

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR
&
THE HONOURABLE MR.JUSTICE BASANT BALAJI

Wednesday, the 24th day of September 2025 / 2nd Aswina, 1947
WP(C) NO. 4269 OF 2025(S)

PETITIONER:

ADVAIDH. M, AGED 19 YEARS, SON OF VINESH KUMAR.M,
THOZHLOOR HOUSE, KOTTAPPADI P.O, THRISSUR, PIN - 680 505.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF KERALA, STATE SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.
2. PRINCIPAL SECRETARY TO THE GOVERNMENT OF KERALA, DEPARTMENT OF HEALTH AND FAMILY WELFARE, SECRETARIAT, ANNEX 2, THIRUVANANTHAPURAM, PIN - 695 001.
3. THE APPROPRIATE AUTHORITY, DIRECTOR OF MEDICAL EDUCATION, KERALA, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM, PIN - 695 011.
4. K-SOTTO(KERALA STATE ORGAN AND TISSUE TRANSPLANT ORGANISATION), REPRESENTED BY ITS ADMINISTRATOR, 1ST FLOOR, OLD HOUSE SURGEON QUARTERS, NEAR SUPER SPECIALTY BLOCK, GOVT. MEDICAL COLLEGE, THIRUVANANTHAPURAM, PIN - 695 011.
5. THE STATE POLICE CHIEF, POLICE HEAD QUARTERS, VAZHUTHACADU, THIRUVANANTHAPURAM, KERALA, PIN - 695 014.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the official respondents to immediately act in compliance with the directions of this honourable court issued in WP(C) 33801 of 2017, particularly to make press releases in print and electronic media seeking willing altruistic donors among the community for and on behalf of all patients who is unable to undergo organ transplant surgery owing to unavailability of matching donor. The press release may include information such as patient's blood group, name of intended transplant hospital, compensation for prospective donor towards the loss of income, organ utilization fee, financial support in case of complications and all other required information, pending disposal of this writ petition.

P.T.O.

This petition again coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 21/08/2025 and upon hearing the arguments of SRI.THOMAS VARGHESE, Advocate for the petitioner, SRI. V.TEKCHAND, SENIOR GOVERNMENT PLEADER, for R1 to R3 and R5 and of M/S AJIT JOY and ASHA TREESA JOSE, Advocates for R4, the court passed the following:

P.T.O.



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Nitin Jamdar, C.J. & Basant Balaji, J.

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Dated this the 24th day of September, 2025

ORDER

Heard Mr. Thomas Varghese, learned counsel for the Petitioner, Mr. Ajit Joy, learned counsel for Respondent No.4 and Mr. V. Tekchand, learned Senior Government Pleader.

2. This petition is filed seeking to raise various issues regarding organ donation in the State of Kerala. On 7 July 2025, after considering the statutory provisions, the following order was passed:

“Heard Mr.Thomas Varghese, learned counsel for the Petitioner, Mr.Ajith Roy, learned counsel for Respondent No.4 and Mr.K.V.Manoj Kumar, learned Special Government Pleader.

2. This Public Interest Litigation raises an issue of improving the means of recourse for organ donation for those who are in need of organ donation. Petitioner in the writ petition has highlighted the issue and has given various suggestions on the methodology by which patients can approach those who are willing to donate organs on purely altruistic reasons.

3. The direction sought by the Petitioner would require expertise as any direction without understanding the full spectrum may result in unintended consequences contrary to the objectives of the Transplantation of Human Organs and Tissues Act, 1994 (Act 42 of 1994) and the Transplantation of Human Organs and Tissues Rules, 2014 (Rules of 2014) which also emphasizes the prohibition of commercial dealings.

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4. Since it would require expert authority to examine the inputs of the Petitioner, we had called upon the State to ascertain whether any such expert committee has been constituted. Learned Special Government Pleader has placed before us the notification issued on 28 August 2024 in exercise of the powers under Section 13A of the Act 42 of 1994 read with Rule 30 of Rules of 2014. Section 13A of the Act of 42 of 1994 reads thus:

13-A. Advisory Committees to advise Appropriate Authority.—

(1) The Central Government and the State Governments, as the case may be, by notification, shall constitute an Advisory Committee for a period of two years to aid and advise the Appropriate Authority to discharge its functions.

(2) The Advisory Committee shall consist of—

(a) one administrative expert not below the rank of Secretary to the State Government, to be nominated as Chairperson of the Advisory Committee;

(b) two medical experts having such qualifications as may be prescribed;

(c) one officer not below the rank of a Joint Director to represent the Ministry or Department of Health and Family Welfare, to be designated as Member-Secretary;

(d) two eminent social workers of high social standing and integrity, one of whom shall be from amongst representatives of women's organisation;

(e) one legal expert who has held the position of an Additional District Judge or equivalent;

(f) one person to represent non-governmental organisations or associations which are working in the field of organ or tissue donations or human rights;

(g) one specialist in the field of human organ transplantation, provided he is not a member of the transplantation team.

(3) The terms and conditions for appointment to the Advisory

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Committee shall be such as may be prescribed by the Central Government.

5. *Rule 30 of Rules of 2014 reads as follows:*

30. Advisory committee of the Central or State Government to aid and advise appropriate authority.-(1) The Central Government and the State Government, as the case may be, shall constitute by notification an Advisory Committee under Chairpersonship of administrative expert not below the rank of Secretary to the State Government for a period of two years to aid and advise the Appropriate Authority and the two medical experts referred to in clause (b) of sub-section (2) of section 13A of the Act shall possess a postgraduate medical degree and at least five years' experience in the field of organ or tissue transplantation.

(2) The terms and conditions for appointment to the Advisory Committee are as under:

(a) the Chairperson and members of the Committee shall be appointed for a period of two years;

(b) the Chairperson and members of the Committee shall be entitled to the air fare and other allowances to attend the meeting of the Committee equivalent to the officer of the level of the Joint Secretary to the Government of India;

(c) the Central Government or State Government or Union territory Administration shall have full powers to replace or remove the Chairperson and the members in cases of charges of corruption or any other charges after giving a reasonable opportunity of being heard;

(d) the Chairperson and members can also resign from the Committee for personal reasons;

(e) there shall not be a corruption or criminal case pending against Chairperson and members at the time of appointment;

(f) the Chairperson or any of the members shall cease to function if charges have been framed against him or her in a

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corruption or criminal case after having been given a reasonable opportunity of being heard.

6. *Learned Special Government Pleader states that an affidavit will be filed explaining how the composition of the Advisory Committee notified on 28 August 2024 conforms to Section 13A of the Act 42 of 1994 and Rule 30 of the Rules of 2014.*

7. *Post on 28 July 2025.”*

3. Thereafter on 6 August 2025, a further order was passed as under:

“Heard Mr. Thomas Varghese, learned counsel for the Petitioner, Mr. Ajit Joy, learned counsel for Respondent No. 4 and Mr. K.V. Manojkumar, learned Senior Government Pleader for the State.

2. *The learned Senior Government Pleader has drawn our attention to the counter affidavit filed and the Government Order dated 28 August 2024 constituting an Advisory Committee. The learned counsel for the Petitioner points out that the duration of the Advisory Committee is two years and according to his knowledge, there is no progress by the Advisory Committee for last one year since its inception.*

3. *The learned Senior Government Pleader seeks time to file an additional affidavit as to the steps taken by this Advisory Committee post its inception, meetings held and whether any preliminary/draft regulations have been formulated or whether any suggestions have been given to the State Government by this Committee. This is to ensure that the Advisory Committee is in process of formulating final suggestions so that the Petitioner’s suggestions can be referred to this Committee.*

4. *Post on 21 August 2025.”*

4. As no details were forthcoming regarding any meeting held by the Committee, it was observed in the order dated 21 August 2025, that if no

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details are placed on record, the Court may be constrained to draw an adverse inference regarding the functioning of the Advisory Committee.

5. It now transpires that the Advisory Committee, which was constituted by notification dated 28 August 2024 for a period of two years, has not held a single meeting so far for more than a year. If the term of the Advisory Committee is two years and it does not hold a single meeting during half of that period, the entire purpose of constituting the Committee stands defeated. It cannot be said nor is it urged that there are no issues in respect of the transplantation of human organs and tissues in the State of Kerala, which require to be looked into. Rule 30 of the Transplantation of Human Organs and Tissues Rules, 2014, after constituting the Committee comprising experts from various fields, also provides for the air fare and other allowances to the members of the committee equivalent to the officer of the level of Joint Secretary to the Government of India.

6. When this petition was filed and was pending for some time, at least the issues raised in the petition could have been discussed in a meeting of the Advisory Committee. Having left with no option because of the failure of the Committee to function, we have to issue a direction to the Advisory Committee constituted under the notification dated 28 August 2024 to forthwith hold a joint meeting within a period of two weeks from today. A copy of the petition be placed before the Committee, and the Committee will study the issues raised by the Petitioner and submit a report (atleast a preliminary report) to the Appropriate

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Authority as contemplated under Chapter IV of the Transplantation of Human Organs and Tissues Act, 1994 (Act 42 of 1994) i.e., the Director of Medical Education - Respondent No. 3, within a period of four weeks.

7. The learned Senior Government Pleader states that a copy of this petition will be placed before the Advisory Committee to examine and submit a report as contemplated under Chapter IV of the Act 42 of 1994.

8. To enable to take these steps, post the matter on 5 November 2025.



Sd/-
Nitin Jamdar
Chief Justice

Sd/-
Basant Balaji
Judge

vpv