

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

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THE HONOURABLE MR. JUSTICE EASWARAN S.

FRIDAY, THE 3<sup>RD</sup> DAY OF MAY 2024 / 13TH VAISAKHA, 1946

WA NO. 640 OF 2024

AGAINST THE JUDGMENT DATED 26.03.2024 IN WP(C) NO.12100 OF 2024 OF  
HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

- 1 SHEEBA, AGED 50 YEARS  
W/O. VIJAYAN, RESIDING AT PANARATH PADEETTATHIL HOUSE,  
THAZHAVA P.O., THAZHAVA GRAMA PANCHAYATH, THAZHAVA  
VILLAGE, KARUNAGAPPALLY TALUK, KOLLAM DISTRICT, PIN -  
690523
- 2 JAFAR SADIK C, AGED 25 YEARS  
S/O. SHARAFUDHEEN, CHERIYANDI VEEDU, PADINJARETHARA,  
THARUVANA P.O., PERUNNANNOOR GRAMA PANCHAYATH, VELLAMUNDA  
VILLAGE, MANANTHAVADI TALUK, WAYANAD DISTRICT, PIN -  
673575  
BY ADVS.  
K.V.JAYADEEP MENON  
P.KRISHNAPRIYA  
T.P.RAMESH (THENGUMPILLIL)

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY, HEALTH AND FAMILY WELFARE  
DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,  
PIN - 695001
- 2 THE DISTRICT LEVEL AUTHORISATION COMMITTEE FOR RENAL  
TRANSPLANTATION, REPRESENTED BY ITS CHAIRMAN, THE  
PRINCIPAL, GOVERNMENT MEDICAL COLLEGE, KALAMASSERY P.O.,  
ERNAKULAM DISTRICT, PIN - 683104  
GP SUNIL KUMAR KURIAKOSE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03.05.2024, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

DEVAN RAMACHANDRAN.J

We propose to be very brief in our observations in the judgment because our intent is to remit the matter to the District Level Authorisation Committee (DLAC), for fresh consideration.

2. We will explain why we have taken this view presently.

3. The appellants had approached this Court, filing WP(C)No.12100/2024, challenging the order of the "DLAC", rejecting their request for permission for the second among them to offer his organ to the first among them, merely saying that there was "discrepancy between their statements and produced certificates"(sic). They assert that they have not been afforded any

cogent reason by the DLAC, as to why their application for permission for organ transplant has been rejected. But, when the learned Single Judge of this Court considered the matter, the impugned judgment was delivered, noticing that there is an alternative remedy against the aforesaid order; thus directing them to invoke the same within certain specified timelines.

4. Smt.P.Krishnapriya - learned counsel for the appellants, vehemently argued that, even if her clients are to invoke the alternative remedy as reserved to them by the learned Single Judge, it would be facile and fruitless because, the assailed order of the DLAC, namely Ext.P11, does not cite any reason which could enable them to make their objections before the Appellate Authority. She argued that, in any event, an appeal in such circumstances, would be totally

redundant; and hence, prayed that this appeal be allowed.

5. The learned Government Pleader - Sri.Sunil Kumar Kuriakose, however, submitted that the learned Single Judge has acted without error, in having issued the impugned judgment because, when there is an alternative remedy, it is well settled that the extra ordinary jurisdiction of this Court, under Article 226 of the Constitution of India, could not have been invoked. He, however, left it to this Court to issue appropriate orders; but arguing that the "DLAC" had considered every relevant and germane aspects in its proper perspective, while entering into its conclusion, as stated in Ext.P11.

6. As we have already said above, this is a case where the jurisdictional "DLAC" has issued

Ext.P11 rejecting the request of the appellants, but without assigning any reason whatsoever. This is manifest from the contents of Ext.P11, which merely say that, since certain discrepancies were "seen" in the statements of the parties and the documents produced by them, the application deserves only to be rejected. As rightly argued by Smt.Krishnapriya, the appellants, obviously, do not know why their application has been rejected, since any reason for the same, or the foundational cause for the decision of the "DLAC" is absent in Ext.P11.

7. In such circumstances, even if it is taken that there is an alternative remedy - which is virtually admitted - it would be imprudent to ask the appellants to invoke the same, when they do not know what exactly has been stated against them by the "DLAC". When the order is laconic and

without any reasonable explanation for the decision arrived therein, we cannot countenance the stand of the respondents, that the appellants should invoke their alternative remedy.

8. We are guided to the afore view also because of the various precedents produced by the appellants before this Court, including Ext.P10, wherein, this Court has intervened in exceptional circumstances - wherever it was found warranted - even at the stage where orders of the "DLAC" were under challenge.

9. As far as this case is concerned, as we have already said above and merely for the purpose of restatement, Ext.P11 does not contain any reason which would enable the appellants to invoke their appellate remedy effectively; and we are, therefore, of the firm view that the matter should engage the consideration of the said

Committee once again.

In the afore circumstances, we allow this writ appeal and set aside the judgment of the learned Single Judge; consequentially, vacating Ext.P11, with a resultant direction to the "DLAC" to reconsider the matter; thus culminating in an appropriate fresh order and necessary action thereon, as expeditiously as is possible, but not later than two weeks from the date of receipt of a copy of this judgment.

Sd/-

DEVAN RAMACHANDRAN  
JUDGE

Sd/-

EASWARAN S.  
JUDGE

SAS