

(2010) 08 MAD CK 0397

Madras High Court

Case No: Writ Petition No. 17038 of 2010 and M.P. No. 1 of 2010

R. Murali

APPELLANT

Vs

State of Tamil Nadu by the
Principal Secretary Department
of Health and Family Welfare

RESPONDENT

Date of Decision: Aug. 11, 2010

Acts Referred:

- Transplantation of Human Organs and Tissues Act, 1994 - Section 15

Citation: (2011) 1 MLJ 1102 : (2011) 3 RCR(Civil) 274 : (2011) 3 RCR(Civil) 274 : (2011) 3 RCR(Criminal) 82 : (2011) 3 RCR(Criminal) 82

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: P. John, for T.S. Gopalan and Co, for the Appellant; Dakshayini Reddy, Government Advocate (Education), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

By consent the writ petition itself is taken up for disposal.

2. The Petitioner has filed this petition to direct the second Respondent to permit any recognised Hospital to operate the Petitioner by Dr. V. Pathak pursuant to the representation dated 29.5.2010 and the No Objection Certificate issued by the Authorization Committee to the Petitioner dated 23.10.2009.

3. (i) According to the Petitioner, he is a senior Lecturer, Pharmacy Department in Annamalai University and he is aged 42 years and in July 2009 he was diagnosed with a kidney problem. As a result, he has been undergoing haemodialysis from 5.8.2009 onwards. As the Petitioner's condition is serious, he has to undergo haemodialysis for as many as 3 days a week and the length of haemodialysis keeps increasing. Therefore, he has to undergo kidney transplant and he has obtained

necessary approval from the Authorization Committee of Tamil Nadu. He is awaiting for the operation to be performed in any recognized hospital by Dr. V. Pathak, who has been orally instructed by the second Respondent not to perform any more operations. The Petitioner is holding on a single thread of hope, that is, the operation. Therefore, the operation is required.

(ii) In this regard, the Petitioner had approached the Kovai Medical Centre and Hospital, Coimbatore for their opinion. The said hospital has one of the best Surgeons, namely, Dr. V. Pathak in the field of kidney transplant, who does not use certain drugs and steroids that have side effects, which would have serious implication on the Petitioner's health after transplant. He has been informed that the kidney operation was done as a matter of course in a number of hospitals in India. However, most hospitals with a view to bring down the chances of rejection, prescribe steroids and other drugs that have a lot of side effects, besides being prohibitively expensive. The post-operative care is most important and the patient is to be kept in isolation. It is to be ensured that the patient does not get any type of infection, and not even common cold. All these precautions are taken as the body would try to reject a donor's kidney. To ensure that this does not happen, strong drugs and steroids are given to the patient.

(iii) It is the case of the Petitioner that he and the Donor had been referred to the said Dr. V. Pathak due to his peculiar medical condition and to have a steroid free operation. The said Dr. V. Pathak carried out his medical examination at the Kovai Medical Centre and Hospital, Coimbatore. Thereafter only, Dr. V. Pathak, on being satisfied that the Petitioner required such transplant, issued a certificate in Form 2 and the Petitioner had approached the Authorization Committee in Tamil Nadu as provided under the Transplantation of Human Organs Act, 1994 (hereinafter referred to as "the Act"). The Authorization Committee had granted to the Petitioner a certificate approving the transplantation of the kidney on 23.10.2009. Then, he was informed that only after the patient and the donor are subjected to elaborate examination by the Authorization Committee, the authorization Committee issued a "No Objection Certificate".

(iv) The Petitioner states that the Kovai Medical Centre and Hospital is one of the hospitals in India performing this kind of surgeries and he requires a non-steroidal transplant and the said hospital is an appropriate one for him. The said hospital was registered u/s 15 of the Act. He has been informed that there seems to have some controversies arisen on the kidney transplants done in the said hospital and the registration seems to have been suspended from 21.12.2009 onwards. In this regard, the hospital has moved before the authority concerned. The Petitioner had been granted the "No objection Certificate" on 23.10.2009 itself. The hospital has moved this Court.

(v) While that being so, the Petitioner is expected to undergo the operation on his own volition and risk and he would not hold the first Respondent responsible for the

risk arising out of the operation as the said operation was suspended. The Petitioner had waited for his turn as he has been informed by the said hospital that his name was also in the list of 31 patients and whose operation had been permitted by this Court.

(vi) The Petitioner underwent dialysis at Bangalore initially and his condition had worsened and therefore he moved to Coimbatore and took a house on rent and is waiting to be operated for the past five months expecting that the said hospital will give priority for the Petitioner to undergo the operation.

(vii) The Petitioner has been informed that the transplant is done by Dr. V. Pathak who is presently working at Kovai Medical Centre and Hospital. Once in three days he is doing the transplant and he is personally involved in the progress of the patients and sees that his patients are on the road to recovery before undertaking the next operation. Therefore he is expecting that Dr. V. Pathak is the proper Doctor who has advised him to do the transplant.

(viii) In the meanwhile, he has been informed that the said hospital filed an application in M.P. No. 4 of 2009 in W.P. No. 2508 of 2010 for a direction to perm it them to carryout the operation for renal patients who had obtained the permission. One of them was the Petitioner. This Court in its order dated 15.4.2010 directed the said hospital to give a representation to the authorities and he was made to understand that immediately the hospital had made an application to the second Respondent on 25.5.2010 and forwarded the application under cover of his letter dated 28.6.2010. A copy of which was obtained on 16.7.2010. Till date the first Respondent has not passed orders on the application of the said hospital.

(ix) In this situation, having no other effective and efficacious remedy, the Petitioner has filed this petition for the above direction.

4. Heard Mr. P. John for T.S. Gopalan and Co., learned Counsel for the Petitioner and Ms. Dakshayini Reddy, learned Government Advocate for the Respondents 1 and 2. The Petitioner has given up Respondent No. 3.

5. The learned Counsel after explaining the very pathetic condition of the Petitioner who is a patient under diagnosis and who needs immediate operation for kidney transplant submits that as per the requirement of the Act permission from the donor as well as No Objection Certificate from the Authorisation Committee has been obtained and the condition of the Petitioner is worsening every day. Therefore, priority should be given for him to undergo the kidney transplant. The only difficulty expressed by the learned Counsel for the Petitioner is that the concerned hospital to which he has opted, namely, Kovai Medical Centre and Hospital is now suspended from doing any kidney transplant. Therefore, if Dr. V. Pathak is permitted to operate the Petitioner in any recognised hospital, it may be convenient for the Petitioner to undergo the operation on priority basis.

6. (i) On the other hand, Ms. Dakshayini Reddy, learned Government Advocate, on instructions, submits that the Kovai Medical Centre and Hospital, Coimbatore is suspended with effect from 21.12.2009 and no action has been taken by the State Appropriate Authority so far against any Nephrologist of the said hospital. Therefore, Dr. Vivek Pathak, Nephrologist of the Kovai Medical Centre and Hospital, Coimbatore is at liberty to do Renal transplantation in any registered transplant hospital other than Kovai Medical Centre and Hospital and Coimbatore Kidney Centre, Coimbatore.

(ii) However, the learned Government Advocate, on instructions, fairly submitted that there are Government Hospitals with advanced technology in the city of Chennai like, General Hospital, Kilpauk Medical College Hospital and Stanley Medical College Hospital and if the Petitioner chooses any one of these hospitals, the Respondent will consider the same as early as possible.

(iii) The learned Government Advocate informs that the competent authority to look into the grievance of the Petitioner is the Director of Medical and Rural Health Services.

7. I have considered the pleadings as well as the submissions made by the learned Counsel on either side and the relevant provisions of the Act.

8. In this case, it is seen that the Petitioner, a senior Lecturer, at the age of 42 years has an unfortunate ailment of kidney problem and he is undergoing haemodialysis from 5.8.2009. After attending the doctors, on opinion from Dr. V. Pathak he had approached the concerned authority under the Act for necessary "No Objection Certificate" from the Authorization Committee and he also obtained the consent from the donor who is prepared to donate the kidney for transplantation. It appears that except the hospital where the Petitioner opted for operation, no other legal impediment appears to have been seen in the pleadings or in the instructions to the Respondent. The written instruction given by the second Respondent reads as under:

In response to your query over phone, I am to inform you that the registration in respect of Kovai Medical Centre and Hospital, Coimbatore for performing the Renal Transplantation had already been suspended with effect from 21.12.2009.

In this context, I am further to inform you that no action has been taken by the State Appropriate Authority so far against any Nephrologists of the said hospital. Therefore Dr. Vivek Pathak, Nephrologist of Kovai Medical Centre and Hospital, Coimbatore is at his liberty to do Renal Transplantation in any other registered transplant hospital other than Kovai Medical Centre and Hospital and Coimbatore Kidney Centre, Coimbatore as these hospitals Registration suspended.

9. From the above instructions, it appears that the only problem with the hospital concerned at present is that it is under suspension from doing renal transplantation

with effect from 21.12.2009. Therefore, the Petitioner's option for the hospital cannot be considered. As on date there is no legal impediment for Dr. V. Pathak to operate the Petitioner in any of the hospitals other than Kovai Medical Centre and Hospital at Coimbatore. The Respondents have no objection to permit him to operate the Petitioner and he is at liberty to do Renal transplantation in any registered transplantation hospitals.

10. In such view of the matter, as the Petitioner is in immediate need of the operation and he is undergoing haemodialysis and he has consistently pleaded that his condition is becoming worse every day, there is immediate need for the operation. Therefore, the Respondents have to look into the request made by the Petitioner at the earliest.

11. In the light of the above situation and taking note of the very pitiable condition of the Petitioner who is at the age of 42 years having served as a Senior Lecturer and in need of immediate attention, the second Respondent or the competent authority, namely, the Director of Medical and Rural Health Services, is directed to permit the Petitioner to undergo the operation in any one of the hospitals, namely, General Hospital-Chennai, Kilpauk Medical College Hospital-Chennai and Stanley Medical College Hospital-Chennai and also to permit Dr. Vivek Pathak, Nephrologist of Kovai Medical Centre and Hospital, Coimbatore with his assistants to perform the Renal transplantation in any of the above hospitals on priority basis subject to the condition that the Petitioner shall bear the expenses. The Petitioner is also directed to approach the above authorities immediately by making a request and producing all the required documents as required by the Act.

12. This writ petition is disposed of accordingly. No costs. Consequently, M.P. No. 1 of 2010 is also disposed of.