

Pawan Anand and Another Vs. Director General of Health Services and Others

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Court : Delhi

Decided On : Aug-09-2012

Reported in : 2012(3)KLT793

Judge : Rajiv Shakdher

Appeal No. : W.P.(C) 3848 of 2012

Appellant : Pawan Anand and Another

Respondent : Director General of Health Services and Others

Judgement :

Rajiv Shakdher, J.

1. By virtue of this writ petition the petitioner seeks to assail the original order passed by respondent no. 2 dated 07.06.2012 and the appellate order passed by respondent no. 1 dated 21.06.2012. Suffice it to say that the mother of petitioner no. 1 appears to be suffering from liver cirrhosis and that there is an urgent need for liver transplant. Petitioner no. 2 is the proposed donor.

2. For this purpose the petitioner says that he has obtained requisite permission including a NOC from the Organ Transplantation Committee constituted by the State of U.P, and a NOC from the District Magistrate, AGRA. Reliance is also

placed by the petitioner on a certificate issued by the then Mayor of Agra and the recommendation obtained from professor Rama Shankar Katheria, Member of Parliament, AGRA. The petitioner has also placed reliance on the opinions of Dr. Manav Wadhawan and also that of Dr. Subhash Gupta.

2.1 Dr. Subhash Gupta, I am told is the doctor who has been identified to perform the operation if requisite permissions are obtained. It may be relevant to point that the Authorization Committee, i.e., respondent no. 2 had rejected the request of the petitioners for organ transplant on the ground that there was an apparent financial disparity as between, the financial wherewithal of the family of petitioner no. 2 and that of petitioner no. 1.

3. It may also be relevant to note that the Authorization Committee, i.e., respondent no. 2 in coming to this conclusion had examined the documents placed on record by the petitioners which included the documents pertaining to financial resources of the family of petitioner no. 1 and that of petitioner no. 2. Apart from this, entire proceedings held before the Authorization Committee were videographed.

4. Being aggrieved by the order of respondent no.2, an appeal was preferred by petitioner no. 1 under Section 17 of the Transplantation of Human Organs Act, 1994 (in short the Organs Act). This appeal, as indicated above, came to be dismissed by respondent no.1 vide order dated 21.06.2012.

5. A perusal of the order passed by respondent no. 1, i.e., the Appellate Authority would reveal that it decided the case, based on the material which was placed on record, which included the videographed tapes of the proceedings held before respondent no. 2. It also appears that respondent no.1 examined the judgment of this court in Parveen Begum Vs. Appellate Authority, 189 (2012) DLT 427, though inadvertently perhaps, reference is given of the writ petition filed by the petitioner in the first round i.e., judgment dated 15.06.2012 passed in WP(C) No. 3734/2012, titled Urmila Anand and Anr. vs Director General of Health Services and Ors. Based on the aforesaid material as well as the judgment of this court it came to the following conclusion:

“...The Appellate Authority is of the view that the available evidence is not enough to establish „love and affection?or „affection and attachment?between donor and recipient which is required to approve it as „unrelated case?for organ transplantation under transplantation of Human Organs Act (THOA). The Appellate Authority agrees with the decision taken by the Authorization Committee of I P Apollo Hospital in this case....”

6. What stands out upon reading of the order is that petitioner no. 1 was not called for a personal hearing. To my mind, there are some matters in which compliance with principles of natural justice may not necessarily require according an opportunity of an oral hearing. [see Union of India and Another Vs. Jesus Sales Corporation, 1996 (4) SCC 69]. But this is not, surely one of those cases, as these are matters in which, even if the statute is silent, in my view, oral hearing ought to be granted even at the appellate stage, as there are many open and shut cases which on a closer examination are fully explained and / or answered. Therefore, the criticality of affording oral hearing in such like cases. In this behalf, I may take recourse to the observations of a Division Bench of this court in Moser Baer India Ltd. Vs. The Additional Commissioner of Income Tax and Anr., WP(C) No.6974/2008, decided on 19.12.2008, which read as follows:-

7.4 The other submission of the Learned ASG, which is, that even if oral hearings is considered to be mandatory, the impugned orders cannot be rendered invalid as there was no demand for oral hearing, (except in writ petition no 6974/200 8) in our view, is not tenable. The reason being that the Courts have time and again, exhorted that fair procedure is required to be followed not only within its own precincts, but also, by authorities exercising quasi-judicial and administrative powers, with a view to achieve, at the end of the day, a result, which is, fair and just. And this end result has to be examined by asking oneself a question as to whether a person who, if he had knowledge of the proceedings but, was otherwise unconcerned with the end result, would view the decision making process, as fair. A question often asked is can a person be aggrieved if he has not demanded, that which is his right i.e., a right to a fair procedure, in this case, an oral hearing. The answer to this question is not far to seek. Where the State is a litigating party, it is, its Constitutional obligation to adopt a procedure which is both fair and just while

dealing with its citizens. The fact that a citizen is unaware of his legal right cannot be used as a plank to seek legal sustenance for its actions which are otherwise invalid. It is duty of the State, in its role as a litigating party, to inform the citizen of his right i.e., to seek an oral hearing. An enquiry of the kind which is contemplated under Chapter X by the TPO will achieve a far more fair result, if there is an opportunity for an oral hearing or personal representation.

The observation of Megarry J, in *John v. Rees* (1969) 2 All. ER 274 best illustrates the point as to why it is important to give a personal hearing especially in such like matters. The relevant extracts reads as follows:

It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. "When something is obvious," they may say, "why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard" The result is obvious from the start." Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were of unanswerable charges which, in the end, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events. (emphasis is mine)

7. I have specifically queried learned counsel for the respondents as to whether oral hearing was granted to petitioner no.1. The learned counsel has confirmed that no oral hearing was granted to petitioner no. 1. The petitioner no. 1 in the present writ petition has specifically raised this as a ground of challenge.

8. In these circumstances, I am of the view that the order of the Appellate Authority i.e., respondent no.1 would have to be set aside. It is ordered accordingly. The case is remanded to the Appellate Authority i.e., respondent no.1 with a direction that they should fix a date, on which, the petitioner no. 1 could appear before them

and be heard personally in support of his appeal.

9. Before I conclude, I may also note that I had interviewed petitioner no. 2 at length. This aspect has been recorded by me, briefly in my order dated 16.07.2012. Upon interviewing petitioner no. 2, I came to a distinct conclusion that the decision of petitioner no. 2 to donate a part of her liver was not an informed decision. I am conscious of the fact that the petitioner has placed on record an assessment of a psychiatrist, which seems to suggest that petitioner no. 2 is sufficiently informed about the outcome of the proposed transplant surgery.

9.1. I must note that it is a format report. Having interviewed petitioner no. 2, my impression is completely to the contrary. In the matters like this, the donor needs to be fully informed about all possible outcomes of a transplant surgery. It is, therefore, necessary that this aspect of the matter should also be recorded. In the video recorded by the Authorization Committee i.e., respondent no.2, I did not find that the Authorization Committee had informed petitioner no. 2 as to the possible outcome(s) as also the post operative changes that petitioner no.2 is likely to experience upon such a surgery being performed on her.

10. In these circumstances, it would be appropriate if the Appellate Authority/respondent no.1 were to call petitioner no. 2 and inform her about the possible outcomes of such an operation; their assessment as to whether the petitioner no. 2 has understood the possible outcomes of such an operation would be vital to the decision making process. In such like cases, lack of informed consent could vitiate the entire process.

11. After assessing the material on record, and after interviewing petitioner no. 2 personally, respondent no. 1 shall pass a reasoned order in the appeal. For this purpose, petitioner no. 1 shall appear before the Appellate Authority/respondent no.1, on 13.08.2012 at 11.00 a.m. The Appellate Authority/respondent no.1 would convene and decide the appeal within ten (10) days from the date of hearing. Needless to say the Appellate Authority/respondent no.1 is free to adopt its own procedure, as no specific procedure is provided in the Organs Act. The Appellate Authority/respondent no.1 would be free to collect material by way of evidence in support of their conclusions. Any material collected would be put to petitioner no.1,

to elicit his response. The Appellate Authority/respondent no.1 will, however, bear in mind that the appeal has to be disposed of expeditiously.

12. With these directions the petition stands disposed of.

13. Dasti to the learned counsels for the parties under the signatures of the Court master.

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