

HIGH COURT OF KERALA

Bench: The Honorable Mr. Justice Devan Ramachandran

Date of Decision: 6 November 2023

WP(C) NO. 35672 OF 20231. RAMACHANDRAN P.2. ANU MANOJPetitioners

Versus

1 STATE OF KERALA REPRESENTED BY THE SECRETARY, DEPARTMENT
2 OF HEALTH, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
3 THE PRINCIPAL SECRETARY DEPARTMENT OF HEALTH,
GOVERNMENT OF KERALA
THE DISTRICT LEVEL AUTHORIZATION COMMITTEE
FOR TRANSPLANTATION OF HUMAN ORGANS ERNAKULAM
REPRESENTED BY ITS CHAIRMAN, GOVERNMENT MEDICAL
COLLEGERespondents

Subject: Challenge to the order of the DLAC, which denied authorization for organ transplantation due to alleged inconsistencies in establishing the altruism of the donor, especially considering her disadvantaged economic status.

Headnotes:

Organ Transplantation – Assessment of Altruism in Organ Donation – Challenge to the order of the District Level Authorization Committee (DLAC) denying authorization for organ transplantation – Allegations of non-altruistic motives in organ donation between the petitioners – DLAC found inconsistencies in statements regarding the relationship and altruism between the donor and recipient – Court finds no inconsistency in statements and directs DLAC to reconsider the decision with emphasis on the “Certificate of Altruism.” [Para 1, 2, 5-10]

Legal Scrutiny of Organ Donation Process – Importance of assessing the voluntariness and altruism in organ donations, especially involving economically disadvantaged donors – DLAC’s role in preventing exploitation in organ transplantation – Court’s intervention in ensuring fairness and adherence to procedural safeguards in the organ donation process. [Para 3, 9, 10]

Judicial Review of Administrative Decisions – High Court’s power to review and set aside administrative decisions – Court’s directive for a fresh consideration by DLAC, highlighting the necessity of considering all relevant documents and statements, including the “Certificate of Altruism” – Emphasis on expeditious handling of the case due to the life-threatening situation of the recipient. [Para 10]

Decision – High Court sets aside the order of DLAC (Ext.P12) – Orders DLAC to issue a fresh decision after considering all relevant documents and statements, particularly the “Certificate of Altruism” – Stipulates the decision to be made within one week from the receipt of the judgment copy. [Para 10]

Referred Cases: None

Representing Advocates:

Petitioners: Adv. C.R. Suresh Kumar

Respondents: Sri Sunil Kumar Kuriakose (Government Pleader)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners challenge Ext.P12 order issued by the 3rd respondent – District Level Authorization Committee (‘DLAC’ for short), in which, they have opined that 2nd petitioner - who is the donor of the organ, is not offering it to the 1st petitioner for altruism.

2. The petitioners say that the afore findings in Ext.P12 are egregiously improper particularly, when the husband of the donor and her brother have made it unequivocally clear before the ‘DLAC’ that she is acting solely on account of affection and love for the 1st petitioner, and not for any other confutative reason. They, therefore, pray that Ext.P12 be set aside and the ‘DLAC’ be directed to issue appropriate authorization, so that transplantation

can be done in favour of the 1st petitioner, without any avoidable delay because, otherwise, his life will be in peril.

3. In response to the afore submissions of Sri.Suresh Kumar C.R.- learned counsel for the petitioner, the learned Government Pleader – Sri.Sunil Kumar Kuriakose, took me through Ext.P12 to show that, there are inconsistencies in the statements given by the donor and her supposed husband and brother; and therefore, that ‘DLAC’ could not take a proper decision in her favour. He argued that when the donor is a person from a disadvantaged class of society, more care has to be taken by the ‘DLAC’, to ensure that she is not being exploited; and that this is all that has been done through Ext.P12. He pointed out that, in fact, the ‘DLAC’ had rejected the plea of the petitioners earlier; and that when Ext.P12 was issued, there was no change in the circumstances noticed. He thus prayed that this writ petition be dismissed.

4. I have examined Ext.P12, which is the order now impugned in this writ petition.

5. I must record upfront that I cannot find why the ‘DLAC’ has found that versions of the ‘parties’ who appeared before them, to be “wholly inconsistent”. As is evident from Paragraph No.4 of the said report, the 2nd petitioner - who is the donor, conceded that she and her husband – Sri.Manoj, are not legally wedded, but that they are living as husband and wife for the last more than 16 years. She is also stated to have said that Sri.Manoj is working with the 1st petitioner since 2006 as a Driver and that it was he who had helped both of them to find a shelter after their ‘marriage’, since their relationship was not approved by their families.

6. As far as Sri.Manoj is concerned, he is seen to have stated before the Committee – as discernible from Paragraph No. 5 of Ext.P12

- that he worked as a Driver on call with the 1st petitioner, but asserting that his wife was offering her organ voluntarily to him, particularly because he was unable to do so since he met with an accident.

7. The 'DLAC' further records that brother of the Donor –Sri.Ajay, had appeared before them in the earlier meeting, but did not do so in the latter one, which led to Ext.P12 order; and that even when he appeared, he had said that he does not know anything about the connection between the petitioners.

8. As I have already said above, the afore statements of the parties cannot be seen to be inconsistent because, the 2nd petitioner – donor and her husband – Sri.Manoj, speak with the same voice, that the latter among them was working with the 1st petitioner and that former is donating her organ to him out of affection and altruism.

9. I cannot, therefore, fathom how the 'DLAC' could find that they could not '*trace out any altruism on the part of the donor, especially a lady*' (sic).

10. I am guided to the impression that 'DLAC' appears to have taken the afore view being swayed by the social status of the donor, who appear to be from a disadvantaged one; and thus somehow has presumed that she appears to be subjected to exploitation by the 1st petitioner. However, the impugned Ext.P12 report cannot add any force to this presumption or assumption - as the case may be; and am, therefore, of the firm view that 'DLAC' must reconsider the matter, based on the statements that have already been recorded, but adverting specifically to the "Certificate of Altruism", which the petitioners are stated to have produced before them, from the competent Police Authority. This is necessary because, in Ext.P12, there is not even a mention about such a Certificate, though at the Bar, their learned counsel – Sri.Suresh Kumar C.R., submits that same had been produced.

In the afore circumstances, I allow this writ petition and set aside Ext.P12; with a consequential direction to the 3rd respondent – ‘DLAC’ to reconsider the matter and issue a fresh order, adverting to the “Certificate of Altruism” stated to have been produced before them by the petitioners; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than one week from the date of receipt of a copy of this judgment.

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