



2023/KER/68919

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

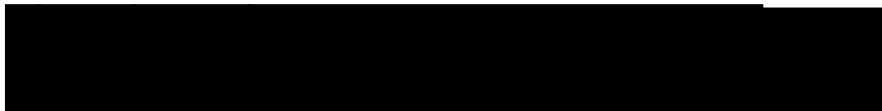
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 6<sup>TH</sup> DAY OF NOVEMBER 2023 / 15TH KARTHIKA, 1945

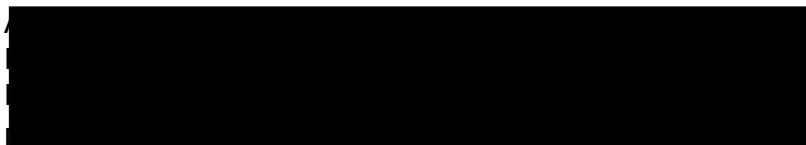
WP(C) NO. 35672 OF 2023

**PETITIONERS:**

1 RAMACHANDRAN P.



2 ANU MANOJ



**RESPONDENTS:**

1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY, DEPARTMENT OF HEALTH,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,  
PIN - 695001

2 THE PRINCIPAL SECRETARY  
DEPARTMENT OF HEALTH, GOVERNMENT OF KERALA,  
GOVERNMENT SECRETARIAT, THIRUVAVANTHAPURAM,  
PIN - 695001

3 THE DISTRICT LEVEL AUTHORIZATION COMMITTEE  
FOR TRANSPLANTATION OF HUMAN ORGANS ERNAKULAM  
REPRESENTED BY ITS CHAIRMAN, GOVERNMENT MEDICAL  
COLLEGE, H.M.T COLONY P.O, KALAMASSERY, KOCHI,  
PIN - 683503  
SRI SUNIL KUMAR KURIAKOSE-GP

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

**CR****JUDGMENT**

The petitioners challenge Ext.P12 order issued by the 3<sup>rd</sup> respondent - District Level Authorization Committee ('DLAC' for short), in which, they have opined that 2<sup>nd</sup> petitioner - who is the donor of the organ, is not offering it to the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> petitioner - donor and her husband - Sri.Manoj, speak with the same voice, that the latter among them was working with the 1<sup>st</sup> 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 1<sup>st</sup>



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 3<sup>rd</sup> 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.

**Sd/ -  
DEVAN RAMACHANDRAN  
JUDGE**

**MC/6.11**

**APPENDIX OF WP(C) 35672/2023**

## PETITIONER EXHIBITS

- Exhibit P-1 TRUE COPY OF THE CERTIFICATE DATED 27.10.2022 ISSUED BY THE AUTHORIZED MEDICAL OFFICER OF CHSS, TRIVANDRUM
- Exhibit P-2 TRUE COPY OF THE FORM 3 APPLICATION DATED 03.11.2022 FILED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT
- Exhibit P-3 TRUE COPY OF THE FORM 11 APPLICATION DATED 03.11.2022 FLED BY THE PETITIONERS
- Exhibit P-4 TRUE COPY OF THE CONSENT OF THE DONOR/2ND PETITIONER DATED 03/11/2022
- Exhibit P-5 TRUE COPY OF THE CONSENT OF THE HUSBAND OF THE DONOR DATED 03/11/2022
- Exhibit P-6 TRUE COPY OF THE ORDER DATED 25.01.2023 ISSUED BY THE 3RD RESPONDENT REJECTING THE APPLICATION OF THE PETITIONER
- Exhibit P-7 TRUE COPY OF JUDGMENT DATED 08.02.2023 OF THIS HON'BLE COURT IN W.P.(C) NO.4064/2023
- Exhibit P-8 TRUE COPY OF THE ORDER DATED 25.02.2023 ISSUED BY THE 3RD RESPONDENT
- Exhibit P-9 TRUE COPY OF JUDGMENT DATED 03.03.2023 OF THIS HON'BLE COURT IN W.P.(C) NO.7357/2023
- Exhibit P-10 TRUE COPY OF THE ORDER DATED 26.03.2023 ISSUED BY THE 2ND RESPONDENT
- Exhibit P-11 A TRUE COPY OF THE ORDER DATED 28/04/2023 IN WP (C) NO. 14270/2023
- Exhibit P-12 A TRUE COPY OF THE ORDER DATED 17/05/2023 OF THE 3RD RESPONDENT
- Exhibit P-13 A COPY OF THE AADHAR CARD VIDE NO. 7003 7013 1517 OF THE 2ND PETITIONER
- Exhibit P-14 A TRUE COPY OF THE RATION CARD VIDE NO. 1523039541 IN WHICH NAME OF THE 2ND PETITIONER SHOWN AS ANU MANOJ
- Exhibit P-15 A TRUE COPY OF THE SHORT DISCHARGE SUMMARY ISSUED BY THE KIMS HEALTH TRIVANDRUM DATED 05/10/2023
- Exhibit P-16 A TRUE COPY OF THE CERTIFICATE ISSUED BY DR. ABRAHAM. M OF LAKE SHORE HOSPITAL DATED 12/09/2023