

IN THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV
ON THE 15th OF FEBRUARY, 2022
WRIT PETITION No. 235 of 2022

Between:-

1. MEENA DEVI,

.....PETITIONER

(*BY SHRI ANKIT SAXENA, ADVOCATE*)

AND

1. THE STATE OF MADHYA PRADESH THR.
SECRETARY, VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)
2. BANSAL HOSPITAL, SHAHPURA BHOPAL,
THROUGH CHIEF EXECUTIVE OFFICER/
MEDICAL SUPERINTENDENT SHAHPURA
DISTRICT BHOPAL (MADHYA PRADESH)
3. RAMSAHAY MISHRA (SHARMA) S/O
PRABHUDAYAL, VILLAGE KACHHAUA
DISTRICT GWALIOR (MADHYA PRADESH)
4. DISTRICT / STATE AUTHORIZATION
COMMITTEE DIRECTORATE OF HEALTH
SERVICE THROUGH CHAIRMAN SHYAMLA
HILLS BHOPAL (MADHYA PRADESH)

....RESPONDENTS

(SHRI PRADEEP SAHU, PANEL LAWYER FOR THE RESPONDENT/STATE AND SHRI RAVINDRANATH CHATURVEDI FOR RESPONDENT NO.2)

This appeal coming on for admission this day, the Court passed the following:

ORDER

The case of the petitioner is that her son namely Raghvendra Mishra aged about 35 years is suffering from CKD V and is on dialysis. The petitioner wants to donate her kidney to her son. However, unless there is approval by the Authorization Committee as per the mandate of Section 9 of the Transplantation of Human Organs and Tissues Act, 1994 (for short hereinafter referred to as “Act of 1994”) the kidney of her son cannot be transplanted. The petitioner has placed on record Annexure P/1 dated 20.12.2021 which is a communication of rejecting the prayer of the petitioner to forward her case for approval of the Authorization Committee on the ground that the husband of the petitioner has not given consent for kidney donation.

2. Learned counsel for the petitioner has submitted that as per the mandate of Act of 1994 or rules made there under there is no such requirement of the consent of the husband of the petitioner for donation of kidney to his own son. A perusal of Annexure P/1 shows that the son of the petitioner is under going treatment in Bansal Hospital, Bhopal and his mother (petitioner) is the prospective donor. The prospective donor (petitioner) has been found to be medically fit for kidney donation after all medical tests. However, on account of non-signing of the consent by the husband of the petitioner, the matter has not been forwarded to the Authorization Committee and therefore, such

transplantation of the kidney of the son of the petitioner could not take place. The petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the matter of *Kuldeep Singh and Another Vs. State of T.N. and Others*¹ to contend that such a matter needs to be given utmost priority and to be decided by the Authorization Committee as early as possible.

3. Section 9 of the Act of 1994 prescribes that Save as otherwise provided in sub-section (3), no [human organ or tissue or both] removed from the body of his donor before his death shall be transplanted into recipient unless the donor is a near relative of the recipient. Sub-section (5) of Section 9 prescribes that on an application jointly made in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorization Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of the Act and the rules made there under, grant to the applicants approval for the removal and transplantation of the human organ. Sub-section (6) of Section 9, however, provides that if, after the inquiry and after giving an opportunity to the applications of being heard, the Authorization Committee finds that the approval cannot be given an appropriate order recording reasons for rejecting of such approval can be passed.

4. The Transplantation of Human Organs Rules, 1995 (for short hereinafter referred to as the "Act of 1995") framed in exercise of powers conferred by sub-section (1) of Section 24 of the Act of 1994. Rule 6(a) of the Rules of 1995 prescribes for composition of

¹(2005) 11 SCC 122

Authorization Committee and Rule 6(b) prescribes for the procedure to deal with such cases`.

5. The perusal of the schemes under the Act and the Rules as referred above shows that the Authorization Committee has to record its satisfaction that the applicants have complied with all the requirements of the Act and Rules made there under. Under such circumstances, the rejection of the request by the respondent/Hospital on the ground of non-issuance of the NOC by the husband of the petitioner is not sustainable and therefore, the same is set aside. The respondent/Hospital is directed to immediately comply with all requirement at its end and sent the matter to the Authorization Committee for taking appropriate decision in accordance with the mandates of the Act and the Rules made there under. Let the Hospital send recommendation by 17.02.2022. The Authorization Committee is also directed to take the decision on the request of petitioner as early as possible as the issue is related to the life of the son of the petitioner.

Petition is accordingly disposed off.

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

Jasleen