

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2026

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.2127 of 2026

and

WMP.Nos.2288, 2290 & 2292 of 2026

1.B.Shyam

2.R.Selvam

... Petitioners

Vs.

1.The State of Tamil Nadu
Rep by its Secretary to Government,
Heath and Family Welfare Department,
Secretariat,
Chennai.

2.The Authorization Committee
Rep. by its Chairman,
Directorate of Medical Education and Research,
Kilpauk,
Chennai.

3.M/s.Apollo Hospital Ltd.,
Rep.by its Managing Director,
Greams Road,
Chennai

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of Certiorarified Mandamus, Calling for the

records relating to the impugned order dated 09.01.2026 made in K.Dis. No.114920 / H and DII/ 4/ 2025 passed by the 2nd respondent, quash the same and consequently direct the 2nd respondent grant approval for human transplantation of an organ from the 2nd Petitioner to the 1st Petitioner by considering petitioners application in Form 11 dated 22.11.2025.

For Petitioner : Mr. N.Manoharan

For Respondents : Mr.M.Bindran, AGP

for R.1 & R.2.

: Mrs.T.Vennila for R.3.

ORDER

The petitioners seeks to quash the rejection of their application seeking transplantation and to direct the respondent to grant approval for human transplantation of an organ from the 2nd petitioner to the 1st petitioner by considering their application in Form 11 dated 22.11.2025.

2. The short facts which have culminated in the filing of the above Writ Petition are as follows:-

3. The 1st petitioner is suffering from chronic kidney decease stage V. The 2nd petitioner who is the brother of the petitioner's maternal Aunt's husband had come forward to offer his organ and the petitioners have

together submitted an application dated 22.11.2025 under Form-11 of the Transplantation of Human Organs and Tissues Rules, 2014 (hereinafter referred to as the “Rules”) enclosing all the attendant documents.

4. The petitioners would submit that after receipt of the their application the 2nd respondent had called them for an interview on 09.01.2026 and after receiving the documents and their statements has proceeded to reject the application with a one line non-speaking order stating that “*Relationship not established*”. Challenging the same, the petitioners are before this Court.

5. Heard the learned counsel on either side and perused the records.

6. The non-speaking impugned order would simply indicate that the joint application submitted by the petitioners had been rejected for the following reasons “*Relationship not established*”. A perusal of the contents of the affidavit and the documents submitted would indicate that the 1st petitioner, a 20 year old undergoing the III year Law Degree in VELS University was diagnosed with a chronic kidney failure and he has been advised by the doctors at the 3rd respondent hospital to undergo a renal transplant surgery. The near relatives of the petitioner have all been

subjected to medical tests and none of them, after various medical tests were found to match the petitioner's body. It appears that while the family was in the process of selecting a willing donor, the 2nd petitioner had come forward to donate his kidney. The 2nd petitioner is the brother of the petitioner's maternal aunt Tmt.Bhavani's husband, R.Sampath.

7. Thereafter, the records would show that the petitioner had submitted an application under Form-11 of the Rules enclosing all the requisite certificates. On receipt of the application, the 2nd respondent committee had called the petitioner for an interview on 09.01.2026. The petitioners have apart from submitting the relevant records submitted their oral statement setting forth the relationship of the petitioners. Despite production of the documents and making the oral statement, the impugned order has been passed. The 2nd respondent has overlooked the fact that the 2nd petitioner is the 3rd party and not a near relative.

8. Section 9 of the Transplantation of Human Organs and Tissues Act (herein after referred to as the "Act") deals with removal and transplantation of human organs not only between near relatives but also those not related to each other. In such cases the provisions of Section 9(3) of the Act would kick in. In such a situation, what is required to be

established is that the organ was being authorised for transplantation because of affection or attachment or for any other special reasons. This is intended to curb commercial exploitation of organ transplant. These provisions were introduced post the amendment to Section 9 in 2011.

9. Section 9(5) of the Act contemplates a joint appeal by the donor and recipient to be submitted in requisite form.

10. The Transplantation of Human Organs and Tissues Rules, 2014 provides the procedure for donation of organs or tissues, the Authorisation Committee - its composition and procedure to be adopted by them etc.

11. Rule 7(3) sets out the guidelines for evaluation. Rule 19 set out that in cases where the transplant is between petitioners who are not related and cases where the donor or recipient is a foreign national then the approval has to be granted by the Authorisation Committee who shall follow the guidelines contemplated in Rule 7(3) and Rule 14. Every third party donor does not require to be scrutinised with a needle of suspicion as there are genuine donors who come forward voluntarily to donate their organ and such third party donor's are therefore not ones who have been exploited. It is, however, the duty of the Authorisation Committee to

examine, investigate and arrive at the conclusion that the donation is not backed by any commercial interest for which the rules provide certain parameters.

12. The Kerala High Court, in *WP(C) No. 7866 of 2025 – Muhmeed Rasheed and another Vs. State of Kerala, rep. By the Secretary to Health Department, Government Secretariat, Thiruvananthapuram and another*, had occasion to deal with a similar case involving a third-party donor, where the Authorisation Committee concluded that the donation was for commercial purposes on the ground that the donor's husband had made contradictory statements during his two interactions with the Committee. After traversing through the provisions of Section 9(3) of the Act and Rules 7(3) and 19 of the Rules the learned Judge drawing reference to the judgment of the Hon'ble Supreme Court in the case of *Kuldeep Singh vs. State of Tamil Nadu* discussed the scheme of the Act as follows in Para 18 of his judgment.

“18. Going by the scheme of the Act, the statutory authorities have to be satisfied whether the organ or tissue donation is altruistic as per the parameters laid down under Rule 7 (3) and the materials placed before them. There is no definitive formula to categorically determine whether a donation is altruistic or if there is a commercial transaction. However, in

marginal cases, like the present one, the distinction between granting or denying approval for transplantation is separated by a narrow line. The commendable intent of the Act is to prohibit commercial transactions in transplantations and to safeguard vulnerable individuals from exploitation. It's not to be forgotten that some compassionate individuals are willing to selflessly donate their organs to give a new lease of life to a family member or friend. So, it would be unpragmatic to assess every donation between nonrelatives on arithmetical scales or view them with scepticism in such summary proceedings. A rigid and inflexible interpretation of Section 9 (3) of the Act would undermine the laudable object of the provision and render it otiose and nugatory. Even otherwise, nowadays, it is common knowledge that the number of recipients outnumber the donors.”

13. In the case on hand, a perusal of the transcript of the statements made by the Donor and his wife clearly brings out that they have come forward voluntarily to donate and in their own words which is, said in unison, “That saving a life is important”. That apart the donor is not a total stranger to the recipient as the donor is the brother of the recipient maternal aunt’s husband. The transcript clearly shows that the donor, his wife, the recipient and his father have clearly described the relationship between the parties. The Donor and his wife have also cogently given reasons for

coming forward to donate the organ. There is no material produced on the side of the respondents to show that the donor has not come forward to donate his organ out of altruism, (the fact of caring about the needs and happiness of other people more than your own) . In the absence of the above, the rejection by the Authorisation Committee is arbitrary and baseless.

14. This Court in the judgement in a batch of cases reported in **2024 SCC Online Mad 1633 – Sudha Mathesan and Another Vs. Authorisation Committee and Another.** discussed how the applicants cannot be called upon to prove the negative. The learned Judge had observed as follows in para 17 of the judgement:-

“17. Let us put ourselves in the shoes of the applicants. They can only assert that there is no commercial dealing. They cannot be called upon to prove the negative. Rule 17 provides for scrutiny of application. In case of doubt, explanation can be sought from the applicants and there can also be verification done through the officials of the Government. Too much of burden cannot be laid on the shoulders of the applicants. Unless there is definite material to establish that there are financial dealings involving the parties, permission ought not to be withheld or rejected. If the donor states that out of love and affection, he/she is making the donation, in the absence

of any credible reason, the averment should not be doubted. The Government must come out with definite guidelines in this regard. Otherwise, the issue will be left to the arbitrary discretion of the Authorisation Committee. If the recipient is well placed and connected, the decision of the committee will swing in his favour. If the recipient is not all that influential, by passing a template order, permission can be rejected. One must take note of the fact that parliament never intended to rule out donation by non-near relatives. The parliamentary intent ought not to be frustrated by adopting a rigid approach. One need not take a cynical view that a non-near relative will not donate out of altruistic considerations.”

15. The learned Judge had commented that altruism is very much present in Society and had discussed a few judgements where our Court and the Kerala and Orissa High Courts have frowned upon the denial of approval merely on a suspicion that the donation is a commercial transaction in paras 19 to 22. The learned Judge has also discussed the manner in which the recipient can be made responsible for the post operative requirements of the Donor and had given suggestions to the Authorisation Committee in para 27 of the Judgement which is extracted herein below:-

“The function of the Authorisation Committee is not to stop with

scrutinizing the application and granting approval. They have an obligation to ensure that the needs of the donor are met. A person donating kidney would require to be nutritiously fed. Health complications can arise in future. Section 2(k) of the Act which defines payment excludes defraying of certain expenditures from its purview. The recipient is obliged to defray and it is the duty of the Authorisation Committee to see to it that this obligation is discharged. Apart from taking medical insurance coverage in favour of the donor, a lump sum deposit shall be directed to be made to the credit of the Authorisation Committee. The committee shall issue directions for crediting a fixed sum every month in the bank account of the donor for a period of three years. This arrangement will ensure direct transfer of benefit to the donors. Thus, the physical and medical needs of the donor will be met for a certain period. The individual details can be worked out on a case to case basis by the Authorisation Committee. No straight jacket formula can be laid down. Making of such provision by the Authorisation Committee will not any way run counter to the statutory scheme of the Act.”

16. Therefore, from a conspectus of the above discussion and taking note of the fact that the Authorisation Committee has overlooked the fact that the Donor and the Recipient are not ‘near relatives’ and that the

petitioners have clearly and cogently set out how the two are not strangers but acquainted/related with each other through near relative, the impugned order of the 2nd respondent is set aside and the matter is remitted back to the 2nd respondent. The 2nd respondent is directed to grant permission for transplantation in accordance with law within a period of 3 weeks from the date of receipt of the copy of the order. In case the same is not granted within the stipulated time it shall be deemed to have been granted. Upon grant of approval/ deemed approval the petitioners are entitled to undergo the transplantation.

17. The writ petition is allowed and ordered as above. No costs. Consequently, the connection Miscellaneous Petitions are closed.

03.02.2026

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The State of Tamil Nadu
Rep by its Secretary to Government,
Heath and Family Welfare Department,
Secretariat,
Chennai.

2.The Authorization Committee
Rep. by its Chairman,
Directorate of Medical Education and Research,
Kilpauk,
Chennai.

W.P.No.2127 of 2026

P.T. ASHA. J.,

(shr)

W.P.No.2127 of 2026

03.02.2026