

## **WEST BENGAL HUMAN RIGHTS COMMISSION**

File No. 03/WBHRC/IW/14-15  
531/WBHRC/COM/14-15

The Transplantation of Human Organs Act 1994, stands amended by the Transplantation of Human Organs (Amendment) Act 2011 (16 of 2011) and after amendment the title of Act is “The Transplantation of Human Organs and Tissues Act, 1994.”

Section 13 of Transplantation of Human Organs Act, 1994 under chapter IV with the heading ‘Appropriate Authority’ has undergone a radical change by insertion of new sections, i.e., section 13A, 13B, 13C, 13D. The most important feature of this amendment of section 13 is enhancement of the powers of Appropriate Authority. Section 13B vests the power of a civil court trying a suit under the court of civil proceeding in summoning any person and production of any document and issuance of such warrant in the Appropriate Authority.

The Transplantation of Human Organs and Tissues Act, 1994, as amended in 2011 shall come into force in our state from the date of its adoption which is under the active consideration of the Government.

The West Bengal Human Rights Commission has, therefore, examined the legal and factual aspects of one case of kidney donation and transplantation arising from the petition filed on 04. 09.2014 by one Satinath Pal, donor of kidney, according to the provisions of the Act, “The transplantation of Human Organs Act, 1994.”

Brief fact of the case as disclosed in the petition filed by the petitioner, Satinath Pal, who is also a donor of kidney, is that he suffered loss in his business of selling clothes to the tune of Rupees 1,50,000. On 08.12.2009, he came across an advertisement published in Bartaman Newspaper that Shri N.

C. Bhattacharya, a resident of 1/1, Bye Lane, P.O. Mahesh, P.S. Sreerampur, Dist Hooghly, wants transplantation of left kidney of his son, Shri Subha Ranjan Bhattacharya. The petitioner, Satinath Pal, who was in dire need of money, contacted Shri N. C. Bhattacharya and a deal of donation of kidney in lieu of Rupees 3,00,000 was struck. The transplantation of kidney took place successfully in Belle Vue clinic but Shri Bhattacharya did not pay the full amount. As such the petitioner approached I.C. Sreerampur, P.S. Shri Tathagata Pandey, who intervened and as a result he got Rupees 50,000 from Shri N. C. Bhattacharya in favour of the petitioner. The petitioner, Satinath Pal, by filing a petition has approached the West Bengal Human Rights Commission, for realization of payment of the remaining amount, which is Rs. 2,20,000/- according to him.

On the order of the Commission an enquiry was conducted by the ADG, Investigation wing of the WBHRC, which revealed that Shri Satinath Pal (donor) is non relation of Shri Subha Ranjan Bhattacharya, the recipient of the kidney. The donoation of the kidney has arisen from the financial transaction in gross violation of THO Act, 1994. Further the I.C. Sreerampur, beyond his jurisdiction acted for recovery of some amount of illegal transaction.

This is a case of non-related organ donor and recipient. In such a case the reasons of affection or attachment towards the recipient or any other special reasons must be explicitly shown and before removal or transplantation of organ proper approval from the Authorization Committee must have been obtained. (Section 9(3) TOH Act).

Shri T. N. Bhattacharya, General Manager, Administration of Belle Vue Clinic, wrote to the Director of Medical Education and Chairman of Authorisation Committee and Ex-Officio, Secretary, Department of Health and Family Welfare, Govt. of West Bengal, vide his letter No. Nil dated 21.11.09 for according approval for transplantation of kidney. But the administration of

Belle Vue Clinic failed to produce authorization order issued by the Authorization Committee.

The supply of human organs on payment and publishing advertisement inviting members of public to supply organs, both an offence under section 19 of TOH Act.

Scrutiny of necessary provisions of THO Act.

Section 19 of THO Act prohibits commercial dealings in human organs and also advertisement for supply of human organ for payment.

An advertisement was made in the daily newspaper, Bartaman, on 04.07.2009, for donation of kidney and the same runs as follows :-

**আবেদন**  
সস্তর কিডনি চাই। 32 বৎসর পুরুষের জন্য A ব্লাড গ্রুপ, কোন সস্তদয় বর্গজি ডোনেট  
করিলে উপকৃত হইব। 9830179869 শ্রীরামপুর .

This This advertisement has been made cleverly suppressing any kind of financial transaction for donation of kidney.

Section 9 of THO Act lays down that donation of kidney should be made by the near relative of the recipient but exception has been made in sub section (3) of Section 9 of THO Act for donor and recipient not being near relative. In such case it must be specified by the donor that for reasons of affection or attachment towards the recipient or for any other special reasons donation of kidney is made. But removal of kidney and its transplantation cannot be made without the prior approval of the Authorisation Committee.

If Section 19 of THO Act and Section 9 sub Section (3) of THO Act are scrutinized in juxtaposition then it comes out that affection or attachment should be the basis for donation of kidney which cannot be created by way of advertisement in newspaper. Advertisement in this context is invitation to the public in general to donate kidney and hidden agenda in such case is tacit transaction for such donation. It is arithmetical generation of affection and attachment by offering money though technically in advertisement no money is generally offered for donation of kidney to avoid legal punishment.

In the case at hand, the petitioner, Satinath Pal, was not aware of the recipient earlier and has become aware of recipient only through advertisement.

In his petition Satinath Pal has stated that he was suggested by the father of the recipient, Shri T. N. Bhattacharya that he (Satinath Pal) should disclose before the Health officials that he has been an employee of his (Shri T. N. Bhattacharya) company.

This strategy behind such disclosure of being company's employee was to establish that Satinath Pal developed affection and attachment in natural way and not reading the advertisement.

Section 2(K) of THO Act defines payment which runs as follows :-

“payment” means payment in money or money's worth but does not include any payment for defraying or reimbursing –

- i) The cost of removing, transporting or preserving the human organ to be supplied ; or
- ii) Any expenses or loss of earnings incurred by a person so far as reasonably and directly attributable to his supplying any human organ from his body.

Section 22 of THO Act lays down that cognizance of offence under THO Act can only be taken by a court if complaint is made by Appropriate Authority concerned or any officer authorised in this behalf by the State Government or as the case may be. Apart this, a person who has given notice of not less than sixty days to the Appropriate Authority of the alleged offence to make a complaint to the court can also initiate legal action.

### Conclusion

The conjoint reading of Sections 19, 9(3), 2(K) and 22 and advertisement in Newspapers clearly establish that a racket of kidney transplantation is running in the state against legal provisions and befooling gullible poor persons who would not venture to proceed further for realization of money offered to them since they themselves are offenders under the strict sense of law.

In non- related donation of kidney attachment and affection is initiated through advertisement cleverly not disclosing consideration money but on paper affection and attachment is created in lieu of money offered.

Promise of defraying expenses and reimbursement of loss of earning incurred by donor drag the poor donor in such muddy transaction.

Further a case can normally be initiated only on a complaint of authorized officer of the State or a Member of public giving 60 days notice to the Appropriate Authority.

### Suggestion

- 1) Appropriate Authority should be quite vigilant when it comes across an advertisement in any newspaper. This has been brought to the notice of the Home Department from West Bengal Human Rights Commission in a separate file that such advertisement whether offering money or not, is illegal.

- 2) Scrutiny of affection and attachment should rigorously be made to test its reality whether it is real or flimsy.
- 3) The assurance of reimbursement of loss of earning or defraying expenses should seriously be scrutinized and taken note of in ascertaining whether poor donor has been befooled.
- 4) Donor's future prospect, his living conditions and maintenance of family must be taken into consideration.
- 5) The recipient of organ must bear all the medical expenses and future treatment of donor, if required.
- 6) One time insurance policy of sufficient amount in favour of donor should be made on the payment of premium by the recipient for safeguarding the donor in future.
- 7) Through DGP all the O.C.'s be instructed not to enter in recovery process of such transactions but refer the matter to Home Dept./ Health Dept. through their superiors.

The entire report be sent to the A.C.S. Home with request to take up the matter with Health Dept. for appropriate action in the matter.

Sd/-

(Naparajit Mukherjee)  
Acting Chairperson  
W.B.H.R.C.

Sd/-

(M. S. Dwivedy)  
Member  
W.B.H.R.C.

Date: 17/02/2015