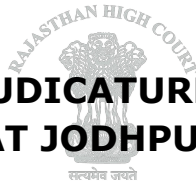




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



D.B. Civil Writ Petition No. 10937/2013

CNR: RJHC010480902013 | URN: CW / 26537U / 2013

LRs of Late Shri Chandra Narayan Mathur-

1. Smt Shakuntla Mathur W/o Of Late Shri Chandra Narayan Mathur, aged about 71 years, Resident Of 965, Ist Floor, Sector 17B, Gurgaon, Haryana.
2. Mohit Mathur S/o. Late Shri Chandra Narayan Mathur, aged about 37 years, Resident Of 965, Ist Floor, Sector 17B, Gurgaon, Haryana.
3. Dhanushree Mathur D/o. Late Shri Chandra Narayan Mathur, aged about 35 years, Resident of House No. G 1/102, Indiabulls Centrum Park, Dwarka Expressway, Sector -103, Daultabad(53), Gurgaon, Haryana.

-----Petitioner

Versus

1. The State of Rajasthan, through the Secretary, Department of Finance, Government of Rajasthan, Secretariat, Jaipur.
2. The Secretary, Law & Legal Affairs Department, Government of Rajasthan, Jaipur.
3. The Registrar General, Rajasthan High Court, Jodhpur.
4. Director of Medical Education and Ex-Officio Secretary, West Bengal and Chairman of Authorization Committee, Government of West Bengal, Swasthya Bhawan, Block GN 29, Sector - V, Salt Lake City, Kolkata - 700091

-----Respondents

For Petitioner(s)	: Mr. Ankur Mathur. Ms. Divya Bapna.
For Respondent(s)	: Mr. Rajesh Panwar, Sr. Advocate-cum- Additional Advocate General with Mr. Ayush Gehlot and Mr. Rakesh Sharma. Mr. Mahaveer Bishnoi, AAG Mr. Aniket Tater (for High Court).

**HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MR. JUSTICE BIPIN GUPTA**





23/09/2026

1. The present writ petition was filed by the original writ petitioner challenging the order dated 15.01.2013 (Annexure-10) passed by respondent No. 2 and pre and consequential orders, whereby the claim for reimbursement of medical expenses of the deceased-petitioner was rejected.
2. The case of the original writ petitioner was that the original writ petitioner was retired as a Judicial Officer from the Higher Judicial Services and he incurred expenditure for transplantation of kidney. The transplantation was done basing on the authorization given by the Committee constituted in this regard and such authorization was obtained from the State Authorization Committee of Rajasthan where the recipient resides and simultaneously, authorization from the State of West Bengal was also obtained as the donor was from the State of West Bengal and the hospital in which the transplantation was done was also in the State of West Bengal. The entire transplantation was done after obtaining necessary authorization from the two Committees of the two different States. After the surgery was done, the petitioner made a claim for reimbursement of the expenses incurred for the transplantation of the kidney.
3. The High Court examined the claim of the deceased-original writ petitioner and referred the matter to the Law & Legal Affairs Department to examine the issues relating to non-compliance of the statutory provisions contained under





Section 9 of the Transplantation of Human Organs and Tissues Act, 1994 (hereinafter referred to as 'the Act of 1994'). The Secretary, Law & Legal Affairs Department, on the basis of the reference, had rejected the claim of the petitioner with the following order:

"In the case of Shri Chandra Narayan Mathur, the mandatory provision of the Transplantation of Human Organs Act, 1994 and Rules 1995 made there under were not complied with and the 'No objection certificate' authorization for transplantation were issued in contravention of the provisions of the Act and the Rules without joint application of the donor and recipient, documents of income etc. and without any inquiry as envisaged in the rules"

4. The case of the respondents is that Section 9 of the Act of 1994 requires that the application seeking "No Objection" must be moved by the donor and recipient together before the concerned Committee of the respective States and the "No Objection Certificate" granted by the Committee appointed by the State of Rajasthan does not refer to the application being filed by the donor as well as the recipient. As such, the Secretary, Law & Legal Affairs Department was right in taking the decision of rejection for non-compliance of the mandatory requirements under Section 9(5) of the Act of 1994.
5. Heard learned counsel for both the parties.
6. The claim for reimbursement was made under the Rajasthan Judicial Officers (Medical Facilities) Rules, 2008 (hereinafter referred to as 'the Rules of 2008'). Rule 5 of the Rules of 2008 reads as follows:



"5. Exception and modification.

- Judicial Officers shall be entitled to the medical facilities contained in Rule 4 of these rules, subject to the following exceptions and modifications, namely: -

(i)The Judicial Officer shall also be entitled to claim expenses incurred by them for medical attendance and treatment obtained by him and his family members in private hospital/Dispensaries, notified by the State Government in each city, District Head Quarter and Sub-Divisional Headquarter for the medical treatment of Judicial Officers and members of their family. The expenses shall be inclusive of the charges for accommodation in the place where such treatment is taken;

(ii)For the purpose of medical treatment of Judicial Officers and members of his family, Doctor of any notified hospital and dispensary shall also be considered as the authorized medical attendant;

(iii)The Judicial Officers shall be entitled to reimbursement of expenses incurred by them for himself or for his family members for the medical attendance and treatment obtained by them in any place other than in a Hospital or Dispensary maintained and/or notified by the State Government, to the same extent as they are entitled to under these rules for the reimbursement of expenses incurred by them for 'medical attendance and treatment obtained in notified Hospital or Dispensary. Expenses shall be inclusive of charges for accommodation;

(iv)There shall not be any ceiling on reimbursement except to the extent of in patient room entitlement, in patient room entitlement shall be as admissible to the State Government employees; and

(v)There shall not be any ceiling on reimbursement of expenditure for treatments like kidney transplant, open heart surgery etc. or any disease notified by the Government."

7. A reading of the above Rule clearly makes out that a Judicial Officers are entitled for reimbursement of expenses incurred





on medical treatment obtained by them in any place other than in a Hospital or Dispensary maintained and/or notified by the State Government, to the same extent as they are entitled under these Rules for reimbursement of expenses incurred by them for medical attendance and treatment obtained in the notified hospital or dispensary. Sub-Rule (v) of Rule 5 clearly says that there is no ceiling so far as the expenses are concerned in respect of kidney transplantation, open heart surgery etc. or any other disease notified by the Government. This means that as per the Rules of 2008, the petitioner was entitled to full reimbursement of medical expenditure incurred for transplantation, even in a case where the treatment is done in a hospital other than the notified hospital or dispensary.

8. It is not in dispute that the hospital where the transplantation was done is not a notified hospital. Still, as per Rule 5 Sub-Rule (iii) of the Rules of 2008, the deceased-petitioner was entitled for reimbursement of such medical expenses at par with reimbursement of medical expenses in any notified hospital or dispensary of the State Government.
9. Annexure-3 is the "No Objection Certificate" issued by the State of Rajasthan and this "No Objection Certificate" was issued by the State Authorization Committee constituted under the Act of 1994. The operative portion of the "No Objection Certificate" reads as follows:

"This no objection certificate is issued by the authorization committee after enquiry and verification of the documents submitted by the recipient. This no objection certificate is issued as





per desire Mr. Chandra Narayan Mathur, the recipient and it is not a referral by the State Government for kidney transplantation outside the State and the Committee has no financial liability of kidney transplantation of the patient outside the State."

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10. From a reading of the contents of the "No Objection Certificate", it is clear that the "No Objection Certificate" was issued with a disclaimer that the deceased-original writ petitioner was not entitled for financial claim of expenses incurred for the kidney transplantation. The "No Objection Certificate" issued by the Committee would also indicate that the proposed surgery was to be done in Remedy Hospital, Kolkata and the original writ petitioner was directed to obtain the "No Objection Certificate" from the concerned State where the transplantation was to take place and where the donor resides.
11. Annexure-5 is the approval of the State Authorization Committee of the State of West Bengal. The approval for transplantation was also granted on the joint application of the donor and the recipient with a specific reference of the place where it is to be done. The reference of the communication of the High Court to the Secretary, Law & Legal Affairs Department would indicate that the petitioner, while obtaining "No Objection Certificate" from the State Authorization Committee, has not fulfilled the condition of joint application which is required to be made as per the provisions contained under Section 9(5) of the Act of 1994. Section 9(5) of the Act of 1994 reads as follows:



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

.....

(5) On an application jointly made, in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorisation Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the rules made thereunder, grant to the applicants approval for the removal and transplantation of the human organ."

12. A plain reading of the above provision indicates that the application has to be made jointly in the prescribed format by the donor and the recipient. On such application, the Authorization Committee shall hold an enquiry and after satisfying itself, the permission is required to be granted.
13. Against the rejection of any request for grant of authorization, the provision of appeal is provided under Section 17 of the Act of 1994. Section 17 of the Act of 1994 reads as follows:

"17. Appeals.—Any person aggrieved by an order of the Authorisation Committee rejecting an application for approval under sub-section (6) of section 9, or any hospital or Tissue Bank, as the case may be, aggrieved by an order of the Appropriate Authority rejecting an application for registration under sub-section (2) of section 15 or an order of suspension or cancellation of registration under sub-section (2) of section 16, may, within thirty days from the date of the receipt of the order, prefer an appeal, in such manner as may be prescribed, against such order to—

- (i) the Central Government where the appeal is against the order of the Authorisation Committee constituted under clause (a) of sub-section (4) of section 9 or against the order of the





Appropriate Authority appointed under sub-section (1) of section 13; or
(ii) the State Government, where the appeal is against the order of the Authorisation Committee constituted under clause (b) of sub-section (4) of section 9 or against the order of the Appropriate Authority appointed under sub-section (2) of section 13."

14. A reading of the above provision indicates that there is no provision of appeal provided against grant of "No Objection Certificate" by the State Authorization Committee, however, rejection gives a cause of action for filing an appeal.
15. The Secretary, Law & Legal Affairs Department is not the Appellate Authority under the Act of 1994 and he cannot sit over the certificate of authorization granted by the State Authorization Committee holding that such approval has been done and authorization was granted without there being any joint application. The consideration of the claim of the donor or recipient pre-supposes submission of form in terms of the rules. The presumption is that before the certificate has been issued, the requirement of the law has been complied with. There is no material before the Secretary, Law & Legal Affairs Department to say that the application was not jointly submitted either before the State Authorization Committee of the State of Rajasthan or State of West Bengal as he has no access. Further, he is not the appellate authority to sit over and examine the validity of the authorization granted by the State Authorization Committee of the two different States. Therefore, the impugned order passed by the Secretary, Law & Legal Affairs Department is



beyond jurisdiction and such order is not sustainable.
Therefore, this Court is inclined to allow the writ petition.

16. In the result, the instant writ petition is allowed and the impugned order dated 15.01.2013 passed by the Secretary, Law & Legal Affairs Department and all consequential orders are set aside. The respondents are directed to examine the claim of the deceased-original writ petitioner-Chandra Narayan Mathur and release the amount within a period of one month from today. The respondent No. 2 shall pay a cost of Rs.50,000/- (Rupees Fifty Thousand only) to the legal representatives of the deceased-original writ petitioner-Chandra Narayan Mathur. Further, the claim amount shall be paid with an interest @ 12% p.a. from the date of claim till the amount is paid to the legal representatives of the deceased-original writ petitioner-Chandra Narayan Mathur.
17. The aforesaid amount shall be apportioned equally amongst all the three legal representatives of the deceased-original writ petitioner-Chandra Narayan Mathur.
18. All pending applications, if any, shall stand disposed of.

(BIPIN GUPTA),J

(MUNNURI LAXMAN),J

C1/PRADEEP SONGARA