

Parveen Begum and Another Vs Appellate Authority And anr

Court: Delhi High Court

Date of Decision: May 15, 2012

Acts Referred: Constitution of India, 1950 " Article 226

Transplantation of Human Organs and Tissues Act, 1994 " Section 17, 2, 24(1), 3, 3(1)

Transplantation of Human Organs Rules, 1995 " Rule 4(A4), 4A, 6(A2), 6(F), 6A

Citation: (2012) 189 DLT 427

Hon'ble Judges: Vipin Sanghi, J

Bench: Single Bench

Advocate: Vikas Pahwa, Mr. B. Badrinath, for the Appellant; Sumeet Pushkarna, Advocate for the respondent No. 1/UOI. Mr. Subhash Kumar, Advocate for the respondent No. 2. Mr. Najmi Waziri, Standing Counsel with Mr. Vikrant Pachnanda, Advocate for the respondent No. 3, for the Respondent

Judgement

VIPIN SANGHI, J.

The petitioners have preferred the present writ petition to seek a writ of certiorari thereby quashing the order of

rejection of the petitioners" appeal passed by the Appellate Authority on 24.04.2012. The petitioners also seek a writ of mandamus directing the

respondents to accord approval to the petitioners for effecting transplant of kidney from petitioner No. 2 to petitioner No. 1. The respondents in

the present writ petition are the Appellate Authority, namely the Director General of Health Services constituted u/s 17 of the Transplantation of

Human Organ & Tissues Act, 1994 (the Act), the Authorisation Committee for Human Organ Transplant, Sir Ganga Ram Hospital, constituted

under Rule 6A2(ii) of the Transplantation of Human Organs Rules, 1995 (the Rules) and the Government of National Capital Territory of Delhi.

2. The case of the petitioners is that petitioner No. 1 is a home maker aged about 58 years and is a permanent resident of Darya Ganj, Delhi.

Petitioner No. 2 is also a home maker aged about 38 years and a permanent resident of Meerut, U.P. It is claimed that petitioner No.2 is related

to petitioner No. 1, being the grand-daughter of the brother of petitioner No. 1's father. The petitioners have annexed to this petition the family

pedigree to show the relationship between the two petitioners, which is as follows:

3. The petitioners state that petitioner No. 1 was suffering from high blood pressure since the year 1982. She started suffering from high blood

sugar level since the year 1995. She underwent Angioplasty in the year 2008. At that stage, the falling condition of her kidney was diagnosed. It is

stated that she has been receiving treatment from Dr. A.K. Bhalla, Sir Ganga Ram Hospital, New Delhi since the year 2008. The petitioners state

that the condition of petitioner No. 1 has deteriorated over the years. Since June, 2011, the treating doctors have advised regular dialysis to

petitioner No. 1. It was advised that kidney transplant could be the only possible sustainable option to save the life of petitioner No. 1.

4. The petitioners state that petitioner No. 2 being related to petitioner No. 1, had been regularly visiting petitioner No. 1. The relationship between

the petitioners is as akin to a mother-daughter relationship. It is stated that petitioner No. 2 had in the past, taken care of petitioner No. 1

whenever she had fallen ill. The petitioners state that due to the fragile health of petitioner No. 1, petitioner No. 2 has been visiting her more often

to enquire about her well-being. In June, 2011, when petitioner No. 2 learnt that petitioner No. 1 requires a kidney transplant, she offered to

donate one of her kidneys to petitioner No.1. In August, 2011, the petitioners presented their application to the concerned department at Sir

Ganga Ram Hospital, New Delhi requesting them to conduct the necessary tests for determining the medical compatibility of the two petitioners, so

that petitioner No.2 may be able to donate one of her kidneys to petitioner No. 1.

5. The petitioners further state that on 16.08.2011, the Transplant Coordinator at Sir Ganga Ram Hospital, New Delhi sought issuance of "No

Objection Certificate" from the State Authorisation Committee for Organ Transplant, Meerut, U.P. in terms of the Act. On 24.08.2011, upon

medical examination of the two petitioners, it was confirmed that they are medically compatible to effect the said kidney transplant. The concerned

department of Sir Ganga Ram Hospital, in compliance with the provisions of the Act, required submissions of documents from the petitioners

which were duly submitted in September, 2011. On 24.09.2011, Police Superintendent, Janpath, Meerut gave his approval to the proposed

kidney transplant between the petitioners after making enquiries from petitioner No. 2, and satisfying himself of the genuineness of the consent so

given by her of her own accord. On 26.09.2011, the Sub-Divisional Magistrate (SDM), Meerut also conveyed his "No Objection" to the

proposed transplant of one kidney of petitioner No. 2 into petitioner No. 1. According to the petitioners, this "No Objection" was accorded after

examination of petitioner No. 2 by the SDM and upon arriving at a conclusion that the consent given by her was willful, and not under any threat or

coercion. In January, 2012, the District Level Authorisation Committee of Meerut permitted the proposed transplant to be conducted at Sir Ganga

Ram Hospital, New Delhi. According to the petitioners, this permission was granted after conducting enquiries and thorough examination of

petitioner No. 2. The said Committee consisted of seven members including the District Magistrate of Meerut, U.P. The petitioners further state

that the State Authorisation Committee, U.P., after holding a meeting on 20.01.2012 accorded its approval to the proposed transplantation after

considering all the documents, on 08.02.2012. This State Authorisation Committee consisted of seven members headed by the Principal

Secretary, Medical Education.

6. The petitioners submit that the Authorisation Committee for Human Organ Transplant at Sir Ganga Ram Hospital, New Delhi, i.e. respondent

No. 2 conducted its enquiry, with regard to the proposed transplant, on 17.02.2012 and directed production of documents and the other relatives

of petitioner No. 1. Further meeting was held on 21.03.2012. On 05.04.2012, respondent No. 2 rejected the petitioners' case on the following

grounds:

~ There is no substantial proof of association between donor and recipient.

~ Husband and close relatives not willing for donation.

~ There is income disparity between donor and recipient.

7. The petitioners preferred W.P.(C.) No. 2322/2012 before this Court assailing the rejection of their case by respondent No. 2 on 05.04.2012.

This writ petition was disposed of on 17.04.2012 directing that the writ petition itself be treated as the petitioners' appeal u/s 17 of the Act and be

disposed of by the Appellate Authority, i.e. the Director General of Health Services, respondent No.1. The petitioners submit that on 24.04.2012,

the petitioners appeared along with the husband of petitioner No. 1 and one more relative of the petitioners before the Appellate Authority at

Nirman Bhawan, New Delhi. They sought an opportunity of hearing. At about 05:00 P.M. the Appellate Authority perused the record of the case

and called upon the petitioners to produce further documents in support of their case, if any. Since no documents were produced, the Appellate

Authority passed the impugned order directing rejection of the appeal of the petitioner. This order was communicated to the petitioners on

25.04.2012.

8. When this writ petition was taken up on 01.05.2012, notice was issued and accepted on behalf of respondents No. 1 & 3 by Mr. Sumeet

Pushkarna and Mr. Najmi Waziri, learned Standing Counsel for respondents No. 1 & 3 respectively. Looking to the urgency of the matter (as

petitioner no.1 is on dialysis thrice a week), notice was directed to be issued to respondent No. 2 - the Authorisation Committee for Human Organ

Transplant, Sir Ganga Ram Hospital returnable on 03.05.2012. Mr. Pushkarna, learned Standing Counsel for respondent No. 1 tendered in Court

the video recordings made by respondent No.2 of the interviews conducted by it of not only petitioner No.1, but also petitioner No.2 and the

relatives of both the petitioners on 14.02.2012, 02.03.2012, 15.03.2012 and 03.04.2012. The same were retained for being viewed by the

Court.

9. On 03.05.2012, respondent No. 2 put in appearance through counsel. Since the four CDs, i.e. the video recordings of the interviews, as

aforesaid, had been viewed by the Court, it was felt necessary that the exact transcripts along with English translation of the interviews should be

brought on record, and directions to this effect were accordingly issued to respondent no.2. The respondents were also granted time to bring, on

the date of hearing, their respective counter affidavits. A short affidavit was filed by respondent no.2 on 05.05.2012 alongwith the transcripts.

However, translations have not been filed. Respondent No. 1 has also filed a short affidavit. The submission of the learned counsels were heard on

08.05.2012, when Mr. Pushkarna tendered the minutes prepared by the appellate committee of its meeting held on 24.04.2012, wherein it was

decided to dismiss the petitioners statutory appeal.

10. The submission of Mr. Vikas Pahwa, learned senior counsel for the petitioner is that the authorization committee as well as the appellate

authority completely misdirected themselves in conducting the enquiry under the provisions of the Act and the Rules. He submits that the enquiry

was primarily focused on the question as to why one of the near relatives of petitioner no.1 was not coming forward to donate one of their kidneys.

Mr. Pahwa submits that the purpose of holding the enquiry by the authorization committee is not to ascertain as to why a near relative is not coming

forward to donate a kidney.

11. Mr. Pahwa submits that the scheme of the Act shows that there are two kinds of donors who can donate an organ or a tissue while they are

alive. One is where the donor is a near relative as defined in Section 2(i) of the Act, i.e. spouse, son, daughter, father, mother, brother, sister,

grandfather, grandmother, grandson or granddaughter. The other is a person who is not a near relative. Mr. Pahwa submits that the scheme of the

Act and the Rules is not that a donor, who is not a near relative, would not be permitted to donate his organ/tissue, unless the recipient has

exhausted all possibilities of receiving the organ/tissue from a near relative.

12. Mr. Pahwa submits that no priority is accorded to a donor who is a near relative of the recipient. He submits that Section 9(3) of the Act is

independent of sub section (1) of Section 9. Section 9(1) provides that no human organ or tissue, or both, removed from the body of a donor

before his death, shall be transplanted into a recipient unless the donor is a near relative of the recipient. However, sub section (1) of Section 9

begins with the phrase ""Save as otherwise provided in sub section (3) "".

13. Mr. Pahwa submits that the enquiry required to be conducted by the authorization committee was to ascertain whether a commercial

transaction is involved in the donor offering his/her organ/tissue to the recipient. He submits that, in the present case, the authorization committee

did not focus on the aforesaid aspect at all. Rather, its enquiry centered around the issue as to why one of the near relatives of the petitioner no.1

was not ready and willing, and not in a position to donate one kidney to petitioner no.1. Merely because one of the near relatives of petitioner no.1

was not coming forward to donate kidney to petitioner no.1, the case of the petitioners has been rejected by the Authorisation Committee.

14. Mr. Pahwa submits that the Act is not a prohibitory Act. It does not seek to prohibit transplant of human organ/tissue. It only seeks to regulate

the same. What is prohibited is the commercial transaction in the giving or taking of an organ/tissue. Mr. Pahwa submits that the Authorisation

Committee has merely proceeded on the basis of suspicion, while rejecting the petitioners"" case, without even drawing a conclusion of a

commercial transaction in the present case.

15. Mr. Pahwa submits that, even otherwise, suspicion - howsoever strong, cannot take the place of proof- for arriving at a conclusion of a

commercial transaction. In the present case, there was no basis for the Authorisation Committee to even entertain the slightest suspicion, as both

the petitioners, and the other family members of the petitioners had candidly answered all the questions put by the Authorisation Committee during

the course of interviews, and nothing incriminating had come out to suggest the existence of a commercial transaction between the parties.

16. Mr. Pahwa further submits that the Authorisation Committee is obliged to use its discretion judiciously and pragmatically, and to record its

reasons in all cases. He submits that, in the present case, the Authorisation Committee has completely failed in this regard.

17. Mr. Pahwa further submits that the Authorisation Committee, in the present case, sat over the petitioners case for about nine months, during

which period the condition of the petitioner no.1 has only deteriorated. He submits that the delay caused by the Authorisation Committee itself

indicated the indifferent and insensitive manner in which the Authorisation Committee has proceeded to consider the petitioners case for transplant

of a kidney.

18. Mr. Pahwa submits that the Authorisation Committee of the State of U.P. as well as various other authorities in the State of U.P. repeatedly

gave their no objections and approval to the proposed transplant of a kidney of petitioner no.2 to petitioner no.1. He submits that these authorities

ascertained the ground level realities, facts and circumstances. The respondent no.2, Authorisation Committee did not conduct any such enquiry,

and only interviewed the petitioners and their other relatives. Yet, they chose to differ from the reports and conclusions drawn by the said

authorities for no rhyme or reason.

19. In support of his submissions, Mr. Pahwa has placed reliance on the following decisions:

i) Arup Kumar Das v. State of Ori, AIR 2011 Ori 21;

ii) Manoranjan Rout and Another Vs. State of Orissa and Others,

iii) Jaswinder Singh v. State of Punjab, 2008 (3) RCR (Crl.) 93 (DB);

iv) Mehul Kishorsinh Jadeja Vs. Amarjit Singh (I.A.S.) Appellate Authority and Commissioner of Health and Others,

v) S Samson v. Authorisation Committee, 2008 AIR Mad 227; and

vi) Balbir Singh v. Authorisation Committee, AIR 2004 Del 413.

20. The submissions on behalf of the respondents have primarily been made by Mr. Pushkarna. The other respondents have merely adopted the

same. Short affidavits have been filed by the Union of India and the Authorisation Committee.

21. The primary submission of Mr. Pushkarna is that if one were to read the transcripts of the interviews, it would appear that the family of

petitioner no.1 is well-off, whereas petitioner no.2 hails from a poor family, and there is economic disparity between the two. He submits that during

the course of their interviews, the petitioners have admitted that the petitioner no.1 and her family had taken care of petitioner no.2 and her family

in the past, ever since the husband of petitioner no.2 died about 18 years back. On this basis, it is argued that the possibility of a commercial

transaction between the parties cannot be ruled out.

22. Mr. Pushkarna submits that the Authorisation Committee consists of various doctors and specialists, and also consists of persons of high

integrity and social standing and credibility from different fields. He submits that this Court cannot substitute its own opinion, for the opinion of the

Authorisation Committee, which has to be respected and accepted.

23. Mr. Pushkarna submits, by placing reliance upon the introduction of the Act, that the focus of the Act is to regulate the removal of organs from

cadavers and living persons, and to prohibit commercial dealings in human organs. He places reliance upon the judgment of the Supreme Court in

Kuldeep Singh and Another Vs. State of Tamil Nadu and Others, and the judgment of Punjab and Haryana High Court in Poonam Gupta v. State

of Punjab & Ors., AIR 2009 P&H 162.

24. By placing reliance on Kuldeep Singh (supra), Mr. Pushkarna submits that the Authorisation Committee has to be satisfied that the

authorisation for removal is not for commercial consideration. The authorisation is committee is required to satisfy that when the donor authorises

removal of his organ, it is by reason of affection or attachment towards the recipient, or for other special reason. Such special reasons can, by no

stretch of imagination, encompass commercial elements.

25. Mr. Pushkarna submits that the burden is on the applicants to establish the real intent behind the proposed organ/tissue donation, by placing

relevant materials for consideration of the Authorisation Committee. Whether there exists any affection or attachment or special reason is within the

special knowledge of the applicants, and a heavy burden lies on them to establish it.

26. In his rejoinder, Mr. Pahwa points out that Rules 4A and 6A of the Rules have been introduced in the Rules after the judgment of the Supreme

Court in Kuldeep Singh (supra) was rendered. In fact, the said Rules have been introduced as a consequence of the said decision in Kuldeep

Singh (supra).

27. This Court, while exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not sit as an appellate forum

to examine or reassess the case on merits, after a statutory authority has formulated its view, upon examination of the merits of the case. This Court

is primarily concerned with the compliance of the procedural aspects, and the application of the correct principles laid down statutorily, or

otherwise, in the decision making process of the concerned authority. This Court would interfere in an appropriate case, where the Government or

a statutory authority or a public authority has failed to exercise, or has wrongly exercised the discretion conferred upon it under the statutory rule or

a policy decision of the Government, or has exercised such discretion malafide or on irrelevant considerations, or by ignoring the relevant

considerations and materials, or in such a manner as to frustrate the object conferring such discretion, or the policy, for implementation for which

such discretion has been conferred. (see Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan

and Another,

28. The submission of Mr. Pahwa is that the Authorisation Committee while rejecting the petitioners case has misdirected itself, and has taken into

consideration irrelevant considerations, and not focused on the enquiry that it was expected to carry out by applying guidelines and yardsticks

statutorily prescribed.

29. To be able to examine this submission, I consider it necessary to take note of the statutory provisions contained in the Act and the Rules.

30. The expression ""donor"" is defined in Section 2(f) to mean any person, not less than eighteen years of age, who voluntarily authorises the

removal of any of his human organs or tissues or both for therapeutic purposes under sub-section (1) or sub-section (2) of section 3.

31. Section 2 (i) defines ""near relative"" to mean spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or

granddaughter.

32. The expression ""payment"" is defined in Section 2(k) to mean payment in money or money's worth but does not include any payment for

defraying or reimbursing; (i) the cost of removing, transporting or preserving the human organ or tissue or both to be supplied; or (ii) any expenses

or loss of earnings incurred by a person so far as reasonably and directly attributable to his supplying any human organ or tissue or both from his

body.

33. The expression ""recipient"" is defined in Section 2(m) to mean a person into whom any human organ or tissue or both is, or is proposed to be,

transplanted.

34. The expression ""therapeutic purposes"" is defined in Section 2 (o) to mean systematic treatment of any disease or the measures to improve

health according to any particular method or modality.

35. The expression ""transplantation"" is defined in Section 2 (p) to mean the grafting of any human organ or tissue or both from any living person or

deceased person to some other living person for therapeutic purposes.

36. Section 3 (1) provides that any donor may, in such manner and subject to such conditions as may be prescribed, authorise the removal, before

his death, of any human organ or tissue or both of his body for therapeutic purposes.

37. Section 3 (4) provides that the authority given, inter alia, under sub-section (1) shall be sufficient warrant for the removal, for therapeutic

purposes, of the human organ or tissue or both but no such removal shall be made by any person other than the registered medical practitioner.

38. Section 9 of the Act deals with restrictions on removal and transplantation of human organs or tissue or both. In so far as it is relevant, the

same reads as follows:

9. Restrictions on removal and transplantation of human organs or tissue or both.-

(1) Save as otherwise provided in sub-section (3), no human organ or tissue or both removed from the body of a donor before his death shall be

transplanted into a recipient unless the donor is a near relative of the recipient.

(2) x x x

(3) If any donor authorises the removal of any of his human organs or tissue or both before his death under sub-section (1) of section 3 for

transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reason of affection or attachment towards

the recipient or for any other special reasons, such human organ or tissue or both shall not be removed and transplanted without the prior approval

of the Authorisation Committee.

(3A) x x x

(4) x x x

(5) On an application jointly made, in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorisation

Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the

rules made thereunder, grant to the applicants approval for the removal and transplantation of the human organ.

(6) If, after the inquiry and after giving an opportunity to the applicants of being heard, the Authorisation Committee is satisfied that the applicants

have not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the

application for approval.

(Emphasis supplied)

39. The Central Government has framed the rules under the Act by resort to Section 24 (1) which are known as the Transplantation of Human

Organs Rules, 1995.

40. Rule 4A states that a registered medical practitioner who will be part of the organ transplantation team for carrying out transplantation

operation shall not be a member of the Authorisation committee constituted under the provision of clauses (a) and (b) of sub-section (4) of section

9 of the Act.

41. Sub-Rule (4) of Rule 4A is relevant and the same reads as follows:

(4) When the proposed donor and the recipient are not "near relatives", as defined under clause (i) of section 2 of the Act, the Authorisation

Committee shall evaluate that,-

(i) there is no commercial transaction between the recipient and the donor and that no payment or money or moneys worth as referred to in the

Act, has been made to the donor or promised to be made to the donor or any other person;

(ii) the following shall specifically be assessed by the Authorisation Committee:-

(a) an explanation of the link between them and the circumstances which led to the offer being made;

(b) reasons why the donor wishes to donate;

(c) documentary evidence of the link, e.g., proof that they have lived together, etc;

(d) old photographs showing the donor and recipient together;

(iii) that there is no middleman or tout involved;

(iv) that financial status of the donor and the recipient is probed by asking them to give appropriate evidence of their vocation and income for the

previous three financial years. Any gross disparity between the status of the two must be evaluated in the backdrop of the objective of preventing

commercial dealing;

(v) that the donor is not a drug addict or known person with criminal record;

(vi) that the next of the kin of the proposed unrelated donor is interviewed regarding awareness about his or her intention to donate an organ, the

authenticity of the link between the donor and the recipient and the reasons for donation. Any strong views or disagreement or objection such kin

shall also be recorded and taken note of.

(Emphasis supplied)

42. Rule 6A deals with the aspect of composition of Authorisation Committees, which provides that there shall be one State Level Authorisation

Committee. It also provides that Additional Authorisation Committees may be set up at various levels as per norms contained in the sub-Rule.

43. Clause (ii) of Rule 6A(2) provides that Authorisation Committee should be Hospital based in Metro and big cities if the number of transplants

exceeds 25 in a year at the respective transplantation centers.

44. I may note at this stage itself that the Authorisation Committee which has dealt with the petitioner's case is a Hospital based Authorisation

Committee of Sir Ganga Ram Hospital, constituted under Rule 6A (2) (ii).

45. The composition of Hospital based Authorisation Committee (to be constituted by the State Government and, in the case of Union territory, by

the Central Government) is as follows:

(a) the senior most person officiating as Medical Director or Medical Superintendent of the Hospital;

(b) two senior medical practitioners from the same hospital who are not part of the transplant team;

(c) two members being persons of high integrity, social standing and credibility, who have served in high ranking Government positions, such as in

higher judiciary, senior cadre of police service or who have served as a reader or professor in University Grants Commission approved University

or are self-employed professionals of repute such as lawyers, chartered accountants and doctors (of Indian Medical Association) etc.; and

(d) Secretary (Health) or nominee and Director Health Services or nominee.

46. Rule 6F deals with the aspects on which the Authorisation Committee shall focus its attention. For our purpose clause (d) of Rule 6F is

relevant, which deals with proposed transplant between individuals who are not near relatives. The scope of enquiry of the Authorisation

Committee is the same as is set out in Rule 4A(4). The said clause reads as follows:

6F (d) Where the proposed transplant is between individuals who are not "near relatives", the Authorisation Committee shall evaluate:-

(i) that there is no commercial transaction between the recipient and the donor. That no payment of money or moneys worth as referred to in the

Act, has been made to the donor or promised to be made to the donor or any other person. In this connection, the Authorisation Committee shall

take into consideration:-

(a) an explanation of the link between them and the circumstances which led to the offer being made;

(b) documentary evidence of the link, e.g., proof that they have lived together etc;

(c) reasons why the donor wishes to donate; and

(d) old photographs showing the donor and the recipient together.

(ii.) that there is no middleman/tout involved;

(iii.) that financial status of the donor and the recipient is probed by asking them to give appropriate evidence of their vocation and income for the

previous three financial years. Any gross disparity between the status of the two, must be evaluated in the backdrop of the objective of preventing

commercial dealing;

(iv) that the donor is not a drug addict or a known person with criminal record;

(v) that the next of kin of the proposed unrelated donor is interviewed regarding awareness about his/her intention to donate an organ, the

authenticity of the link between the donor and the recipient and the reasons for donation. Any strong views or disagreement or objection of such

kin may also be recorded and taken note of.

(Emphasis supplied)

47. Clause (f) of Rule 6F provides that in the course of determining eligibility of the applicant to donate, the applicant should be personally

interviewed by the Authorisation Committee and minutes of the interview should be recorded. Such interviews with the donors are required to be

videographed. I may note that in the present case, the Authorisation Committee of Sir Ganga Ram Hospital has videographed not only the

interviews conducted with the petitioner No. 2, the proposed donor, but that of all other persons interviewed. This aspect shall be considered a

little later.

48. Clauses (g), (h) & (i) of Rule 6F are relevant and they read as follows:

(g) In case where the donor is a woman greater precautions ought to be taken. Her identity and independent consent should be confirmed by a

person other than the recipient. Any document with regard to the proof of residence or domicile and particulars of parentage should be relatable to

the photo identity of the applicant in order to ensure that the documents pertain to the same person, who is the proposed donor and in the event of

any inadequate or doubtful information to this effect, the Authorisation committee may in its discretion seek such other information or evidence as

may be expedient and desirable in the peculiar facts of the case.

(h) The Authorisation Committee should state in writing its reason for rejecting / approving the application of the proposed donor and all approvals

should be subject to the following conditions:-

(i) that the approved proposed donor would be subjected to all such medical tests as required at the relevant stages to determine his biological

capacity and compatibility to donate the organ in question.

(ii) further that the psychiatrist clearance would also be mandatory to certify his mental condition, awareness, absence of any overt or latent

psychiatric disease and ability to give free consent.

(iii) all prescribed forms have been and would be filled up by all relevant persons involved in the process of transplantation.

(iv) all interviews to be video recorded.

(i) The Authorisation Committee shall expedite its decision making process and use its discretion judiciously and pragmatically after recording the

reasons in all such cases where, the patient requires immediate transplantation.

(Emphasis supplied)

49. From the above statutory provisions and the scheme of the Act, it becomes clear that the Act and the Rules do not seek to prohibit, but to only

regulate the transplant of organs and tissues from cadavers and living human beings. What is prohibited is the commercial transaction in the giving

and taking of organs and tissues. However, donations offered out of love and affection - even amongst those who are not near relatives, is

permitted. The aforesaid scheme under the Act recognizes two of the greatest human virtues of love and sacrifice, and also the fact that such

intense love and affection need not necessarily be felt only for one's own blood or spouse, but could also extend to those not so closely related, or

for those not related at all.

50. From the scheme of the Act and the Rules it appears that organ/tissue donation by a person before his death can be made not only for the

therapeutic purposes of a recipient who is a near relative, i.e., son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or

granddaughter, but also for therapeutic purposes of persons/recipients who do not fall within the definition of the expression "near relative". Section

9(1) of the Act, while generally providing that no human organ or tissue, or both, removed from the body of a donor before his death shall be

transplanted into a recipient, unless the donor is a near relative of the recipient, saves from application of this general rule, cases which fall under

sub-section (3) of section 9. Therefore, a donor, who is not a near relative of the recipient may by reason of "affection, or attachment towards the

recipient or for any other special reasons" authorise the removal of his human organ or tissue or both for transplantation in a recipient for

therapeutic reasons. The caveat is that in such circumstances prior approval, before removal and transplantation, would be required of the

Authorisation Committee.

51. It also needs to be emphasized that an approval of the Authorisation Committee is necessary and required to be obtained only in such cases,

where the donor and recipient are not near relatives, or in cases where the donor or the recipient, being near relatives, is a foreign national (see

Section 9(1A)). The role of the Authorisation Committee comes into play primarily in cases where the donor and the recipient are not near

relatives, and it is the function of the Authorisation Committee to ascertain and evaluate, by applying the guidelines/yardsticks and tests provided in

Rule 4A(4) and 6F(d) of the Rules, whether there is a commercial transaction between the recipient and the donor, and to ensure that no payment

of money or monies worth has been made to the donor, or promised to be made to the donor or any other person on account of the fact that the

donor has agreed to donate an organ or tissue to the recipient. The Authorisation Committee is required to enquire whether the donor is offering

his organ/tissue by reason of affection or attachment towards the recipient or for any other special reasons. The law also mandates that the

approach of the Authorisation Committee in such matters has to be pragmatic and its discretion has to be used judiciously, particularly in cases

which require immediate transplantation.

52. I have viewed the four video recordings made by the Authorisation Committee for Human Organ Transplantation, Sir Ganga Ram Hospital,

New Delhi of the interviews conducted by it on 14.02.2012, 02.03.2012, 15.03.2012 & 03.04.2012. I have also examined the transcripts of the

said interviews provided by respondent No. 2. A perusal of the said video recordings and transcripts leave no manner of doubt that the said

Committee has completely misdirected itself while rendering its decision to refuse the case of petitioner No. 1 for transplant of a kidney which

petitioner No. 2 agreed to donate to petitioner No. 1.

53. I have analysed the various queries and responses contained in the interviews conducted by the Authorisation Committee of the two petitioners

and their family members. They present a startling picture. Of the 162 questions posed by the Authorisation Committee to all the interviewees

(including the petitioners), 41 questions, i.e. more than 25% are only to enquire, and that too repeatedly, as to why a near relative of petitioner

no.1 - the recipient, is not donating a kidney to her. This, with due respect to the Authorisation Committee, is wholly irrelevant and not required to

be gone into by the Authorisation Committee. The enquiry before the Authorisation Committee proceeds on the footing that the recipient and the

donor are not near relatives (except in cases covered by section 9(1A)). The Authorisation Committee is not required to enquire into the question

as to why a near relative of the recipient is not ready or willing to, or in a position, to donate their organ/tissue to the recipient. Merely because, in a

given case, a near relative may not be willing to donate his/her organ/tissue to the recipient, is not ground to either raise a suspicion of a commercial

transaction, or to reject the case altogether. It is not the mandate of the Authorisation Committee to compel or drive the near relative of the

recipient to donate their organ/tissue to the recipient. Unfortunately, that is what appears to have been the theme of the exercise undertaken by the

Authorisation Committee in the present case.

54. To illustrate the aforesaid position, I may only quote a few extracts from the interview conducted by the Authorisation Committee:

(a) Interviewer :

Abhi ye batiye ki aapke apne khandan ke itne log hai, ek to aapka beta jiska naam hai Amir Khan, theek ahi. Wo aapko de sakta tha. Wo nahi de

rahe hai. Aapke ek beti hai, unki chalo.

Parveen Begum :

Unki marriage ho gaye hai.

Interviewer :

Manke chalo wo hum manne ke liye tayyar hai. Ab aapka ek aur beta hai, Waseem Khan, uski biwi bolti hai main nahi dene dongi. Aur aapke

husband, aap bolte hai unko. Apni family mein sabko bolte hai mana, aur dosre ke family se aap chahte nahi.

(from the interview of petitioner no.1 conducted on 14.02.2012 at page 10 of the affidavit of respondent no.2 dated 05.05.2012.)

(b) Interviewer :

Aap apne husband ko nahi lena chahti. Aapke ladke ki wife nahi dena chahti, lekin aap doosri family se lena chahtey hain.

(from the interview of petitioner no.1 conducted on 14.02.2012 at page 11 of the affidavit of respondent no.2 dated 05.05.2012.)

(c) Interviewer :

Kyonki aisa hai ki pehle to maa baap ke liye beta beti ka hota hai farz, ya beta beti ke liye ma baap ka hota hai. Ve hi bolenge nahi hum to khatra

nahi molte to baki public jo hai jab aata hai to kabhi na kabhi sochne wali baat hai, kyon aa raha koi. Jab beta hi nahi aa raha hai, to door ke

rishtedar kyon aata hai. Usko bhi utna hi dar hoga, utna hi khatra hoga, jaan sabko pyari hoti hai. Jisne aap ko paida kiya, uske liye aapko sochna

par raha to jiska kisi ke koi matlab hi nahi door door tak usko kya karan hai ki wo de rahi hai.

(from the interview conducted on 02.03.2012 of Sh. Waseen, son of petitioner no.1.at page 11 of the affidavit of respondent No. 2 dated

05.05.2012)

(d) Interviewer :

Ye problem is wajah se ho rahi hai ki jo aap ke nazdiki hai wo kisi na kisi wajah se kisi ko koi mana kar raha hai, kisi ko koi wife mana kar rahi

hai, is wajah se ye saari problem ho rahi hai.

(from the interview of petitioner no.1 conducted on 15.03.2012 at page 23 of the affidavit of respondent no. 2 dated 05.05.2012)

55. Pertinently, the Authorisation Committee did not ask the petitioners or their family members even one question as to whether there was any

financial dealing or transaction between the recipient and the donor, underlying the offer made by the donor to donate one of her kidneys to the

recipient.

56. From the umpteen comments of the members of the Authorisation Committee, and from their questions posed to the interviewees also, it is

abundantly clear that their decision is based fundamentally on the premise that a near relative of petitioner No. 1 is not willing to donate his/her

kidney to petitioner no.1; that there is no single photograph of petitioner no.1 and petitioner no.2 showing them in the same frame; that the

relationship is distant between the two petitioners, and; that there is economic disparity between them.

57. I may also note that each one of those interviewed, including the two petitioners, stated that petitioner no.2 had been coming over to live with

petitioner no.1 of and on.

58. What has been completely missed out by the Authorisation Committee is the fact that during the course of her interview, the donor clearly and

candidly stated during her interview conducted on 14.02.2012 (at page 14 of the affidavit of respondent no.2 dated 05.05.2012) that petitioner

no.1, her Mausi, had helped her a great deal, after the demise of her husband about 15-17 years ago. She stated that petitioner no.1 is the sister of

her mother in relationship. She further stated that she had three children and she faced great difficulty in bringing them up and in getting them

married. She stated that she has got her children married and now she is free from her obligation. She also stated that the family of petitioner no.1

supported her a lot in her difficult times. She further goes on to state that both her daughters were got married by the family of petitioner no.1. She

states that she does not have anything else, and she thought that by offering her kidney to petitioner no.1, she could reduce the suffering of

petitioner no.1. She clearly brings out the love, affection and gratitude felt by her for petitioner no.1 and her family, and she conveys that she

wanted to reciprocate in time of need of petitioner No. 1 and, therefore, she offered one of her kidneys to petitioner no.1.

59. I consider it appropriate at this stage to quote the following extract from the interview of Ishrat conducted on 14.02.2012 (at page 14 of the

affidavit of respondent no.2):

Interviewer :

Koi karan hai, aapko pata hai kyon nahi de rahe hai.

Ishrat :

Nahi Sir Ji, ye hain na ki mere husband khatam ho gaye kariban 15-17 saal ho gaye hain, to inhone meri bahaut madad kari mausi ne meri. Ye

hamari mummi ki behan lagti hai. Is tarah to 3 bacche maine pale hai bari pareshani se, phir unki phir shaadi kari. Teeno baccho se farig ho gayi.

Inke bacchon ne, inhone bahaut sahara lagaya mere ko.

Interviewer :

Aapaka ek hi baccha hai.

Ishrat :

Ji. Dono betiyon ki shaadi bhi inhone hi kari thi. Mere pass aur to kuch nahi. Maine kahi talif thori inki kum ho jayegi is wajah se, ke itni inhone

shuru se mere saath karti hui aa rahi hain, to maine bhi keh diya.

60. The submission of Mr. Pushkarna, that the aforesaid shows the existence of a commercial transaction between the parties, as a result of which

petitioner no.2 is willing to offer her kidney to petitioner no.1, has no merit. Both the Authorisation Committee and the learned counsel Mr.

Pushkarna, by claiming that the acts of good deed done gratuitously by petitioner no.1 and her family for petitioner no.2 and her family, amount to

payment within the meaning of section 2(k) of the Act, are completely discounting the human qualities and virtues of love, affection, compassion

and generosity. The acts of generosity, which petitioner no.2 admits to have been done by petitioner no.1 and her family, span about two decades

prior to petitioner no.1 becoming so sick as to require a kidney transplant. When those acts were performed by petitioner no.1 and her family

members, they were not performed with the calculation, or design that one day petitioner no.1 would require a kidney, which they could demand

petitioner no.2 to provide. The relationship between the two petitioners, though distant, stands fairly established. It is not uncommon when to find

that people, who may either be distantly related or not related at all, may come much closer due to their affinity for each other, or due to quirk of

fate, than even their own parents, siblings or children.

61. The expression ""payment"" defined in section 2(k) of the Act refers to the payment made by a donor or on his/her behalf to a recipient, or

someone on his/her behalf, as consideration for the donation of an organ/tissue by the donor to the recipient. It does not refer to a contribution, gift

or monetary support made or granted gratuitously in the past, when even the need for organ/tissue transplant was not in existence. The test is,

whether the said payment would not have been made but for the donor agreeing to donate his/her organ/tissue. In this case, the financial assistance

was rendered way back in history, with no such strings attached. It could not have been in anybody's contemplation that the petitioner No. 1

would require a transplant in future after many years, or that petitioner No. 2 would be found medically matching the parameters of petitioner No.

1. It cannot be said that the financial assistance received by petitioner No. 2 over two decades would qualify as ""payment"" within the meaning of

Section 2(k) of the Act.

62. There appears to be no doubt that petitioner no.1 and her family are financially more sound, when compared to petitioner no.2 and her family,

and petitioner No. 2 and her family have received financial assistance from petitioner No. 1 and her family. But that does not mean that petitioner

no.1 or her family can be said to have put a condition that, when they require, they would extract their pound of flesh in future, as and when the

need arises. There is no basis for such an assumption to be made by anyone, including the Authorisation Committee.

63. Keeping in view the past relationship between the parties and their respective conducts, it may be that, in future, in case the need arises,

petitioner no.1 and her family may again financially help petitioner no.2 and her family. But that cannot be a reason for the Authorisation Committee

to conclude the existence of a commercial transaction of buying and selling of an organ or tissue. The driving force behind the decision of petitioner

no.2 to donate one of her kidneys to petitioner no.1 clearly is her sense of love, affection and gratitude for petitioner no.1, and is not commercial

gain.

64. The Supreme Court in Kuldeep Singh (supra) has observed that the Authorisation Committee should satisfy itself ""that the real purpose of the

donor authorizing removal of the organ is by reason of affection or attachment towards the recipient or for any other special reason"". The special

reason cannot encompass commercial elements. The Supreme Court also observed that several relevant factors, which the Authorisation

Committee should examine are factors like relationship, if any, period of acquaintance, degree of association, reciprocity of feelings, gratitude and

similar human factors and bonds.

65. In the present case, the parties had shown to the Authorisation Committee their long period of acquaintance and degree of association, as they

are distantly related. They have both shown the reciprocity of feelings amongst themselves, inasmuch, as, petitioner no.2 had been residing, since

the demise of her husband about 18 years ago, on and of, with petitioner no.1 and her family members, and was receiving support from petitioner

no.1. Petitioner no.2 clearly expressed her gratitude for all that petitioner no.1 and her family members have done for her over the years, and states

that she would like to help petitioner no.1/her Mousi in time of her need.

66. The videograph recorded on 02.03.2012, inter alia, contains the interview of petitioner No. 2 Smt. Israt, being the prospective donor. She

produced two black & white photographs before the said Committee of the marriage of the younger sister of petitioner No. 1. These photographs

have also been placed on record at pages 22, 23 & 24. The first photograph shows the bridegroom, being fed sweets by petitioner No. 2 as a

part of marriage ritual and celebration. The second photograph, which is a group photograph, shows the petitioner No.1 sitting on the left side of

the bridegroom. The bride, who starkly resembles petitioner No. 1 is seen sitting on the right side of the bridegroom, though at a lower level.

However, the Committee, as it appears from the interviews, laid emphasis on the fact that both the petitioners do not appear in the ""same

photograph"".

67. In the videograph recorded on 15.03.2012, which contains the interview of petitioner No. 1, this aspect is again highlighted. Petitioner No. 1

repeatedly explains that in their community they do not encourage taking of too many pictures. She also states that nobody could have foretold 30

years earlier, that they would be asked to produce a photograph wherein both of them are seen together.

68. One of the reasoning adopted by the Committee, while rejecting the case of the petitioners, is that ""there is no substantial proof of association

between donor and recipient"". This finding of the Committee is premised, as aforesaid, on their observation made during the course of interview on

02.03.2012 & 15.03.2012 to the effect that the donor and the recipient are not seen in the same photograph.

69. With due respect to the members of the Committee the approach of the Committee in this regard is wholly misplaced.

70. The Authorisation Committee, while assessing the evidence produced in the form of old photographs showing the association between the

donor and the recipient, has to act with pragmatism, and keeping in mind the ground realities. The two black and white photographs produced by

the petitioners are of 30 years of vintage. They were taken during the wedding ceremony of the younger sister of petitioner no.1. The petitioner

no.1 has stated during the course of her interview, and it is also well known even otherwise, that amongst the muslim community where women

follow parda system, photographs are not frequently taken. What is absolutely clear from these photographs is that both the petitioners are closely

related to the person getting married as shown in the photographs, since in one photograph petitioner no.2 is seen feeding sweets to the

bridegroom as a part of marriage ceremony and in the other, petitioner no.1 is sitting next to the bridegroom in a group photograph. Their past

acquaintance (if not relation), therefore, atleast is clearly established from these two photographs. As commented by petitioner no.1, they could not

have foreseen that both the petitioners would require a common photograph 30 years later, for the purpose for which the Authorisation Committee

was examining their case.

71. The petitioners have also produced another set of photographs taken in the year 2008 at the time of the wedding of the daughter of petitioner

no.2. In the said photograph, both the petitioners are seen sitting on either side of the bride. Even this photograph is four years old. It was taken

about three years before petitioner No. 1's need for kidney transplant arose.

72. At this stage, I consider it appropriate to take note of the observations made in para 14 by the Orissa High Court in Arup Kumar Das (supra),

which reads as follows:

14. We also feel it essential to point out herein that the various objectives of TOHO Act, 1994 and the intention of the Parliament in enacting the

present legislation appears to have not been properly understood by the statutory authorities who have been vested with the responsibility of

enforcing the said Act. What must not be lost sight of is that, transplantation of human organs has not been prohibited but regulated in terms of the

said statute. What has been prohibited under the statute is commercial dealings in human organs and prevention and exploitation of humans for

financial benefits. The Authorisation Committee as well as the appellate body must endeavour to ensure that while exploitation must be prevented

and commercialization dealing in human organ is prohibited, yet bona fide applicants may not be viewed in a suspicious manner since the TOHO

Act, 1994 itself permits not only the donors from within the family but also permits non-relative donors.

We are of the considered view that the TOHO Act, 1994 should not be interpreted in a manner which effectively amounts to prohibiting

transplantation of human organs. In conclusion, we may state that the TOHO Act, 1994 is enacted by the Parliament for regulating transplantation

of human organs and only prohibits commercial dealings in human organs.

(Emphasis supplied)

73. Unfortunately, the Authorisation Committee and the Appellate Authority do not appear to have heeded to the above advice of the Orissa High

Court while deciding the present case. With regard to the approach required to be adopted by the Authorisation Committee, in such like cases, I

may refer to the decision of the Orissa High Court in Manoranjan Rout (supra). In para 10 of the judgment, the Division Bench held that there was

no material on record regarding any chance of commercial transaction between the donor and the recipient. There was no material placed on

record to doubt the relationship between them. Consequently, the Court proceeded on the basis of affidavits and reports received from the

relatives, sar panch and other authorities with regard to the relationship of the parties, and also the fact that there was no commercial transaction. In

para 11, the Division Bench observed as follows:

11. In the present case, there is no material on record to disprove the relationship between the donor & the recipient. Therefore, the necessary

approval cannot be denied on the ground of a mere suspicion. The question that the applicants have not produced relevant documents, establishing

their relationship, as stated by the Committee, also does not arise when Mrs. Ramadei Singh, Sarpanch of Kuamara Grama Panchayat has

certified the relationship between the donor & the recipient as per the Rules, 1995. After all, law is not cast in stone, nor is it that judicial

interpretation remains unchanged over time

74. In *Jaswinder Singh* (supra), the Authorisation Committee had denied its approval of the proposed transplant of organ. The Division Bench of

the Punjab and Haryana High Court reversed that decision by holding that there was no material placed on record to arrive at the conclusion that

there was involvement of money in the proposed donation. In para 8 of its decision, the Division Bench held as follows:

8. We have considered the rival contentions of the parties and have gone through the record of the case. The only reason as per Annexures P13

and P14 to refuse necessary approval to the petitioner and the proposed donor is the alleged involvement of money. However, there is no material

placed on record to reach to this conclusion arrived at by the Committee, therefore, in our considered view, the aforesaid reason is totally

extraneous specially in view of the fact that in police verification, which is on record as Annexure P12, it has been made clear by the Senior

Superintendent of Police, Sangrur that the kidney is being donated by the donor, without any fear and out of his own free will Human conduct and

reactions in this regard cannot be measured in any mathematical terms. It has already come on the record that the donor knows the recipient as

they have visiting terms in the family and it is because of sheer love and affection and humanitarian considerations, the kidney is being donated by

Manjit Singh. The necessary approval cannot be denied only on the ground of a mere suspicion that some money consideration is involved

especially when there is no material on record to prove that fact.

75. Even if the submission of the respondents, that it was for the petitioners to establish the existence of past acquaintance/ relationship and the

existence of love & affection between them, were to be accepted, in my view, the petitioners and their family members clearly discharged their

onus in this regard. On the other hand, the Authorisation Committee does not appear to have found any material or evidence to doubt the case of

the petitioners or disbelieve their statements.

76. The impugned order passed by the Authorisation Committee in the present case is a list drawn up by respondent no.2 with the title ""Approval

status of prospective patients for organ transplantation"". It deals with 19 cases. The cases at sl. nos.1 to 8, 10, 12 and 13 have been ""approved"". I

may note that no reasoning is recorded by the Authorisation Committee in respect of these approved cases, even though, statutorily they were

obliged to do the same. Two cases were rejected, including that of the petitioners. The so-called reasons for rejection are, in fact, no ""reasons"",

but mere conclusions or observations. There is no reasoning given by the Authorisation Committee for reaching the said conclusions, and making

the said observations. The link between the materials examined by the Authorisation Committee and the conclusions/observations made by it, i.e.

the ""reasons"", are completely missing. How the material available before it has been analysed or dealt with by the Authorisation Committee is not

known. As aforesaid, the said observations/conclusions of the committee read as follows:

Ã-Ã½ There is no substantial proof of association between donor and recipient.

Ã-Ã½ Husband and close relatives not willing for donation.

Ã-Ã½ There is income disparity between donor and recipient.

77. Of the aforesaid, the second observation/conclusion is patently irrelevant, as already discussed above. In any event, even otherwise, it appears

to me that there is sufficient explanation given by petitioner No. 1 and her family members for one of the near relatives not donating a kidney to

petitioner No. 1.

78. It is not clear as to what the Authorisation Committee means when it says ""there is no substantial proof of association between donor and

recipient"". What is that the Authorisation Committee was looking for as ""substantial proof of association"", is not known. The petitioners produced

their pedigree table; various reports from various authorities prepared after local examination at Meerut/U.P.; their old photographs, i.e. 30 years

old and of the year 2008, and; lastly their own statements and statements of their relatives. These, in my view, were clearly enough to establish

their case as genuine, particularly, when nothing to contradict the same was found by the Committee or the other authorities.

79. From the interviews conducted by the Authorisation Committee, it appears that none of the interviewers expressed any doubt or dissatisfaction

with regard to the claim of the petitioners that they are related in the manner as claimed by them.

80. The mere existence of disparity in the income of the donor and the recipient by itself could not have been a reason to reject the petitioners case

by raising a suspicion that there would necessarily be a commercial transaction in relation to the giving and taking of the kidney. As discussed

above, the Authorisation Committee appears to have completely turned a blind eye to the reasons given by petitioner no.2 for her offering her one

kidney to petitioner no.1. It also proceeds on the assumption that love and affection can only be shared with people having the same or similar

financial standing. Such an assumption only needs to be stated to be rejected. The approach of the Authorisation Committee and the Appellate

Authority clearly lacks the exercise of discretion judiciously and with pragmatism.

81. Reliance placed by Mr. Pushkarna on the decision of the Punjab and Haryana High Court in Poonam Gupta (supra), in my view, is of no avail.

In that case, the donor and the recipient were not at all related, except that both the family claimed to know each other for the last 17 years.

Moreover, in the form filled up by them, they had described themselves as ""close relatives"", which the Court felt was to mislead the authorities. The

Court was also impressed by the fact that the donor was a young lady having two small children while her husband did not have a steady income,

as he did not have a regular job. In that case, the Authorisation Committee and the appellate authority had given their reasoning for raising doubts

on the claim of the proposed donation being actuated by love and affection between the donor and the recipient. It was in this background that the

Court refused to interfere with the exercise of its discretion by the Authorisation Committee and the appellate authority. The same cannot be said

about the case in hand.

82. The minutes of the meeting dated 24.04.2012 of the appellate authority tendered by Mr. Pushkarna does not in any way advance the

respondents case. On the contrary, it shows that the order passed by the appellate authority is just as unreasoned and cryptic, as the one passed

by the Authorisation Committee. The relevant extract from the said minutes read as follows:

The Committee examined all the documents submitted by the appellants, and the documents and the video recordings provided by the Sir Ganga

Ram Hospital and the circumstances of the case. The Appellate committee held detailed discussions and deliberations on this case.

The husband of petitioner no.1, Mr. Shameem Ahmad and Mr. Riyasat Hussain Khan, the husband of petitioner number 1's younger sister were

called for personal hearing by the committee and were asked if they want to submit/produce any document(s) in support of their petition apart from

what they had already submitted to the authorisation committee of Sir Ganga Ram Hospital. Their reply was ""No"".

The committee agrees with the decision taken by the Authorisation Committee of Sir Ganga Ram Hospital in this case and thus the aforesaid

appeal is rejected

83. In the light of the aforesaid facts, circumstances, discussion and the law, in my view, the impugned decision of the Authorisation Committee as

well as the appellate authority are wholly unsustainable and, accordingly, they are quashed. The question is, at this stage, what should be the

approach of the Court - whether the matter should be remanded back to the Authorisation Committee or the appellate authority for

reconsideration, or whether the Court would be justified in directing the Authorisation Committee to grant its approval without any further

examination of the matter by it.

84. The Supreme Court in Comptroller and Auditor General of India Gian Prakash, New Delhi (supra) held in para 20 that in an appropriate case,

in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or a

public authority should have passed or exercised its discretion at a proper level.

85. In the present case, the petitioner no.1 has been in need of a kidney replacement since June 2011. The joint application for seeking the

approval of the Authorisation Committee was submitted by the petitioners in August 2011. Over this period of time, the condition of the petitioner

no.1 has only deteriorated and she requires dialysis thrice a week. Even from the interviews of petitioner no.1 conducted on different dates, her

deteriorating condition of her health is evident.

86. Considering these facts and circumstances, and the urgency of the matter, I am inclined to require the Authorisation Committee to forthwith

grant its approval to the case of the petitioners for donation of one kidney by petitioner no.2 to petitioner no.1 in terms of their application. The

formal approval should be granted within two days, failing which it shall be deemed that the said formal approval stands granted.

87. Upon the grant of the said formal approval/deemed formal approval, the petitioners shall be entitled to undergo the required medical

procedures and operation for the purpose of carrying out the transplantation, as aforesaid. Petition stands disposed of in the aforesaid terms.

Parties are left to bear their respective costs.

Dasti under the signatures of the Court Master.