
(2005) 02 P&H CK 0127

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 17427 and 21616 of 2004

Rajinder Kumar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Transplantation of Human Organs and Tissues Act, 1994 — Section 17, 9(3)

Citation : AIR 2005 P&H 172 : (2005) 140 PLR 642 : (2005) 2 RCR(Civil) 566

Hon'ble Judges : Viney Mittal, J;H.S. Bedi, J

Bench : Division Bench

Advocate : Kanwaljit Singh, for the Appellant; Charu Tuli, Sr. Dy. A.G., for the Respondent

Judgement

Viney Mittal, J.—Petitioner, Rajinder Kumar, has approached this Court through the present petition filed under Article 226 of the Constitution of India. The prayer made in the petition is for issuance of a writ of certiorari for quashing orders dated September 27, 2004 and October 14/27, 2004 passed by respondent No. 3, Chairman, Authorisation Committee, and respondent No. 2, Secretary Medical Education and Research, respectively. The petitioner has pleaded that he is suffering from a complete kidney failure. He was advised the transplantation of the aforesaid organ. On an earlier occasion, wife of the petitioner had donated her one kidney. However, the aforesaid transplantation of the organ was not successful and, therefore, the petitioner was medically advised to go in for a fresh transplantation of the kidney. The petitioner, found a willing donor, Jeewan Sharma. As per the requirement of the Transplantation of Human Organs Act, 1994 (hereinafter referred to as the Act"), in case the donor of a human organ is not related to the recipient, approval of the Authorisation Committee constituted under the Act is required. Since the aforesaid proposed donor, Jeewan Sharma was not related to the petitioner, therefore, necessary permission from the Authorisation Committee was sought by the petitioner and the donor. For the aforesaid purpose, the petitioner as well as the donor filed

their respective affidavits. Along with that, various medical test reports of the petitioner were also placed on record, along with certificates issued by the surgeon who was to conduct surgery upon the petitioner. An affidavit of Shrimati Rita Sharma, wife of the proposed donor was also filed. A meeting of the authorisation committee was held on September 27, 2004. The Authorisation Committee found that the proposed donor and his wife were not related to the petitioner, in any manner, but were working as servants in the house of the petitioner. On that basis, it was inferred that since there was a great economic disparity between the recipient and the donor, donor and his wife being servants of the recipient's family, "the money involvement cannot be ruled out". Accordingly, the request of the petitioner seeking the approval was rejected by the Authorisation Committee. A copy of the aforesaid minutes of the meeting of Authorisation Committee dated September 27, 2004 is appended as Annexure P/12 with the present petition.

2. The petitioner approached Secretary, Medical Education and Research, respondent No. 2, by way of appeal u/s 17 of the Act. It was submitted by the petitioner that his wife Rakesh Kumari had already donated her one kidney in the past and, therefore, none of the close relatives of the recipient was in a position to donate the kidney. The affidavits of the proposed donor as well as his wife were also placed on the record. The matter was considered by respondent No. 2 and the prayer of the petitioner was rejected by making the following observations :

"The learned counsel of Shri Rajinder Kumar submitted that the donor Jewan Sharma and Rajinder Kumar recipient were living in the same lane. Even if his contention is accepted, it would not materially affect the case. The recipient and donor have failed to establish that the kidney was being donated out of love and affection. The recipient was living abroad in 2002. He has reportedly come back to India due to his illness. The donor Mr. Jeewan Sharma does not have any regular job. Both he and his wife are doing part time manual jobs. They are not related to the recipient in any manner nor has it been brought on record as to what motivated him to donate his kidney and why he was trying to help the family. I accordingly feel that the requirements of Section 9(3) of Transplantation of Human Organs Act, 1994 are not met. The appeal is accordingly rejected."

3. A copy of order dated October 14/27, 2004 has been appended as Annexure P/13 with the petition. The petitioner has impugned the aforesaid orders Annexures P/12 and P/13 and has approached this Court through the present petition.

4. The claim of the petitioner has been contested by the respondents. A short reply by Dr. J. S. Dalai, Principal-cum-Chairman, Authorisation Committee has been filed. In para 2 of the aforesaid reply, it has been admitted by the Principal-cum-Chairman of the Authorisation Committee that the Senior Superintendent of Police, Jalandhar had stated vide letter No. 278-P-CCII dated September 18, 2004 in police report that there is no money transaction between donor and

patient and this kidney transplantation is likely to be done on humanitarian ground. Even after the aforesaid enquiry by the Senior Superintendent of Police, the Authorisation Committee did not approve the aforesaid donation on the ground that there was a great economic disparity between the recipient and the donor. The reasons given in the orders Annexures P/12 and P/13 have been reiterated by the respondents.

5. CM No. 21616 of 2004 has also been filed by the petitioner bringing on record a certificate issued by the surgeon. In the affidavit in support of the application and the certificate, it has been stated that the condition of the petitioner is very bad and he needs kidney transplantation at the earliest. The aforesaid CM is allowed and the aforesaid certificate is taken on record.

6. We have heard Shri Kawaljit Singh, learned counsel for the petitioner and Ms. Charu Tuli, learned Senior Deputy Advocate General, Punjab and with their assistance have also gone through the record of the case.

7. Shri Kanwaljit Singh, learned counsel for the petitioner has vehemently argued that as per the provisions of the Act the donation of an organ by a person not related to the recipient was not prohibited. The provisions of the Act were merely regulatory in nature. It was only with a view to avoid illegal and unauthorised transplantation that the aforesaid Act had been enacted. Learned counsel has also brought to our notice that on an earlier occasion, the petitioner had been donated kidney by his own wife. However, the said transplantation was not successful, inasmuch as the said transplanted organ was rejected by the body of the petitioner. The petitioner was thereafter medically advised to go in for a fresh transplantation. In these circumstances, urges the learned counsel, once the petitioner had been able to find a person who was a willing donor and who was willing to donate his kidney on humanitarian grounds and not out of any money consideration, then there was absolutely no justification for the Authorisation Committee or the Appellate Authority to have rejected the request of the petitioner.

8. On the other hand Ms. Charu Tuli, learned counsel for the respondents has argued that there was absolutely no relation between the petitioner and the donor, therefore, the possibility of money involvement in the aforesaid transplantation could not be ruled out. Mr. Tuli has supported the orders Annexure P/12 and P/13 being within the competence of the aforesaid authorities.

9. We have given our due consideration to the rival contentions of the learned counsel for the parties and in our considered view the present petition is liable to succeed.

10. A perusal of the orders Annexures P/12 and P/13 clearly shows that the only reason given by respondents Nos. 2 and 3 to refuse the necessary approval to the petitioner and the proposed donor is that "the money involvement could not be ruled out". The aforesaid conclusion has been drawn merely on account of the fact that there was a great economic disparity between the petitioner and the

proposed donor. However, in our considered view the aforesaid ground is totally an extraneous ground and merely because there was economic disparity between the petitioner and the proposed donor would be no reason to draw any inference that the petitioner was actually receiving the donated organ on money consideration. The human conduct and reactions cannot be measured in any mathematical terms. The instances are not unknown where people due to sheer love and affection or due to humanitarian consideration do act for the welfare of a needy person. All such actions of the good doers cannot be suspected and need not be viewed with any tainted glasses. We are also impressed by the enquiry held by the Senior Superintendent of Police, Jalandhar which has been mentioned by the respondents in their own reply. It has been specifically reported by the Senior Superintendent of Police, Jalandhar that as per the police report there was no money transaction between donor and patient and the aforesaid kidney transplantation is likely to be done on humanitarian ground. In view of the aforesaid positive and specific report of the police, there was absolutely no material with the Authorisation Committee or the Appellate Authority to reject the claim of the petitioner. It is apparent that the Authorisation Committee as well as the Appellate Authority have been influenced by the suspicious atmosphere which had been created on account of some irregularities in kidney transplantation in the past. However, the result of the aforesaid suspicious atmosphere cannot be allowed to become a dead wall for seriously ill patient, like the petitioner. Accordingly we find that as per the affidavits Annexures P/1, P/2 and P/3 and various medical reports and the enquiry conducted by the police itself, the offer of donation of kidney made by Jiwan Sharma to petitioner, Rajinder Kumar cannot be termed to be tainted or because of involvement of any money consideration.

11. As a result of the aforesaid dismissal we allow the present petition and quash orders Annexures P/12 and P/13. As a consequence thereof, we direct respondent No. 3, Chairman, Authorisation Committee to grant necessary approval to the petitioner, forthwith, to receive the kidney proposed to be donated by Jeewan Sharma.

12. The petition stands disposed of accordingly.

13. A copy of this order be given dasti on usual charges.