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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 26TH DAY OF SEPTEMBER 2023 / 4TH ASWINA, 1945

WP(C) NO. 30365 OF 2023

PETITIONER:

- 1 SOUBIYA, AGED 34 YEARS, W/O. SAFEER,
KALATHIL HOUSE, PUTHUKULANGARA, TANALUR P.O.,
MALAPPURAM DISTRICT, PIN - 676307
- 2 ANIL C.V., AGED 32 YEARS, S/O. AYYAPPAN,
KARENGAPARAMBIL HOUSE, ATHIPATTA, EDAYOOR,
TIRUR TALUK, MALAPPURAM DISTRICT, PIN - 676552

BY ADV C.M.MOHAMMED IQUABAL

RESPONDENTS:

- 1 THE DISTRICT LEVEL AUTHORIZATION COMMITTEE FOR
TRANSPLANTATION OF HUMAN ORGANS, ERNAKULAM,
ERNAKULAM MEDICAL COLLEGE HOSPITAL, KALAMASSERY,
REPRESENTED BY ITS CHAIRMAN., PIN - 683104
- 2 THE CONVENER, LOCAL COMMITTEE OF ORGAN TRANSPLANTATION,
MEDICAL TRUST HOSPITAL LTD, ERNAKULAM DISTRICT,
PIN - 682016
- 3 THE DEPUTY SUPERINTENDENT OF POLICE, TIRUR,
DY.S.P. OFFICE, THRIKANDIYUR P.O.,
MALAPPURAM DISTRICT, PIN - 676104

BY ADVS
SRI. R.S.KALKURA
SRI. SUNIL K.KURIAKOSE - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26.09.2023, ALONG WITH WP(C)NO.30984/2023, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 26TH DAY OF SEPTEMBER 2023 / 4TH ASWINA, 1945

WP(C) NO. 30984 OF 2023

PETITIONERS:

- 1 UMMUSALMA, AGED 43 YEARS, D/O. MUHAMMED C.,
MELEPURATH HOUSE, PALOOR, CHEMMALASSERY P.O.,
MALAPPURAM DISTRICT, PIN - 679323
- 2 MINI P.S., D/O. SUBRAMANIAN, KATHIKODATH HOUSE,
KOOLIMUTTAM, MATHILAKAM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT, PIN - 680691

BY ADV C.M.MOHAMMED IQUBAL

RESPONDENTS:

- 1 THE DISTRICT LEVEL AUTHORIZATION COMMITTEE FOR
TRANSPLANTATION OF HUMAN ORGANS, ERNAKULAM,
ERNAKULAM MEDICAL COLLEGE HOSPITAL, KALAMASSERY,
REPRESENTED BY ITS CHAIRMAN., PIN - 683104
- 2 THE CONVENER, LOCAL COMMITTEE OF ORGAN
TRANSPLANTATION, MEDICAL TRUST HOSPITAL LTD,
ERNAKULAM DISTRICT, PIN - 682016
- 3 THE DEPUTY SUPERINTENDENT OF POLICE, KODUNGALLUR,
DY.S.P. OFFICE, KODUNGALLUR P.O., THRISSUR
DISTRICT, PIN - 680664

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26.09.2023, ALONG WITH WP(C)NO.30365/2023, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

[WP(C) Nos.30365/2023, 30984/2023]

The first petitioners in these two Writ Petitions are patients waiting for kidney transplantation – who are now stated to be surviving on dialysis and other life support mechanisms. They say that, even though they have placed their request for the afore – identifying the 2nd petitioners to be their respective donors, the 2nd respondent – Hospital is refusing to forward the same to the 1st respondent – District Level Authorisation Committee (DLAC), solely for the reason that a Police Clearance Certificate (‘PCC’) has not been obtained by them.

2. The petitioners assert that, consequent to the coming into force of Transplantation of Human Organs and Tissues Rules, 2014 (herein after referred to as ‘Rules 2014’), ‘PCC’ is unnecessary to be obtained; and therefore, that the 2nd respondent must be directed to forward their applications, along with other relevant documents, to the 1st respondent, so that the said Authority can take a final decision urgently. They plead that this be done quickly, because

they are awaiting organ transplantation for the last several months and are in great distress now.

3. Sri.Sunil Kumar Kuriakose – learned Government Pleader, pertinently, also affirmed that a 'PCC' is not necessary and that what is now required by the petitioners to obtain is a 'Certificate of Altruism' from the District Superintendent of Police, or Deputy Superintendent of Police, of the District having jurisdiction over the donor and the recipient. He, however, added that the DLAC has been statutorily entrusted with the competence to decide all modalities; and hence, that if the petitioners are to present themselves before the said Authority, as and when they are called, a final decision on such a certificate being obtained by them will also be taken by them. He submitted that he is making this submission, so that the processes in favour of the petitioners can be expedited; but added that the DLAC can issue final authorisations only if all relevant and germane requirements are satisfied.

4. Sri.R.S.Kalkura – learned Standing Counsel for the 2nd respondent - Hospital, submitted that his client is only acting per the directives given to them by the 1st respondent – DLAC; and

that, if this Court so directs, they are willing to forward the documents obtained from the petitioners to the said Authority. He submitted that, however, his client will have to abide by the final decision to be taken by the DLAC.

5. When I consider the afore rival submissions, it is indubitable that there are certain specified prescriptions stipulated in the 'Rules', to apply in the process of organ donation. This Court cannot, certainly, dilute the same or relax it in individual cases.

6. To paraphrase, the petitioners will have to follow the mandate of law strictly and scrupulously, because it is only if the systems are robust, can the laudable intent behind organ donation be preserved.

7. That said, since the learned Government Pleader says that all which the petitioners require is to obtain a 'Certificate of Altruism' from the Superintendent, or Deputy Superintendent of Police, of the area where both the recipient and donor are residing and not a 'PCC'; and that too, subject to it being insisted by the 1st respondent – DLAC, I am certain that this is a matter that should be left to such Authority to decide.

In the afore circumstances, these Writ Petitions are ordered in the following manner:

a) The 2nd respondent – Convener of the Local Committee of Organ Transplantation of the Hospital concerned, will forward the applications of the petitioners, along with all necessary documents, except ‘Certificate of Altruism’, to the 1st respondent – DLAC; and this shall be done within a period of one week from the date of receipt of a copy of this judgment.

b) On the afore applications reaching the 1st respondent - DLAC, its competent Authority will notify the petitioners and inform them whether they have to obtain a ‘Certificate of Altruism’ from the concerned Police Authority.

c) If the DLAC is to find that no such Certificate is required in these cases, they will complete the processes, leading to necessary permissions to be granted to the petitioners, within a period of one month thereafter.

d) However, if, on the contrary, the DLAC is to find that ‘Certificates of Altruism’ are required to be obtained by the petitioners, they will intimate them of such within a period of two

weeks from the date on which they receive applications from the 2nd respondent; upon which, the petitioners will be required to obtain the same and produce it before the said Authority, as per law.

e) On the afore being done, the DLAC will take a final decision on the petitioners' request, within a period of one month from the date on which such Certificate is produced.

f) Needless to say, if the 1st respondent calls upon the petitioners to obtain a 'Certificate of Altruism', the 3rd respondent – Deputy Superintendent of Police, or such other competent Authority, will act upon the applications for such to be made before them; and will issue necessary certificates without any avoidable delay, but not later than two weeks from the date on which it is received by them, after making all necessary enquiries.

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Sd/ -
DEVAN RAMACHANDRAN
JUDGE

APPENDIX OF WP(C) 30984/2023

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF PULAMANTHOLE GRAMA PANCHAYATH DATED 14.09.2023
- Exhibit P2 THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF MATHILAKAM GRAMA PANCHAYATH DATED 11.09.2023
- Exhibit P3 THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE DONOR AND HER HUSBAND DATED 11.08.2023
- Exhibit P4 THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE DONOR AND HER DAUGHTER DATED 11.08.2023
- Exhibit P5 THE TRUE COPY OF THE AFFIDAVIT OF THE PETITIONERS DATED 18.09.2023
- Exhibit P6 THE TRUE COPY OF THE AFFIDAVIT OF THE DONOR DATED 18.09.2023
- Exhibit P7 THE TRUE COPY OF THE CONSENT OF THE HUSBAND OF THE DONOR DATED 18.09.2023
- Exhibit P8 THE TRUE COPY OF THE FORM 3 APPLICATION OF THE PETITIONERS DATED 18.09.2023
- Exhibit P9 THE TRUE COPY OF THE FORM 11 APPLICATION OF THE PETITIONERS DATED 22.07.2023
- Exhibit P10 THE TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT DATED 21.06.2023
- Exhibit P11 THE TRUE COPY OF THE JUDGMENT IN W.P. (C).NO.28845/2023 OF THIS HON'BLE COURT DATED 25.08.2023

APPENDIX OF WP(C) 30365/2023

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF TANALUR GRAMA PANCHAYATH DATED 14.06.2023
- Exhibit P2 THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF EDAYOOR GRAMA PANCHAYATH DATED 08.06.2023
- Exhibit P3 THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE DONOR AND HIS MOTHER DATED 08.06.2023
- Exhibit P4 THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE DONOR AND HIS SISTER DATED 22.06.2023
- Exhibit P5 THE TRUE COPY OF THE AFFIDAVIT OF THE PETITIONERS DATED MAY, 2023
- Exhibit P6 THE TRUE COPY OF THE CONSENT OF THE DONOR DATED 13.09.2023
- Exhibit P7 THE TRUE COPY OF THE CONSENT OF THE MOTHER OF THE DONOR DATED 13.09.2023
- Exhibit P8 THE TRUE COPY OF THE CONSENT OF THE SISTER OF THE DONOR DATED 13.09.2023
- Exhibit P9 THE TRUE COPY OF THE FORM 3 APPLICATION OF THE PETITIONERS DATED 13.09.2023
- Exhibit P10 THE TRUE COPY OF THE FORM 11 APPLICATION OF THE PETITIONERS DATED 26.05.2023
- Exhibit P11 THE TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT DATED 06.07.2023
- Exhibit P12 THE TRUE COPY OF THE JUDGMENT IN W.P. (C).NO.28845/2023 OF THIS HON'BLE COURT DATED 25.08.2023

RESPONDENT EXHIBITS

- Exhibit R2(a) True copy of the renal transplant checklist detailing the documents that are required to be submitted with the 2nd respondent