



2026:DHC:4961



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7473/2026 and CM APPL. 36279/2026**

Date of Decision: **26.05.2026**

IN THE MATTER OF:

SHIVANI KHURANA & ORS.

.....Petitioners

Through: Mr. Naveen R. Nath, Sr. Adv. with
Ms. Gayatri Virmani, Mr. Sai
Vaishnav and Ms. Disha Gupta,
Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Sumit Nagpal (SPC) with Mr.
Tanmay Saini, Advocate for R-1 and
2.
Mr. Sanjeev Puri, Sr. Adv. with Mr.
Rohit Puri, Advocate for R-3.
Mr. Anubhav Gupta, Panel Counsel
(Civil), GNCTD/R-5.
Ms. Sanjana Akhilesh Singh,
Government Pleader, Advocate for
Union of India.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

JUDGEMENT

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

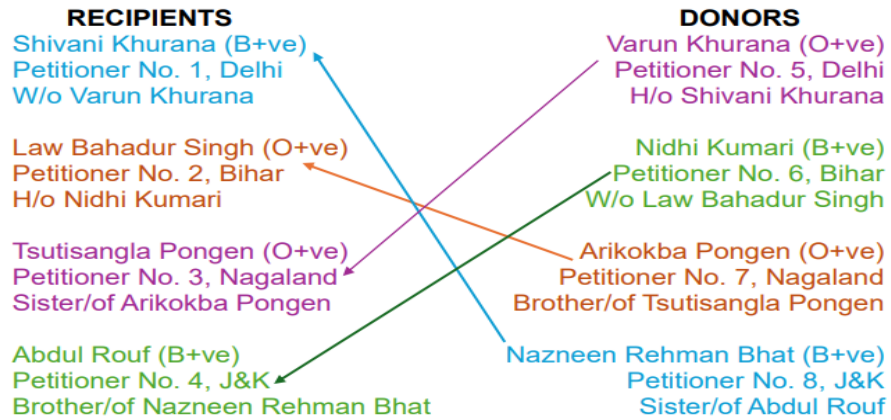
1. The present petition assails the order dated 28.04.2026 (“**Impugned Order**”) passed by the Appellate Authority under the Transplantation of



Human Organs & Tissues Act, 1994 (“Act”), whereby the petitioners’ appeal against the respondent no.3-Authorisation Committee’s (“**Authorisation Committee**”) decision dated 28.04.2026 (“**Impugned Decision**”) was dismissed. *Vide* the Impugned Decision the Authorisation Committee, had refused permission for a ‘four-way-swap kidney transplantation’ (hereinafter “**Proposed Procedure**”) *inter se* amongst the petitioners.

2. Petitioners no.1 to 4 are the proposed recipients and petitioners no.5 to 8 are the proposed donors. They comprise four donor-recipient pairs. Each pair is of two ‘near-relatives’ as defined under Section 2(i) of the Act. For the sake of clarity, the relationship between the petitioners, as per the chart furnished by learned counsel, is extracted below:

FOUR WAY KIDNEY TRANSPLANT



Spouse Pairs	Sibling Pairs
Shivani Khurana is the wife of Varun Khurana	Tsutisangla Pongen is the sister of Arikokba Pongen
Law Bahadur Singh is the husband of Nidhi Kumari	Abdul Rouf is the brother of Nazneen Rehman Bhat

3. The singular reason to reject the Proposed Procedure is that Section 9(3A) of the Act, as per the Appellate Authority, permits the exchange of donors between two biologically incompatible donor-recipient pairs only.



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There is, according to the authority, no provision under the Act that allows a swap donor transplant between more than two incompatible pairs. The relevant portion of the order passed by the Appellate Authority is extracted below for reference:

“3. The Appellate Committee met on 16.04.2026 under the Chairmanship of Additional Secretary in the Ministry of Health and Family Welfare to examine the appeal, grounds of appeal along with the documents as submitted by Max Superspeciality Hospital, Saket, New Delhi. After detailed discussions and deliberations, the observations of the appellate committee members are given as under:

a. The committee noted that the current legal provision for swap donor transplantation as provided under Section 9(3A) of the Transplantation of Human Organs and Tissues Act, 1994 (THOTA) permits only exchange of donors between two biologically incompatible donor - recipient pairs, wherein the donor of one pair donates to the recipient of the other pair and vice versa.

b. It was opined that the current legal provision as mentioned in para 3(a) does not allow, swap donor transplant between more than 2 incompatible pairs. For permitting more than 2 pairs, it will require amendment in the current Act.

4. Accordingly, the proposed case involving a four-way swap transplantation amongst four donor-recipient pairs is not covered under the extant provisions of THOTA, as the current legal framework provides for only a two-way swap and does not provide for multi-way swap transplantation involving more than two pairs. Since the present case involves a four-way swap transplantation and the same is not permissible under THOTA. Hence the appeal is Rejected.”

4. The present petition was called for hearing, for the first time, yesterday and the Court directed for the issuance of notice to the respondents. Today, the respondents are represented by their respective counsel.

5. Mr. Sanjeev Puri, learned senior counsel appearing for the Authorisation Committee, points out certain practical challenges being faced



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by the Authorisation Committee. He submits that the respondent-authorities have *bona fide* refused permission owing to lack of clarity on the interpretation of the Act.

6. Mr. Naveen R. Nath, learned senior counsel appearing for the petitioner, has taken the Court through a detailed note and a chart detailing the proposed donors/recipients, prepared by Ms. Gayatri Virmani, learned counsel, and submits that there have been numerous other instances of multi-party swap transplants such as the present, and the same is in fact the best possible medical solution to overcome issues of medical incompatibility of near-relatives for organ transplantation.

7. He places reliance on the decision of the Supreme Court in the case of *Indian Society of Organ Transplantation v. Union of India & Ors.*¹ and submits that the Supreme Court has taken note of some of the shortcomings in the current legal framework for cases of swap-transplantations and has directed respondent no. 4 i.e. National Organ and Tissue Transplantation Organisation to evolve a common national swap transplantation guidelines. Further, the regulatory procedure for the same has been directed to be done digitally through an accessible web portal.

8. The prayer in this petition is with respect to four human lives and requires urgent consideration. The sole legal question for the consideration of the Court is whether, the Authorisation Committee can permit, under Section 9(3A) of the Act, swap transplantations between multiple donor-recipient pairs.

9. Before delving into the interpretation of the said provision, certain authorities on the Act and the issue at hand may be taken note of.



10. In *Kuldeep Singh v. State of Tamil Nadu*,² the Supreme Court noted the purpose of the Act to be to prevent commercial dealings in human organs. Para. 12 of the said decision reads as under:

*“12. Where the donor is not “near relative” as defined under the Act the situation is covered by sub-section (3) of Section 9. As Form 1 in terms of Rule 3 itself shows, the same has to be filed in both the cases where the donor is a near relative and where he is not, so far as the recipient is concerned. In case the donor is not a near relative the requirement is that he must establish that removal of the organ was being authorised for transplantation into the body of the recipient because of affection or attachment or for any special reasons to make donation of his organ. **As the purpose of enactment of the statute itself shows, there cannot be any commercial element involved in the donation. The object of the statute is crystal clear that it intends to prevent commercial dealings in human organs.** The Authorisation Committee is, therefore, required to satisfy that the real purpose of the donor authorising removal of the organ is by reason of affection or attachment towards the recipient or for any other special reason. Such special reasons can by no stretch of imagination encompass commercial elements. Above being the intent, the inevitable conclusion is that the Authorisation Committee of the State to which the donor and the donee belong have to take the exercise to find out whether approval is to be accorded. Such Committee shall be in a better position to ascertain the true intent and the purpose for the authorisation to remove the organ and whether any commercial element is involved or not. They would be in a better position to lift the veil of projected affection or attachment and the so-called special reasons and focus on the true intent.”*

(Emphasis supplied)

11. In *Parveen Begum v. Appellate Authority*,³ this Court was faced with a challenge to the Authorisation Committee’s refusal to permit transplantation between non-relatives on the ground that the petitioner had not satisfied it as to why no near-relative could have been the donor. Ultimately, the Court held that the Act and the rules framed thereunder do not seek to prohibit, but to only regulate, the transplantation of organs and

¹ 2025 INSC 1361.

² (2005) 11 SCC 122.

³ 2012 SCC OnLine Del 2839.



tissues from cadavers and living human beings. What is prohibited is the commercial transaction in the giving and taking of organs and tissues. The relevant portion of the said decision is extracted below, for reference:

“51. From the above statutory provisions and the scheme of the Act, it becomes clear that the Act and the Rules do not seek to prohibit, but to only regulate the transplant of organs and tissues from cadavers and living human beings. What is prohibited is the commercial transaction in the giving and taking of organs and tissues. However, donations offered out of love and affection - even amongst those who are not near relatives, is permitted. The aforesaid scheme under the Act recognizes two of the greatest human virtues of love and sacrifice, and also the fact that such intense love and affection need not necessarily be felt only for one's own blood or spouse, but could also extend to those not so closely related, or for those not related at all.”

(Emphasis supplied)

12. A similar view is taken by the Madras High Court, in *S. Samson v. Authorisation Committee*,⁴ wherein, it was held that in cases under the Act, the authorities are to look into the issue, in a manner as to save the life of a person. Permission, therefore, ought not to be refused on overly technical grounds:

“11. From a reading of the relevant provisions of the Act, it is clear that there must be a thorough enquiry of the matter and an opportunity of hearing should be given to the parties concerned and the matter has to be looked into with the avowed object of helping the needy whose life is in danger. It is also clear that the authorities concerned, while exercising the power under the Act, must also look into the issue in a manner so as to save the life of a person and the matter should not be looked into from the technical point of view...”

13. The Punjab and Haryana High Court, in *Ajay Mittal and Ors. v. Union of India and Ors.*,⁵ has, further, held that loss of human life should not be permitted merely at the altar of technicalities and more so when the

⁴ 2008 SCC OnLine Mad 317.

⁵ 2022 SCC OnLine P&H 3696.



possibility of commercial transaction in such swapping has been completely ruled out. Para. 20 of the said decision reads as under:

“20. Loss of human life should not be permitted merely at the alter of technicalities and more so when the possibility of commercial transaction in such swapping has been completely ruled out. The Donor for petitioner No. 1 is his mother-in-law and as such, it cannot be construed that the said donor has agreed to donate her kidney for commercial reasons. The social family bonds; the social fabric and family structure in the Indian Sub Continent is also required to be kept in consideration and such relatives from the family of the spouse cannot be isolated as completely distant or wholly unrelated.”

14. Section 9(3A) then reads as under:

“(3A) Notwithstanding anything contained in sub-section (3), where—

(a) any donor has agreed to make a donation of his human organ or tissue or both before his death to a recipient, who is his near relative, but such donor is not compatible biologically as a donor for the recipient; and

(b) the second donor has agreed to make a donation of his human organ or tissue or both before his death to such recipient, who is his near relative, but such donor is not compatible biologically as a donor for such recipient; then

(c) the first donor who is compatible biologically as a donor for the second recipient and the second donor is compatible biologically as a donor of a human organ or tissue or both for the first recipient and both donors and both recipients in the aforesaid group of donor and recipient have entered into a single agreement to donate and receive such human organ or tissue or both according to such biological compatibility in the group,

the removal and transplantation of the human organ or tissue or both, as per the agreement referred to above, shall not be done without prior approval of the Authorisation Committee.”

15. A perusal of the aforementioned provision would reveal that it is intended to redress a serious practical difficulty where the will of an individual to donate in favour of their near relatives cannot meaningfully fructify owing



to biological incompatibility and no fault of their own. The legislature in its wisdom, has to allow pairs of non-compatible donors and recipients to swap *inter se*. The said provision is, therefore, a carve out within the large scheme of the Act, where, subject to compliance with the requirement of non-commerciality, persons are allowed to *inter se* donate and receive organs and tissues.

16. The said provision does not in any manner whatsoever bar an inter-se transplantation between more than two pairs. The usage of words such as “*first donor*” and “*second donor*” in the said provision is merely to illustrate and exemplify the procedure which is to be followed. The said words ought not to be interpreted as confining the scope of the provision to only the second donor and the second pair. Such an interpretation, truly, borders on absurdity.

17. In erudite terms, the learned author in *GP Singh’s Principles of Statutory Interpretation*,⁶ has noted that while selecting out of different interpretations “*the Court will adopt that which is just, reasonable and sensible rather than that which is none of the hose things*”. A construction giving rise to an anomaly ought to be avoided.

18. Therefore, so long as the underlying object of the Act i.e., to prevent organ trafficking and commercialisation of the organ transplantation, is satisfied, mere purported, artificial and forced gaps ought not to come in the way of the petitioners’ availing benefits thereunder.

19. In the instant case, three of the four recipients are highly sensitised and have tested positive for a cross-match test which indicates that a recipient’s blood contains antibodies that actively react against and attack



the organs and cells of the specific donor. The purpose of Section 9(3A) of the Act is to enhance the possibility of identifying a compatible match from a donor who has a reciprocal organ transplant necessity for his/her close relative. Thus, Section 9(3A) has to be interpreted in a manner that furthers the possibility of matching legally and clinically compatible donors with the recipients.

20. The Supreme Court has also emphasised the need for a uniform national approach with a national database to facilitate swap transplants efficiently in its decision in *Indian Society of Organ Transplantation*. The relevant portions of the said decision are extracted below, for reference:

“10. Another issue highlighted by the learned senior counsel for the petitioner is with regard to the swap transplantation, which is permitted under Section 9(3A) of the 1994 Act. According to the petitioner, on account of low deceased organ donation rates and donor-recipient incompatibility, a national policy for swap transplantation would go a long way in the matter of organ donation/transplantation. It is submitted that in the absence of a national policy coupled with the fact that different States have either no policy, or an independent policy, the swap transplantation is not being done though a large number of donors are available. It is further submitted that a national grid for swap transplantations and organ donations would enable different donors and different recipients in various States across the country to connect thereby increasing the number of transplants. It is, therefore, submitted that the Union of India through the NOTTO must formulate a national policy to ensure equitable access to swap transplantation for addressing the existing inequalities in the healthcare system.

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19. In light of the above, we issue the following directions:

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v. The Union of India through NOTTO is requested to evolve model allocation criteria in consultation with all the States so as to ensure a uniform national policy for transplantation. The uniform national policy guidelines must include provisions to alleviate the concerns with respect to gender, class and regional discrimination and provide appropriate remedial provisions for the same. The policy must

⁶ 13th Ed., 2012, Ch. 2, pg. 132-133.



endeavor to have uniform criteria for the registration of patients, donors and formats throughout the country.

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vii. We further request the Union of India through NOTTO to evolve national swap transplantation guidelines in consultation with all States to implement Section 9(3) of the 1994 Act. The swap transplantation guidelines should be on a national level providing equal opportunities to all the persons for swap and must be done digitally through an accessible web portal”

21. National Organ and Tissue Transplantation Organisation has also taken initial steps towards implementation of uniform procedure for swap transplantations and *vide* letter dated 16.04.2025, directed all States and Union Territories to co-operate in the same.

22. Some States have even identified the legislative gap and have sought to address the same. The State of Karnataka has issued ‘Administrative Guidelines for Multi-Pair Kidney Paired Exchange (Swap) Transplantation under Section 9(3A) of the Transplantation of Human Organs and Tissues Act (THOTA), 1994’ dated 04.04.2026 to address the very aspect in issue in this petition. The Guidelines clarify that the scope of the provision under Section 9(3A) could be extended even to multi-way swap transplantations. In the preamble to the said guidelines, the following observations have been made:

“2. A significant number of donor-recipient pairs in Karnataka are unable to undergo transplantation on account of biological incompatibility, including ABO blood group mismatch, positive crossmatch or HLA incompatibility. Kidney Paired Exchange (KPE) Transplantation — commonly referred to as Swap Transplantation — is an internationally recognised, scientifically validated and ethically accepted modality to resolve such incompatibility.

3. Applications have been received from registered transplant hospitals in Karnataka seeking approval for multi-pair Kidney Paired Exchange Transplantation involving three or more donor-recipient pairs (‘three-way’ or higher).



4. Section 9(3A) of THOTA, as it presently stands, explicitly contemplates the swap mechanism between 'a first donor' and 'a second donor' and their respective near-relative recipients. The Act does not explicitly address three-way or multi-pair exchanges. However, neither the Act nor the Rules contain any express prohibition on multi-pair exchanges. The Legal Advisor has opined that there is no legal impediment to the Authorization Committee taking a decision on multi-pair swap cases, provided the proposed transplantation is not contrary to the Statement of Objects and Reasons of the parent Act and the Amendment Act of 2011. The Supreme Court of India, in the judgment cited at Reference No. 3 above, has also affirmed the provisions of Sections 9(3A), 13A, 13B, 13C and 13D.

5. Keeping in view the legal position, the humanitarian imperatives, the scientific consensus and the directions of the Hon'ble Supreme Court, the Government considers it necessary and expedient to issue administrative guidelines to facilitate multi-pair kidney swap transplantations in Karnataka while ensuring strict adherence to the ethical standards and legal safeguards mandated by the Act and the Rules."

23. Further, the State of Kerala, vide order dated 15.02.2018 has also issued guidelines for altruistic and exchange donation of organs and tissues. No restriction against swap transplantations involving more than two donor-recipient pairs exists even in these guidelines. The relevant portion of the same is extracted below, for reference:

"Swap donation

The donors donate organs to strangers in exchange for getting the best matched organ for their near relatives or friends to whom they intend to donate organs. Blood group incompatible donor recipient pair can exchange donor with another blood group incompatible pair. There are more than one pair and if more than one hospital is involved, the donor will have to travel to the recipient hospital, the donor organ removal must be started simultaneously in both the hospitals. If there are more than one pair, donor recipient matching will be done by a computer assisted matching algorithm which will be designed by NIC. For this donation process KNOS will have separate Web based registry.

The patients with kidney failure, who have a blood group compatible donor (near relative), but with positive lymphocyte cross match, can be registered under Swap Donation Registry.



The cases of swap donation referred to under subsection (3A) of section 9 of the Transplantation of Human Organs Act shall be approved by Authorisation Committee of hospital or district or State in which transplantation is proposed to be done and the donation of organs shall be permissible only from near relatives of the swap recipients.”

24. Mr. Nath also points out that recently, eleven sets of donors/recipients underwent swap transplants at IKDRC, Gujarat.

25. The Court, thus, finds that multi-party swap transplantation being one of the best courses of action for patients facing difficulties in finding a suitable donor, ought not to be restricted only between two pairs of donor-recipients.

26. Section 9(3A) of the Act and the use of the expressions “*first donor*” and “*second donor*”, therefore, are to be construed as expressing merely the procedure for facilitating a transplantation or human organ or tissue where, subject to compliance with other conditions, individuals with a *bona fide* and genuine desire to donate to their “*near relative*” have been unable to do so owing to biological incompatibility.

27. The Court, thus, finds that the decision passed by the Authorisation Committee as well as by the Appellate Authority, which is based on a mistaken and restrictive interpretation of Section 9(3A) of the Act, deserves to be set aside.

28. The Authorisation Committee is directed to examine the feasibility of the four-way swap transplantation in accordance with Section 9(3A) of the Act as interpreted hereinabove. It is clarified that the permission shall be granted by the Authorisation Committee after complying with the other requirements under the Act including those with respect to absence of commercial dealing with respect to proposed transplantation etc.



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29. With these directions, the petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J
MAY 26, 2026/p/amg/ksr