

WP No. 20140 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 29-05-2026

CORAM

THE HON'BLE MR JUSTICE G. R. SWAMINATHAN

WP No. 20140 of 2026

AND

WMP NO. 21551 OF 2026, WMP NO. 21554 OF 2026, WMP NO. 21555 OF 2026

1. Minor Atonu Saha
S/o. Sree Akhil Kumar Saha,
Rep. by his Mother/Next Friend Sreemati Monika
Rani Saha,

2. Sreemati Monika Rani Saha
W/o. Sree Akhil Kumar Saha,

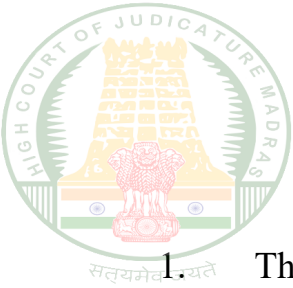
3. Sree Akhil Kumar Saha
S/o. late Bonojit Saha,

All of them permanently residing at
10003, Ward No.01,
Kashinathupur - 6682,
Santhia, Pabna,
Bangladesh.

Temporarily residing at
No.27, Model School Road,
Thousand Lights West,
Chennai - 600 006.

..Petitioner(s)

Vs.



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1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.

2. The Authorization Committee,
Rep. by its Chairman,
Directorate of Medical Education and Research,
Killpauk, Chennai - 600 010.

3. Apollo Hospitals
Rep. by its Managing Directro,
No.21, Greams Lane, Off Greams Road,
Chennai - 600 006.

..Respondent(s)

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to call for the records relating to the impugned order made in K.Dis.No.24075/H and DII/4/2026 dated 02.04.2026 passed by the 2nd respondent, Quash the same and consequently direct the respondents 1 and 2 to permit transplantation of kidney from the 2nd petitioner to the 1st petitioner by considering their application in Form 11 dated 30.03.2026.

For Petitioner(s):

N.Manoharan
R.Renukadevi
A.Adhishree
S.Shrish



Order

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The writ petitioners 2 and 3 are the mother and father of the first petitioner. They are citizens of Bangladesh. The first petitioner has renal issues and is presently on dialysis. Since medical facilities in Bangladesh were not found to be adequate, the writ petitioners have come down to Chennai on medical visas to avail better treatment.

2. The first petitioner was admitted in the Apollo Hospital, Chennai. The nephrologists diagnosed his condition as “end-stage renal chronic kidney disease”. He advised the first petitioner to undergo kidney transplantation in November 2025 itself. Due to unstable political conditions then prevailing in Bangladesh, the petitioners were unable to obtain what is known as the “e-Apostille certificate” from the Ministry of Foreign Affairs. The said certificate was obtained on 15.02.2026. The second petitioner who is the mother of the first petitioner had come forward to donate one of her kidneys. The requisite compatibility tests were undertaken and it was opined that the second petitioner can very well donate her kidney. However, for doing so, prior approval of the second respondent Authorisation Committee was required. Hence, an application was submitted before the second respondent committee.



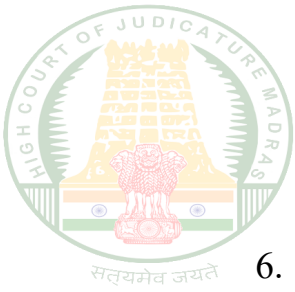
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The committee conducted enquiry with the assistance of an interpreter since the petitioners were conversant only in Bangla / Bengali.

3. During the course of the enquiry, certain questions were posed to the parents of the first petitioner and it appears that there was some miscommunication. The applications submitted by the petitioners were rejected on the ground that the spousal relationship between the petitioners 2 & 3 was not established. Challenging the same, this writ petition has been filed.

4. The learned counsel appearing for the petitioner took me through the contents of the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

5. Per contra, the learned Government Counsel appearing for the respondents submitted that this Court should take note of the fact that there is large-scale trafficking in human organs and that, therefore, this Court should not ordinarily review the decision taken by the Expert Committee constituted for that purpose. He called upon this Court to sustain the impugned order and dismiss the writ petition.



6. I carefully considered the rival contentions and went through the materials on record. The applicable provisions are Sub-sections 1-A, 5 & 6 of Section 9 of the Transplantation of Human Organs and Tissues Act, 1994 and Rule 20 of the Transplantation of Human Organs and Tissues Rules, 2014. They read as follows:-

“9.Restrictions on removal and transplantation of human organs or tissues or both...

(1A) Where the donor or the recipient being near relative is a foreign national, prior approval of the Authorisation Committee shall be required before removing or transplanting human organ or tissue or both:

Provided that the Authorisation Committee shall not approve such removal or transplantation if the recipient is a foreign national and the donor is an Indian national unless they are near relatives.

(5) On an application jointly made, in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorisation Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the rules made thereunder, grant to the applicants approval for the removal and transplantation of the human organ.



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WEB COPY (6) If, after the inquiry and after giving an opportunity to the applicants of being heard, the Authorisation Committee is satisfied that the applicants have not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the application for approval.

“20 - Procedure in case of foreigners - When the proposed donor or the recipient are foreigners;

(a) a senior Embassy official of the country of origin has to certify the relationship between the donor and the recipient as per Form 21 and in case a country does not have an Embassy in India, the certificate of relationship, in the same format, shall be issued by the Government of that country;

(b) the Authorisation Committee shall examine the cases of all Indian donors consenting to donate organs to a foreign national (who is a near relative), including a foreign national of Indian origin, with greater caution and such cases should be considered rarely on case to case basis:

Provided that the Indian living donors wanting to donate to a foreigner other than near relative shall not be considered.”



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The expression “near relative” has been defined in Section 2(i) of the Act as meaning spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or granddaughter.

7. The question that calls for consideration is whether the Authorisation Committee adopted the right approach while considering the application submitted by the writ petitioners. The donor can be a near relative or a third party. When the application claims that the donor is a near relative, the Authorization Committee was required to test the veracity of this claim (Section 9 of the Act). Rule 18 of the Transplantation of Human Organs and Tissues Rules, 2014 has set out the procedure to be adopted in such cases. Sub-rules 1 & 2 of Rule 18 read as follows:-

“(1) Where the proposed transplant of organs is between near relatives related genetically, namely, grandmother, grandfather, mother, father, brother, sister, son, daughter, grandson and granddaughter, above the age of eighteen years, the competent authority as defined at rule 2(c) or Authorisation Committee (in case donor or recipient is a foreigner) shall evaluate;

(i) documentary evidence of relationship e.g. relevant birth certificates, marriage certificate, other relationship certificate from Tehsildar or Sub-divisional magistrate or Metropolitan Magistrate or Sarpanch of the Panchayat, or similar



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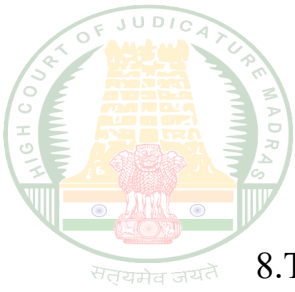
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other identity certificates like Electors Photo Identity Card or AADHAAR card; and

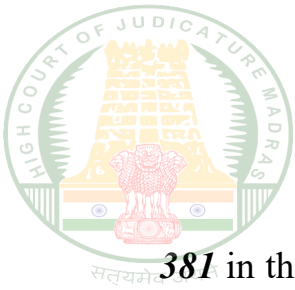
(ii) documentary evidence of identity and residence of the proposed donor, ration card or voters identity card or passport or driving license or PAN card or bank account and family photograph depicting the proposed donor and the proposed recipient along with another near relative, or similar other identity certificates like AADHAAR Card (issued by Unique Identification Authority of India).

(2) If in the opinion of the competent authority, the relationship is not conclusively established after evaluating the above evidence, it may in its discretion direct further medical test, namely, Deoxyribonucleic Acid (DNA) Profiling.”

It is true that if the documentary evidence submitted by the applicants does not conclusively establish the near relationship between the donor and the recipient, the competent authority can take recourse to DNA test. But this move cannot be lightly or casually taken. Sub-rule 2 confers discretion on the authority and this discretion has to be exercised with utmost care. “Mother” is assigned a sacred position in Bharatiya culture. When a person claims that she is the mother of so and so and it is accepted, a statutory authority will not normally be justified in rejecting the claim.

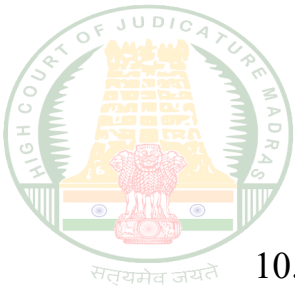


8. The expression “conclusively establish” found in Sub-rule 2 calls for some discussion. It does not carry any technical meaning as set out in the law of evidence. “Proof” and “presumption” are concepts which are employed by courts of law. An Authorisation Committee is not expected to adopt such legal standards of proof. On the other hand, it should approach the issue from a commonsense point of view. The authority will have to satisfy themselves that the documents produced by the applicants are genuine. Once this threshold is crossed, all the documents will have to be cumulatively considered. It is the net effect that is important. No document should be seen in isolation. If by considering all the documents as a whole, a reasonable person’s commonsense is satisfied, that is the end of the matter. Such an approach has to be adopted considering the overall statutory scheme. The applicants are in dire need of organ transplantation. Their applications have to be disposed of expeditiously. They can at best produce their birth certificates, family ration cards, aadhar cards, school certificates etc., If there is no discrepancy among them and the claim put forth in the application as to relationship stands probalised, it should be taken that the claim has been conclusively established. The standard of proof cannot be placed at a high threshold. Taking a cue from the observations of the Hon’ble Supreme Court in *Gangadhar Behera v. State of Orissa (2002) 8 SCC*



381 in the context of applying the rule of benefit of doubt, I would observe that the Authorisation Committee must not nurture fanciful doubts or lingering suspicion. There cannot be vague hunches or abstract speculation. A reasonable doubt is not an imaginary, trivial or merely possible doubt but a fair doubt based upon reason and commonsense. If the documentary evidence produced by the applicants establishes the near relationship by applying one's commonsense, approval ought to be given.

9. In case, clarification is called for, the Committee is obliged to revert to the applicants. This is a mandate set out in Rule 17(2). This calls for a dialogic approach. The applicants must be given every opportunity to convince the Committee about the veracity of their claim. As in this case, undue importance must not be given to the oral testimony. The applicants might be appearing for the very first time in an official enquiry. There could be language barriers. If the oral testimony is at variance with the documentary evidence, the documentary evidence is in favour of the applicant, it is the document that should be preferred. The endeavour of the Committee should not be to reject the application but to find out the truth.



10. In the case on hand, the applicants submitted the following records to establish their relationship:-

- (i) Passport issued to the petitioners by the Government of Bangladesh
- (ii) Visa issued to the petitioners
- (iii) Application in Form I of the Donor / second petitioner
- (iv) Notarized affidavit dated 07.01.2026 of the first and second petitioner
- (v) HLA/DNA report in Form 5 dated 19.03.2026
- (vi) Birth Registration Certificate of the 1st petitioner, dated 16.03.2016 issued by the Govt. of Bangladesh along with verification records
- (vii) 10th standard / SSC result of the 1st petitioner
- (viii) National ID Card issued by the Govt. of Bangladesh dated 10.09.2018 issued to the petitioners 2 & 3
- (ix) E-Apostille Certificate dated 15.02.2026 issued by the Chief Judicial Magistrate, Pabna and certified by the Assistant Secretary, Ministry of Foreign Affairs
- (x) Family Certificate dated 15.10.2025 issued by the Kashinathpur Union Parishad to the petitioners
- (xi) Form 21 / Relationship Certificate and No-Objection Certificate



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issued to the petitioners 1 & 2 by the Bangladesh Deputy High Commission, Chennai

(xii) Family Photographs, blood grouping reports, Psychiatrist Fitness reports dated 11.03.2026 issued to the petitioners 1 & 2.

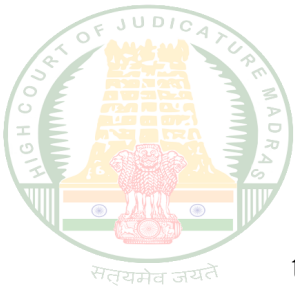
In the case on hand, the applicants have even given the DNA Report along with the e-Apostile Certificate.

11. Some remarks on Apostile certificate would be in order. Apostille certificate is a standard certification provided under the Hague Convention for the purpose of authenticating documents used in foreign countries. It is acceptable in all member-countries of the Convention. India is a signatory to the Hague Apostille Convention, 1961. The relevant Articles of the Hague Convention are as under:-

Article 1 : The present Convention shall apply to the public documents, which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

(a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including



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those emanating from a public prosecutor, a clerk of a court or a process-server ("huissier de justice");

- (b) administrative documents;
- (c) notarial acts;
- (d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

Article 2 : Each contracting State shall exempt from legislation the documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, Legislation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced, certify the authenticity of the signature, the capacity in which the person signing the documents has acted and, where appropriate, the identity of the seal or stamp which it bears.

As per Article 51(c) of the Constitution of India, the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. Since some institutes and organisations in India insisted on an additional layer of verification of the documents by the Mission in that country, the Ministry of External Affairs (CPV Division) vide



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office memorandum bearing No.Q/OI/433/2/2020, dated 18.11.2020 issued a clarification which reads as follows:-

Ministry of External Affairs
(CPV Division)

Room No.20, Patiala House Annexe,
Tilak Marg, New Delhi -110001

No. Q/OI/433/2/2020

November 18, 2020

OFFICE MEMORANDUM

The Hague Apostille Convention, 1961, abolishes the requirement of legalization of foreign documents for use in any member country, once an Apostille certificate (including e-Apostille) has been issued by a competent authority of the country where the document originates.

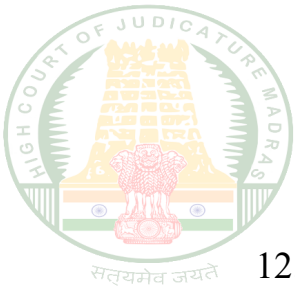
2.It has been brought to the notice of this Ministry that some institutes/organizations/establishments in India demand an apostilled document of a member country to be further attested by the Indian Mission/Post in that country. It is clarified that no further attestation or legalization of an apostilled document should be required in India as India is a member of the Hague Apostille Convention. An apostilled document should, therefore, be treated as legalized document in India by all concerned, in accordance with the international obligation under the Hague Apostille Convention.

3. Copy of a Note on “Issuing and Accepting Apostilles” is enclosed for ready reference. The full text of the Hague Apostille Convention and list of its member countries are available at:

<https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille>

4. To avoid unnecessary hassle caused to general public by demand of further legalization or attestation of an apostilled document, all concerned are requested to disseminate the information contained in paras 1, 2 & 3 above, among organizations/academic establishments, which are under their charge/in their jurisdiction or are affiliated with them. The information may also please be prominently displayed on the official websites.

(Devesh Uttam)
OSD(CPV)

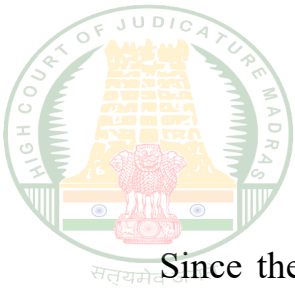


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12. Interpreting the aforesaid office memorandum, the Hon'ble Division Bench of the Bombay High Court in the decision reported in **2025 (4) MhLj 757 (*Thakur Infraprojects Pvt. Ltd. vs. State of Maharashtra*)** held that no attestation or legalisation of an apostilled document is required in India, as India is a member of Hague Apostilled Convention and that an apostilled document should therefore be treated as legalized document in India by all concerned in accordance with International obligation under the Hague Apostille Convention. The Hon'ble Division Bench of the Allahabad High Court in the decision reported in **2024 (2) ADJ 130 (*Naromattie Devi Ganpat vs. Union of India*)** held as follows:

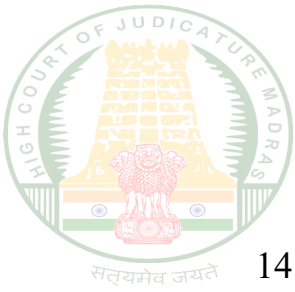
“27.India being a signatory of this Convention is bound to accept any public document issued by the other contracting party (country). An 'Apostille' document should, therefore, be treated as legalized document in India by all concerned, in accordance with the international obligation under the Hague Apostille Convention.”



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Since the petitioners have produced the e-Apostille certificate, the documents produced by them must be treated as authenticated documents which are worthy of credence. Apart from these documents, the petitioners have also filed Form 4 given by a registered medical practitioner certifying the medical fitness of the second petitioner in compliance with the requirements of the Act.

13. The scope of the enquiry should have been confined to ascertaining whether the donor and the recipient are near relatives. The second petitioner had claimed that she is the mother of the first petitioner. The materials on record clearly indicate that the first petitioner is very much the son of the second petitioner. In fact, on this score, the Authorisation Committee did not appear to have entertained any doubt. Instead, it developed doubts about the marital relationship between the second and third petitioners. Such doubt had arisen in the minds of the members of the Authorization Committee because in response to the question as to where the wedding took place, the second petitioner and the third petitioner seem to have given varying answers. That is why, the Committee concluded that the marital relationship between the second petitioner and third petitioner was not established.



14. The approach of the Authorization Committee has to be interfered with for more than one reason. The only relevant question which the Committee should have posed to itself was whether the first petitioner (recipient) was the son of the second petitioner (donor). Whether the third petitioner was the husband of the second petitioner was irrelevant. It is well settled that if an administrative decision is vitiated by an irrelevant consideration, it is liable to be set aside. On this sole ground, the impugned order is set aside.

15. The next question that calls for consideration is whether the materials on record do establish that the first petitioner was the son of the second petitioner. It is not as if a non-near relative cannot be a donor. The only restriction which is stipulated is that it should not be a commercial transaction. In other words, for altruistic considerations, there must be donation of the organ. In *Sudha Mathesan Vs. Authorisation Committee (Transplantation)* reported in 2024 SCC Online Mad 1633, I had held that in the absence of any credible reason, the statement made by a non-near relative donor that he/she is making the donation out of love and affection has to be accepted as such and taken at its face value. Here is a case whether the donor claims that she is none



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other than the mother of the recipient. The expression “near relative” embraces a host of relations. But the mother-son / mother-daughter relationship can be said to be the closest of all. Vide order dated **21.05.2026** in **W.P.No.20047 of 2026** (*Rita Chaurasia vs Government of Tamil Nadu*), I had observed that the donor – mother cannot be called upon to undergo a DNA test. I had held so because of the availability of abundant evidence to prove and establish the mother–son relationship.

16. Coming to the case on hand, the birth certificate of the first petitioner has been filed. It clearly discloses the name of the second petitioner as mother and the name of the third petitioner as father. The marriage certificate of the petitioners 2 & 3 have also been filed. The applicants on their own submitted the DNA report. From these materials on record, one can very easily come to the conclusion that the petitioners 2 & 3 are wife and husband and the first petitioner was born through their wedlock.

17. The committee should have been little more sensitive when holding that the relationship of the petitioners 2 & 3 has not been established. They have virtually stigmatised the first petitioner who is a minor child. The



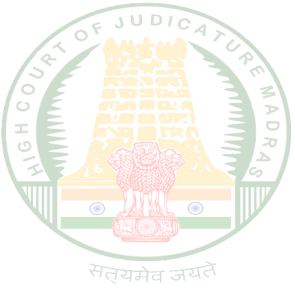
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consequence that would be visited upon the first petitioner ought to have been duly taken note of.

18. I, therefore, hold that the impugned order suffers from misdirection in law and utter non-application of mind. The impugned order is set aside. The Committee is directed to grant permission to the second petitioner to donate one of her kidney to her son, namely, the first petitioner herein. This shall be done immediately. This Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

29-05-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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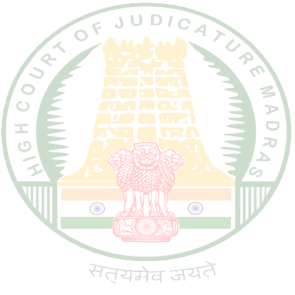
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