

**CWP-33455-2025 & CWP-38231-2025****-1-**

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

122 (2 cases)**CWP-33455-2025****Date of Decision: 19.03.2026****Anil Kumar and others****...Petitioners**

Versus

Union of India and another**...Respondents**

And

CWP-38231-2025**Md. Shamim Akhtar Didar and others****...Petitioners**

Versus

Union of India and another**...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL****Present: - Mr. Molly A. Lakhanpal, Advocate for the petitioners**

Mr. Dheeraj Jain, Senior Advocate, Senior Panel Counsel with
Mr. Sudhir Nar, Senior Panel Counsel
for respondent No.1-Union of India

Ms. Payal Sharma, Advocate for respondent No.2-PGIMER

JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP No.33455 of 2025*.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking direction to respondents to approve swapping of donors of kidney.



3. Petitioner No.1 (Anil Kumar) and petitioner No.2 (Harjit Singh) are suffering from kidney ailment. They approached Post Graduate Institute of Medical Education and Research ('**PGIMER**') for treatment. They were advised to undergo kidney transplant as their both kidneys have got damaged and become dysfunctional. They attempted to find out donor. Mother-in-law of petitioner No.1 namely Meena Devi agreed to donate her kidney. Similarly, wife of petitioner No.2 agreed to donate her kidney. Both the families are unconnected to each other. On medical examination, it was found that on account of mismatch of blood groups and other factors, neither petitioner No.1 nor 2 can receive kidney from aforesaid donors. They came in contact of each other and decided to swap donor. They approached competent Government to consider swapping of donor. Competent authority as per Section 9 of Transplantation of Human Organs and Tissues Act, 1994 (for short '**1994 Act**') read with Transplantation of Human Organs and Tissues Rules, 2014 (for short '**2014 Rules**') constituted a committee. The Authorization Committee disapproved swapping of donor on the ground that mother-in-law does not fall within the definition of '*near relative*'. The expression '*near relative*' has been defined under Section 2(i) of the 1994 Act. As per Section 2(i), spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson and granddaughter fall within the definition of the '*near relative*'. As per Section 9(3-A), swapping is permissible if donors are near relatives. As mother-in-law does not fall within the definition of '*near relative*', she cannot be considered for swapping under Section 9(3-A).

4. Learned Senior counsel for Union of India-respondent No.1 submits that Authorities are bound by statutory provisions. As per Section



9(3-A) read with Rule 7(4), swapping is permissible only if donors are near relatives. The Authorization Committee was bound by mandate of law, thus, has rightly rejected claim of the petitioners.

5. Learned counsel for the petitioners submits that expression '*near relative*' defined under Section 2(i) cannot be interpreted narrowly. The interpretation should be purposive. In the present societal setup, mother-in-law cannot be excluded from the definition of '*near relative*'. Her claim is espoused with judgment of this Court in ***Ajay Mittal and others v. Union of India and another, 2022 SCC OnLine P&H 3696.***

6. Heard the arguments and perused the record.

7. The conceded position emerging from the record and arguments of both sides is that petitioner Nos.1 and 2 are suffering from kidney disease. They cannot survive without kidney transplantation. Mother-in-law of petitioner No.1 and wife of No.2 have agreed to donate their kidney. On account of mismatch of blood group and other medical reasons, neither petitioner No.1 nor No.2 can receive kidney from their respective donor. If donor is swapped, both can survive and receive kidney. They requested authorities to consider their request to permit swapping of donor. The matter was put up before Authorization Committee which rejected their request on the ground that mother-in-law does not fall within the definition of '*near relative*'. Both the petitioners (donees) on account of dysfunctional kidneys are on dialysis. Family members as well as State is incurring expenses and patients are suffering from mental and physical agony. Successful kidney transplantation would enable them to lead a normal life and there would be saving of medical resources. They are in their middle age and having family.



8. The respondent has rejected petitioner's request while relying upon Section 9(3A). Section 9(1) provides that human organ removed from the body of a donor before his death may be transplanted if recipient is near relative. Sub-section (3) provides that if anybody authorizes removal of any of his human organ for transplantation into the body of any other person who is not a near relative, prior approval of Authorization Committee shall be obtained. Sub-section (3-A) provides that if there are two donors and two donees and because of one or another reason, donees cannot receive human organ from their donors, Authorization Committee may permit swapping provided donor and donee are near relatives. Section 9 of the 1994 Act reads as:

“9. Restrictions on removal and transplantation of human organs or tissues or both.— (1) Save as otherwise provided in sub-section (3), no human organ or tissue or both removed from the body of a donor before his death shall be transplanted into a recipient unless the donor is a near relative of the recipient.

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

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

(1-B) No human organs or tissues or both shall be removed from the body of a minor before his death for the purpose of transplantation except in the manner as may be prescribed.

(1-C) No human organs or tissues or both shall be removed from the body of a mentally challenge person before his death for the purpose of transplantation.



Explanation.—For the purpose of this sub-section,—

- (i) the expression “mentally challenged person” includes a person with mental illness or mental retardation, as the case may be;*
- (ii) the expression “mental illness” includes dementia, schizophrenia and such other mental condition that makes a person intellectually disables;*
- (iii) the expression “mental retardation” shall have the same meaning as assigned to it in clause (r) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995*

(2) Where any donor authorises the removal of any of his human organs or tissues or both after his death under sub-section (2) of section 3 or any person competent or empowered to give authority for the removal of any human organ or tissue or both from the body of any deceased person authorises such removal, the human organ or tissue or both may be removed and transplanted into the body of any recipient who may be in need of such human organ or tissue or both.

(3) If any donor authorises the removal of any of his human organs or tissues or both before his death under sub-section (1) of section 3 for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such human organ or tissue or both shall not be removed and transplanted without the prior approval of the Authorisation Committee.

(3-A) 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.

(4) (a) The composition of the Authorisation Committee shall be such as may be prescribed by the Central Government from time to time.

(b) The State Government and the Union territories shall constitute, by notification, one or more Authorisation Committee consisting of such members as may be nominated by the State Government and the Union territories on such terms and conditions as may be specified in the notification for the purposes of this section.



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

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

9. Rule 7 of 2014 Rules provides for Authorization Committee. Rule 7(4) provides that cases of swap donation shall be approved by Authorization Committee and donation of organs shall be permissible only from near relatives of the swap recipients. Rule 7 reads as:

“7. Authorisation Committee.—(1) *The medical practitioner who will be part of the organ transplantation team for carrying out transplantation operation shall not be a member of the Authorisation Committee constituted under the provisions of clauses (a) and (b) of sub-section(4) of section 9 of the Act.*

(2) *When the proposed donor or recipient or both are not Indian nationals or citizens whether near relatives or otherwise, the Authorisation Committee shall consider all such requests and the transplantation shall not be permitted if the recipient is a foreign national and donor is an Indian national unless they are near relatives.*

(3) *When the proposed donor and the recipient are not near relatives, the Authorisation Committee shall,-*



- (i) *evaluate that there is no commercial transaction between the recipient and the donor and that no payment has been made to the donor or promised to be made to the donor or any other person;*
- (ii) *prepare an explanation of the link between them and the circumstances which led to the offer being made;*
- (iii) *examine the reasons why the donor wishes to donate;*
- (iv) *examine the documentary evidence of the link, e.g. proof that they have lived together, etc.;*
- (v) *examine old photographs showing the donor and the recipient together;*
- (vi) *evaluate that there is no middleman or tout involved;*
- (vii) *evaluate that financial status of the donor and the recipient by asking them to give appropriate evidence of their vocation and income for the previous three financial years and any gross disparity between the status of the two must be evaluated in the backdrop of the objective of preventing commercial dealing;*
- (viii) *ensure that the donor is not a drug addict;*
- (ix) *ensure that the near relative or if near relative is not available, any adult person related to donor by blood or marriage of the proposed unrelated donor is interviewed regarding awareness about his or her intention to donate an organ or tissue, the authenticity of the link between the donor*



and the recipient, and the reasons for donation, and any strong views or disagreement or objection of such kin shall also be recorded and taken note of.

(4) Cases of swap donation referred to under sub-section (3-A) of section 9 of the 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.

(5) When the recipient is in a critical condition in need of life saving organ transplantation within a week, the donor or recipient may approach hospital in-charge to expedite evaluation by the Authorisation Committee.”

[Emphasis Supplied]

10. Expression ‘near relative’ has been used in Section 9 as well as Rule 7. The said expression has been defined under Section 2(i) of Act which reads as:

(i) “near relative” means spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or granddaughter.

11. From the perusal of above quoted Section, it is evident that legislature has used expression ‘means’. The expression ‘includes’ has not been used. As expression ‘means’ has been used, the list of relatives underscored in the said definition cannot be called as exhaustive. The expression ‘means’ should be interpreted considering object of the 1994 Act as well as prevailing facts and circumstances. In the present urban population structure, most of the families are having one or two children. The list of relatives has squeezed. There are very few fortunate people who are having grandparents and in any case grandparents cannot be expected to donate their organs during their lifetime on account of ailments.



12. Hon'ble Supreme Court in *Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) and another v. Sri Seetaram Rice Mill, (2012) 2 SCC 108* while interpreting expression 'means' used in explanation of Section 126 of Electricity Act has held that there should be purposive interpretation. If the expression 'means and includes' is used, the situations/events not contemplated by legislature cannot be included in the definition, however, where expression 'means' is used, there should be purposive interpretation considering the object of the Act and prevailing situation. Relevant extracts of the judgment read as:

"46. "Purposive construction" is certainly a cardinal principle of interpretation. Equally true is that no rule of interpretation should either be overstated or overextended. Without being overextended or overstated, this rule of interpretation can be applied to the present case. It points to the conclusion that an interpretation which would attain the object and purpose of the Act has to be given precedence over any other interpretation which may not further the cause of the statute. The development of law is particularly liberated both from literal and blinkered interpretation, though to a limited extent.

47. The precepts of interpretation of contractual documents have also undergone a wide-ranged variation in the recent times. The result has been subject to one important exception to assimilate the way in which such documents are interpreted by Judges on the common sense principle by which any serious utterance would be interpreted by ordinary life. In other words, the common sense view relating to the implication and impact of provisions is the relevant consideration for interpreting a term of document so as to achieve temporal proximity of the end result.



48. *Another similar rule is the rule of practical interpretation. This test can be effectually applied to the provisions of a statute of the present kind. It must be understood that an interpretation which upon application of the provisions at the ground reality, would frustrate the very law should not be accepted against the common sense view which will further such application.*

49. *Once the court decides that it has to take a purposive construction as opposed to textual construction, then the legislative purpose sought to be achieved by such an interpretation has to be kept in mind. We have already indicated that keeping in view the legislative scheme and the provisions of the 2003 Act, it will be appropriate to adopt the approach of purposive construction on the facts of this case. We have also indicated above that the provisions of Section 126 of the 2003 Act are intended to cover the cases over and above the cases which would be specifically covered under the provisions of Section 135 of the 2003 Act.*

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52. *The expression “means” would not always be open to such a strict construction that the terms mentioned in a definition clause under such expression would have to be inevitably treated as being exhaustive. There can be a large number of cases and examples where even the expression “means” can be construed liberally and treated to be inclusive but not completely exhaustive of the scope of the definition, of course, depending upon the facts of a given case and the provisions governing that law.*

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60. *The expressions “means”, “means and includes” and “does not include” are expressions of different connotation and significance. When the*



legislature has used a particular expression out of these three, it must be given its plain meaning while even keeping in mind that the use of the other two expressions has not been favoured by the legislature. To put it simply, the legislature has favoured non-use of such expression as opposed to other specific expression. In the present case, the Explanation to Section 126 has used the word “means” in contradistinction to “does not include” and/or “means and includes”. This would lead to one obvious result that even the legislature did not intend to completely restrict or limit the scope of this provision.”

13. The respondent has rejected petitioners request on the sole ground that definition of ‘*near relative*’ does not include mother-in-law. Section 2 of 1994 Act starts with the expression ‘*In this Act, unless the context otherwise requires.*’ Similar expression was used in Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. While interpreting expression ‘*family*’ defined in Section 2(6-A), Hon’ble Supreme Court in ***K.V. Muthu v. Angamuthu Ammal, 1997(2) SCC 53*** has held that foster son would also fall within the definition of ‘*member of family*’. Relevant extracts of the judgment read as:

“Whether a “foster son” would be a “member of family” in relation to a landlord within the meaning of Section 2(6-A) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short “the Act”) is the question involved in this appeal which is directed against the judgment of a Division Bench of the Madras High Court laying down that a “foster son” would, under a given set of facts, be a member of the landlord's family and thus overruled the Single Judge's decision in Hathibudi Anandar v. Govindan [(1981) 1 MLJ 250].

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9. Section 2(6-A) provides as under:



“2. (6-A) ‘member of his family’ in relation to a landlord means his spouse, son, daughter, grandchild or dependant parent.”

10. *Apparently, it appears that the definition is conclusive as the word “means” has been used to specify the members, namely, spouse, son, daughter, grandchild or dependant parent, who would constitute the family. Section 2 of the Act in which various terms have been defined, opens with the words “in this Act, unless the context otherwise requires” which indicates that the definitions, as for example, that of “family”, which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature.*

11. *While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.”*

14. As per Section 9(3) donation is permissible to non-relative. As per Section 9(3-A), swapping is permissible. The definition of ‘near relative’ does not include mother-in-law, however, context requires that she should be included. Thus, ratio of afore-cited judgments is applicable to cases in hand.

15. Considering the prevailing family structure especially in the urban population and object of 1994 Act as well as aforesaid judgments of Hon’ble Supreme Court, this Court finds it appropriate to hold that in the



definition of '*near relative*' few more relatives should be included and mother-in-law is one of them.

16. The matter may be examined from another angle. Section 9(3) permits donation of organs to other than '*near relative*'. For the said purpose, approval of Authorization Committee is required. If Section 9(3-A) is interpreted in the manner as claimed by respondent, if an orphan faces situation as arising in the present case, he would not be able to get human organ from anyone. For the said reason, the Authorization Committee is empowered to approve removal of organ and transplantation into a recipient who is not a relative of the donor. It means there is no bar on transplantation of organ of a human being into non-near relative. This shows that intention of the legislature was never to prohibit voluntary and non-coercive transplantation of human organs among unrelated persons. The object of 1994 Act is to prevent misuse of organs of poor persons. There are always possibilities of abstraction of human organs of poor ones on payment of meager amount. As donation of human organs to non-near relative is permissible, matter needs to be examined in the light of parameters laid down in Rule 7(3):

17. Rule 7(3) provides that Authorization Committee shall evaluate:

- i. there is no commercial transaction between the recipient and donor;
- ii. there is link between them;
- iii. reason why donor wishes to donate;
- iv. there is no middleman or tout;
- v. donor is not a drug addict;



vi. financial status of donor and recipient;

18. In the present case, if matter is examined under Section 9(3) read with Rule 7(3), the donor would be able to donate her kidney to recipient who is not a near relative. There is nothing on record disclosing that petitioners are not complying with parameters laid down in aforesaid Rule.

19. In the wake of above discussion and findings, this Court is of the considered opinion that mother-in-law should be considered as '*near relative*' for the purpose of swapping under Section 9(3-A). The petitions deserve to be allowed and accordingly allowed. Respondent No.2-PGIMER is directed to proceed with the procedure subject to compliance of other legal and medical formalities.

(JAGMOHAN BANSAL)
JUDGE

19.03.2026

Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No