

(1995) 07 KAR CK 0051
In the Karnataka High Court
Case No : Writ Petition No. 26720 of 1995

B.L. Nagaraj and others

APPELLANT

Vs

Dr. Kantha and others

RESPONDENT

Date of Decision : 12-07-1995

Acts Referred:

Transplantation of Human Organs Act, 1994 — Section 9, 9 (3)

Citation : AIR 1996 Kar 82 : (1995) ILR (Kar) 2050 : (1995) 5 KarLJ 519

Hon'ble Judges : G.P. Shivaprakash, J

Bench : Single Bench

Advocate : B.K. Sampathkumar, for the Appellant; N.K. Ramesh, HCGP, for the Respondent

Judgement

1. In this writ petition, the petitioners seek direction to the respondents "to give clearance for the transplant operation of the 1st petitioner by transplanting one kidney of the 2nd petitioner in the Karnataka Nephrology and Transplant Institute."

2, It appears that an application was presented to the "Authorization Committee" constituted under the Transplantation of Human Organs Act, 1994 (Act for short). The said application has been rejected by the Committee on 7-7-1995 on the following grounds:--

1. Donor being Miss Lalithamba not genetically related to the recipient and
2. Other near relatives were not being considered as donors by the family (paternal uncle, wife, etc.)
3. Section 9 of the Act reads as hereunder:--

"9. Restrictions on removal and transplantation of human organs:--

(1) Save as otherwise provided in subsection (3), no human organ removed from the body of a donor before his death shall be transplanted into a recipient unless the donor is a near relative of the recipient.

(2) Where any donor authorises the removal of any of his human organs after his death under sub-section (2) of Section 3 or any person competent or empowered to give authority for the removal of any human organ from the body of any deceased person authorises such removal, the human organ may be removed and transplanted into the body of any recipient who may be in need of such human organ.

(3) If any donor authorises the removal of any of his human organs before his death under sub-section (1) of Section 3 for transplantation into the body of such recipient not being a near relative, as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such human organ shall not be removed and transplanted without the prior approval of the Authorization Committee.

(4) (a) The Central Government shall constitute, by notification, one or more Authorization Committees consisting of such members as may be nominated by the Central Government on such terms and conditions as may be specified in the notification for each of the Union territories for the purposes of this section.

(b) The State Government shall constitute, by notification, one or more Authorization Committees consisting of such members as may be nominated by the State Government on such terms and conditions as may be specified in the notification for the purposes of this section.

(5) On an application jointly made, in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorization Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the rules made thereunder grant to the applicants approval for the removal and transplantation of human organ.

(6) If, after the inquiry and after giving an opportunity to the applicants of being heard, the Authorization Committee is satisfied that the applicants have not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the application for approval."

4. In terms of sub-section (3) of Section 9 of the Act, the donor i.e., the 2nd petitioner has authorised the removal of her kidney for transplantation into the body of the 1st petitioner. She has stated that she is donating her kidney out of "affection and attachment" towards the 1st petitioner.

5. From the records, it appears that the 2nd petitioner is the sister in law of the 1st petitioner i.e., the sister of the wife of the 1st petitioner. It is also on record that the 2nd petitioner is a spinster. The Committee instead of ascertaining whether the 2nd petitioner was donating her kidney "by reason of affection and attachment" towards the 1st petitioner, has rejected the application on the ground that the "near relatives" as defined in the Act "were not being considered as donors by the family".

6. There is no provision in the Act which prohibits a person, who is not a "near relative" by definition, from donating his kidney, merely because the "near relatives" have not been considered as donors by the family for kidney transplantation. The Committee has misdirected itself in this regard while refusing permission to the petitioners.

7. In the result this petition succeeds and a direction is issued to the first respondent who is the chairperson of the Committee to consider the application/s of the petitioners afresh at its meeting on 14-7-1995 in the light of the provisions contained in sub-section (3) of Section 9 of the Act.

8. The Committee would ascertain from the 2nd petitioner whether she would be donating the kidney out of "affection and attachment". The donor's relationship with the recipient, period of acquaintance and the degree of association reciprocity of feelings, gratitude and other human bonds are perhaps some of the factors which would sustain "affection and attachment" between two individuals. The Committee has to ensure that the human organ does not become an article of commerce. The main thrust of the Act is against commercial dealings in human organs.

9. The Committee would take into consideration all the surrounding circumstances while considering the applications "of the petitioners seeking permission for kidney transplantation.

Let a copy of this order be furnished to the learned HCGP, Sri N. K. Ramesh.

Writ Petition disposed of.

10. Order accordingly.