
(2004) 11 KAR CK 0017
In the Karnataka High Court
Case No : W.A. No"s. 4650-51 of 2004

S. Malligamma @ Malligavva and Another	APPELLANT
Vs	
State of Karnataka and Another	RESPONDENT

Date of Decision : 17-11-2004

Acts Referred:

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

Citation : (2005) ILR (Kar) 1557 : (2005) 2 KCCR 1028 : (2005) 2 RCR(Civil) 772

Hon'ble Judges : S.R. Nayak, Acting C.J.;H.N. Nagamohan Das, J

Bench : Division Bench

Advocate : Ashok Haranahalli, for the Appellant; M.N. Sheshadri, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Nagamohan Das, J.—The first appellant is aged about 50 years and suffering from chronic renal failure from the year 2003 and she is on dialysis twice in a week. In addition to renal failure, the first appellant is suffering from hypertension diabetes. As per Annexure-"A" dated 15.7.2004, the Doctors advised the first appellant to undergo Kidney Transplantation at the earliest. Further, it is the case of first appellant that her blood group is "O" positive, whereas the blood group of first appellant's husband, three daughters and two sons are "B" positive as per Annexure "B" to "B5" and do not match with the blood group of first appellant.

2. The second appellant is aged about 32 years, married to Mr. Shivananjaiah having a daughter aged about 12 years and a son aged about 10 years. The second appellant is a house-wife and her blood group is "O" positive. The second appellant through her husband and his relatives are closely known to the family of first appellant. The second appellant out of her free volition and out of love and affection has come forward to donate one kidney to the first appellant. Both the appellants approached the Committee to grant permission to undergo kidney

transplantation as required under the Transplantation of Human Organs Act, 1994. The second respondent-Committee after recording the statements of appellants and on the basis of the material on record rejected the application of the appellants vide its order dated 17.8.2004 as per Annexure "D". Aggrieved by the rejection order Annexure "D", the appellants filed W.P.Nos. 35640-35641/2004 before this Court. The learned Single Judge vide order dated 15.10.2004 dismissed the Writ Petitions. Hence these appeals by the aggrieved appellants.

3. Sri Ashok Haranahalli, learned counsel for the appellants contended that the learned Single Judge failed to consider the report of Police and scrutinised the evidence of parties as if it is a civil suit. It is further contended that more number of donors including the second appellant are from Ramanagram Taluk itself shall not be a ground to reject the prayer of appellants. The rejection of the prayer of appellants on the ground that they belong to different castes is contrary to the provisions of the Act. It is contended that the learned Single Judge is not right in directing an inquiry into the matter by the Director General of Police.

4. We directed the appellants to be present before the Court on 10.11.2004. Accordingly, the second appellant, her husband and the son of first appellant by name Basavaraj were present before the Court. On interrogation, the second appellant stated that out of love and affection and with an intention to re-pay her gratitude, she voluntarily offered to give her kidney to the first appellant, who is in urgent need of it. We also noticed some inconsistencies in the statements of second appellant and her husband.

5. The first appellant filed additional affidavit on 9.11.2004 stating that the blood group of her husband and children are not matching. The mother of first appellant is deceased and her father is aged about 80 years, who is diabetic and despite her best efforts, no near relative is available whose blood group matches with the blood group of first appellant.

6. Learned Government Advocate Sri M.N. Sheshadri submits that the Police Report says that out of love and affection, the second appellant has come forward to donate her kidney to the first appellant and that there are no criminal cases reported against the appellants.

7. Organ transplantation is one of the major medical achievements of 20th century. The improvements in surgical technique and post-operative care have contributed to the successful replacement of diseased parts with healthy ones. The supply of donated organs is falling behind the rapidly increasing demand as more patients with organ failure are becoming candidates for transplantation. The lists of those awaiting a transplant are lengthening and as a result some patients with kidney failure are on dialysis for years until a suitable kidney is available. This advancement brought its evils as well. Commercial dealings in human organs especially kidneys, started increasing. This situation lead to enactment of The transplantation of Human Organs Act, 1994 (hereinafter

referred to as the "Act"). Section 3 of the Act speaks about the authority for removal of human organs. Section 9 of the Act speaks about restrictions on removal and transplantation of human organs.

8. The object of the Act, is not to prevent transplant of organs to save the lives of suffering human beings, but to prevent commercial dealings in human organs. Caste, religion region, language and class is not a bar for donation process. The consent of donor shall be free. It is needless, to say that a consent is free when it is not caused by coercion, fraud, intimidation and misrepresentation. The consent of donor requires mental competence to decide, voluntary freedom of choice and discloser of the risks.

9. In the instant case, the only ground on which the second respondent-Authorization Committee rejected the application of appellants is the absence of love and affection between the parties. Merely because there are some inconsistencies in the statements of appellants, it cannot be said that there is no love and affection and that their objective is commercial. The donor and the recipient belong to different caste and they are from different places shall not be a ground to reject the application of appellants. In many a circumstances, it is not practical and possible to expect the donor and the recipient to be from same caste, same religion, same place and class. The paramount criteria that the Authorisation Committee is to find out whether there is commercial object between the donor and the recipient. Only on surmises and conjectures the Authorisation Committee rejected the prayer of appellants.

10. The learned single Judge on the basis of some information that more number of donors are from Ramangaram Taluk, directed the Director General of Police to enquire and to submit a report. With great respect, we disagree with the learned Single Judge. There is no sufficient material on record which warrants to hold an enquiry.

11. For the reasons stated above, we allow the appeals, set-aside the order of learned Single Judge and quash the order of second respondent Authorisation Committee dated 17.8.2004, Annexure "D" to the Writ appeals and remit the matter to the second respondent for reconsideration in the light of observations made by the Court and in accordance with law, within two weeks from the date of receipt of this order.

The Registry is directed to furnish a copy of the order to the second respondent forthwith.