

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI  
ON THE 22<sup>nd</sup> OF SEPTEMBER, 2022  
WRIT PETITION No. 21660 of 2022**

**BETWEEN:-**

1. SURESH GARG S/O LAE SHRI BADRI PRASAD GARG, AGED ABOUT 56 YEARS, BUSINESS R/O KASIM KHAN KA BADA DAL BAZAR LASHKAR GWALIOR R/O 123 REVERA TOWN T.T NAGAR BHOPAL (MADHYA PRADESH)
  
2. RAMPRASAD PANDEY S/O SHRI RADHESHYAM PANDEY, AGED ABOUT 39 YEARS, OCCUPATION: PRIVATE JOB R/O 132, JASMIN VILLA, NEAR MOTHER TERESA SCHOOL, KOLAR ROAD, BHOPAL (MADHYA PRADESH)

**.....PETITIONER**

**(BY SHRI KAPIL SHARMA- ADVOCATE )**

**AND**

1. THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE M.P GOVT. BHOPAL (MADHYA PRADESH)
  
2. SIDDHARTH HOSPITAL , THROUGH ITS MANAGING DIRECTOR RED CROSS BHAWAN, LINK ROAD NO. 01, SHIVAJI NAGAR, DISTRICT BHOPAL (MADHYA

**PRADESH)**

3. **AUTHORIZATION COMMITTEE,  
APPOINTED BY THE STATE GOVT.  
UNDER THE TRANSPLATATION OF  
HUMAN ORGANS (AMENDMENT) ACT.  
2011 GANDHI MEDICAL COLLEGE  
BHOPAL (MADHYA PRADESH)**
  
4. **HOSPITAL AUTHORIZATION  
COMMITTEE, SIDHARTH RED CROSS  
SUPER SPECIALTY HOSPITAL  
DISTRICT BHOPAL (MADHYA  
PRADESH)**
  
5. **DEAN AND C.E.O. GANDHI MEDICAL  
COLLEGE, AUTONOMOUS SOCIETY ,  
BHOPAL APPROPRIATE AUTHORITY  
HUMAN ORGAN TRANSPARENT  
COMMUNITY (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY MS. G.K. PATEL- GOVERNMENT ADVOCATE )**

*This petition coming on for admission and interim relief this  
day, the court passed the following:*

**ORDER**

By filing this petition under Article 226 of the Constitution of  
India, the petitioners have prayed for the following reliefs :

- i. The Hon'ble High Court may kindly be please to direct the respondents authority to grant approval for renal transplantation and expedite the process of kidney transplantation between petitioner no.1 and 2, without any further delay to save the life of the petitioner no.1.
- ii. The Hon'ble High Court may kindly be please to set aside impugned letter dated 13.09.2022 issued by respondent no.5 and direct respondent no.2 hospital to expedite the process of kidney transplantation between petitioner no.1 & 2 without any further delay to save the life of petitioner no.1 in the interest of justice.
- iii. The Hon'ble Court may be please to call for relevant records for its kind perusal.
- iv. The Hon'ble Court may please to grant another relief deemed fit and proper looking to the facts and circumstances of the case."

2. Earlier, the petitioners had approached this Court in W.P. No.18311/2022 and this Court vide order dated 30.08.2022 had passed the following order:

“This petition under Article 226 of the Constitution of India has been filed seeking direction to the

respondent no.3 to grant approval for renal transplantation and to expedite the process of kidney transplantation between the petitioner no.1 and 2 without any further delay to save the life of the petitioner no.1, who is on the deathbed.

The petitioner no.2 is ready to donate the kidney to petitioner no.1 for which they have completed the requisite formalities; but, the authorities are not granting them No Objection Certificate for the reason that they are not blood relatives.

The application filed by the petitioner is pending before the respondent no.5 which was filed on 30.6.2022; however, no decision has been taken till date. Counsel for the petitioner submitted that under such circumstances this court in W.P.No.6141/2021 and W.P.No.9668/2019 had directed the authorities to carry out the exercise of transplantation of kidney.

Heard learned counsel for the parties and perused the record.

The Parliament has enacted the Act known as 'the Transplantation of Human Organs Act, 1994' and have made the rules thereunder known as "the Transplantation of Human Organs and Tissues Rules, 2014", hereinafter referred to as 'the Rules'. Rule 7 sub rule (3) clause (iv) and clause (ix) provides as under :-

"(3) When the proposed donor and the recipient are not near relatives, the Authorisation Committee shall,-

-----

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

----

(ix) ensure that the near relative or if near relative is not available, any adult person related to donor by blood or marriage of the proposed unrelated donor is interviewed regarding awareness about his or her intention to donate an organ or tissue, the authenticity of the link between the donor and the recipient, and the reasons for donation, and any strong views or disagreement or objection of such of such kind shall also be recorded and taken note of'.

Keeping in view the aforesaid provisions of the Rules as well as the judgment passed by this court, the respondent no.3 is directed to consider the claim of the petitioner and decide the same as expeditiously as possible preferably within a period of seven days keeping in mind the pronouncements made by this Court as well as the provision of law on the subject and take a decision in respect of kidney transplantation between petitioner no.1 and 2 and submit its report before this Court before the next date of hearing.

List this case on **8.9.2022** along with the report.

Certified copy today.”

3. From the above order, it is evident that the respondent No.3 was directed to consider the claim of the petitioners and decide the same as expeditiously as possible preferably within a period of seven

days keeping in mind the pronouncements made by this Court as well as the provision of law on the subject and take a decision in respect of kidney transplantation between petitioners No.1 and 2 and submit its report before the next date of hearing. Thereafter, the case was listed on 08.09.2022.

4. On 08.09.2022, the respondents/State did not choose to file the report as directed by this Court and looking to the urgency shown by the petitioners, the case was finally disposed of. The following order came to be passed:

“Keeping in view the aforesaid provisions of the Rules as well as taking into consideration the fact that the competent Specialist doctors after examining the health condition of the petitioner No.1 as well as the petitioner No.2 have arrived at the conclusion that Kidney can be donated. There is no reason to reject the prayer of the petitioners specially when he is on the death bed and is fighting for his life.

Hence, this petition is disposed of with a direction to respondents Nos.2 and 3 to expedite the process of transplantation of Kidney between petitioner No.2 and No.1 within a period of seven days from the date of receipt of certified copy of this order.”

5. Since the report was not filed, this Court was constrained to direct the authorities to carry out the transplantation of kidney between the petitioners No.1 and 2. From perusal of the impugned order dated 13.09.2022 (Annexure P/6), it is seen that the Committee has again rejected the application on the ground that Mr. Ram Prasad Pandey (Donor), and Mr. Suresh Garg (recipient) are not related to each other and have failed to produce documents to prove that there is no monetary transaction between them and have also failed to prove the term “relationship”.

6. Taking note of the fact that in the first round of litigation, vide order dated 08.09.2022, this Court had already directed to expedite the process of transplantation of kidney between the petitioners No.1 and 2 within a period of seven days, meaning thereby the respondents ought to have performed the operation, however, they have failed to do so.

7. In such a situation, looking to the urgency in the matter and the fact that the petitioner No.1 is on the death bed and is fighting for his life so also keeping in view the orders passed by this Court in similar circumstances in W.P. No.6141/2021, W.P. No.9668/2019 and W.P.

No.20797/2021, the respondents are directed to carry out the surgery for transplantation of kidney between petitioner No.1 (recipient) and petitioner No.2 (Donor) despite the fact that NOC has not been granted by the respondents/State. Needless to say that the competent specialist doctors after examination of the health condition of the petitioner No.1 as well as petitioner No.2 have arrived at the conclusion that kidney can be donated.

**8.** It is further made clear that considering the factual situation of the matter, when operation, which is likely to be carried out and can save life of a person and undoubtedly it needs urgency in the matter, I am not inclined to grant any time to the State to seek any further instruction.

With the aforesaid observation, this petition is finally **disposed of.**

**Certified copy today.**

**(S. A. DHARMADHIKARI)**  
**JUDGE**

Shanu