



2023/KER/81488

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 19TH DAY OF DECEMBER 2023 / 28TH AGRAHAYANA,

1945

WP (C) NO. 38624 OF 2023

PETITIONERS :

- 1 DEEPA P M
AGED 37 YEARS, W/O SAJITH A K,

- 2 AJITH KUMAR J S
AGED 53 YEARS,

BY ADVS.
SRI.K.RAMAKUMAR
SRI.JOHN VARGHESE

RESPONDENTS :

- 1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY,
HEALTH & FAMILY WELFARE DEPARTMENT,
GOVT SECRETARIAT, THIRUVANANTHAPURAM
DISTRICT, PIN - 695001
- 2 THE DISTRICT LEVEL AUTHORIZATION
COMMITTEE FOR RENAL TRANSPLANTATION
REPRESENTED BY THE CHAIRMAN/
PRINCIPAL, GOVT MEDICAL COLLEGE,
KOTTAYAM., PIN - 686001
- 3 THE LOCAL LEVEL AUTHORIZATION
COMMITTEE FOR RENAL TRANSPLANTATION
REPRESENTED BY THE CONVENER, MAR
SLEEVA MEDICITY, PALAI, PIN - 686101
- 4 THE DEPUTY SUPERINTENDENT OF POLICE
THRISSUR RURAL, KODUNGALLOOR, KODUNGALLOOR PO,
THRISSUR DISTRICT, PIN - 689001
BY ADV.
SRI.SUNIL KUMAR KURIAKOSE - GP



2023/KER/81488

W.P.(C).No.38624 of 2023

: 2 :

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19.12.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**C.R.****JUDGMENT**

The 2nd petitioner is stated to be suffering from advanced renal failure and is in emergent need of an organ transplant. The 1st petitioner has come forward to help him by donating her organ; but they say that they have not been able to move forward on account of the refusal of the 4th respondent to issue to them a “Letter of Altruism”, which is a statutory requirement. They say that, since the said letter has now been withheld, they have not been able to submit the relevant documents before the 3rd respondent - Local Level Authorization Committee for Renal Transplantation ('LLAC', for short); and consequently, that the same could not be forwarded thereafter to the 2nd respondent - District Level Authorization Committee for Renal Transplantation ('DLAC', for short).

2. The petitioners, therefore, pray that the 4th respondent be directed to issue an appropriate “Letter of Altruism”; and that the 3rd respondent be directed to accept all documents from them and forward the same to the 2nd respondent - DLAC, so as to enable the said Authority to take a final decision on their application.

3. Noticing the afore submissions of the petitioners, as made by the learned Senior Counsel, Sri.K.Ramakumar, instructed by Sri.John Varghese, this Court passed an interim order on



20.11.2023, in the following manner:

“The learned Government Pleader - Sri.Sunil Kumar Kuriakose will obtain specific instructions from 4th respondent as to the status of the petitioners application for 'Letter of Altruism'.

In the meanwhile, I direct the petitioners to produce all relevant documents, except the 'Letter of Altruism' before the 3 rd respondent forthwith, who will thereupon forward the same to the 2nd respondent - District Level Authorisation Committee (DLAC) immediately thereafter.

Post on 24.11.2023.”

4. Thereafter, this matter was listed on 24.11.2023, on which day, a further order as below was issued:

“Read order dated 20.11.2023.

2. Sri.K.Ramakumar - learned senior counsel, instructed by Sri.John Varghese, submitted that in terms of the afore interim order, his clients have already produced all necessary documents before the third respondent - Committee.

3. Sri.Sunil Kumar Kuriakose - learned Government Pleader, sought a day's time to obtain further instructions from the fourth respondent as to the status of the petitioners' application for 'Letter of Altruism'.

4. In the afore circumstances, adverting to the judgment of this Court in W.P.(C) No.30365/2023, I direct the third respondent to immediately forward all the documents, without waiting for the 'Letter of Altruism', within a period of three working days from the date of receipt of a copy of this order.

On the same being received by the second respondent, it will assess the documents and take a final decision without requiring the 'Letter of Altruism'; but will not issue orders but will inform its decision to the learned Government Pleader, to be submitted before this Court. This shall be done within a period of four working days after the documents are received by them from the third respondent.

List on 04.12.2023.

H/o.”



5. Subsequently, on 15.12.2023, the learned Government Pleader - Sri.Sunil Kumar Kuriakose, submitted that the application for "Letter of Altruism" by the petitioners had been rejected by the 4th respondent; and hence that the "DLAC" had not taken any decision. However, since it is clear from the afore extracted order dated 24.11.2023, that the "DLAC" was directed to take a decision without requiring the "Letter of Altruism", the learned Government Pleader, sought two days time. The matter was thus adjourned to 18.12.2023 with the following proceedings being recorded:

"Read order dated 24.11.2023.

The learned GP seeks a days time to obtain instructions regarding the decision of the 2nd respondent - DLAC.

Sri.Ramkumar - learned Senior Counsel instructed by Sri.John Varghese appearing for the petitioners, submitted that rejection of the 'Letter of Altruism' by the Police Authority is illegal and that objections have also been filed on record. He specifically contended that 4th respondent cannot reject an application, in the absence of contrary proof; and that the 1st petitioner is willing to appear before this Court to prove her bonafides. He added that she will be present before this Court at 10.15 AM on 18.12.2023.

Post on 18.12.2023 at 10.15 AM."

6. On the afore date, the order of the "DLAC", " deferring the request of the petitioners", was brought on record by the learned Government Pleader; and the 1st petitioner and her husband were present in Court. With the consent of both sides, I interacted with the said persons, and the record of the same was indited in the



order of the same day as under:

“Read order dated 15.12.2023.

2. The 1st petitioner and her husband, Sri.Sajith A.K., were present in Court today.

3. With the consent of learned counsel for the petitioners and the learned Government Pleader - Sri.Sunil Kumar Kuriakose, this Court had an interaction with both of them.

4. The 1st petitioner - Smt.Deepa P.M., submitted that she has offered her organ to the 2nd petitioner for transplant because, she was working with his family from 2016, until the COVID-19 pandemic disruption, that is, nearly for a period of four years. She submitted that family of the 2nd petitioner became close to her and that they were giving her salary on time, as also essential financial assistance whenever her daughter - who is presently in the VI standard - required for her education. She added that, it was her husband, who was initially interested in donating the organ, but that since he had a fall, thus being incapacitated from doing so medically, she decided to help the 2nd petitioner. She added that 2nd petitioner is now in a very difficult condition; and, therefore, that it is purely by way of humanism and empathy that she has come forward to offer her organ for transplant.

5. Sri.Sajith A.K. - husband of the 1st petitioner, affirmed the afore statements of his wife, adding that they were married on 14.07.2008, through a customary one. To a pointed question from this Court, both the husband and wife asserted that they had never been married before and that they have been living as husband and wife for the last more than 15 years, with a daughter, who is now 11 years in age. They submitted that their daughter is in the VI standard and that she is also aware of the consequences of her mother's decision.

6. However, since the learned Government Pleader submits that the District Level Authorization Committee (DLAC) has taken a decision to defer the case, solely because they have some suspicion regarding the marital status of the 1st petitioner, I deem it essential that this matter be listed tomorrow, for the said petitioner to respond appropriately.

List on 19.12.2023.”



7. Sri.K.Ramakumar - learned Senior Counsel, vehemently argued that the action of the 4th respondent, rejecting the "Letter of Altruism", and that of the 2nd respondent - DLAC, in deferring the application of the petitioners are untenable and illegal, going by the record of the interaction that this Court has indited in the order dated 18.12.2023. The learned Senior Counsel, thereafter, pointed out that the 1st petitioner has produced Exts.P16 to P24, which would establish beyond doubt that, they are validly married and that the former among them has agreed to donate her organ, being fully aware of the consequences of the same. He thus asserted that the further documents produced by his clients, namely Exts.P25 and P26 bank statements and records, would render it without any doubt that there has been no monetary transaction between the petitioners; and that the first among them has acted in humanism and altruism in coming forward to help the 2nd among them. The learned Senior Counsel, therefore, reiteratingly prayed that the reliefs sought for in this writ petition be granted, so that the 2nd petitioner can be saved of a life threatening situation, which he presently faces.

8. Sri.Sunil Kumar Kuriakose - learned Government Pleader, in response, submitted that, as evident from the order of the 4th respondent rejecting the "Letter of Altruism", the main factor



which the said Authority was persuaded by was that, even though the 1st petitioner says that she was working for the 2nd petitioner and his family as a home maid, there were no phone calls between them for nearly a period of one year; and that this has been confirmed by verifying their Call Data Records (CDR). He added that, since the 1st petitioner seems to have a *“poor financial income and they even don't have their own house”* (sic), the Station House Officer of Valapad Police Station has concluded that the offer for transplantation made by her *“is not on the basis of fair interest”* (sic) and, therefore, that a *“Letter of Altruism”* cannot be issued.

9. Sri.Sunil Kumar Kuriakose, thereafter, pointed out that the *“DLAC”*, in their meeting held on 07.12.2023, verified the records presented before it by the *“LLAC”*, in terms of the interim order of this Court, but did not take a decision on it, solely because a *“Letter of Altruism”* was found to be necessary since there was a doubt whether the 1st petitioner and her husband are validly married. He submitted that, therefore, the Authorities will abide by any directions to be issued by this Court; however, arguing that this may not be a case where the indulgence of this Court can go to the petitioners.

10. I must say that the last of the afore submissions of Sri.Sunil Kumar Kuriakose cannot appeal to me because, the 4th



respondent has refused a “Letter of Altruism” purely on conjectures on the basis of the “CDR” of the 1st petitioner. As has already been recorded in the afore extracted order dated 18.12.2023, this Court interacted with the 1st petitioner and her husband, with the consent of the learned counsel on both sides; and she unequivocally stated that she has come forward to donate her organ not for any financial gain, but solely out of humanism, since she and her husband have developed attachment to the 2nd petitioner and his family on account of their long association. She had made it limpid that she was not acting for money and that her dignity and self-esteem would not permit her to do so; and this was affirmed by her husband, who, in fact, said that it was he who wanted to donate, but has been incapacitated on account of a fall, which he suffered. Pertinently, both of them affirmed that the 2nd petitioner and his family had been extremely helpful to them, particularly their daughter, who is now 11 years of age and who had been offered assistance, whenever she required in her education and other purposes.

11. In the afore perspective, when one reads the order of rejection of “Letter of Altruism” by the 4th respondent, it is perspicuous that, he has acted upon certain surmises and conjectures entered into by the Station House Officer of the



Valapad Police Station. This Court has already declared in **Soubiya v. District Level Authorisation Committee for Transplantation of Human Organs, Ernakulam [2023 (6) KHC 293]**, leaving no room for doubt that a presumption, that a person in financial requirement would only act for monetary gain, is an affront to the dignity of an individual and is against the constitutional imperatives.

12. As far as this case is concerned, the Station House Officer, Valapad, shockingly says that since the 1st petitioner's family "*is having poor financial income and they even don't have their own house*" (sic), "*the organ transplantation is not on the basis of fair interest*" (sic). This Court can never grant approval to such a sweeping statement; and, if police officers are allowed to make such conjectures, it would certainly hit at the bedrock of the constitutional imperatives of dignity and individual respect.

13. That said, the further assertion by the 4th respondent, that the connection between the petitioners could not be verified or established merely because there are no details of phone calls with each other, is rather immature, to say the least, because it is not necessary that the petitioners - when the 1st among them was working with the 2nd, in his house - should have called each other on their phones. One fails to fathom what the 4th respondent meant



by this, or the rationale in making such a statement.

14. Coming to the proceedings of the “DLAC”, the said Authority has deferred the matter, for a completely different reason, namely, that they have suspicion that the 1st petitioner and her husband are not validly married. Again, this Court fails to understand the legal impact of such a suspicion – even assuming it to be true, for the sake of argument – because, when the 1st petitioner has come forward to donate her organ, the factum of her marriage being legally registered or otherwise, would be wholly immaterial and irrelevant. However, it does not require this Court to say anything further on this because, Ext.P24 would establish, at least for the purpose of this case, that the 1st petitioner and her husband are validly married, though perhaps not registered in terms of the applicable law. It is now well settled that, even a customary marriage has valid and legal status, which cannot be discounted by any of the Authorities, particularly the 2nd respondent, in the manner they have done in their proceedings dated 07.12.2023.

15. In the afore circumstances, I am certain that the petitioners are entitled to relief, especially because the 2nd among them is now facing acute renal failure and whose life would be in danger, if the organ transplant is not allowed. However, I must



clarify that, had this Court found any suspicion in the relationship or the intent of the petitioners in having approached this Court, certainly, the afore could not have been the sole reason to grant relief; but in a case like this, where such suspicions have now become tenuous and without any factual basis, this Court is enjoined to come to the aid of the petitioners.

16. In the afore circumstances,

(a) This writ petition is allowed, and the “DLAC” is directed to complete proceedings on the documents produced by the petitioners in terms of the interim order earlier and issue a final order advertent to the observations of this Court and without insisting on any “Letter of Altruism” to be produced by them; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than one week from the date of receipt of a copy of this judgment.

(b) On the “DLAC” issuing orders as afore, the petitioners will be at full liberty to continue with the treatment of the 2nd petitioner, by way of organ transplant by the 1st among them; and this shall be completed by the competent Authorities without any



impediment in future.

(c) I also leave liberty to the petitioners to seek any clarification as they may require in fructification of the afore orders; for which purpose, all remedies are left open.

**Sd/-
DEVAN RAMACHANDRAN
JUDGE**

anm

**APPENDIX OF WP(C) 38624/2023**

PETITIONER EXHIBITS

- Exhibit P1 COPY OF THE DISCHARGE SUMMARY DATED 26/04/2023 ISSUED BY THE AMRITA INSTITUTE OF MEDICAL SCIENCES, KOCHI TO THE 2ND PETITIONER
- Exhibit P2 COPY OF THE REACTIVE ANTIBODY SCREENING (HLA CLASS I & II) CROSS MATCHING REPORT OF THE PETITIONERS ISSUED BY THE TRANSPLANT IMMUNOLOGY & IMMUNO GENETICS DEPARTMENT OF METROPOLIS HEALTH CARE LTD (LABORATORY) DATED 13/07/2023.
- Exhibit P3 COPY OF THE HLA T CELL AND B CELL CROSS MATCHING REPORT OF THE PETITIONERS DATED 14/07/2023 ISSUED BY THE TRANSPLANT IMMUNOLOGY & IMMUNO GENETICS DEPARTMENT OF METROPOLIS HEALTH CARE LTD (LABORATORY)
- Exhibit P4 COPY OF THE CLINICAL EVALUATION REPORT OF THE 1ST PETITIONER ISSUED BY VARIOUS CLINICAL DEPARTMENTS OF THE MAR SLEEVA MEDICITY, PALAI DURING JULY 2023
- Exhibit P5 COPY OF THE LETTER DATED 08/08/2023 BY DR. MANJULA RAMACHANDRAN, NEPHROLOGIST, MAR SLEEVA MEDICITY, PALAI TO THE 4TH RESPONDENT
- Exhibit P6 COPY OF THE DISCHARGE SUMMARY DATED 11/08/2023 ISSUED BY THE MAR SLEEVA MEDICITY, PALAI TO THE 2ND PETITIONER
- Exhibit P7 COPY OF THE PETITION SUBMITTED BY THE 1ST PETITIONER TO THE 4TH RESPONDENT ON 03/11/2023.
- Exhibit P8 COPY OF THE TESTIMONY DATED 26/10/2023 ISSUED TO THE 2ND PETITIONER BY THE MLA, ERNAKULAM
- Exhibit P9 COPY OF THE NOTARIZED AFFIDAVIT OF THE 1ST PETITIONER DATED 27/10/2023
- Exhibit P10 COPY OF THE NOTARIZED AFFIDAVIT OF THE 2ND PETITIONER DATED 27/10/2023
- Exhibit P11 COPY OF THE NOTARIZED JOINT AFFIDAVIT OF THE PETITIONERS DATED 27/10/2023
- Exhibit P12 COPY OF THE VOLUNTARY KIDNEY DONOR CERTIFICATE DATED 28/10/2023 ATTESTED BY THE VILLAGE OFFICER, CHERANELOOR
- Exhibit P13 COPY OF THE TESTIMONY ISSUED BY THE PRESIDENT, VALAPPAD GRAMA PANCHAYATH TO THE 1ST RESPONDENT DATED NIL.



- Exhibit P14 COPY OF THE TESTIMONY ISSUED BY THE PRESIDENT, CHERANELLOOR GRAMA PANCHAYAT DATED 01/11/2023 TO THE 2ND PETITIONER
- Exhibit P15 COPY OF THE TESTIMONY DATED 02/11/2023 ISSUED BY THE MP OF THRISSUR TO THE 1ST PETITIONER
- Exhibit P16 COPY OF THE BIRTH CERTIFICATE DATED 11/03/2014 ISSUED BY THE REGISTRAR OF BIRTH AND DEATH, KODUNGALLOOR MUNICIPALITY
- Exhibit P17 COPY OF THE AADHAAR CARD WITH NO. 867771996643 OF SRI SAJITH A K
- Exhibit P18 COPY OF THE AADHAR CARD NO. 944630217218 OF SMT DEEPA P M
- Exhibit P19 COPY OF THE RATION CARD NO, 1844051901 OF THE 1ST PETITIONER, HER HUSBAND, DAUGHTER AND MOTHER IN LAW, ISSUED BY THE KERALA CIVIL SUPPLY'S DEPARTMENT
- Exhibit P20 COPY OF THE NOTARISED LETTER OF CONSENT EXECUTED BY MR. SAJITH A K (THE HUSBAND OF THE 1ST PETITIONER) DATED 28/10/2023
- Exhibit P21 COPY OF THE NOTARISED LETTER OF CONSENT EXECUTED BY SMT VASANTHA NT (MOTHER IN LAW OF THE 1ST PETITIONER) DATED 28/10/2023
- Exhibit P22 COPY OF FORM NO. B (IDENTIFICATION CERTIFICATE NO. 3229/2023 ISSUED BY THE VILLAGE OFFICER, EDAMUTTAM VILLAGE
- Exhibit P23 COPY OF FORM NO, B (IDENTIFICATION NO. 3230/2023 ISSUED BY THE VILLAGE OFFICER, EDAMUTTAM VILLAGE
- Exhibit P24 COPY OF THE NOTARIZED JOINT AFFIDAVIT OF 1ST PETITIONER (DEEPA PM) AND HER HUSBAND (SAJITH A K)
- Exhibit P25 COPY OF THE BANK STATEMENT OF MY HUSBAND SRI. SAJITH AK AT PANJAB NATIONAL BANK, VALAPPAD BRANCH, A/C NO.4360000100129491
- Exhibit P26 COPY OF THE BANK STATEMENT OF SMT VASANTHA KUMARAN, MY MOTHER IN LAW AT PANJAB NATIONAL BANK, VALAPPAD BRANCH, AC NO.4360001700007598