



## GOVERNMENT OF KERALA

### Abstract

LSGD - Judgment of Hon'ble High Court of Kerala dated 20.03.2024 in WP(C) No. 7886/2024 filed by Kidney Friends Koottayma - Complied with - Orders issued.

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### LOCAL SELF GOVERNMENT (DA) DEPARTMENT

G.O.(Rt)No.1129/2024/LSGD Dated, Thiruvananthapuram, 25-06-2024

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- Read 1. G.O. (Ms) No.69/2020/LSGD; dated 30.04.2020
2. G.O. (Ms) No.115/2022/LSGD; dated 28.05.2022  
Representation dated 04.10.2023 from Sri. Naseerkhan A.,
3. Secretary, Kidney Friends Koottayma (Kondotty Municipal Committee)
4. Circular No.LSGD-DA1/363/2023-LSGD dated 25.10.2023
5. Letter No. MH3/22375/2023/DHS dated 25.02.2024 from the Director of Health Services  
Judgment of Hon. High Court of Kerala in WP(C) No.
6. 7886/2024 dated 20.03.2024, filed by Kidney Friends Koottayma
7. Letter No. 397/2024/SRG/LSGD dated 18.04.2024 from the Convenor, State Resource Group
8. Representation dated 04.06.2024 from Sri. Naseerkhan A., Secretary, Kidney Friends Koottayma (Kondotty Municipal Committee)

### ORDER

Kidney Friends Koottayma, a Malappuram based association formed for the welfare of Kidney patients, has filed WP(C) No. 7886/2024 before the Hon. High Court of Kerala, aggrieved by the stoppage of supply of medicines to Kidney transplantees from Kondotty Health Centre, allegedly without Government orders and concerned about the non-availability of branded medicines. The petition was filed seeking direction from the Hon. Court to Government, in order to ensure that

distribution of branded lifesaving medicines as envisaged by Government order read as 1st paper above, is continued.

2. The Hon. Court in its judgment read above, has directed the Government to take up representation submitted by the Petitioner, vide paper read 3rd, and dispose it of, after affording an opportunity of being heard to the petitioner or his authorized representative, as expeditiously as is possible, but not later than three months from the date of receipt of a copy of the judgment. It was also directed to consider the plea projected by the petitioner dispassionately and with the empathy deserving to the patients.

3. Accordingly, the Petitioner, represented by Sri. Naseer Khan, Secretary; Sri. Aslam, Joint Secretary; Sri. Ahammed Kabir, President; & Sri. Hassankutti, Treasurer, were heard on 04.06.2024 at 11 AM by the Under Secretary, Local Self Government (DA) Department. The Petitioners submitted a formal representation vide paper read 8 above, which claimed that the branded medicines are essential for preventing organ rejection and maintaining the health of transplant recipients. It was also argued that the Generic substitutes are not much effective and can cause harmful side-effects, as evidenced by the experiences of members of the Organization, who suffered kidney rejection due to shifting to generic medicines from branded. The petitioners also highlighted the financial burden of these expensive branded medicines, with patients often spending ₹20,000 per month, a significant sum for poor individuals who are also unable to engage in strenuous work due to their health conditions. The petitioners emphasized that each patient's medication regimen is personalized, making most of the generic alternatives unsuitable. They also pointed out the willingness of local bodies (like the Kondotty Municipality) to take up projects to fund the procurement of branded medicines if expressly allowed by the Government. Hence the request that the local governments be directed to ensure the continued distribution of branded medicines as per GO read 1st, was reiterated.

4. Government Order read 1<sup>st</sup> above was issued as a temporary relief measure during the COVID-19 pandemic to ensure access to lifesaving medicines, including branded medicines, for critically ill patients facing financial hardship due to loss of livelihoods. This measure, part of a broader disaster management strategy, enabled medical institutions under Local Government institutions to procure and distribute these essential medicines. This was a permission granted only for the

pandemic period. As the pandemic subsided, Local Governments transitioned back to their normal public health functions and shifted to providing routine health care services as in the past. With the subsidence of the pandemic, there was no need for Local Governments to continue with the same type of emergency assistance, as envisaged in GO read 1st above. Consequently, State Level Coordination Committee on Decentralised Planning has issued directions, discontinuing the extraordinary procurement of branded medicines for organ transplant recipients. In addition to that, Circular read 4 above was issued, specifically stating that the LSGIs should only procure and distribute medicines recommended by its medical officers for the treatment provided by the hospitals at the respective levels.

5. Local Governments are expected to focus on providing treatment and medicines recommended by medical officers at their respective levels, ensuring equitable access to healthcare for the broader community. They are not obligated to purchase and stock medicines prescribed at specialty hospitals for organ transplant patients. The medical officers are entitled to prescribe generic medicines for all conditions including chronic diseases and the Local Governments are allowed to procure generic medicines for the same, vide GO read 2nd above. National and State drug prescription policies prioritize and promote generic medicines. It is also noticed that price variations exist among brands of the same drug with same quality. Local Governments would experience undue financial strain if they have to procure costly branded medicines for a specific subset of patients. This could potentially compromise the delivery of essential public health services to the broader population. The fact that the Local Governments today face competing priorities and resource constraints that severely limit their ability to fully address the needs of the people, is to be taken into account.

6. The provision of essential medicines for economically disadvantaged organ transplant recipients ideally fall within the purview and responsibility of the Health Department. Steps are being taken by Health Department to provide quality medicine to kidney patients through EDL/SDL ((Essential Drug List/ Specialty Drug List)) and Karunya/KMSCL.

7. Generic medicines are bioequivalent to branded counterparts and have the same therapeutic effects. The petitioner's claims regarding the adverse effects of generic medicines are not universally supported by medical evidence. Allowing the discretion to procure branded

medicines would raise legitimate concerns regarding potential unethical practices, corruption, and financial impropriety within the healthcare system.

8. Patient distrust of generic medicines is a larger issue, which is rooted in a lack of awareness about their testing and approval process, a perception of inferiority due to lower cost, and perhaps one-off negative experiences. This distrust is reinforced by pharmaceutical marketing and misinformation. While doctors generally acknowledge the safety and efficacy of generics, they may not always prescribe them due to patient preferences, lack of confidence, pharmaceutical marketing tactics/incentives, or habit. Bridging this trust gap requires multi-faceted interventions including comprehensive patient education about the approval process, bioequivalence, and cost-effectiveness of generic medicines, as well as open communication between doctors and patients about the benefits and potential risks, if any, of both generic and branded medicines, which can empower patients to make informed decisions. Increased transparency in pharmaceutical marketing can also help shift prescription practices towards more affordable and accessible options. Interventions for bridging the trust gap needs to be made by the Health department.

9. As directed by the Hon'ble High Court, the matter has been examined with respect to the facts and documents as above. While ensuring quality drugs for each patient is paramount, procuring and distributing specific branded medicines as prescribed by the respective doctors, presents practical challenges and potential financial burdens for the Local Self Government Institutions (LSGIs) under current circumstances. Hence the Government regrets its inability to favourably consider the representation vide paper read 3rd above, at present. The judgement read above is complied with accordingly.

(By order of the Governor)  
MANOJ T  
JOINT SECRETARY

To:

The Secretary, Kidney Friends Koottayma (Kondotty Municipal Committee), Kottukara P.O - 673 638

The Advocate General, Ernakulam (with C/L)

The Principal Director, LSGD

The Director of Health Services

The Principal Accountant General (Audit) Kerala, Thiruvananthapuram  
The Director, Kerala State Audit Department  
The Chairman, State Resource Group  
The Accountant General (A&E) Kerala, Thiruvananthapuram  
The Executive Director, IKM  
Health & Family Welfare (B) Department  
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Section Officer