

Court No. - 9

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Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 49 of 2021

Petitioner :- Ranjan Srivastava

Respondent :- Union of India

Counsel for Petitioner :- In Person

Counsel for Respondent :- A.S.G.I.

Hon'ble Sanjay Yadav,J.

Hon'ble Jayant Banerji,J.

The petitioner who appears in person in this public interest litigation seeks following reliefs:

"I. Make a declaration and issue an express writ, order and direction to enable and make it lawful for the petitioner to exercise his supreme right regarding his life and body whereby he makes/performs Live Body Donation(Jeevit Deh Daan) of his human body and of all his living organ and tissues for the desperate and suffering needy by walking into an operation theater of a suitable facility at a suitable time and for making multiple gifts of life to desperately suffering and dying individuals.

II. Make a declaration and issue an express writ, order and direction to enable and make it lawful for medical doctors/hospital/institution to perform the necessary medical procedures on the petitioner for his act of Live Body Donation (Jeevit Deh Daan), which will be necessary for the transplant of the living organ and tissues from the body of the petitioner into the bodies of the desperately suffering needy whereby there is an increase in the scope of the Hippocratic oath."

Taking note of the relief sought for by the petitioner and the contentions in furtherance thereto that it is fundamental right enshrined under Article 21 of the Constitution of India to walk into an operation theatre of a suitable facility at a suitable time and for making multiple gifts of life to desperately suffering and dying individuals. We are instantly reminded of the enactment passed by the Parliament, i.e, the Transplantation of Human Organs and

Tissues Act, 1994, which received assent of the President on 8.7.1994. It is an Act to provide for the regulation of removal, storage and transplantation of human organs and tissues for therapeutic purposes and for the prevention of commercial dealings in human organs and tissues and for matters connected therewith or incidental thereto. Section 9 of the enactment stipulates restrictions on removal and transplantation of human organs and tissues or both. Section 9 of the Act of 1994 is reproduced below:

"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.

[(1A) 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 transplantation 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.

(1B) 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.

(1C) No human organs or tissues or both shall be removed from the body of a mentally challenged 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 disabled;

(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 Rights and Full Participation) Act, 1995 (1 of 1996).]

(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.

(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.

(4) (a) The composition of the Authorisation Committees 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 Committees consisting of such members as may be nominated by the State Governments 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.”

If we accede to the relief sought for by the petitioner in the present writ petition, the same would be contrary to the restrictions imposed u/s 9 of the Act of 1994. It is further noticed from the provisions of the Act of 1994 that detail procedure is laid down under Chapter II of the Act of 1994 which deals with the manner for the removal of human organs or tissues or both.

Since ample provisions have been made in the Act of 1994 as regard to removal, storage and transplantation of human organs

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and tissues for therapeutic purposes, we are not inclined to grant the relief as sought for by the petitioner in this petition being misconceived.

Consequently petition fails and is **dismissed**.

No costs.

Order Date :- 21.1.2021

o.k.

(Jayant Banerji, J) (Sanjay Yadav, J)

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