

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25TH DAY OF NOVEMBER, 2014

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No.12668/2014 (GM-RES)

BETWEEN:

M/s.Fortis Hospital Ltd.,
Bannerghatta Road,
Bangalore,
Represented by its GPA Holder
Sri Karthik Rajgopal,
Zonal Director,
M/s. Fortis Hospital Ltd.

... PETITIONER

**(By Sri C.V.Nagesh, Sr. Counsel for
Sri K.Suman, Adv.)**

AND:

1. The Principal Secretary and
Appellate Authority,
Health & Family Welfare Department,
Government of Karnataka,
Vikasa Soudha,
Bangalore.
2. The Appropriate Authority for
Transplantation of Human Organs
and Tissues,
Directorate of Health & FW Services,
Anand Rao Circle,
Bangalore – 560 009.
3. Sri Pankaj Rai,
Major in age,
S/o K.K.Rai,
No.6074, "Prestige Shanthiniketan",

Whitefield Main Road,
Bangalore – 560 048.

...RESPONDENTS

**(By Sri D.Aswathappa, AGA for R-1 & 2;
Sri Pankaj Rai – R-3 – Party-in-person)**

This writ petition is filed under Articles 226 & 227 of the Constitution of India, praying to quash the order passed by the 1st respondent – Appellate Authority (i.e., Annx-A) and order dated 26.12.2013 passed by the Appropriate Authority R-2 (Annx-A1) as arbitrary, illegal and unjust.

This petition having been heard and reserved for orders on 29.10.2013, coming on for 'Pronouncement of Orders', this day, the Court made the following:

ORDER

1. Petitioner is a medical hospital managed by M/s. Fortis Hospitals Ltd. According to the petitioner, Fortis Hospital is a global brand in health care services and has super specialty hospitals established all over the globe including major metropolises in India. Petitioner claims that it had made three separate applications to the Director of Health and Family Welfare Services, Government of Karnataka, for grant of requisite sanction/permission to conduct transplant surgeries under three categories i.e., (i) kidney transplantation; (ii) transplantation of liver and other abdominal organs; and (iii) cardiac, pulmonary, cardio-pulmonary transplantation.

2. According to the petitioners, the licensing authority inspected the infrastructure and facilities available in the hospital and being satisfied with the facilities and the manpower available and of the compliance of all the requirements, granted sanction/permission to the hospital on 25.03.2010. Thereafter the hospital began to provide advanced medical treatment for organ failures by performing transplant surgeries in terms of the certificate of registration granted in its favour. The applications filed by the petitioners for permission to conduct transplant surgery are produced at Annexures-B, B1 & B2. The inspection report is produced at Annexure-B3 and the certificate of registration issued has been produced at Annexure-B4.

3. Mrs. Seema Rai, wife of the 3rd respondent – Mr. Pankaj Rai, was suffering from severe diabetes and renal failure. She was undergoing dialysis treatment at the petitioner-hospital. According to the petitioner, she had also registered her name with the Zonal Co-ordination Committee of Karnataka (for short, 'ZCCK') for Cadaver Kidney Transplantation. ZCCK is the regulating agency for transplantation of cadaver organs in Karnataka; whenever a cadaver organ is available, ZCCK

intimates and lines up atleast five recipient patients for transplantation in order to ensure that cadaver organ is grafted to any one recipient and is not lost or wasted for want of blood group cross-match and other compatibility criteria of the recipient.

4. It is the case of the petitioner-hospital that it received a call from ZCCK on 01.05.2010 intimating them of the availability of a kidney for transplantation to Mrs. Seema Rai. Petitioner-hospital informed the same to Mrs. Seema Rai and her family members and she was immediately admitted for an emergency transplant surgery on the night of 01.05.2010. Petitioners urge that doctors/medical experts of the petitioner-hospital appraised Mrs. Seema Rai and her family members of the risk involved in the transplantation surgery before the patient was moved to the operation theatre. In the meantime, ZCCK also informed that pancreas was also available from the said cadaver donor, since no one else at that point of time had registered with ZCCK for pancreas. As Mrs. Seema Rai could get maximum benefit from the transplantation of pancreas as well, petitioners contend that the same was informed to her and her family members; the risk of surgery involved was also explained

to them, whereafter, they consented for transplant surgery of both the kidney and the pancreas.

5. On the early morning of 02.05.2010, kidney transplant surgery was performed on Mrs. Seema Rai. Thereafter, pancreas transplantation was carried out. Mrs. Seema Rai developed serious complication called disseminated intravascular coagulation (abnormal bleeding). On the third day of the surgery, she developed high fever and died the following day due to sepsis.

6. On 30.05.2010, 3rd respondent lodged a complaint before the J.P.Nagar Police Station against the two doctors of the petitioner-hospital complaining acts of negligence on their part in performing the surgery. Another complaint was lodged on 02.06.2010 before the Karnataka Medical Council (for short, 'KMC'). The KMC examined the complaint regarding medical negligence. After recording the evidence and hearing the concerned, KMC passed an order that there was no negligence or violation of code of medical ethics on the part of the doctors attached to the petitioner-hospital. However, a warning was administered to the petitioner-hospital to follow the instructions given by the authority under the Transplantation of Human

Organs and Tissues Act, 1994 (for short, 'the Act'), to take measures to control infection and to submit a compliance report to it.

7. The 3rd respondent filed a complaint before the Karnataka State Consumer Disputes Redressal Commission against the petitioner-hospital complaining of medical negligence and sought for compensation. On 31.08.2010, the 3rd respondent lodged a complaint with the Department of Health and Family Welfare Services. The complaint was entrusted to the Member Secretary of the Appropriate Authority – Dr. V.Raju, who after conducting a preliminary inquiry, gave a report stating that the treatment given to Mrs. Seema Rai was the appropriate one and the petitioner was not at fault. This was followed by a detailed inquiry conducted by the Appropriate Authority which is the licensing authority under the provisions of the Act. Findings were recorded on 22.12.2010 holding that there was no violation of the provisions of Section 12 of the Act and that consent was obtained for transplantation of pancreas as well.

8. Thereafter, the 3rd respondent filed a complaint against the Chairman of the Appropriate Authority before the Karnataka Lokayuktha. The Lokayuktha sought for a report

from its technical committee which consisted of three medical doctors. The technical committee submitted a report. Based on the report of the technical committee of Lokayuktha, which was against the views recorded by the Appropriate Authority, a show cause notice dated 13/14.07.2011 was issued by the Director of Health and Family Welfare Services to the petitioner-hospital. Petitioner-hospital sent a response to the show cause notice. The Appropriate Authority held a meeting on 16.08.2011 and concluded that petitioner-hospital was not authorized to conduct transplantation of pancreas and reversed its own earlier findings and cancelled the license granted to the petitioner-hospital for transplantation of human organs vide order produced at Annexure-N1. It is urged by the petitioner that, Appropriate Authority has exercised the power of review which was not vested in it and has thus acted without jurisdiction in passing Annexure-N1 – order.

9. It is relevant to note here that the 3rd respondent in the meanwhile had approached the High Court by filing W.P.No.6523/2011 challenging the order dated 22.12.2010 passed by the Appropriate Authority exonerating the petitioner-hospital. The said writ petition was disposed of on 08.09.2011.

This Court, taking note of the subsequent developments, in that, the very same authority acting as Chairman of the Appropriate Authority as well as the Committee for Human Organs Transplantation, had taken note of the situation regard being had to the report submitted by the Lokayuktha and had issued a notice dated 13/14.07.2011 to the 4th respondent-hospital alleging certain acts of negligence which were required to be justified by the hospital by submitting their reply, felt that correctness of the order dated 22.12.2010 challenged in the writ petition need not be decided. However, it was clarified by this Court that as the Commissioner had the benefit of the subsequent report of the Lokayuktha, based on which notice dated 13/14.07.2011 had been issued to the hospital, it would be sufficient if a direction was issued to the Commissioner to conduct the inquiry independent of the observations made in the order dated 22.12.2010 and that independent findings shall be recorded by the Commissioner, without being in any manner influenced by the order dated 22.12.2010, which shall have no bearing whatsoever in the matter. This order dated 08.09.2011 has attained finality and it is produced at Annexure-Q to the writ petition.

10. It is urged by the petitioner that, the Appropriate Authority had passed the order cancelling the license granted to the petitioner-hospital for transplantation of human organs on 16.08.2011, even before the disposal of the writ petition on 08.09.2011, hence the Appropriate Authority had exercised the power of review without authority of law. It is also urged that when there is no power of review conferred on the Appropriate Authority under the statute, such a power cannot be conferred by the order passed by this Court and hence, order passed by the Appropriate Authority is illegal.

11. Aggrieved by the order dated 12.09.2011 passed by the Appropriate Authority, petitioner-hospital filed an appeal before the Appellate Authority under Section 17 of the Act. The Appellate Authority dismissed the appeal vide its order dated 24.11.2011 as per Annexure-A produced along with the writ petition. In the circumstances, aggrieved by the order passed by the Appropriate Authority on 12.09.2009 confirmed in appeal by the Appellate Authority vide order dated 24.11.2011, the petitioner-hospital filed W.P.No.45437/2011. The said writ petition was allowed on 07.11.2012. The orders passed by both

the authorities were set aside and the matter was remitted back to the Appropriate Authority.

12. The learned Single Judge held that Appropriate Authority had placed reliance on certain documents to pass the impugned order, cancelling the registration certificate of the hospital without serving copies of the same on petitioner and without providing an opportunity to meet the allegations and the opinion expressed by the technical committee. Hence, provisions of Section 16(2) of the Act were held to have been violated resulting in miscarriage of justice, as principles of natural justice ought to have been violated. This Court also found that the contention raised by the Counsel for the hospital regarding the authority or power in the appropriate authority to re-open the case and/or review its earlier decision was kept open to be decided, as the matter itself was remitted for fresh consideration. While remitting the matter for fresh consideration, petitioner-hospital was disallowed to perform transplantation operations as per the registration certificate.

13. It is also relevant to notice here that, 3rd respondent – Major Pankaj Rai had also filed W.P.No.12721-724/2012, challenging the findings of the Chairman – Appropriate

Authority in the proceedings of the meeting dated 16.08.2011, in so far as it pertained to issue of informed consent which was answered against the 3rd respondent. In view of the judgment rendered in the writ petition filed by the hospital, the said writ petition filed by the 3rd respondent -- Pankaj Rai was not pressed.

14. The hospital filed W.A.No.8767/2012 only in so far as the learned Single Judge prohibited petitioner-hospital from carrying on transplantation of human organs till the disposal of the complaint by the Appropriate Authority. The Division Bench of this Court allowed the writ appeal without disturbing the other directions issued by the learned Single Judge, making it clear that the appellant-hospital shall not perform any organ transplantation in respect of pancreas till the complaint was disposed of on merits, finally. It further directed that the Appropriate Authority shall meticulously comply with the directions issued by the learned Single Judge and thereafter give a reasonable opportunity of being heard to both the parties and then pass appropriate orders within ten weeks, without being influenced by the observations made by the Division Bench or by the learned Single Judge.

15. After remand, the Appropriate Authority passed an order dated 26.12.2013 holding that the hospital was not granted registration certificate for transplantation of pancreas and it had violated the provisions of the Act in conducting transplantation of pancreas on Mrs. Seema Rai. This order was challenged in appeal before the Appellate Authority by filing an appeal under Section 17 of the Act. The Appellate Authority dismissed the appeal vide its order dated 10.03.2014. In the circumstances, aggrieved by the orders passed by the Appropriate Authority confirmed in appeal by the Appellate Authority, the present writ petition is filed.

16. Mr. C.V.Nagesh, learned Senior Counsel has urged following contentions:-

(i) That the Appropriate Authority as per the provisions of the Act had no power to review its own order passed earlier. Though a contention was taken in this regard, and although this Court in the writ petition filed earlier and as also in the writ appeal made it clear that the question regarding power of the Appropriate Authority to review its own order had to be decided by it, the Appropriate Authority has not decided the

said issue regarding its jurisdiction in reviewing the order. The Appellate Authority though noticed the said contention, failed to record any finding on the same despite making a passing reference to the judgment relied on by the writ petitioner-hospital.

(ii) It is urged that the Appellate Authority decided the appeal with a pre-determined mind as is evident from the proceedings dated 22.02.2014. Being a quasi-judicial authority, it could not have mechanically proceeded to hold in one line that the appeal stood dismissed without assigning any reasons and without dictating the order in the open court. He invites the attention of the Court to the memo filed before the Appellate Authority on 24.04.2014 seeking grant of certified copy of the entire proceedings sheet of the case and the order passed on 22.02.2014. Reliance is placed on the judgment in the case of **UNION OF INDIA AND OTHERS VS MANAGER, M/S. JAIN & ASSOCIATES - (2001)3 SCC 277** (paragraph 12); and **STATE OF PUNJAB & OTHERS VS JAGDEV SINGH TALWANDI - AIR 1984 SC 444**.

(iii) It is urged that the order passed by the Appropriate Authority was not signed by one of the members viz., Joint

Director of Health and Family Welfare and that the Director of Medical Education who was one of the members was not present when the matter was heard as was evident from the order sheet. He relies on the judgment in the case of **VIJAYA BANK, BY ITS CHIEF MANAGER VS THE SECRETARY TO THE GOVERNMENT OF KARNATAKA, REVENUE DEPARTMENT & OTHERS - ILR 2008 KAR 1481**, to contend that such an order is void and illegal.

(iv) It is urged that as per Section 14(2) read with Form No.11 appended to the Act, there is no requirement of filing separate applications for different organs and in terms of Section 15(2), if the Appropriate Authority chooses to reject the request, the rejection shall be in writing and reasons have to be recorded, against which the aggrieved party has a right of appeal under Section 17. In the absence of any such rejection of request for permission to transplant pancreas, the authorities below were in error in recording findings to the contrary.

(v) It is also contended that as per Rule 9C(B), liver and other abdominal organs are grouped in one category and therefore, one application was enough seeking permission for

registration of the said organs viz., liver and pancreas, the experts required for liver transplantation are also experts required for transplantation of pancreas, therefore, there is no basis for the contention that separate application and registration was necessary for pancreas.

(vi) It is vehemently urged that the 3rd respondent was in the habit of making complaints before various authorities and pressurizing them to take up the matter and in this regard, first a police complaint was filed, then a complaint was filed before the KMC which was closed after conducting enquiry exonerating the two doctors, thereafter, a complaint was filed before the State Consumer Disputes Redressal Commission. When the Appropriate Authority rejected the complaint, the 3rd respondent approached the Lokayuktha; thereafter, in view of the report submitted by Technical Committee appointed by Lokayuktha, by entertaining another complaint from the 3rd respondent, the Appropriate Authority passed an order recommending cancellation of registration certificate, thus orders impugned in the writ petition are the result of pressure tactics by the 3rd respondent adopted before various authorities

by going to the extent of making all kinds of allegations against these authorities.

(vii) He further urges that the order passed by the Appropriate Authority on 09.11.2010 vide Annexure-M holding that allegations made were not established, has not been challenged so far by filing either an appeal or writ petition.

(viii) It is urged by him that, certificate of registration issued includes transplantation of pancreas. He points out to the additional statement of objections filed in W.P.No.45437/2011 by respondents 1 to 3 therein, to contend that admittedly petitioner-hospital had made application for transplantation of liver which contained pancreas also.

(ix) It is further urged by him that there has been compliance of the provisions contained under Section 12 of the Act. At any rate, the obligation cast as per Section 12 for explaining the effects to the donor and to the recipient is on the doctors and not on the hospital and hence hospital's license could not be cancelled on that ground.

(x) He has lastly contended that the Appropriate Authority had already taken up a stand in the additional statement of

objections that registration was granted for pancreas also before this Court and therefore, they are estopped from urging to the contrary. Reliance is placed on the judgment in the case of **B.U.CHAITANYA VS THE MANAGING DIRECTOR, BMTC DIVISION & ANOTHER - (2011)3 AIR KAR 317** (paragraph 11).

17. The 3rd respondent – Mr. Pankaj Rai who has appeared in person has strongly supported the impugned orders passed. He has principally urged that power of this Court under Article 227 is confined to consideration of any flagrant abuse of fundamental principles of law and justice and does not extend to re-appreciation of evidence except in exceptional situations where grave injustice would otherwise occasion. He places strong reliance in this regard on the judgment in the case of **JAI SINGH & OTHERS VS MUNICIPAL CORPORATION OF DELHI - (2010)9 SCC 385**. He particularly emphasizes the fact that as there are concurrent findings of facts by both the authorities below no interference under Article 227 is called for.

18. He also urges that there has been fraud, suppression and misrepresentation by the petitioner with regard to several material aspects regarding the alleged application filed seeking registration for pancreas and the claim for having obtained

registration for transplantation of pancreas and also the assertion regarding obtaining the consent of the victim for conducting transplantation of pancreas. He has contended that in such circumstances question of raising a defence of violation of natural justice is impermissible. Reliance is placed by him on the judgment in the case of **SECRETARY, AP SOCIAL WELFARE VS SRI PINDIGA SRIDHAR & OTHERS - (2007)13 SCC 352.**

19. He has urged that Annexure-M is only minutes of the meeting and Annexure-M1 dated 22.12.2010 is the order and it was this order that was challenged in W.P.No.6523/2011. He invites the attention of the Court to the order dated 08.09.2011 passed by this Court in the said writ petition (W.P.No.6523/2011), to contend that in this order, this Court clarified that Commissioner who had the benefit of the subsequent report of the Lokayuktha and had issued notice to the hospital based on the same shall, independent of the observations made in the order dated 22.12.2010 proceed in the matter and record independent findings regardless of the order dated 22.12.2010. He further contends that petitioner-hospital applied for registration for only kidney, liver and heart/homograft; the application filed for liver was tampered by

inserting the word 'pancreas' with a different ink. He asserts that petitioner-hospital never applied for pancreas as it did not have either a diabetologist or an endocrinologist required for recommending pancreatic transplant. He has also urged that in Form No.11, the expression 'kidney' which was written on top of 'liver' was erased by using a whitener and 'pancreas' was inserted in the application much later. He has further specifically urged that no hospital having permission to transplant liver have been permitted to perform transplant surgeries of other abdominal organs including pancreas. He takes the court through the certificates of registration of different hospitals produced along with the statement of objections to show that those hospitals were specifically registered for pancreas also. He has urged that even before this Court in the previous proceedings the hospital had made false averments regarding denial of natural justice stating that report of the committee constituted by the Lokayuktha was not furnished to the petitioner-hospital, as indeed the hospital was in possession of the report as on 23.06.2011 much before show cause notice dated 13/14.07.2011 was issued.

20. It is next contended by him that the risks involved were never explained as per Condition printed on the back of the application for certificate of registration and as per Section 12 of the Act. He also urges that the patient Mrs. Seema Rai was not registered to receive pancreas as she was registered for transplantation of kidney only, therefore, the hospital had committed illegality in harvesting pancreas and hence, there was violation of Sections 9, 18 & 19 of the Act.

21. He has contended that the Chairman of the Appropriate Authority only signs the order of cancellation of registration and therefore, order produced at Annexure-M1 dated 22.12.2010 which was marked to the petitioner was challenged in W.P.No.6523/2011 and that Annexure-M order dated 09.11.2010 was in the nature of minutes or proceedings of the committee hence there was no substance in the argument that order dated 09.11.2010 was the real order and the same had not been challenged.

22. It is submitted by him that totally three applications had been filed and Rs.3,000/- was paid and no separate application for pancreas was filed. He refers to the check list provided by the hospital disclosing that application was filed only for liver. A

copy of the check list is produced along with a memo. In the check list, there is no reference to transplantation of pancreas and reference is made only to liver transplantation and the demand draft referred there was only for Rs.1,000/-.

23. He has referred to Rule 7 of the Rules and the format of Form no.11, wherein reference is made only to 'organ' and not to 'organs'. He has pointed out by referring to the definition of the term 'human organ' contained in Section 2(h), that same refers only to a particular organ.

24. He urges that Dr. Ramacharan who conducted transplantation of pancreas was a member of the Authorization Committee (ZCCK) and therefore, he could not have conducted the surgery as per Rule 4A read with Clauses (a) & (b) of Section 9(4). It is also urged by him that only the patient can sign the consent form, whereas Mrs. Seema Rai has not signed the same and the signature found on the form was not admittedly her signature. It is urged that her daughter was made to sign under strange circumstances which have been indeed explained by her in her statement. He has placed strong reliance on the judgment in the case of **SAMIRA KOHLI VS DR. PRABHA MANCHANDA & ANOTHER - AIR 2008 SC 1385** (paragraph 32), to

emphasize how consent has to be obtained in order to make it a valid consent for transplantation.

25. He further points out that the Appellate Authority has not committed any illegality in passing the order and no prejudice whatsoever has been caused to the hospital as it was fully heard in the matter and as the conclusion reached by the Appellate Authority are supported by cogent reasons. He has placed reliance on the judgment of the Apex Court in the case of **HP SCHEDULED TRIBES EMPLOYEES FEDERATION & ANOTHER VS HIMACHAL PRADESH SVKK & ORS. – (2013)10 SCC 308**, to urge that where no prejudice is shown to have been caused there could be no interference only on the ground that principles of natural justice had been violated.

26. Mr. Aswathappa, learned Additional Government Advocate has supported the stand taken by the 3rd respondent.

27. Having heard the learned Counsel for all the parties, the point that arises for consideration in this case is,

“whether the order passed by the Appropriate Authority confirmed in appeal by the Appellate Authority suffers from any illegality warranting interference by this Court?”

28. To answer the above point, answer to the following questions would be essential.

(a) whether the Appropriate Authority has exercised the power of review while passing the order dated 26.12.2013? If yes, whether the Appropriate Authority has acted illegally and without authority of law in exercising such a power?

(b) whether the findings recorded by the Appropriate Authority confirmed in appeal, holding that petitioner-hospital was not registered for transplantation of pancreas suffers from any illegality or perversity?

(c) whether the order passed by the Appellate Authority is legally sustainable?

29. The first point for consideration is, whether there has been review of the order dated 16.08.2011 by the Appropriate Authority and if so, whether such review was without authority of law? It is not in dispute that the Appropriate Authority had passed an order on 09.11.2010 on the allegations made by Mr. Pankaj Rai, holding that the allegation regarding violation of Sections 9 & 12 of the Act and as regards acts of negligence imputed against the hospital and the doctors was not conclusively proved. However, the Appropriate Authority agreed

with the suggestion of the 3rd respondent – Mr. Pankaj Rai regarding certain lapses and hence decided to issue notice to the hospital authorities seeking explanation as to why action should not be initiated for such lapses in not taking adequate aseptic precautions during pre and post-operative period which could be the possible reason for the complications in the case. The committee also strongly felt that it was desirable to separately issue detailed guidelines to all the concerned so that hospital authorities take due diligence and care by following all the required procedure to secure and safeguard the life and health of the patients.

30. It is relevant to note here that while these proceedings were drawn by the Enquiry Committee of the Appropriate Authority on 09.11.2010, formal order reiterating the same was passed on 22.12.2010. It is this order dated 22.12.2010 that was called in question in W.P.No.6523/2011. The 3rd respondent had also approached the Lokayuktha making a grievance regarding the illegalities committed by the hospital and the doctors. The Lokayuktha had referred the matter to a technical committee. A report had been submitted by the committee which was taken note of by the Commissioner for

Health and Family Welfare, Government of Karnataka and had issued a notice dated 13/14.07.2011 to the petitioner hospital. In this background, this Court specifically directed the Commissioner to conduct enquiry pursuant to the notice already issued by him on 13/14.07.2011 independent of the observations that had been made in the order dated 22.12.2010 and that the enquiry to be held pursuant to the notice dated 13/14.07.2011 was ordered to be held on the material which would be available before the Commissioner and an independent finding was ordered to be recorded by the Commissioner. It was specifically made clear that the order dated 22.12.2010 shall have no bearing whatsoever on the matter.

31. It is thus clear that this Court took note of the fact that as per the report of the Lokayuktha, the Commissioner had issued a notice to the hospital and was seized of the matter and therefore, a fresh enquiry was to be held without referring to the findings arrived at as per the earlier report/order dated 22.12.2010. It is thus evident that action of the Appropriate Authority/Commissioner in initiating a fresh enquiry by issuing show cause notice dated 13/14.07.2011 has been approved by

this Court. It transpires that even before this Court passed the said order dated 08.09.2011, the Commissioner, Health and Family Welfare Services, had conducted fresh enquiry pursuant to the show cause notice issued and pursuant to the report of the Lokayuktha dated 20.05.2011 and had drawn the proceedings holding that Fortis Hospital was only authorized to perform organ transplantation of Kidney, Liver and Homograft (permitted only usage) and not pancreas. Its contention that the hospital indeed had permission to conduct transplantation of liver and abdominal organs including pancreas was not accepted. The authority also came to the conclusion that hospital had not maintained appropriate post-operative infection control measures which was a mandatory requirement to be followed in cases of transplantation. Therefore, it recommended for cancellation of certificate of registration issued to the petitioner-hospital.

32. It is also evident and apparent from the proceedings earlier drawn by the Appropriate Authority on 09.11.2010, that the Committee had not gone into the question regarding the petitioner-hospital having been duly registered for transplantation of pancreas also and into the question whether

registration of the hospital for transplantation of liver would include pancreas as well. On the other hand, it had come to the conclusion that Dr. Ramesh of ZCCK had telephonically authorized Dr. Ramacharan of Fortis Hospital, to retrieve kidney and pancreas to be implanted to Mrs. Seema Rai. The authorization through telephonic communication had been attributed to the urgency involved in the matter and therefore, the committee taking note of the emergent situation was not inclined to agree with the allegation made by Mr. Pankaj Rai. It had also opined that perusal of the certificate issued by the competent authority revealed that Fortis Hospital had been authorized to conduct multi-organ transplant.

33. Further, so far as lapses regarding omission to take aseptic precautions, the committee in its earlier order had decided to issue fresh notice to the hospital. It had also strongly felt to separately issue detailed guidelines for taking due diligence and care by following the required procedure for safeguarding the life and health of the patients. Therefore, it is not as though order dated 09.11.2010 completely exonerated the hospital and that the Appropriate Authority had no power to initiate action atleast in so far as matters for which certain

lapses were noticed for which action was proposed to be taken in future. It cannot also be said that the Appropriate Authority could not have initiated fresh proceedings for further investigation particularly when the Lokayuktha having got conducted an enquiry through the Technical Committee had forwarded the report submitted by the Health Foundation for information to the Government for taking further necessary action as is evident from the proceedings of the Lokayuktha produced at Annexure-Q1, and the report of the Technical Committee dated 20.05.2011 which is produced at Annexure-N2. In addition, this Court also was of the view in W.P.No.6523/2011 that fresh enquiry shall be conducted pursuant to the notice issued by the Commissioner as a result of the report of the Lokayuktha. Although this order was passed by this Court, without being appraised by the parties about the passing of the order dated 16.08.2011, it does not take away the fact that this Court also was of the view that a fresh enquiry had to be conducted and the findings already recorded earlier shall not have any bearing on the enquiry to be conducted afresh.

34. If the above factors are all cumulatively taken into consideration, it cannot at all be said that the Appropriate Authority on its own initiated proceedings for review of its earlier order after the proceedings had reached finality and therefore, such an order could be characterized as one passed without authority of law. The proceedings before the Lokayuktha, the report of the Technical Committee and the Lokayuktha, the specific observations made by the Appropriate Authority in its order dated 09.11.2010 reserving right to initiate action against the hospital, absence of any positive findings on the issue raised in the said order coupled with the directions issued by this Court, though post-dated would make it very clear that the order passed by the Appropriate Authority on 16.08.2011 cannot be regarded as one without authority of law having been made illegally exercising the power of review.

35. The next point for consideration is, whether the hospital was duly registered for transplantation of pancreas. The preamble to the Act (Act 42 of 1994) makes it clear that it is enacted to provide for regulation of removal, storage and transplantation of human organs and tissues for the therapeutic purposes and for the prevention of commercial

dealing in human organs and tissues. Section 2(h) defines the term 'human organ' as 'any part of a human body consisting of structured arrangement of tissues, which, if wholly removed cannot be replicated by the body'. Section 2(p) defines the term 'transplantation' to mean, 'grafting of any human organ or tissue or both from any living person or deceased person to some other living person for therapeutic purposes'. Section 14 of the Act deals with registration of hospitals engaged in removal, storage or transplantation of human organs or tissues or both. There is express prohibition for any hospital to carry on such activities unless such hospital is duly registered under the Act. Sub-clause (2) of Section 14 mandates that every application for registration shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed. Sub-clauses (3) & (4) of Section 14 may be usefully extracted. They read as under:

“(3) No hospital shall be registered under this Act unless the Appropriate Authority is satisfied that such hospital is in a position to provide such specialized services and facilities, possess such skilled manpower and equipments and maintain such standards as may be prescribed.

(4) No hospital shall be registered under this Act, unless the Appropriate Authority is satisfied that such hospital has appointed a transplant co-ordinator having such qualifications and experience as may be prescribed.”

36. Section 15 deals with certificate of registration. It states as under:

“15. Certificate of registration.- (1) The Appropriate Authority shall, after holding an inquiry and after satisfying that the applicant has complied with all the requirements of this Act and the rules made thereunder, grant to the hospital or to the Tissue Bank, as the case may be, a certificate of registration in such form, for such period and subject to such conditions as may be prescribed.

(2) If, after the inquiry and after giving an opportunity to the applicant of being heard, the Appropriate Authority is satisfied that the applicant has 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 registration.”

37. As per Section 17, a person aggrieved by the rejection of the application for approval may file an appeal to the State Government against the order of the authorization committee.

38. It is also useful to refer to the Transplantation of Human Organs Rules, 1995. Rule 7 deals with registration of hospital for organ transplantation. It requires that an application for registration shall be made to the Appropriate Authority as specified in Form-11 and the application shall be accompanied by a fee of Rs.1,000/- payable to the Appropriate Authority by means of a bank draft or a postal order. Thereafter, the Appropriate Authority is enjoined with a duty to hold an enquiry and after satisfying itself that the applicant has complied with all the requirements, grant a certificate of registration in Form-12 which will be valid for a period of five years from the date of its issue. As per Rule 9A(7), one of the conditions for grant of certificate of registration is that, 'experts (other than the experts required for relevant transplantation) of relevant and associated specialties including but not limited to and depending upon the requirement, the experts in internal medicine, diabetology, gastroenterology, nephrology, neurology, pediatrics, gynecology, immunology and cardiology, etc., should be available to the transplantation centre. The Rule makes it very clear that no hospital shall be granted certificate of registration under the Act unless it fulfills the said requirement

of specialized services. Rule 9C(B) which pertains to transplantation of liver and other abdominal organs and the experts and their qualifications states that MS(General) Surgery or equivalent, qualification with adequate post MS Training in an established centre with a reasonable experience of performing liver transplantation as an active member of team was needed.

39. It is also useful to refer to Form-11 which is the prescribed form for submitting application for registration of hospital to carry on organ transplantation. Col. B pertains to surgical team. At Sl. No.5 in Col. B, it is stated as 'trained persons available for transplantation (please specify organ for transplantation)'. At the end of Form-11, the last sentence reads that 'bank draft/cheque of Rs.1,000/- is being enclosed'.

40. There is serious dispute in this case about the hospital having applied for registration for pancreas. Hospital has filed three applications separately paying Rs.1,000/- towards each application by way of demand draft. Contention of the 3rd respondent has been that pancreas was not mentioned in the application and only liver was mentioned. But, subsequently by tampering with the application, word 'pancreas' has been

inserted. In this regard, 3rd respondent has lodged a complaint making serious allegations.

41. The contention of the Counsel for the petitioner is that as per Rule 9C(B) transplantation of liver and other abdominal organs is categorized as one category for the purpose of requirement of experts and their qualifications. The same experts having the qualifications as mentioned in Rule 9C(B) as experts required for transplantation of liver are also required for transplantation of other abdominal organs which includes pancreas, therefore, once it is shown that application was filed for transplantation of liver and other abdominal organs and once the hospital is found registered for transplantation of liver and particularly when its request for pancreas was not rejected, it has to be held that registration certificate issued also includes registration for pancreas. He also points out in this regard to the stand taken by the Appropriate Authority before the Lokayuktha and the stand taken by the State Government and the Appropriate Authority in the additional statement of objections filed before this Court in earlier proceedings. Hence, it is urged by the learned Senior Counsel that the Appropriate

Authority was estopped from taking a different view in the matter.

42. It has to be stated, at the outset, that whether certificate of registration issued for liver holds good and includes other abdominal organs including pancreas is a matter that has to be examined with reference to the legal requirement as per the statute, the rules framed and Form-11 prescribed. This requirement cannot depend on the stand of the Appropriate Authority or the hospital or for that matter of the 3rd respondent. It is well established that principle of estoppel cannot be applied to a statute. A statutory requirement cannot be dispensed with by applying the principle of estoppel.

43. Whether petitioner has resorted to tampering of the application by inserting the word 'pancreas' and whether the application if closely scrutinized by referring to handwriting and forensic experts would reveal tampering and manipulation is a matter which this court will not examine in this case, particularly because 3rd respondent has lodged a complaint in this regard and the matter is seized by the competent authorities.

44. The undisputed fact is that, certificate of registration issued in favour of Fortis Hospital which is produced at Annexure-1 along with statement of objections filed by the 3rd respondent shows that it is granted for performing organ transplantation of (1) kidney, (2) liver, (3) homograft (permitted only usage). This certificate is issued on 20.05.2010. Though experts required for transplantation of liver and other abdominal organs as specified in Rule 9C are one and the same, Rule 9(7) provides that other than the experts required for the relevant transplantation, certain other experts are also required. Mere grant of registration for transplantation of liver cannot be presumed or inferred as permission or registration granted for other abdominal organs. Liver is one of the abdominal organs. In the case on hand, registration certificate is granted for transplantation of liver. No other abdominal organ is mentioned in the certificate of registration. Even if it is taken for the sake of argument that petitioner had applied for pancreas also, and for other abdominal organs, the fact that registration certificate is not issued for transplantation of pancreas or for any other abdominal organ other than liver would make it very clear that the hospital was not permitted to

carry out transplantation of other abdominal organ other than liver.

45. Therefore, assuming that an application had been made for pancreas also, once it is shown that registration is confined only for liver transplant, it goes without saying that its request for pancreas transplant had not been favourably considered and what is not granted has to be deemed to have been rejected.

46. As per the definition of the term 'human organ' contained in Section 2(h), it only refers to a particular organ. The Act, the Rules and Form-11 prescribed for filing application do not conceive of grant of registration certificate in respect of all abdominal organs without specifying the organs. If one closely examines the definition of the terms 'human organ', 'transplantation' and also the requirement in law of registration of hospitals for transplantation of human organs, after holding an enquiry and satisfying about the compliance by the hospital of the provision made for specialized facilities and services, skilled man power and equipments and the prescribed standards before registering the hospital for transplanting the

organ concerned, it becomes abundantly clear that the registration has to be in respect of specified human organ.

47. In the instant case, registration is not made for pancreas which is evident from the certificate issued. Therefore, the hospital could not have conducted transplantation of pancreas. Hence, it has to be held that the hospital did not have registration or permission for transplantation of pancreas.

48. Next point for consideration is regarding the alleged illegality committed by the Appellate Authority in pronouncing the order dismissing the appeal stating that reasons would be furnished later. It is true, such a procedure cannot be termed as either just or appropriate. The requirement in law is that before reaching conclusion, reasons have to be stated and it is the reasons that lead to the conclusion. A judicial determination involves a reasoned order for arriving at the conclusion. Principles in this regard are stated in the judgment in the case of **UNION OF INDIA AND OTHERS VS MANAGER, M/S. JAIN & ASSOCIATES - (2001)3 SCC 277** (paragraph 12); and **STATE OF PUNJAB & OTHERS VS JAGDEV SINGH TALWANDI - AIR 1984 SC 444**. In paragraphs 30 & 31 of the later judgment, the Apex Court has made the following observations:

“30. We would like to take this opportunity to point out that serious difficulties arise on account of the practice increasingly adopted by the High Courts, of pronouncing the final order without a reasoned judgment. It is desirable that the final order which the High Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement. Suppose, for example, that a final order without a reasoned judgment is announced by the High Court that a house shall be demolished, or that the custody of a child shall be handed over to one parent as against the order, or that a person accused of a serious charge is acquitted, or that a statute is unconstitutional or, as in the instant case, that a detenu be released from detention. If the object of passing such orders is to ensure speedy compliance with them, that object is more often defeated by the aggrieved party filing a special leave petition in this Court against the order passed by the High Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court, it is difficult for this Court to allow the bare order to be implemented. The result inevitably is that the operation of the order passed by the High Court has to be stayed pending delivery of the reasoned judgment.

31. It may be thought that such orders are passed by this Court and therefore there is no reason why the High Courts should not do the same. We would like to point out respectfully that the orders passed by this Court are final and no appeal lies against them. The Supreme Court is the final Court in the hierarchy of our courts. Besides, orders without a reasoned judgment are passed by this Court very rarely, under exceptional circumstances. Orders passed by the High Court are subject to the appellate jurisdiction of this Court under Article 136 of the Constitution and other provisions of the concerned statutes. We thought it necessary to make these observations in order that a practice which is not very desirable and which achieves no useful purpose may not grow out of its present infancy.

Appeal allowed.”

49. Therefore, it is undoubtedly clear that such a practice is not a desirable practice. The Appellate Authority was well advised to deliberate over the issue and pass a reasoned order instead of pronouncing the verdict and then furnishing reasons for it. But, it cannot be lost sight that in the facts of the present case, the Appellate Authority has dealt with the matter in great detail at the stage of hearing of the parties as is evident from the notes made by it. After hearing the arguments at length, the

Appellate Authority has found that there was no merit in the appeal and it deserved to be dismissed. He ought to have dictated the reasons and the conclusion at once and pronounced the same. But, the said omission to follow such a procedure has not resulted in any miscarriage of justice, in as much as, a fair and reasonable opportunity of hearing was given to the parties. Reasons assigned by the Appellate Authority for dismissing the appeal will also make it clear that there has been proper application of mind and re-appreciation of materials on record in the light of the contentions urged by the rival parties. Therefore, on this technical ground, it is neither possible nor permissible, in the facts of the present case, to interfere with the order.

50. As regards the contention urged by the learned Counsel for the petitioner that order passed by the Appropriate Authority was not signed by one of the members and that another member was not present when the matter was heard and therefore, as per the judgment in Vijaya Bank's case, such an order was void and illegal, it has to be stated that Vijaya Bank's case arose out of an order passed by the Land Tribunal and this Court was considering the effect of provisions

contained in Rule 17(8) of the Karnataka Land Reforms Rules, 1974. In paragraph 4 of the said judgment, this Court has observed thus,

“After carefully going through the impugned order passed by the learned Single Judge in review and the provisions of Rule 17(8) of the Karnataka Land Reforms Rules, 1974, we are of the opinion that the failure of the members to sign the order is not merely a technical lapse, but it goes to the very root of the matter.”

51. In the instant case, no such rule akin to Rule 17(8) of the Karnataka Land Reforms Rules, 1974, is found. Merely because one of the members did not sign the proceedings sheet and that another member was allegedly not present when the matter was heard, the entire proceedings culminating in the order passed by the Appropriate Authority cannot be regarded as nullity nor can it be declared as void. The proceedings of the Appropriate Authority and the order passed would show that matter has been gone into at great detail before taking the final decision. Therefore, on such technical grounds, a well considered order passed by the fact finding authority cannot be upset.

52. The further contention urged by the learned Senior Counsel for the petitioner is that there is no requirement to

mention each of the abdominal organs in the application and to seek specific permission for transplantation of such organs by making separate application and by paying separate fee particularly in the background of Rule 9C(B). It is necessary to notice that the format prescribed in Form No.11 itself requires mentioning of specified organs. Though Rule 9C(B) refers to liver and other abdominal organs grouping them in one category, it cannot be inferred from it that there is no need to seek specific permission for different abdominal organs by specifically mentioning them and applying for the same. There are several abdominal organs apart from kidney and liver. It cannot be said that by making one application for all the abdominal organs without specifying them permission for transplantation can be obtained. The nature of the organs, infrastructural requirement for transplanting the said organ, the supporting medical staff and experts required for transplanting such organs, are matters that will go into the consideration of the inspecting team when such inspection of the hospital and the facilities available are made. In fact, the certificates of registration of other hospitals produced by the 3rd respondent disclose that separate and specific mention of each of the organs are made certifying that permission has been

given for their transplantation. Therefore, this contention cannot be accepted.

53. Although it is urged by the 3rd respondent that there was no consent of the victim for the pancreatic surgery and its transplantation, both the authorities have held that consent was duly obtained. These concurrent findings are not challenged before this Court by the 3rd respondent. Therefore, I do not propose to go into the said contention urged by the 3rd respondent. Although several judgments are relied upon by the 3rd respondent in support of the requirement of valid consent for surgery and also in support of the other contentions, it is unnecessary to deal with the said judgments having regard to my findings already recorded above.

54. In the result and for the foregoing reasons, this writ petition is dismissed.

**Sd/-
JUDGE**

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