



2025:KER:195

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946WP(C) NO. 45300 OF 2024PETITIONER/S:

- 1 UVAIS MUHAMMAD K.C.
AGED 20 YEARS
S/O. HASSAN, KANDANCHIRA HOUSE, KAKKADAMPURAM,
A.R.NAGAR P.O., MALAPPURAM DISTRICT, PIN - 676305
- 2 CHIPPY S.
AGED 30 YEARS
D/O. LATE SOMAN, VENNEER VEEDU, CHANDIROOR P.O.,
ARoor VILLAGE, CHERTHALA TALUK, ALAPPUZHA DISTRICT,
PIN - 688537

BY ADVS.
C.M.MOHAMMED IQUABAL
P.ABDUL NISHAD (K/537/2016)
ISTINAF ABDULLAH (K/003112/2022)
THASNEEM A.P. (K/001995/2022)
DHILNA DILEEP (K/002952/2024)
SURYA S.R. (K/002675/2023)

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO HEALTH
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE PRINCIPAL SECRETARY
DEPARTMENT OF HEALTH, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001
- 3 THE DISTRICT LEVEL AUTHORIZATION COMMITTEE FOR
TRANSPLANTATION OF HUMAN ORGANS ERNAKULAM



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REPRESENTED BY ITS CHAIRMAN, GOVERNMENT MEDICAL
COLLEGE, H.M.T. COLONY P.O., KALAMASSERY, KOCHI, PIN
- 683503

OTHER PRESENT:

GP SRI SUNIL KUMAR KURIAKOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19.12.2024, THE COURT ON 06.01.2025 DELIVERED THE
FOLLOWING:

**C.S.DIAS, J.****WP(C) No. 45300 of 2024****Dated this the 6th day of January, 2025****JUDGMENT**

“Hope is the heartbeat of the patient's spirit, a whisper that reminds him that even in waiting, he is one step closer to a new beginning.” — Anonymous.

2. It is said that tragedy strikes in threes; the saying happens to be true in the poignant life of Uvais Muhammed, a 20-year-old boy suffering from chronic kidney disease who is precariously clinging on to life and anxiously expecting a renal transplant. The illness runs in his family, having claimed the health of his father, who now has a renewed lease of life with the kidney of his wife. In an act of altruism, Chippy, who has lost her younger brother due to renal failure, has offered to sacrifice her kidney to Uvais. Yet, the statutory authorities have denied permission thrice, casting doubt on the legitimacy of the donation by harbouring a suspicion of trade. Burdened with the constant fears of death, anxiety and desperation but with a glimmer of hope, Uvais is once again before this Court with the expectation of a new beginning.



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3. Uvais, the 1st petitioner, has been advised to undergo a renal transplant, but he has no near relative to donate him a kidney. But, Chippy, the 2nd petitioner, who is an employee of the 1st petitioner's relative, has volunteered. Due to the statutory prohibition under Section 9 (3) of the Transplantation of Human Organ and Tissues Act, 1994, the petitioners approached the 2nd respondent to forward their joint application for approval. However, their request was declined because they wanted a certificate of altruism from the District Police Chief. This Court, by Ext.P13 interim order in W.P(C) No.18513/2024, directed the Hospital to forward the joint application without insisting on the certificate. Nonetheless, by Ext.P14 order, the 3rd respondent rejected the application for no valid reason, and by Ext.P15 order, the 2nd respondent confirmed the order in appeal. By Ext.P16 judgment, this Court set aside the order and remitted the matter to the 2nd respondent for fresh consideration. However, the 2nd respondent once more rejected the petitioners' application by Ext.P17 order. Yet again, the petitioners assailed Exts.P14 and P17 orders before this Court. This Court *suo motu* impleaded the Deputy Superintendent of Police (Dy. S.P) and directed him to



conduct an enquiry and submit a report regarding the relationship and the nature of the transaction between the petitioners. Along with Ext.P19 report, the Dy. S.P produced the statement of the 2nd petitioner, who reiterated that the donation is voluntary. In the light of Ext.P19 report, this Court set aside Exts.P14 and P17 orders by Ext.P20 judgment and remitted the matter to the 3rd respondent for fresh consideration. Yet, by Ext.P21 order, the 3rd respondent rejected the application. Ext.P21 is ex-facie illegal and arbitrary. Hence, the writ petition.

4. Heard; the learned counsel for the petitioner and the learned Government Pleader.

5. The Transplantation of Human Organs and Tissues Act, 1994 (Act No.42 of 1994) ('Act', in short), is enacted to provide for the regulation of removal, storage and transplantation of human organs and tissues for therapeutic purposes and for the prevention of commercial dealings in human organs and tissues and for matters connected therewith or incidental thereto.

6. The Act permits and regulates organ and tissue transplantations among near-relatives and non-near-relatives as per the provisions of the Act, 1994, and the Rules made thereunder.



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7. S.2(i) defines "near relatives" as spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or granddaughter.

8. In the case on hand, it is undisputed that the 2nd petitioner is not a near relative of the 1st petitioner. Therefore, the parties are regulated by Section 9 (3) of the Act, which reads as follows:

"9. Restrictions on removal and transplantation of human organs or tissues or both.—

(3) If any donor authorises the removal of any of his (human organs or tissues or both) before his death under sub-section (1) of S.3 for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such (human organ or tissue or both) shall not be removed and transplanted without the prior approval of the Authorisation Committee."

9. The above provision permits the donation of human organs and tissues in favour of a person who is not a near relative but with the prior approval of the Authorisation Committee.

10. To achieve the object of the Act, sub-rule (3) of Rule 7 and Rule 17 of the Transplantation of Human Organs and Tissues Rules, 2014 ('the Rules') have been incorporated in the Rules, which reads as under:

"R.7 Authorisation Committee. —

(3) When the proposed donor and the recipient are not near relatives, the Authorisation Committee shall, —



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(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 the 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."

"R.19. Procedure in case of transplant other than near relatives.— Where the proposed transplant is between other than near relatives and all cases where the donor or recipient is foreign national (irrespective of them being near relative or otherwise), the approval will be granted by the Authorisation Committee of the hospital or if hospital - based Authorisation Committee is not constituted, then by the District or State level Authorisation Committee."

11. If the Authorisation Committee is satisfied that the applicants fulfil the conditions under sub-rule (3) of Rules 7, it will issue a Certificate under Form -18 of the Rules granting permission for the transplant.

12. In **Kuldeep Singh v. State of T.N.**, [(2005) 11 SCC 122], the Honourable Supreme Court, while interpreting sub-section (3) of



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Section 9 of the Act, has held that the object of the statute is to prevent commercial dealings in human organs. If the donor is not a near relative of the recipient, then the Authorisation Committee is to be satisfied that the real purpose of the donation is due to the affection or attachment or for any other special reason. The Authorisation Committee would be better positioned to ascertain the authorisation's true intent and purpose by lifting the veil of projected affection or attachment and the so-called special reasons and by focusing on the true intent. The burden is on the applicants to establish the real intent by placing relevant materials for consideration before the Authorisation Committee. Whether there is affection, attachment, or special reason is within the special knowledge of the applicants, and a heavy burden is cast on them.

13. Reverting to the factual matrix of the present case, Ext.P1 certificate unquestionably proves that the 1st petitioner is suffering from chronic kidney disease and has to undergo a renal transplant for his survival. But, by Ext.P14 order, the 3rd respondent has rejected the petitioners' joint application for the following reason:

“Commercial transaction cannot be excluded. The link is a weak element. Further, the donor is a young woman with extreme vulnerabilities. In this circumstance, the application is rejected”.



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14. In the challenge against Ext.P1 order, by Ext.P17 order, the 2nd respondent rejected the petitioners' appeal, stating thus:

"Government have examined the matter in detail. On verifying the Ration Card produced by the donor as id proof, it is noticed that the age of Sanju is 19 and the age of Sivapriya is 17 and they are not twins and the occupation of Chippy is marked as fisherman. On verification of documents and oral interaction with the recipient's representative, donor and their representatives and the contradictory statement by the donor and her parents, it is revealed that the donor and her parents are not aware of the exact place of the shop and their relationship is also doubtful. Moreover, the recipient's father also have confusion on the exact place of the shop and the residence of Sri.Muhammed at Alappuzha. Neither the recipient nor the donor have any old group photos in support of their acquaintance. There is no conclusive proof of their relationship and therefore the donation cannot be proved altruistic beyond doubt".

15. Pursuant to the directions of this Court in W.P(C) No.35443/2024, the Dy. S.P recorded the statement of the 2nd petitioner and submitted Ext.P19 report. The relevant portion of the statement reads as follows:

"For the past 8 months she is working in a peeling company at Aroor. While she was working in the textile shop, she met 1st petitioner who is nephew of the shop owner. He is suffering from kidney disease and undergoing treatment at Medical Trust Hospital, Ernakulam. While talking to him, he asked her to donate her kidney. Her brother Sanju died at the age of 19 due to kidney disease. Uvais is aged 20 only, and he will die if someone does not donate him a kidney like her brother; hence, she expressed her willingness to donate her kidney voluntarily. Her mother and stepfather also consented to donate her kidney. She deposed that she did not expect any monetary benefit in the donation. But due to an altruistic mind and to avoid the fate of her own brother who died at a tender age due to kidney disease"

16. In view of Ext.P19 report and for other reasons, by Ext.P20 judgment, this Court remitted the matter to the 3rd



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respondent with a direction to reconsider the matter afresh, uninfluenced by the findings in Exts.P14 and P17 orders, and to pass a reasoned order specifically adverting to the observations in the report submitted by the Dy.S.P. Nevertheless, by the impugned Ext.P21 order, the 3rd respondent has again rejected the application by holding thus:

“We respectfully request the Honourable High Court of Kerala to initiate an investigation whether middlemen are exploiting poor women for organ donations. The committee has noticed that many donors come from very poor backgrounds and are from vulnerable communities often from specific areas like Alappuzha , Thrissur, Kollam Cherunniyoor in Varkala. In several of these cases, the police have issued certificates of altruism without fully investigating whether the donations are genuine. An inquiry could help uncover any exploitation and protect vulnerable communities, ensuring that organ donations are done ethically and legally.

The donor is currently living in a rented house. It was noted that her mother has remarried, and her husband is presently in jail. Additionally, her 8-year-old son is in the custody of her husband. Given these circumstances, the committee observed that the donor is in a very vulnerable situation, and it appears likely that her decision to donate a kidney is financially motivated rather than altruistic.

Therefore, bases on these considerations and the statutory mandate to uphold the health, welfare and integrity of all parties involved, the DLAC concludes that the conditions do not meet the required criteria under Section 7 of the THOR Act. Accordingly, the application is rejected to safeguard the donor's health, the welfare of her minor child, and to prevent potential exploitation”.

(emphasis supplied)

17. Going by the scheme of the Act, the statutory authorities have to be satisfied whether the organ or tissue donation is altruistic as per the parameters laid down under Rule 7 (3) and the



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materials placed before them. There is no definitive formula to categorically determine whether a donation is altruistic or if there is a commercial transaction. However, in marginal cases, like the present one, the distinction between granting or denying approval for transplantation is separated by a narrow line. The commendable intent of the Act is to prohibit commercial transactions in transplantations and to safeguard vulnerable individuals from exploitation. It's not to be forgotten that some compassionate individuals are willing to selflessly donate their organs to give a new lease of life to a family member or friend. So, it would be unpragmatic to assess every donation between non-relatives on arithmetical scales or view them with scepticism in such summary proceedings. A rigid and inflexible interpretation of Section 9 (3) of the Act would undermine the laudable object of the provision and render it otiose and nugatory. Even otherwise, nowadays, it is common knowledge that the number of recipients outnumber the donors.

18. On an analysis of Exts.P14, 17, and 21 orders passed by the respondents 2 and 3, it is apparent that the core reason to reject the petitioners' application is the 2nd petitioner's



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impecuniousness. Out of the nine clauses under sub-rule (3) of Rule 7, the respondents have rejected the application under clause (i) of Rule 7 (3), i.e., there is a suspected commercial element between the parties. Notably, the respondents 2 and 3 have failed to evaluate the financial status of the donor, as mandated under clause (vii) of the above Rule, which is imperative to assess the income disparity between the donor and recipient. Without such an assessment, it is impossible to arrive at a legitimate conclusion on whether the donation is altruistic or profit-driven. Furthermore, the 3rd respondent has failed to comply with the specific directions of this Court in Ext.P20 judgment, that is, to advert to Ext.P19 report while reconsidering the application, uninfluenced by the findings in Exts.P14 and P17 orders, and pass a reasoned order. Instead, the 3rd respondent has reiterated its earlier view, which is untenable.

19. It is to be borne in mind that Uvais is a 20-year-old boy whose father is also a renal patient. There is no material to show that he hails from an affluent background and can purchase the organ. The explanation put forth by Chippy, that she views Uvais as a surrogate for her deceased brother, who fell prey to the same fatal disease, and, therefore, she desires to altruistically donate her



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kidney to save Uvais's life, is convincing and credible. A reading of Exts.P14, 17, and 21 orders would reveal that respondents 2 and 3 have rejected the petitioners' application on a surmise of a suspected commercial transaction. We also have to visualise a crucial aspect: the petitioners can only, on solemn oath, state that there is no commercial element involved. If the Authorisation Committee had harboured doubt regarding the veracity of the petitioners' statement, they should have sought clarifications from the petitioners or initiated an inquiry through their machinery. In any given case, the Authorisation Committee cannot impose a reverse burden upon the petitioners to disprove a negative aspect. Permission for donation cannot be rejected unless there is cogent material to establish a commercial element. When the donor asserts that the donation is made purely out of altruism, in the absence of any credible material to the contrary, the statement has to be accepted. We need to have an optimistic perspective that non-near relatives exist who are genuinely willing to sacrifice their organs or tissues for altruistic consideration.

20. In **Soubiya v. District Level Authorisation Committee for Transplantation of Human Organs, Ernakulam** (2023



(6) KHC 293), this Court has emphatically held that there is no presumption that a person in financial requirement would only act for monetary gain, which is an affront to the dignity of an individual and is against the constitutional imperatives.

21. In **Shareef K.M and another v. State of Kerala and others** (2017 (4) KHC 122), this Court has held thus:

“6. As noted above, one of the reasons stated by the Authorisation Committee in the instant case to decline the approval sought by the petitioners is that there is a gross disparity in the financial status of the donor and recipient. Gross disparity in the financial status is certainly a factor to be gone into by the Authorisation Committee to ascertain whether there is any financial dealings in the transaction. But, that does not mean that the Authorisation Committee is prevented from granting approval for transplantation, if there is gross disparity in the financial status of the parties. **Voluntary donation of an organ by a person is a self deprivation of the highest order and it is inhuman to hold that such sacrifices would be made by people only based on monetary considerations.** The materials on record do not indicate that there is gross disparity in the financial status of the parties. Even assuming that there is disparity in the financial status of the parties, the same by itself is not a ground to decline the approval for transplantation”.

(emphasis

supplied)

22. In **C. Seshadri & Another v. State of Telangana** (2018 ALT 5 637), the Andhra Pradesh High Court quashed the Authorisation Committee's decision and approved the transplant on the ground that a mere suspicion or economic disparity is not a reason to deny approval.

23. The Madras High Court in **S.Samson v. Authorisation**



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Committee (2008 SCC OnLine Mad. 317) has succinctly held that the Authorisation Committee must give a cogent and convincing reasoning for concluding that there exists financial bonding between the recipient and the donor. The reasons must be valid and acceptable. An opportunity of hearing should be given to the parties concerned. The matter must be looked into with the avowed object of helping people in need whose lives are in danger. While exercising power under the Act, the authorities concerned must look into the issue in a manner that saves a person's life, and not from a technical point of view.

24. The Honourable Supreme Court in **Association of Medical Super Speciality Aspirants & Residents v. Union of India [(2019) 8 SCC 607]** has held that the right to health is fundamental to the right to life under Article 21 of the Constitution of India. The right to life extends beyond mere survival to include living with dignity, encompassing necessities like nutrition, clothing, shelter, and the freedom to express, move, and interact. Every act that undermines human dignity amounts to a partial deprivation of the right to life. Such restrictions must align with a reasonable, fair, and just legal procedure that upholds other



fundamental rights. To truly live is to live with dignity.

25. On an analysis of the law, the facts and materials on record, and for the reasons already stated above, this Court concludes that Exts.P14, 17, and 21 orders are arbitrary and unreasonable and are liable to be quashed. Given the pressing urgency of the matter i.e., Uvais's critical medical condition, and this is the fourth round of litigation before this Court, it would be imprudent to relegate the matter to the respondents for fresh consideration. The reality is that time is of the essence, and any further delay may jeopardise Uvais's life. To put it pithily in the words of Leo Tolstoy — "It is a question of life and death, and it is a question of the meaning of life." Therefore, I deem it necessary and appropriate to exercise the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and direct the respondents to grant the petitioners the required approval for the transplantation procedure.

26. In **Comptroller and Auditor General of India Gian Prakash, New Delhi & Another V. K.S. Jagannathan & Another** [(1986)2 SCC 679], the Honourable Supreme Court has declared that to prevent injustice, the court may itself pass an order or give



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directions which the Government or public authority should have passed or exercised in its discretion at its level.

In the above conspectus, Exts.P14, 17, and 21 orders are quashed. The 3rd respondent is directed to grant permission to the petitioners for the transplantation, in accordance with law, and as expeditiously as possible, at any rate, within one week from the date of production of a copy of this judgment. If such permission is not granted within the stipulated period, it shall be deemed that such permission is granted. Upon the grant of such approval/deemed approval, the petitioners shall be entitled to undergo the transplantation as sought in Exts.P11 and P12 applications.

The writ petition is ordered accordingly.

Sd/-

C.S.DIAS, JUDGE

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APPENDIX OF WP(C) 45300/2024**PETITIONER EXHIBITS**

- Exhibit P1** THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE ASSISTANT SURGEON, FAMILY HEALTH CENTRE, A.R.NAGAR DATED 30.06.2024
- Exhibit P2** THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE DONOR AND HER FATHER DATED 10.05.2024
- Exhibit P3** THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE DONOR AND HER MOTHER DATED 10.05.2024
- Exhibit P4** THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE AROOR MLA DATED 01.06.2024
- Exhibit P5** THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF ABDURAHIMAN NAGAR GRAMA PANCHAYATH DATED 23.04.2024
- Exhibit P6** THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF AROOR GRAMA PANCHAYATH DATED 26.06.2024
- Exhibit P7** THE TRUE COPY OF JOINT AFFIDAVIT OF THE PETITIONERS DATED 13.05.2024
- Exhibit P8** THE TRUE COPY OF THE AFFIDAVIT OF 2ND PETITIONER DATED 13.05.2024
- Exhibit P9** THE TRUE COPY OF THE CONSENT OF THE MOTHER OF 2ND PETITIONER DATED 13.05.2024
- Exhibit P10** THE TRUE COPY OF THE CONSENT OF THE FATHER OF 2ND PETITIONER DATED 13.05.2024
- Exhibit P11** THE TRUE COPY OF THE FORM 3 APPLICATION OF THE PETITIONERS DATED 26.06.2024
- Exhibit P12** THE TRUE COPY OF THE FORM 11 APPLICATION OF THE PETITIONERS DATED 15.05.2024
- Exhibit P13** THE TRUE COPY OF THE INTERIM ORDER IN W.P. (C).NO.18513/2024 OF THIS HON'BLE COURT DATED 23.05.2024



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Exhibit P14	THE TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DATED NIL
Exhibit P15	THE TRUE COPY OF THE APPEAL SUBMITTED BY PETITIONERS BEFORE THE 2ND RESPONDENT DATED 29.07.2024
Exhibit P16	THE TRUE COPY OF THE JUDGMENT IN W.P. (C).NO.28729/2024 OF THIS HON'BLE COURT DATED 13.08.2024
Exhibit P17	THE TRUE COPY OF G.O. (RT).NO.2309/2024/H&FWD DATED 29.09.2024
Exhibit P18	THE TRUE COPY OF THE INTERIM ORDER IN W.P. (C).NO.35443/2024 OF THIS HON'BLE COURT DATED 28.10.2024
Exhibit P19	THE TRUE COPY OF THE MEMO FILED BY THE GOVERNMENT PLEADER ALONG WITH THE REPORT OF THE DEPUTY SUPERINTENDENT OF POLICE, CHERTHALA DATED 21.11.2024
Exhibit P20	THE TRUE COPY OF JUDGMENT IN W.P. (C).NO.35443/2024 OF THIS HON'BLE COURT DATED 29.11.2024
Exhibit P21	THE TRUE COPY OF THE ORDER OF 3RD RESPONDENT DATED 06.12.2024