
(2009) 05 RAJ CK 0126
In the Rajasthan High Court

Gheesa Ram Garg

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Transplantation of Human Organs and Tissues Act, 1994 — Section 3(1)

Citation : (2009) 2 WLN 532

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. This is unfortunate case that the petitioner's son Sandeep Garg suffered kidney disease and was subjected to kidney transplantation. He got his kidney transplanted from the Institution of Kidney Diseases and Research Center, Civil Campus, Ahmedabad and he incurred total expenditure of Rs. 4,81,558/-. The petitioner has been given reimbursement of Rs. 50,000/- only by order dt. 30.04.2005, copy of which has been placed on record as Annex.7.

3. It is stated by the petitioner, a Government employee, that when the petitioner along with his family members were at Ahmedabad to attend some social function, his son suffered some serious illness and the petitioner's son was immediately taken to the hospital for treatment and ultimately, it was found that the petitioner's son is suffering from serious kidney disease. The petitioner was advised to give dialysis to his son for which the petitioner immediately went to hospital at Ahmedabad for further specialised treatment. The petitioner's son was admitted in the aforesaid institute and it was found that the petitioner's son is suffering from End Stage Renal Disease and because of that transplantation of kidney was necessary.

4. The other most unfortunate circumstance is that the petitioner's another son died because of the same reason of kidney disease in the year, 1995.

5. According to the petitioner, for transplanting the kidney, there is an act to safeguard the interest of the patients and which is, Transplantation of Human Organs Act, 1994 and as per the said Act, if any donor authorizes the removal of any of his human organ before his death for transplantation into the body of such recipient, not being a near relative, human organ from the body of donor shall not be removed and transplanted without the prior approval of the authorization committee constituted under Sub-section (1) of Section 3 the Act of 1994. According to the petitioner, in the State of Rajasthan, no such committee was in existence for grant of approval of renal transplantation of unrelated person or donor. It is submitted that the petitioner's near relatives are brother, sister, mother and father and spouse which could have given kidney for transplantation in the body of the petitioner's son. However, the blood group of petitioner and his wife are "A+" and "AB+" respectively whereas the blood group of the petitioner's daughters are "ARH-" and "AB-". Therefore, none of the family members of the petitioner could have donated kidney for his son. In that situation, with the approval of authorised committee under the Act of 1994 and looking to the urgency, operation was conducted and kidney was obtained and transplanted in the body of the petitioner's son. It is stated that the petitioner was not in a position to bring back his son to the State of Rajasthan for treatment. It is also pertinent that the petitioner before that submitted all the medical documents and reports to the Principal, SMS Medical College, Jaipur with a request to grant permission for operation of his son at the institute referred above. The petitioner did not receive any response from the Principal, SMS Medical College. Then the petitioner requested the Chairman Authorisation Committee and Additional Director of Medical Research, Gandhinagar (Gujarat) for the approval of unrelated renal transplant operation. The Committee after examining the case of the petitioner's son vide order dt. 15.12.2003 accorded approval for removal of kidney from the unrelated donor and transplant to the petitioner's son and thereafter, kidney was transplanted and the bill of Rs. 4,81,558/- has been raised.

6. Learned Counsel for the petitioner submitted that in view of the number of judgments delivered by this Court which are- (1) Division Bench judgment delivered in the case of Kendriya Vidyalaya Sangathan and Ors. v. The Central Administrative Tribunal Bench Jodhpur and Anr. reported in 2005(7) RDD 2360 (Raj.) (DB); (2) Division Bench judgment delivered in the case of State of Rajasthan and Others Vs. Surendra Kumar Kalra, Single Bench judgment delivered in the case of Kailash Prasad Gupta Vs. State of Rajasthan and Others, the issue has already been considered at length and this Court held that the emergency knows no law and procedure and in emergent situation, the Government cannot insist on a Government employee to get the treatment at Government recognised institution.

7. At this juncture, it will be worthwhile to mention here that the petitioner has placed on record the details of the employees who have been given reimbursement of more than Rs. 50,000/- and reimbursement upto more than

Rs. 10 lakhs on account of kidney transplantation were allowed. In the list Annex. 12, there are several instances wherein medical expenses of more than Rs. 50,000/- are allowed by the State.

8. The respondents have not denied the above list in their reply.

9. It is submitted by the respondents that as per the rules, the petitioner could have been awarded reimbursement of Rs. 50,000/- only.

10. After going through the facts and the reasons given in the judgments referred above as well as in view of the fact that the petitioner's one son died because of kidney problem and in that situation, there was reasonable apprehension in the mind of the petitioner that if the petitioner's son will not get the proper treatment from proper institute, then he may lose his second son also and in that emergent situation, if the petitioner got treatment from the institute referred above, then the State Government cannot take help of any technicalities and the petitioner could not have been denied the reimbursement of the expenses which he incurred in that peculiar circumstances which at the cost of repetition may be mentioned as (1) the petitioner's one son already died because of kidney disease and (2) second son's operation was necessary in the opinion of doctor and (3) the operation was conducted with the approval of competent committee under the Act of 1994 and (4) in other cases, the State Government has given reimbursement upto Rs. 10,65,000/- and more, than there is no reason for the State Government to deny same treatment to the petitioner.

11. In this view of the matter, the instant writ petition is allowed and the respondents are directed to reimburse Rs. 4,81,588/- in total.