

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

**PRESENT
THE HONOURABLE Dr. JUSTICE SHAMEEM AKTHER**

WRIT PETITION NO: 7405 OF 2022

Between:

Mohammed Ali Khan, S/o.A. Abid Ali Khan Aged about 41 years, R/o 10-4-25/1, Masab Tank, Hyderabad

...PETITIONER

AND

1. The State of Telangana, rep. by its Principal Secretary, Health, Medical and Family Welfare, Department, D Block, 2nd Floor, Secretariat, Hyderabad The Appellate Authority constituted u/s The Transplantation of Human Organs and Tissues Act 1994.
2. State Authorization Committee For Organ Transplant, Telangana State, Constituted u/ s 9 (4) (b) Of The Transplantation of Human organs and Tissues Act, 1994, rep. by its Chairman, C/o Office of the Director of Medical Education, Koti, Hyderabad-500 095

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction more one in the nature of writ of Mandamus declaring the order of the 2nd respondent in RC No.47746/MAK/ 2021 dated 02.12.2021 in rejecting the petitioner's case for approval of kidney transplantation though all the ingredients are satisfied as per Law and further action of the 1st respondent rejecting the appeal vide Memo.No.625/ D/2022 dated 02.02.2022 though petitioner health is deteriorating day by day as illegal, arbitrary and consequently direct the 1st and 2nd respondents to immediately grant approval for the kidney transplantation to Petitioner forthwith by setting aside the aforesaid orders

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the 1st & 2nd respondents to grant permission for transplantation of kidney of the petitioner

Counsel for the Petitioner : SRI . RATHANGA PANI REDDY

Counsel for the Respondent No.1 : GP FOR MEDICAL HEALTH AND FAMILY WELFARE

Counsel for the Respondent No.2 : --

The Court made the following: ORDER

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.7405 OF 2022

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners, wherein the following prayer is made:

"...to issue an appropriate writ, order or direction more one in the nature of writ of Mandamus declaring the order of the 2nd respondent in RC No.47746/MAK/2021, dated 02.12.2021 in rejecting the petitioner's case for approval of kidney transplantation though all the ingredients are satisfied as per Law and further action of the 1st respondent rejecting the appeal vide Memo No.625/D/2022, dated 02.02.2022 though petitioner health is deteriorating day by day as illegal, arbitrary and consequently direct the 1st and 2nd respondents to immediately grant approval for the kidney transplantation to Petitioner forthwith by setting aside the aforesaid orders and pass such orders...."

2. Heard the learned counsel for the petitioner, learned Assistant Government Pleader for Medical and Health appearing on behalf of respondent No.1 and perused the record.

3. Learned counsel for the petitioner would contend that the donor of the kidney is the cousin of the petitioner. There is no ill intention between the donor and the donee. The donor has come forward to donate his kidney to the petitioner out of love and affection, without any consideration. The respondent No.1-appellate authority had passed impugned order dated 02.02.2022 *vide* Memo No.625/D/2022, mechanically, without application of mind and without adverting to Rule 7(3) of the Transplantation of Human Organs and Tissues Rules, 2014 (for short 'the Rules') and ultimately prayed to set aside the

impugned order dated 02.02.2022 and allow the writ petition as prayed for.

4. Learned Assistant Government Pleader for Medical and Health would submit that the Authorization Committee for Organ Transplantation had assigned reasons in rejecting the request of the petitioner for kidney transplantation and the appellate authority, having examined the issue, passed the impugned order, dated 02.02.2022, holding that there are no grounds to interfere with the decision of the Authorization Committee. There is neither procedural irregularity in passing the impugned order nor violation of principles of natural justice against the petitioner and ultimately prayed to dismiss the writ petition.

5. In view of the submissions made by both the learned counsel, the question that arises for determination in this writ petition is as follows:

"Whether the impugned order, dated 02.02.2022, passed by the respondent No.1/Secretary to Government, Health, Medical & Family Welfare Department, Government of Telangana, is sustainable under law."

6. Rule 7 (3) of The Transplantation of Human Organs and Tissues Rules, 2014, reads as under:

7(3) - When the proposed donor and the recipient are not near relatives, the Authorization Committee shall-

- (i) evaluate that there is no commercial transaction between the recipient and the donor and that no payment has been made to the donor or promised to be made to the donor or any other person;
- (ii) prepare an explanation of the link between them and the circumstances which led to the offer being made;
- (iii) examine the reasons why the donor wishes to donate;
- (iv) examine the documentary evidence of the link, e.g. proof that they have lived together, etc;

- (v) examine old photographs showing the donor and the recipient together;
- (vi) evaluate that there is no middleman or tout involved;
- (vii) evaluate that financial status of the donor and the recipient by asking them to give appropriate evidence of their vocation and income for the previous three financial years and any gross disparity between the status of the two must be evaluated in the backdrop of objective of preventing commercial dealing;
- (viii) ensure that the donor is not a drug addict;
- (ix) ensure that the near relative or if near relative is not available, any adult person related to donor by blood or marriage of the proposed unrelated donor is interviewed regarding awareness about his or her intention to donate an organ or tissue, the authenticity of the link between the donor and the recipient, and the reasons for donation, and any strong views or disagreement or objection of such kin shall also be recorded and taken note of.

7. Paragraph No.3 of the impugned order, dated 02.02.2022, reads as follows -

"After hearing both sides and upon careful examination of the matter, it is held that there are no grounds to interfere with the decision of the Authorization Committee. Accordingly the orders of the Authorization Committee are upheld and the appeal is hereby rejected."

8. As seen from the impugned order, the respondent No.1 did not apply its mind and did not advert to the provisions laid down under Rule 7(3) of the Rules and passed the impugned order mechanically stating that there are no grounds to interfere with the decision of the Authorization Committee. No reasons, much less cogent reasons, were assigned by respondent No.1 to arrive at such conclusion. There is no mention in the impugned order as to what weighed the appellate authority to arrive at such a conclusion. The appellate authority has to examine the issue independently going through the material on record. No such indication is anywhere in the impugned order. The appellate authority ought to have examined the material placed on record

in detail and thereafter would have passed an order, in accordance with the Rules, which is patently absent in this case.

9. Under these circumstances, the impugned order, dated 02.02.2022 passed by respondent No.1 vide Memo No.625/D/2022, is set aside. The appeal against the order, dated 02.12.2021, of the 2nd respondent is restored to file and the respondent No.1 is directed to examine the issue afresh and pass necessary orders, in accordance with the Rules, within a period of seven (7) days from the date of receipt of a copy of this order.

10. With the above observations/directions, the Writ Petition is disposed of.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

SD/-N.CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

GP

SECTION OFFICER

To

1. The Principal Secretary, Health, Medical and Family Welfare, Department, D Block, 2nd Floor, State of Telangana, Secretariat, Hyderabad The Appellate Authority constituted u/s The Transplantation of Human Organs and Tissues Act 1994.
2. The Chairman, State Authorization Committee For Organ Transplant, Telangana State, Constituted u/ s 9 (4) (b) of The Transplantation of Human organs and Tissues Act, 1994, C/o Office of the Director of Medical Education, Koti, Hyderabad-500 095
3. One CC to Sri K.Rathanga Pani Reddy, Advocate [OPUC]
4. Two CCs to GP for Medical Health and Family Welfare, High Court for the State of Telangana at Hyderabad [OUT]
5. Two CD Copies
6. One Spare Copy

Kj.

BS

HIGH COURT

DATED:10/02/2022

ORDER

WP.No.7405 of 2022



**DISPOSING OF THE WRIT PETITION
WITHOUT COSTS.**

16/02/2022