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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3590/2020 and CM APPL. 12775/2020**

AMAR SINGH BHATIA & ANR. Petitioners

Through: Ms. Charu Aneja, Advocate.

versus

SIR GANGA RAM HOSPITAL & ORS. Respondents

Through: Mr. Subhash Kumar, Advocate for R-1 & 2. (M:9811210664)

Mr. Saroj Bidawat, Advocate for UOI/R-3.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **28.04.2023**

1. This hearing has been done through hybrid mode.
2. The present petition is an unfortunate case where the Petitioner was seeking organ donation and had challenged the Respondent No. 1-Sir Ganga Ram Hospital's indecision and delay in taking a decision on the kidney transplant which the Petitioner required.
3. In the present petition, the issue that has been raised is that, once the requisite documentation is submitted, there are no prescribed timelines for holding of the interview by the Authorisation Committee under the Transplantation of Human Organs and Tissues Rules, 2014 ('2014 Rules').
4. Ld. counsel for the Petitioner submits that when the petition itself was filed, the Petitioner had sought approval for kidney transplantation at the Respondent No. 1-Hospital on an expedited basis. However, while the present petition was pending, the Petitioner has passed away in March-April, 2021. The submission of Ld. Counsel for the Petitioner is that the Hospitals

do not follow any timelines between the submission of documents and for fixing the date of interview.

5. Under the 2014 Rules, Rule 23(4) requires the decision to be displayed on the website within 24 hours and Rule 23(3) requires that the decision has to be taken within 24 hours. Insofar as the Rule 23(1) of the 2014 Rules is concerned, from the filing of the forms there is no timeline fixed for holding of the interviews. The said Rules are reproduced below:

“23. Decision of Authorisation Committee.— (1) The Authorisation Committee (which is applicable only for living organ or tissue donor) should state in writing its reason for rejecting or approving the application of the proposed living donor in the prescribed Form 18 and all such approvals should be subject to the following conditions, namely:-

(i) the approved proposed donor would be subjected to all such medical tests as required at the relevant stages to determine his or her biological capacity and compatibility to donate the organ in question;

(ii) the physical and mental evaluation of the donor has been done to know whether he or she is in proper state of health and it has been certified by the registered medical practitioner in Form 4 that he or she is not mentally challenged and is fit to donate the organ or tissue:

Provided that in case of doubt for mentally challenged status of the donor the registered medical practitioner or Authorisation Committee may get the donor examined by psychiatrist;

(iii) all prescribed forms have been and would be filled up by all relevant persons involved in the process of transplantation;

(iv) all interviews to be video recorded.

(2) The Authorisation Committee shall expedite its decision making process and use its discretion

judiciously and pragmatically in all such cases where the patient requires transplantation on urgent basis.

(3) Every authorised transplantation centre must have its own website and the Authorisation Committee is required to take final decision within twenty four hours of holding the meeting for grant of permission or rejection for transplant.

(4) The decision of the Authorisation Committee should be displayed on the notice board of the hospital or Institution immediately and should reflect on the website of the hospital or Institution within twenty four hours of taking the decision, while keeping the identity of the recipient and donor hidden.”

6. The said 2014 Rules have been enacted by the Central Government under Section 24 of the Transplantation of Human Organs & Tissues Act (THOTA), 1994. Let an affidavit be filed by the Respondent No. 3-Ministry of Health and Family Welfare, Union of India on this issue. This issue shall be considered on the next date of hearing.

7. If there are no timelines, for calling the interview, the Respondent No. 3-Union of India shall also state in its affidavit as to what is the reasonable period that should be followed by the Hospitals, Authorisation Committees and for the screening process for holding interviews and conveying the decisions to the applicants under the 2014 Rules.

8. The Union of India through the Secretary, Ministry of Health and Family Welfare is impleaded as Respondent No.3 in the matter.

9. Let the amended memo of parties be brought on record.

10. List on 28th July, 2023. This is a part-heard matter.

PRATHIBA M. SINGH, J

APRIL 28, 2023

dj/dn