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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 27.09.2021

+ W.P.(C) 10292/2021

SAURAV SUMAN THROUGH HIS MOTHER MRS. BABY DEVI
..... Petitioner

Through Mr. Prasoon Kumar, Adv.

versus

GOVERNMENT OF NCT OF DELHI AND ANR..... Respondents

Through Mr. Naushad Ahmed Khan, ASC,
GNCTD for R-1
Mr. Sanjay Poddar, Sr. Adv. with Mr.
Siddharth Panda and Mr. P.
Venkateshan, Advs.

**CORAM:
HON'BLE MS. JUSTICE REKHA PALLI**

REKHA PALLI, J (ORAL)

1. The Petitioner, who is turning 18 years of age on 09.12.2021, has approached this Court seeking setting aside of the order dated 28.08.2021 passed by respondent no.1, whereby his application seeking approval for donating a part of his Liver to his ailing father has been rejected. Consequently, the petitioner seeks a direction to respondent no.2 to grant him the necessary permission to donate a part of his Liver to his ailing father.

2. Learned counsel for the petitioner submits that the petitioner's father is suffering from Chronic Liver Disease and his MELD score was 28 as on 08.09.2021, according to the certificate issued by respondent no.2 itself,

which certificate states, in no uncertain terms, that the petitioner's father requires a Liver transplant urgently. He submits that the petitioner's request for approval has been rejected by a non-reasoned order solely on the ground that he is a minor without appreciating the fact that there is no absolute bar for permitting a minor to donate his living organs or tissues. He submits that in terms of Rule 5(3)(g) of the Transplantation of Human Organs and Tissues Rules, 2014 (*hereinafter referred to as 'the Rules'*), a minor can be permitted to donate his living organs or tissues on exceptional medical grounds. Since the close relatives of the petitioner's father were either not found to be a suitable match for donation or are unwilling to donate a part of their Liver due to their advancing age, coupled with the fact that the petitioner's father needs immediate transplant, it is evident that the present case is a case where exceptional medical circumstances as envisaged under the aforesaid rule are made out.

3. Mr. Kumar further contends that in view of the COVID-19 pandemic and the ensuing lockdown imposed from time to time, the petitioner's father has been unable to locate any other suitable donors till date and therefore, if the petitioner is not granted the necessary approval expeditiously, his father's health could take a turn for the worse. He further draws my attention to the medical fitness certificate dated 25.08.2021 issued by the concerned doctor of respondent no.2/Institute clearly certifying that the petitioner was medically fit to undergo the procedure of Liver removal. He therefore, prays that the impugned order which overlooks these important aspects be set aside and the matter be referred to the respondent no.1 for necessary approval.

4. On the other hand, learned senior counsel for the respondent no. 2 submits that since the petitioner is a minor, the respondent no.2 is justified in rejecting his request in accordance with Section 9 (1) (1B) of the Transplantation of Human Organs and Tissues Act, 1994 (hereafter 'the Act'), which states that no human organs or tissues shall be removed from the body of a minor prior to his death except in the manner as may be prescribed.

5. Before dealing with the rival submissions of the parties, it may be apposite to refer to the relevant provisions dealing with the procedure, where a minor can be permitted to donate his organs or tissues. In this regard, Section 9 (1) (1B) of the Act reads as under -

“9 (1) (1B) No human organs or tissues or both shall be removed from the body of a minor before his death for the purpose of transplantation except in the manner as may be prescribed.”

Reference may also be made to Rule 5 (3) (g) of the Rules which reads as under -

“3(1)(g) living organ or tissue donation by minors shall not be permitted except on exceptional medical grounds to be recorded in detail with full justification and with prior approval of the Appropriate Authority and the State Government concerned.”

6. A bare perusal of Rule 5(3) (g) shows that a minor can donate organs in exceptional medical circumstances. In the present petition, keeping in view the facts noted hereinabove, there can be no doubt that the petitioner's case ought to have been considered within the parameters of the abovementioned rule and therefore it was incumbent upon the respondent no. 2 to consider whether the petitioner had made out a case for grant of

approval on exceptional medical grounds. The respondent no.2 ought to also have considered the effect of the medical fitness certificate issued in favour of the petitioner by its own doctors on 25.08.2021 clearly stating that the petitioner was in a proper state of health and medically fit to be subjected to the procedure of Organ Removal.

7. In the light of the aforesaid, the impugned order which does not deal with these vital aspects is not sustainable and is accordingly set aside. However, keeping in view the fact that petitioner's father is already in a critical state, instead of remanding back the matter to the respondent no.2, it would be in the interest of justice, if the petitioner's case is expeditiously considered by the Secretary, Health, Government of NCT of Delhi who is the final authority to grant approval in terms of Rule 5(3) (g) in terms of the Rules. Accordingly, while setting aside the impugned order, the respondent no.1 is directed to decide the petitioner's request within a period of 2 days from today.

8. Needless to state, while considering the petitioner's request for approval, the Secretary, Health, Government of NCT of Delhi will consider the aspects noted in this order, especially the fact that there is a grave medical emergency in the present case and the petitioner is about to attain majority i.e. complete 18 years of age within about two months from today.

9. In order to facilitate an early decision by respondent no.1, the respondent no.2 is directed to forthwith forward all the medical records of the petitioner and his father to the respondent no.1. It will also be open for the petitioner to submit additional documents to the respondent no.1, within a day, copies whereof will be provided to learned counsel for the respondent no.1.

10. The petition is disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

SEPTEMBER 27, 2021

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