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**S. Samson Vs. Authorization Committee for Implementation of Human Organ Transplantation**

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**SooperKanoon Citation :** [sooperkanoon.com/826304](http://sooperkanoon.com/826304)

**Court :** Chennai

**Decided On :** Apr-29-2008

**Reported in :** AIR2008Mad227

**Judge :** V. Dhanapalan, J.

**Acts :** [Transplantation of Human Organs Act, 1994](#) - Sections 9 and 9(6); Transplantation of Human Organs Rules; [Constitution of India](#) - Article 21

**Appeal No. :** W.P. No. 3584 of 2008 and M.P. Nos. 1 and 2 of 2008

**Appellant :** S. Samson

**Respondent :** Authorization Committee for Implementation of Human Organ Transplantation

**Advocate for Def. :** R. Janakiramulu, Spl. Govt. Pleader

**Advocate for Pet/Ap. :** G.R. Swaminathan, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

## **V. Dhanapalan, J.**

1. This petition is filed seeking a writ of certiorarified mandamus calling for the records relating to the impugned minutes of the respondent in Ref. No. 19222/G6/2008 dated 10-1-2008 and quash the same insofar as the petitioner is concerned and consequently direct the respondent to permit the petitioner to undergo kidney transplantation by accepting the donation of a kidney from the donor mentioned therein.

2. According to the petitioner, he is a lawyer practising in District and Sessions Court at Nagercoil, living with his wife, two children and aged parents; he has been affected with chronic renal failure and has been advised to undergo kidney transplantation which is the only option for prolonging his life; he is also undergoing regular dialysis; he is not in a position to obtain donation from his near relatives for the reasons that his wife's kidney does not match on account of the difference in their respective blood groups, and his parents are very old while his children are too young and he is the only son to his parents; thus, none of his listed near relatives are available for donation of the organ; this being the position, he approached one G. Kumar alias Sivakumar of Sundarkudi, Ariyalur Taluk, Perambalur District who has come forward to donate his kidney; he became known to him through Dr. Godwin Prem, who is working as Reader in Bishop, Heber College, Tiruchirapalli; both of them underwent the necessary tests at ABC Hospital, Tiruchirapalli and when the process was half way, the said hospital had some temporary registration issues to be resolved; as a result, he was constrained to institute Writ Proceedings before this Court, thereafter, Writ Appeal No. 168 of 2007 has been preferred in which, this Court, by order dated 24-5-2007, after considering the case in detail, has passed the following order:

Even though Dr. Jeyasekharan Hospital and Nursing Home, K.P. Road, Nagercoil, Kanyakumari District, is not a party and has not been heard, we have been told that such hospital has been informally consulted and it has got no objection. In view of the urgency of the matter, it is expected that such Hospital will act on the basis of the records which were placed before other authorities including respondent No. 3. ABC Hospital.

3. While that being the position, the petitioner has applied to the respondent seeking approval for transplantation and the respondent, in its decision dated 10-1-2008, has rejected the petitioner's request for obtaining donation of organ from the said Kumar. Aggrieved by the impugned order, the petitioner has filed this petition on various grounds, the main being that:

a. the decision of the respondent is arbitrary inasmuch as the authorities concerned have examined both the petitioner as well as the donor and there is no basis to show that there is any financial bonding between the petitioner and the donor.

b. the reasons adduced are against the provisions of [Transplantation of Human Organs Act, 1994](#) ('the Act' for short) and the rules framed thereunder and are also in violation of the fundamental rights guaranteed under Article 21 of the [Constitution of India](#).

4. On behalf of the respondent, an affidavit has been filed which is sworn by the Dean, Madurai Rajaji Hospital, Madurai. The Dean is one of the Committee Members and the Chairman of the Respondent Committee.

5. In the affidavit referred to above, it is stated that the petitioner as well as the donor have been orally examined by the Committee Members, viz., Revenue Divisional Officer-Madurai, Assistant Commissioner of Police Madurai, Joint Director of Medical Services-Madurai and the Deponent namely, the Dean of Madurai Rajaji Hospital; during the enquiry, it was found that the donor is very young and he is not a relative to the petitioner and both of them know each other only for the last two years and suspected financial bonding was involved and therefore, as per the provisions of the Act, the Committee has rightly rejected the petitioner's request for donation of organ.

6. Heard Mr. G.R. Swaminathan, learned Counsel for the petitioner and Mr. R. Janakiramulu, learned Special Government Pleader for the respondent.

7. The learned Counsel for the petitioner has vehemently contended that the petitioner's health is deteriorating day-by-day and he is under dialysis and unless

transplantation is performed at once, his life will certainly be at stake. He has further contended that the respondent, who is the competent authority, has not examined the issue in detail, taking note of the entire circumstances and also the provision Under Section 9 of the Act according to which the matter has to be approached in detail with due application of mind, after giving an opportunity and on satisfaction, the matter of this nature has to be resolved by the Committee and without doing so, the respondent has simply and straightway rejected the petitioner's request stating that there is a suspected financial bonding between him and the donor.

8. Conversely, the learned Special Government Pleader appearing for the respondent, relying on the affidavit filed by the Dean of Madurai Rajaji Hospital, has contended that during the enquiry, it was found that the donor is very young and he is not a relative of the petitioner and both of them know each other only for two years and there is a suspected financial bonding between them and this is the only reason as found in the impugned minutes to reject the petitioner's request for organ transplantation and the matching problem is not matter which the Committee has to examine.

9. I have given careful consideration to the issues and the submission made by the learned Counsel on either side besides carefully perusing the documents filed in support of the case and the impugned minutes passed by the respondent.

10. Admittedly, the petitioner who is a lawyer practising at the District and Sessions Court, Nagercoil is aged about 43 years and he is living with his wife, two children and aged parents. The reason for his not getting donation of organ from them is twofold i.e. mismatch of their blood groups and the age factor. This reasoning appears to be genuine. Further, it appears that the petitioner and the person who is willing to donate his kidney are known to each other for the last two years. It can be seen that the relevant provision under the Act aims at imposing certain restrictions on removal and transplantation of human organ in order to prevent any sort of irregularity in this regard. Clause (6) of Section 9 provides that if there is an application seeking approval of transplantation, after enquiry and after giving an opportunity of personal hearing to the applicants, the Authorisation

Committee has to examine as to whether the requirements of the Act and the Rules made thereunder have been complied with and if they have not been complied with, it shall reject the application stating the reasons for such rejection.

11. It is seen that the petitioner's application has been taken up by the Authorisation Committee and earlier, the petitioner has approached this Court by filing a Writ Petition followed by a Writ Appeal and this Court, taking note of the actuality of the situation, in the said Writ Appeal, has directed the respondent to consider the petitioner's case expeditiously and now, the respondent has passed the impugned minutes stating thus:

Not approved. They appear to be financial bonding between the two. They are acquainted for two years only.

12. From a reading of the relevant provisions of the Act, it is clear that there must be a thorough enquiry of the matter and an opportunity of hearing should be given to the parties concerned and the matter has to be looked into with the avowed object of helping the needy whose life is in danger. It is also clear that the authorities concerned, while exercising the power under the Act, must also look into the issue in a manner so as to save the life of a person and the matter should not be looked into from the technical point of view. The main reason attributed in the impugned Minutes is that there appears to be a financial, bonding between the petitioner and the donor. But, prima facie, it appears that there is no thorough examination of the case, inasmuch as the circumstances during the last two years because of which the donor has come forward to donate his organ, does not appear to have been taken note of by the respondent. While it is relevant to note that donation of organ is aimed to give immediate relief to the needy person whose life is in peril, it is equally relevant to state that such donation should be made at the appropriate time in the manner prescribed as time is the essence in a matter of this nature.

13. In the case on hand, while examining the matter by exercising the powers vested under the Act, I am of the considered opinion that the respondent ought to have given a cogent and convincing reasoning for coming to a conclusion that there exists a financial bonding between the petitioner and the donor. In the

absence of any such reasoning being assigned by the respondent, much less any valid and acceptable reasoning, it has to be held that the impugned Minutes of the respondent is vitiated by non-compliance of Section 9(6) of the Act and as such, the action of the respondent in rejecting the petitioner's case is the result of sheer non-application of mind and arbitrary exercise of power, despite the order of this Court in W.A. No. 168 of 2007 to consider the case of the petitioner.

14. In such circumstances, the impugned Minutes dated 10-1-2008 passed by the respondent is set aside insofar as the petitioner is concerned. However, the matter is remitted to the Authorisation Committee for re-examination of the issue in detail by following the provisions of the Act, not only in letter but also in spirit, taking cognizance of the fact that the petitioner is already undergoing dialysis and he is in need of immediate transplantation of kidney and to consider his application for transplantation within a period of three weeks from the date of receipt of a copy of this order.

15. Resultantly, the writ petition stands allowed with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

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