
(2013) 03 KL CK 0156
In the High Court Of Kerala
Case No : Writ Petition (C) No. 8339 of 2013

Latheefa E.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Transplantation of Human Organs Rules, 1995 — Rule 4A(4)(i)

Citation : (2013) 2 KHC 183 : (2013) 2 KLJ 652

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; Abdul Salam, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

Antony Dominic, J.—Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents. Petitioner is a patient who is urgently in need of kidney transplantation. According to the petitioner, one Smt. Ajitha A., Mohanavilasam, Thathampilly Post, Alappuzha has agreed to donate one of her kidneys to her. On that basis, along with all documentation, Ext. P1 application was submitted before the District Level Authorisation Committee constituted under the provisions of the Transplantation of Human Organs Act, 1994. The application was considered and was rejected by Ext. P2 order. Challenging Ext. P2 order, appeal was filed before the 1st respondent and that appeal has been rejected by Ext. P4. It is in these circumstances, the petitioner has filed this writ petition challenging Exts. P2 and P4 and also seeking consequential directions.

2. The reason stated in Ext. P2 are that the provisions of sub-rules (4)(i)(ii)(a) (b) and (c) of Rule 4A of the Transplantation of Human Organs Rules, 1995 are not complied with. It is also stated that contradictory statements were given by the recipient's husband, donor and the donor's father. This order has been confirmed in Ext. P4 which does not deal with anyone of the contentions raised

by the petitioner. On the other hand, the 1st respondent has proceeded to confirm Ext. P2 without any discussion.

3. Rule 4A(4)(i) provides that the Authorisation Committee shall evaluate that, there is no commercial transaction between the recipient and the donor and that no payment of money or moneys worth as referred to in the Act, has been made to the donor or promised to be made to the donor or any other person. Although this provision of the Rule has been mentioned in Ext. P2 order passed by the Authorisation Committee, there is no finding that the case of the petitioner involves any commercial transaction or even a promise in that behalf. As far as the provisions of sub-rules (4)(ii)(a), (b) and (c) of Rule 4A are concerned, Clause (a) requires the Authorisation Committee to assess the explanation of the link between the donor and donee and the circumstances which led to the offer being, made. The documents annexed to Ext. P1 application indicate that according to the donor and donee, the donee is a close family friend and that is the reason. Although certain minor contradictions in the statements recorded from the recipient's husband, donor and donor's father are mentioned in Ext. P2, no concrete material is relied on to doubt the correctness of the claim of the parties that they are close family friends. Necessary declarations have been made in the affidavit filed by both parties. The materials available before the Committee did not justify the suspicion about the bona fides of the offer made, justifying rejection of the application by Ext. P2 order. Since Ext. P4 does not contain any discussion, that order also is untenable. For the aforesaid reasons, I am satisfied that Exts. P2 and P4 deserves to be set aside. Even the Authorisation Committee does not have a case that the application or its enclosures submitted by the petitioner do not meet the requirements laid down in the Act. If that be so, in the absence of any circumstances justifying rejection of the application, I set aside Exts. P2 and P4 and direct the 6th respondent to pass orders according permission to the petitioner for accepting the kidney offered by Smt. Ajitha A., Mohanavilasam, Thathampilly Post, Alappuzha. Orders in this behalf shall be passed at any rate within 10 days of production of a copy of this judgment along with a copy of the writ petition.

Writ Petition is disposed of as above.