SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Asees Moitheen, vs the District Level Authorization Committee,

Asees Moitheen, vs the District Level Authorization Committee,

SooperKanoon Citation : sooperkanoon.com/1857821

Court : Kerala

Decided On : Feb-28-2019

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/2799/2019

Appellant : Asees Moitheen,

Respondent : The District Level Authorization Committee,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN THURSDAY ,THE 28TH DAY OF FEBRUARY 2019 / 9TH PHALGUNA, 1940 WP(C).No. 2799 of 2019 PETITIONER/S: ASEES MOITHEEN, AGED 35 YEARS S/O MOITHEEN, SRAMBIKKAL HOUSE, PERUMATTOM, PUTHUPADY P.O.VELLURKUNNAM VILLAGE, MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT. BY ADV. SRI.C.M.MOHAMMED IQUABAL RESPONDENT/S: 1 THE DISTRICT LEVEL AUTHORIZATION COMMITTEE, FOR TRANSPLANTATION OF HUMAN ORGANS, THRISSUR,THRISSUR MEDICAL COLLEGE HOSPITAL, POST THRISSUR, PIN 680 020, REPRESENTED BY ITS CHAIRMAN. 2 LOCAL APPROVAL COMMITTEE OF ORGAN

TRANSPLANTATION, MEDICAL TRUST HOSPITAL LTD, ERNAKULAM,PIN 682 016, REPRESENTED BY ITS CHAIRMAN.

3 THE DEPUTY SUPERINTENDENT OF POLICE KOTTARAKKARA,KOLLAM DISTRICT, PIN 691506 (IMPLEADED AS ADDL. R3 AS PER ORDER DATED 14.02.2019 IN IA 1/2019 IN WPC) BY ADVS. GOVERNMENT PLEADER SRI.R.S.KALKURA SMT.NEENU PAVITHRAN SMT.P.ANJANA SMT.R.BINDU SRI.HARISH GOPINATH SRI.M.S.KALESH SRI.NIKHEL K GOPINATH SRI.P.I.NAJUMAL HUSSAIN SRI.R.HARIKRISHNAN (KAMBISSERIL) SR.GP B VINOD THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.02.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C)No.2799/19 2

JUDGMENT

The petitioner has approached this Court seeking directions to the respondents to consider the application preferred for transplantation of kidney.

2. The learned counsel for the petitioner submits that the

petitioner's application for kidney transplantation has been placed before the 2nd respondent. But it was not forwarded to the 1 st respondent for want of favourable certificates by the 3 rd respondent. The 3rd respondent has placed a statement on record wherein it is revealed that the donor is the wife of one Anoop and that she has three children. Her husband is working as a Packing Supervisor at Amal Threads at Muvattupuzha and the owner of the Amal Threads who is the sister in law of the petitioner herein.

3. It is stated that the elder child of the donor was suffering

from epilepsy and is under treatment at the SAT Hospital, Thiruvananthapuram. It is stated that the petitioner and his family has agreed to make arrangements for the treatment of the donor's daughter. It is submitted that the said report of the 3 rd respondent is W.P.(C)No.2799/19 3 also liable to be considered by the 1st respondent while passing orders on the application preferred by the petitioner.

4. I have considered the contentions advanced. The issue of

transplantation of human organs where the donor is a known person is liable to be considered in terms of Section 9(3) of the Transplantation of Human Organs and Tissues Act, 1994. The 1 st respondent is the authority empowered to consider such applications. All the relevant aspects, including the relationship between the parties, the bonafides of the application as also the question whether any amounts have changed hands are matters to be considered by the 1st respondent in accordance with law. In the above view of the matter, I am of the opinion that the application preferred by the petitioner is liable to be forwarded to the 1st respondent. The report of the 3rd respondent which is placed before this Court will also be forwarded to the 1 st respondent. The 1st respondent shall consider the application of the petitioner taking note of all the relevant aspects and consider whether the donation is being done on an altruistic basis. Orders shall be passed with notice to the donor and the donee and after considering whether the donor W.P.(C)No.2799/19 4 is fully aware of the consequences of this action. Orders shall be passed within a period of two weeks from the date of receipt of a copy of this judgment. The writ petition is ordered accordingly. Sd/- ANU SIVARAMAN JUDGE Ac W.P.(C)No.2799/19 5 APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE DONOR AND HER HUSBAND DATED 14.11.2018 EXHIBIT P2 THE TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE DONOR AND HER MOTHER DATED 14.11.2018 EXHIBIT P3 THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF VETTIKAVAL GRAMA PANCHAYATH DATED 19.12.2018 EXHIBIT P4 THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF PAYIPRA GRAMA PANCHAYATH DATED 26.11.2018 EXHIBIT P5 THE TRUE COPY OF THE REQUEST LETTER ISSUED BY SRAMBICKAL AZEEZ CHIKILSA SAHAYS SAMITHI DATED 15.10.2018 EXHIBIT P6 THE TRUE COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER AND THE DONOR DATED 5.12.2018 EXHIBIT P7 THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER AND THE DONOR DATED 11.12.2018 RESPONDENT'S EXHIBITS: NIL //TRUE COPY// Sd/- PA TO JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com