2025:KER:57097

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 1ST DAY OF AUGUST 2025 / 10TH SRAVANA, 1947

WP(C) NO. 25749 OF 2025

PETITIONERS:

1 MUSTHAFA N P
AGED 53 YEARS
S/O MOIDU HAJI, LAILA MANZIL,
MANIKOTH, AJANUR,
KASARGOD DIST., PIN - 671316

2 SMITHA V C
AGED 41 YEARS
W/O SHIBULAL, VALIYAVEETTIL,
CHITTATTUKARA, VADAKKEKARA P O,
PARAVOOR, ERNAKULAM,
PIN - 683513

BY ADVS.
SRI.SHIRAZ ABDULLA M.S.
SHRI.VISHNU DEV C.S.
SHRI.K.ABDUL NASSAR

RESPONDENTS:

1 THE STATE LEVEL ORGAN TRANSPLANTATION
AUTHORIZATION COMMITTEE
REP. BY THE ADDL. CHIEF SECRETARY,
HEALTH & FAMILY WELFARE DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001

2 THE DIST. LEVEL ORGAN TRANSPLANTATION AUTHORIZATION COMMITTEE
GOVERNMENT MEDICAL COLLEGE, ERNAKULAM,
REP. BY THE CHAIRMAN, PIN - 683503

3 LAKESHORE HOSPITAL & RESEARCH CENTRE LTD.
XVI/612, MARADU, NETTOOR P O, ERNAKULAM ,
REP. BY ITS ADMINISTRATIVE OFFICER.,
PIN - 682040

* ADDL.4 KERALA STATE ORGAN AND TISSUE TRANSPLANT ORGANIZATION(K-SOTTO)
1ST FLOOR, OLD HOUSE SURGEONS QUARTERS,
NEAR SUPER SPECIALTY BLOCK, VT MEDICAL COLLEGE,
THIRUVANANTHAPURAM-690511. REP. BY ITS EXECUTIVE DIRECTOR

(ADDITIONAL 4TH RESPONDENT IS IMPLEADED AS AS PER ORDER DATED 16/07/2025 IN I.A .NO 1/2025 IN WP(C)25749/2025)

BY SMT. K. AMMINIKUTTY, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25.07.2025, THE COURT ON 01.08.2025 DELIVERED THE FOLLOWING:

N. NAGARESH, J.

‘‘

W.P.(C) No.25749 of 2025

‘‘

Dated this the 1st day of August, 2025

J U D G M E N T

~ ~ ~ ~ ~ ~ ~ ~ ~ ~

The 1st petitioner is a chronic kidney patient. There are no immediate relatives in his family. The 1st petitioner and the husband of the 2nd petitioner were working together and are close family friends.

2. The 2nd petitioner's husband expressed willingness to donate one of his kidneys to the 1st petitioner. But, the blood group was not matching. The 2nd respondent, realising the plight of the petitioner, gave consent to donate her kidney to the 1st petitioner voluntarily. An application was submitted for transplantation. The District Level Authorisation

Committee held its meeting on 13.12.2024 by Ext.P15 order. The application was rejected. The petitioners preferred statutory appeal against Ext.P15. By Ext.P16 judgment in W.P.(C) No.1619/2025, this Court directed the appellate authority to accept the appeal and dispose of the same. The 1st respondent-appellate authority, however, dismissed the appeal as per Ext.P18 order.

3. Challenging Ext.P18, the petitioners preferred W.P.(C) No.17188/2025. By Ext.P19 interim order, this Court directed the 1st respondent to reconsider the appeal. The 1st respondent, however, again dismissed the appeal as per Ext.P20 for untenable reasons. The petitioners state that the 1st petitioner's life is in danger and requires immediate transplant.

4. Ext.P20 order of rejection is illegal, contend the petitioners. The 1st petitioner is undergoing minimum of three dialysis in a week in order to sustain his life. There is nothing on record to doubt the altruistic relationship of the

petitioners. All the requisite details, documents and certificates were submitted to the 1st respondent. Unless this Court quash Ext.P20 and issue a positive direction to grant permission for transplant, the 1st petitioner will be put to irreparable loss.

5. The Senior Government Pleader resisted the writ petition. The Senior Government Pleader submitted that the District Level Authorisation Committee as well as the 1st respondent-Appellate Authority considered all aspects of the case. The District Level Authorisation Committee came to a conclusion that there is complete absence of documented affection, emotional attachment or any special reason to justify the proposed organ donation.

6. The inter-personal connections and emotional bond were not substantiated. The possibility of commercial element in the organ donation cannot be totally ruled out. It is in such circumstances that the application was rejected. The petitioners have not shown sufficient legal grounds to

interfere with Ext.P20, urged the Senior Government Pleader.

7. I have heard the learned counsel for the petitioners and the learned Senior Government Pleader representing the respondents.

8. Ext.P15 is the order dated 13.12.2024 of the District Level Authorisation Committee rejecting the application of the petitioners. By Ext.P20, the appellate authority has upheld the rejection. In Ext.P15, the District Level Authorisation Committee found that the evidence of relationship between the petitioners is insufficient. The Committee held that it is highly unlikely that a 42 year old woman, the mother of two minor girl children, would voluntarily donate her kidney based on a tenuous relationship, without any significant or ongoing connection to the recipient's family. The District Level Authorisation Committee further noted that no valid marriage certificate was provided to verify that Sri. Shibulal is the 2nd petitioner's

husband. The name of Sri. Shibulal was not found in the family ration card of the donor.

9. The 1st respondent-appellate authority re-examined the case. The 1st respondent held that there is complete absence of documented affection, emotional attachment or any special reason to justify the proposed organ donation. The lack of a convincing rationale, combined with vague and unsubstantiated inter-personal connections, necessitates a more cautious approach, observed the appellate authority.

10. In the case of the petitioners, the clinical examination conducted at the Lakeshore Hospital, Maradu has revealed that the kidney of the 2nd petitioner is matching. The Organ Transplantation Local Approval Committee recommended that the 2nd petitioner is fit to be a voluntary kidney donor. The Assistant Commissioner of Police, Kunnamkulam stated that the 2nd petitioner has offered kidney upon her free will, without any compulsion, influence

or intent of reward or consideration. The Assistant Commissioner of Police certified that altruism of the 2nd petitioner is genuine.

11. Ext.P12 is the affidavit filed by the 2nd petitioner and her husband jointly. The affidavit states that they got married on 09.12.2007 at the Lokamalleswaram Thiruvallur Sree Bhadrakalikavu Temple near Kodungallur. Ext.P11 is the certificate issued by the Astrologist of Sree Bhadrakalikavu Navagraha Jyothishalayam. Ext.P14 is photographs indicating that the 2nd petitioner and Sri. Shibulal are husband and wife.

12. The fact that the 1st petitioner and Sri. Shibulal are friends and have worked together is not disputed. There is no circumstances to doubt the veracity of the said statement. The 1st petitioner as well as the 2nd petitioner would swear that they are family friends. The District Level Authorisation Committee and the appellate authority doubted the element of altruism on the ground that marriage certificate of the 2nd

petitioner has not been produced. The absence of marriage certificate and non-inclusion of the name of the husband of the 2nd petitioner in the ration card cannot be reason to doubt the relationship between the 2nd petitioner and her husband. There is no compelling reason to doubt the husband and wife relationship.

13. As the 1st petitioner and the husband of the 2nd petitioner have been working together, there is sufficient chance that their families are in friendship. Whether the families are interacting even now physically, is no ground to disbelieve the element of altruism. In the facts and circumstances of the case, I find that rejection of the application submitted by the petitioners for organ transplantation is on untenable grounds. The application of the petitioners is liable to be reconsidered, especially taking note of the serious condition of the 1st petitioner.

14. Exts.P15 and P20 orders are therefore set aside. The application for organ transplantation submitted by the

petitioners is remitted back to the 2nd respondent- District Level Authorisation Committee. The 2nd respondent shall reconsider the application and pass orders afresh within a period of six weeks, giving opportunity to the petitioners to adduce fresh evidence, if any.

The writ petition is disposed of as above.

Sd/-
N. NAGARESH, JUDGE

aks/31.07.2025

APPENDIX OF WP(C) 25749/2025

PETITIONER'S EXHIBITS

Exhibit P1	**A TRUE COPY OF THE RELEVANT PAGES OF THE APPLICATION DTD 25-09-2024**
Exhibit P2	**A TRUE COPY OF THE COMMUNICATION ISSUED BY THE CONSULTING DOCTORS, TO THE ORGAN TRANSPLANTATION LOCAL COMMITTEE, LAKESHORE HOSPITAL, MARADU, ERNAKULAM DTD 14-11-2024**
Exhibit P3	**A TRUE COPY OF THE CERTIFICATE OF ALTRUISM, ISSUED TO THE PETITIONERS, BY THE ASST. COMMISSIONER OF POLICE, KUNNAMKULAM SUB DIVISION, THRISSUR – CITY DTD 30-10-2024**
Exhibit P4	**A TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE PETITIONERS, ATTESTED BY THE MLA, UDUMA DTD NIL**
Exhibit P5	**A TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE 2ND PETITIONER AND HER HUSBAND – SHIBULAL, ISSUED BY THE VILLAGE OFFICER, VADAKKEKKARA DTD NIL**
Exhibit P6	**A TRUE COPY OF THE IDENTIFICATION CERTIFICATE OF THE 2ND PETITIONER AND HER BROTHER - IN-LAW MIDHUN KM ISSUED BY THE VILLAGE OFFICER, VADAKKEKKARA DTD NIL**
Exhibit P7	**A TRUE COPY OF RATION CARD OF THE 2ND PETITIONER, DTD NIL**
Exhibit P8	**A TRUE COPY OF THE RATION CARD OF SHIBULAL – HUSBAND OF THE 2ND PETITIONER, DTD NIL**
Exhibit P9	**A TRUE COPY OF THE NATIVITY CERTIFICATE OF THE 2ND PETITIONER ISSUED BY THE VILLAGE OFFICER VADAKKEKKARA DTD 24-08-2024**

Exhibit P10	**A TRUE COPY OF THE INCOME CERTIFICATE OF THE 2ND PETITIONER, ISSUED BY THE VILLAGE OFFICER, VADAKKEKKARA DTD 25-08-2024**
Exhibit P11	**A TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED BY A. S. SANTHOSH THANTHRI OF THE 2ND PETITIONER, DTD NIL**
Exhibit P12	**A TRUE COPY OF THE NOTARIZED AFFIDAVIT BY THE 2ND PETITIONER AND HER HUSBAND – SHIBULAL DTD 12-09-2024**
Exhibit P13	**A TRUE COPY OF THE BIRTH CERTIFICATE OF ARJUNLAL K S, SON OF THE 2ND PETITIONER DTD 21-03-2014 ISSUED FROM THE CORPORATION OF COCHIN**
Exhibit P14	**COPIES OF THE FAMILY PHOTOGRAPHS OF THE 2ND PETITIONER DTD NIL**
Exhibit P15	**A TRUE COPY OF THE ORDER OF REJECTION BY THE 3RD RESPONDENT DTD 13-12-2024**
Exhibit P16	**A TRUE COPY OF THE JUDGMENT IN WP(C) NO. 1619/2025 DTD 06-02-2025 2024**
Exhibit P17	**A TRUE COPY OF THE MARRIAGE CERTIFICATE OF THE 2ND PETITIONER DTD 14-03-2025**
Exhibit P18	**A TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT, REJECTING THE APPEAL OF THE PETITIONERS DTD 15-04-2025**
Exhibit P19	**A TRUE COPY OF THE INTERIM ORDER IN WP(C) NO. 17188/2025 DTD 06-05-2025**
Exhibit P20	**A TRUE COPY OF THE ORDER DTD 12-06-2025 ISSUED BY THE 1ST RESPONDENT**
Exhibit P21	**A TRUE COPY OF THE JUDGMENT DTD 24-06-2025 IN WPC NO. 17188/2025 BY THIS HON'BLE COURT**
Exhibit P22	**A TRUE COPY OF THE CERTIFICATE ISSUED BY DR. ABI ABRAHAM AS EARLY AS ON 24-04-2025**

Exhibit P23	**A TRUE COPY OF THE DONOR WORK UP OF THE 2ND PETITIONER ISSUED BY THE DOCTORS ATTACHED TO THE 3RD RESPONDENT DTD NIL**