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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 19TH DAY OF AUGUST 2026 / 28TH SRAVANA, 1948

WP(C) NO.10249 OF 2026

PETITIONERS:

- 1 FOUSIYA,
AGED 38 YEARS, W/O. MUHAMMED ASHRAF,
VADAKKETHALA HOUSE, MUDAVINGAL,
CHETTIPPADI P.O., NADUVA VILLAGE,
TIRURANGADI TALUK, MALAPPURAM DISTRICT,
PIN - 676319.
- 2 MANOJ C.S.,
AGED 48 YEARS, S/O.SANKARAN,
CHATTIPPARAN HOUSE, BEACH ROAD,
MANATHALA P.O., CHAVAKKAD VILLAGE,
THRISSUR DISTRICT, PIN - 680506.

BY ADVS.
SRI.C.M.MOHAMMED IQUABAL
SMT.NASHWA P. K.
SMT.ANUPAMA R. NAIR
SMT.THASNEEM A.P.
SHRI.ISTINAF ABDULLAH
SRI.P.ABDUL NISHAD

RESPONDENTS:

- 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.



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- 3 THE CONVENER
STATE LEVEL TECHNICAL COMMITTEE,
FUNCTIONING UNDER KERALA STATE ORGAN AND
TISSUE TRANSPLANT ORGANIZATION, 1ST FLOOR,
OLD HOUSE SURGEON QUARTERS,
NEAR SUPER SPECIALITY BLOCK,
GOVERNMENT MEDICAL COLLEGE,
THIRUVANANTHAPURAM, PIN - 695011.
- 4 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.
- 5 THE ASSISTANT COMMISSIONER OF POLICE,
GURUVAYOOR, ACP OFFICE, GURUVAYOOR P.O.,
THRISSUR DISTRICT, PIN - 680101.

BY ADVS.
SRI.AJIT JOY - SC
SMT. POOJA SURENDRAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.08.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Heard Sri.C.M. Mohammed Iquabal, the learned counsel for the petitioners, Smt.Pooja Surendran, the learned Government Pleader for respondents 1,2,4 and 5, as well as Sri.Ajit Joy, the learned Standing Counsel for the 3rd respondent.

2. The 1st petitioner is stated to be a kidney patient undergoing treatment at Medical Trust Hospital, Ernakulam. The 2nd petitioner has come forward for donating one of his kidneys. An appropriate application has been presented under the provisions of the Transplantation of Human Organs and Tissues Act, 1994 (for short 'the Act'), seeking sanction. By Ext.P12 order, the 4th respondent herein has sought to reject the afore application. Though a further appeal was presented, the 2nd respondent has sought to reject the said appeal by Ext.P13 order. It is seeking to challenge Exts.P12 and P13 orders issued as above that the petitioners are before this Court.



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3. A reading of the impugned orders would show that the main reason stated for rejecting the application filed as above is the donation of a kidney by the wife of the 2nd petitioner to one Smt.Sulaikha a few years back. Apart from the afore, no other convincing reasons have been pointed out for rejecting the application filed as above.

4. It is not in dispute that while considering an application seeking permission under the Act, the modalities prescribed under the provisions of Section 9 of the Act read with the provisions of Rule 7(3) of the Transplantation of Human Organs and Tissues Rules, 2014, requires to be taken note of. True, the order at Ext.P12 has referred to the provisions of Rule 7(3). However, a reading of Ext.P12 shows that involvement of a middleman or any commercial transaction has not been pointed out as a reason for rejecting the application filed by the petitioners. As already noticed, the main reason stated is the donation of kidney by the wife of the 2nd petitioner a few years back. Another allegation raised is with reference to communication obtained from the



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Assistant Commissioner of Police, Guruvayoor, that the 2nd petitioner is an accused in a criminal case. In my opinion, merely for the reason that the wife of the 2nd petitioner had donated a kidney a few years back, that cannot be a reason for rejection of an application filed under the Act by the 2nd petitioner. This is especially so, when the provisions of Rule 7(3) does not say that in such a situation, the application requires to be rejected. True, there are certain allegations with respect to the criminal antecedents of the 2nd petitioner, and that he is also in the habit of consuming alcohol. At the same time, it is only in a situation where the donor is addicted to drugs, an application could be rejected. Therefore, in my opinion, the consideration made while issuing the order at Ext.P12 or the appellate order at Ext.P13 is not in tune with the provisions of the Statute.

4. In my opinion, the application ought to have been considered, with specific reference to the principles laid down by the judgment of this Court in ***Shereef M. v. State of Kerala [2025 KHC OnLine 11974]*** and ***Uvais Muhammad***



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K. C. v. State of Kerala [2025 (1) KHC 253].

In such circumstance, this writ petition would stand orders as under:-

- i. Exts.P12 and P13 issued by the 4th respondent and 2nd respondent respectively are set aside.
- ii. The 4th respondent is directed to consider the matter afresh with specific reference to the principles laid down in ***Shereef M.*** (*supra*) and ***Uvais Muhammad*** (*supra*).
- iii. The fresh orders as above are to be issued as expeditiously as possible, at any rate, within a period of ten days from today.
- iv. The petitioners are also to be granted an opportunity of being heard in the matter.

Sd/-**HARISANKAR V. MENON
JUDGE**

AP



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APPENDIX OF WP(C) NO.10249 OF 2026PETITIONERS' EXHIBITS:

EXHIBIT P1	THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE DONOR AND HIS WIFE DATED 19.07.2024
EXHIBIT P2	THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE DONOR AND HIS DAUGHTER DATED 19.07.2024
EXHIBIT P3	THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE MINISTER OF STATE PETROLEUM AND NATURAL GAS, GOVERNMENT OF INDIA DATED NIL
EXHIBIT P4	THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE CHAIRMAN OF PARAPPANANGADI MUNICIPALITY DATED 22.06.2024
EXHIBIT P5	THE TRUE COPY OF JOINT AFFIDAVIT OF THE PETITIONERS DATED 17.07.2024
EXHIBIT P6	THE TRUE COPY OF THE CONSENT OF THE 2ND PETITIONER DATED 17.07.2024
EXHIBIT P7	THE TRUE COPY OF THE CONSENT OF THE WIFE OF THE 2ND PETITIONER DATED 17.07.2024
EXHIBIT P8	THE TRUE COPY OF THE CONSENT OF THE DAUGHTER OF THE 2ND PETITIONER DATED 17.07.2024
EXHIBIT P9	THE TRUE COPY OF THE FORM 3 APPLICATION OF THE PETITIONERS DATED 17.07.2024
EXHIBIT P10	THE TRUE COPY OF THE FORM 11 APPLICATION OF THE PETITIONERS DATED 17.07.2024
EXHIBIT P11	THE TRUE COPY OF THE ORDER IN W.P. (C) NO.44559/2024 OF THIS HON'BLE COURT DATED 13.12.2024
EXHIBIT P12	THE TRUE COPY OF THE ORDER ISSUED BY THE 4TH RESPONDENT DATED 22.03.2025
EXHIBIT P13	THE TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 01.01.2026