

Madras High CourtIndian Kanoon - <http://indiankanoon.org/doc/1590126/>**K. Uma Mahesh vs The State Of Tamil Nadu, Rep. By Its ... on 21 November, 1997****Equivalent citations: AIR 1998 Mad 283, 1998 (1) CTC 16, (1998) IMLJ 381****ORDER**

1. In Writ Petition No. 5215 of 1996 the petitioner seeks to issue a writ of mandamus, directing the respondents to accept the petitioner's body for the purpose of anatomical dissection, treatment, medical relief, including transplant of vital organ to the deserving donees.
2. In Writ Petition No. 5216 of 1996 the writ petitioner seeks to issue a writ of declaration declaring the Tamil Nadu Anatomy Act as ultra vires.
3. The facts leading to the filing of both the writ petitions are briefly stated here under:

According to the petitioner he is a rationalist and does not believe in any rituals or ceremonies. His father who has the same frame of mind wanted to donate his body after his death to the Institute of Anatomy for the purpose of anatomical dissections. Since, his father's request was not acceded to by the respondents he filed Writ Petition No. 1843 of 1987 and this Court directed the respondents to dissect the body when the same is produced to the mortuary. Likewise one Srinivasachary has also obtained similar order in Writ Petition No.1690 of 1988. In issuing such direction this Court has directed the Government to amend the Tamil Nadu Anatomy Act suitably to cover cases of voluntary donations of the body. The petitioner made an application to the respondents on 21.4.1993 requesting that his body should be accepted for the purpose of anatomical examination etc., He also made an application stating that after his death his organs may be used for transplanting, for those who need it. He made it clear that his family members are in entire agreement with his wishes and they have no sentimental objection for anatomical purpose.

4. On 7.3.1993 the third respondent informed the petitioner that there are no provisions in the Tamil Nadu Anatomy Act, 1951 for accepting the petitioner's claim. Hence, he approached this Court in Writ Petition No.12177 of 1994 for issuance of a writ of mandamus directing the respondents 2 and 3 to receive his body after his death and use the same for anatomical dissections etc., When the matter posted for admission, the learned Judge is of the view that there was no statutory obligation cast on the respondents to accept the body and therefore was not inclined to admit the writ petition. Since the learned Judge of the view that the Tamil Nadu Anatomy Act did not oblige the respondents to accept the body and the said Act would apply only in respect of an unclaimed body and rejected the prayer for issue of a writ of mandamus

on the ground that no writ of mandamus would lie in the absence of a statutory obligation on the part of the respondents. In view of the earlier directions of this Court as well as the order in Writ Petition No.12177 of 1994 the petitioner has approached this Court one to declare that the Tamil Nadu Anatomy Act is ultra vires and another one for mandamus to accept his body after his death for the purpose of anatomical dissections etc., on various grounds.

5. The first and second respondents have filed a common counter affidavit in both the cases. The stand of the Government as seen from the counter-affidavit is briefly stated hereunder:

It is contended that at present the Tamil Nadu Anatomy Act, 1951 provides only for supply of unclaimed bodies of deceased persons to teaching medical institutions and hospitals for the purpose of anatomical examination and dissection. There is no provision in the said Act for accepting voluntary donation of dead bodies for anatomical and dissection purposes. Many offers of dead bodies are frequently forthcoming and in the absence of statutory provisions, the Medical Institutions and Hospitals are not in a position to accept such offers. The first respondent has already taken necessary steps to amend the Tamil Nadu Anatomy Act, 1951. A draft bill has been prepared on the lines of the Transplantation of Human Organs Act, 1994 and sent to the Government of India for concurrence by the Health and Family Welfare Department, dated 5.2.1996 and orders are still awaited from the Government of India. It is also contended that after the Act is amended suitably, the request and intention of the petitioner will be satisfied automatically. As regards the acceptance of body in the meantime, the same can be done upon specific orders of Court for individual cases. It is contended that with regard to the donation of human organs of the body for medical relief including transplant of vital organs to deserving donors, it is to be pointed out that the above will be considered only based on the Human Organs Transplantation Act, 1994, passed by the Tamil Nadu Legislative Assembly for implementation in Tamil Nadu with effect from 5.5.1995. With these averments the first and second respondents have prayed for dismissal of both the writ petitions.

6. In the light of the above pleadings, I have heard Mr. N.R. Chandran learned senior counsel for the petitioner and Mr. S. Manikumar learned Additional Government Pleader (Education) for the respondents in both the cases.

7. Even at the out set Mr. N.R. Chandran, learned senior counsel has fairly submitted that he was not serious with regard to the relief prayed for in Writ Petition No.5216 of 1996 viz., the validity of some of the provision of the Tamil Nadu Anatomy Act, 1951. As a matter of fact, he submitted that if the petitioner's request in Writ Petition No. 5215 of 1996 is considered there is no need to adjudicate writ petition No. 5216 of 1996. The above statement is recorded.

8. An interesting question has to be decided in this writ petition viz., W.P.No.5215 of 1996. The petitioner who does not believe in rituals or ceremonies wanted to donate his body after his

death to the Institute of Anatomy for the purpose of anatomical dissections. Even prima facie the request of the petitioner seems to be reasonable and commendable. Apart from the petitioner's request to denote his body and other organs after his death, it is seen from the averments in the affidavit that his father had filed similar Writ Petition No.1843 of 1987 and obtained necessary directions to the respondents for using his body after his death for the anatomical dissections. Before approaching this Court, the petitioner by letter dated 21.4.1993 addressed to the respondents made the following request:

1. On my death you will accept my body and use it for anatomical examination, dissection, medical relief and treatment including transplant and use of my organs.
2. The necessary amendments to the Tamil Nadu Anatomy Act have been carried out as per the order of the High Court, Madras in W.P.No.1690 of 1988."
9. By letter dated 7.6.1993, the Director (incharge), Institute of Anatomy, Madras Medical College, Madras-3 informed the petitioner that there is no provision to accept any cadaver except those which are unclaimed. He also informed that necessary action is being taken to amend the Tamil Nadu Anatomy Act, 1951 for the acceptance of voluntary donation of bodies. Further, the Director has also made it clear that in the event of petitioner's death his body will be accepted if the same is intimated and the body is brought without losing much time after death. The above said passage is very much relevant for the disposal of our case, hence the same is extracted hereunder: "No.332/Anat/93 dated 7.6.93 Dated 7.6.1993

From

The Director i/c.,

Institute of Anatomy

Madras Medical College

Madras-3

To

Thiru K. Umamahesh

21 Beasant Road

Madras 600 014.

Through the proper channel.

Sir,

Sub: Voluntary donation of human body after death - regarding

Ref: 1. No.Dis.No.37998/G2/93, dt.3.5.93 of the Director of Medical Education, Madras-3.

2.N. Dis.No.10797/P7D/93, dt. 27.5.93 of the Dean, Madras Medical College, Madras.

.....

As per the existing Anatomy Act, there is no provisions to accept any cadavar except those which are unclaimed. Action is being taken to amend the Tamil Nadu Anatomy Act, 1951 for the acceptance of voluntary donation of bodies. The matter is under correspondence with the Government. However, in the unfortunate event of your death, the body will be accepted in this department if the fact is intimated and the body is brought without losing much time after death.

.....

.....

.....

Yours faithfully,

sd/....."

Copy to:

The Dean, Madras Medical

College, Madras 3.

The Residential Medical Officer, Madras-3

Government General Hospital

10. However, in order to get further clarification the petitioner addressed another letter on 9.12.1993 to the Director of Institute of Anatomy, Madras Medical College, Madras-3, wherein he had asked a clarification regarding his organs being used after his death. Since there was no reply the petitioner has approached this Court by way of filing a Writ Petition No.12177 of 1994. No doubt, Abdul Hadi, J. in his order dated 22.7.1994, after appreciating the gesture of the petitioner dismissed the writ petition stating that there is no statutory provision to compel the authority to accept his body. His Lordship has concluded thus,

" Therefore, though I may appreciate the gesture of the petitioner to donate his dead body for the abovesaid purpose, I would be exceeding my jurisdiction under Article 226 of the Constitution of India, if I grant the mandamus prayed for. Accordingly the writ petition is dismissed in limine."

11. At this juncture I may point out that even as early as on 3.3.1987 Mohan, J. (as he then was) in W.P.No.1843 of 1987 in an identical circumstance granted relief claimed by the petitioner therein who is none else than the father of the petitioner herein. The learned Judge has passed the following order.

" The learned Government Pleader, on instructions, states that should the body be delivered at the mortuary in the Madras Medical College, the Anatomy Department has no objection to take it as desired by the petitioner. Mr. V.P. Raman, learned counsel for the petitioner, has no objection to this course and he says that in the unfortunate event of the death of the petitioner, necessary arrangements will be made for the body to be delivered at the mortuary.

.....Recording the statement, I hereby order that as and when the body is produced before the mortuary, it shall be received without any objection and used for purposes mentioned in the prayer as made before me. The writ petition is ordered accordingly. No costs."

12. In another writ petition filed by one Srinivasachari (W.P.No.1690 of 1988) Venkataswami, J. (as he than was) by order dated 19.1.1989 after considering the various provisions in the Anatomy Act and on the basis of the necessary averments passed the following orders:

"..... I direct the respondents to accept the body of the petitioner minus eyes in the event of the happening of the inevitable, namely death, provided necessary arrangements are made by the relatives of the petitioner to deliver the body at the mortuary, Madras Medical College, Madras. (As pointed out earlier, Mohan, J., as he then was, has issued similar in Writ Petitioner No.1843 of 1987). The body so received will be utilised for the purposes mentioned in the Act, by the respondents."

After issuing such direction His Lordship has also directed the Government of Tamil Nadu to initiate within six months from the said date for necessary amendments in the Act and in the Rules to enable the Authorised Officer appointed under the Act to accept the voluntary donation of the bodies after the death.

13. In both the abovesaid cases the order of the respective learned Judges therein have not been challenged by way of appeal by the State Government or any of the respondents. No doubt, Abdul Hadi, J. after holding that in the absence of any statutory provision in the existing Act, it is not possible for this Court to issue mandamus to accept the body in the event of death.

There is no dispute that the respondents particularly, the Director, Institute of Anatomy, Madras Medical College is in need of many dead bodies for anatomical dissection as well as several organs of the body in order to transplant the same for deserving needy persons. It is also seen, in pursuance of the earlier direction by this Court, the Government of Tamil Nadu have taken necessary steps to amend the Tamil Nadu Anatomy Act, 1951 on the lines of Transplantation of Human Organs Act, 1994 and the same has been sent to Government of India for concurrence by their letter No.10398/Z1/88 Health and Family Welfare Department, dated 5.2.1996.

14. However, it is brought to my notice that the Government of India has not approved or cleared the said draft bill sent by the Government of Tamil Nadu. Inasmuch as the request of the petitioner is laudable, even the first and second respondents in their counter have made it clear that if any order or direction is issued to them they are ready to accept the body of the petitioner. In para 5 of the counter affidavit it is stated thus.

" Therefore, we have no objection to accept the body of the writ petitioner for purposes of anatomical dissection, treatment, medical relief etc., if so ordered in the above writ petition by this Honourable Court."

I have already extracted the statement of the Director of Institute of Anatomy, Madras Medical College, in his letter dated 7.6.1993 addressed to the petitioner, willing to accept the body of the petitioner after his death if the fact is intimated and the body is brought without losing much time after death.

15. As far as transplantation of vital organs, there is a rule called Transplantation of Human Organs Rules, 1995. In such a situation, on the basis of the provisions of the said Rules there may not be any difficulty in accepting the vital organs of the petitioner. No doubt, the petitioner has to fulfil and satisfy the requirements referred to in the said Rules.

16. Even though the Courts are expected to issue orders within the four corners of the statute, in the interest of justice and if the request is laudable and in the interest of Department of Anatomy, I am of the view that this Court can issue necessary directions to the appropriate respondents to accept the body of the petitioner in the event of his death. I have already referred to two orders passed by this Court on two earlier occasions. Both the orders have been included in the typed book of papers filed by the petitioner. The Government as well as the Medical Institutions are expected to appreciate the attitude of the public toward voluntary donation of body on death. Duty is also caused on the State of Tamil Nadu to expedite and pursue the draft amendment sent to the Government of India in February, 1996 in order to fulfil the aspirations of many public which in turn would be helpful to the Medical Institutions.

17. Under these circumstances, there is justification in issuing mandamus to the respondents as claimed by the petitioner. Accordingly, Writ Petition No.5215 of 1996 is allowed. No costs.

18. In view of the order passed in Writ Petition No.5215 of 1996 and in the light of the statement made by the learned senior counsel, Writ Petition No.5216 of 1996 is dismissed as unnecessary. No costs.