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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.53 OF 2014**

Jashwant B. Mehta and Ors.	... Petitioners
Versus	
The State of Maharashtra and Ors.	... Respondents

Mr. Jalan Sandeep for the Appellant.
Mr. Hitesh Venegaonkar, AGP for the Respondent Nos.1 and 2 – State.
Mr. Rui Rodrigues and Ms. Shehnaz Bharucha for the Respondent Nos.3 and 4.

**CORAM : A.S. OKA &
P. D. NAIK, JJ.**

DATE : 18th MARCH, 2016

PC.

1 Heard the learned counsel appearing for the Petitioners.

Prayer clause (a) of this Petition which is the only substantive prayer reads thus :-

“(a) Be pleased to issue appropriate directions to Respondent Nos.1 and 2, as suggested in at EXHIBIT-“E” to the Petition, with necessary changes in it, as the Hon'ble Court may deem fit, and that the due compliance of which by the competent person concerned, shall constitute “Satisfaction”, as mandated u/s 6 of the Act.”

2 Prayer clause (b) is consequential prayer.

3 After having heard the learned counsel appearing for the
Petitioners and after perusing the averments made in the Petition, we
find that the prayer is completely misconceived. Section 6 of the
Transplantation of Human Organs Act, 1994 reads thus :-

“(6) Where the body of a person has been sent for post-mortem examination- (a) for medico-legal purposes by reason of the death of such person having been caused by accident or any other unnatural cause;

OR

(b) for pathological purposes, the person competent under this Act to give authority for the removal of any human organ from such dead body may, if he has reason to believe that such human organ will not be required for the purpose for which such body has been sent for post-mortem examination, authorize the removal, for therapeutic purposes, of that human organ of the deceased person provided that he is satisfied that the deceased person had not expressed, before his death, any objection to any of his human organs being used, for therapeutic purposes after his death or, where he had granted an authority for the use of any of his human organs for therapeutic purposes after his death, such authority had not been revoked by him before his death.”

4. On plain reading of Section 6 of the said Act of 1994, the person competent under the said Act of 1994 to give authority for removal of any human organ or tissue or both from a dead body which is sent for postmortem is required to record satisfaction that the deceased person had not expressed, before his death, any objection to any of his human organs or tissue or both for being used, for therapeutic purposes after his death or, where he had granted an

authority for the use of any of his human organs or tissues or both for therapeutic purposes and such authority had not been revoked by him before his death. If we read prayer clause (a) together with what is stated in Exhibit -E, what the Petitioners want in substance is that the consent letter signed by a relative who is in lawful possession of the dead body for postmortem should be read as satisfaction in terms of Section 6.

5 If such a relief is granted, this Court will be virtually legislating. Moreover, the question is of recording satisfaction in terms of Section 6 of the said Act of 1994. In what manner the said satisfaction is to be recorded depends on facts and circumstances of each case and no hard and fast rule can be laid down. Thus, in substance, the submission of the learned counsel appearing for the Petitioners is that by modifying the form which is used by the Mumbai Municipal Corporation for recording the consent of the person lawfully in possession of the body for postmortem, the consent recorded therein shall be read as satisfaction contemplated by Section 6 of the said Act of 1994.

6 Transplantation of Human Organs Rules (for short “the said Rules”) have been framed in exercise of powers under Sub-Section (1) of Section 24 of the said Act of 1994. Rule 4 lays down the duties of the

medical practitioner which he is under an obligation to perform before removing human organ from the body of a donor before his death or after his death. Sub-Rule (2) of Rule 4 is applicable when the Registered Medical Practitioner wants to remove a human organ from a body of the person after his death. Sub-Rule (2) of Rule 4 reads thus :-

“(2) A registered medical practitioner shall, before removing a human organ from the body of a person after his death, satisfy himself -

(a) that the donor had, in the presence of two or more witnesses (at least one of whom is a near relative of such person), unequivocally authorised as specified in Form 5 before his death, the removal of the human organ of his body, after his death, for therapeutic purposes and there is no reason to believe that the donor had subsequently revoked the authority aforesaid;

(b) that the person lawfully in possession of the dead body has signed a certificate as specified in Form 6.”

7 Thus, the person lawfully in possession of the dead body has to sign a certificate as specified in Form 6 to the appended Rules. Sub-Rule (2) of Rule 4 requires a Registered Medical Practitioner to record a satisfaction that the person lawfully in possession of the dead body has signed a certificate as specified in Form 6.

8 So long as Section 6 of the said Act of 1994 and clause (b) of Sub-Rule (2) of Rule 4 along with Form 6 prescribed by the said Rules remain on the statute book, the interpretation sought to be put by the Petitioners in terms of prayer clause (a) cannot be accepted. One of the contentions raised in paragraph 16 reads thus :-

“16. The Petitioners further state that, having regard to the nature of the existence of prevailing circumstances contemplated u/s 6, it is nearly impossible for the person competent to reach any “satisfaction” as contemplated under said section. The Petitioners state that, thus the burden which is thrown upon the competent person can hardly be discharged in reality. Hence, in spite of all the noble intention the section 6 carries with it, the section cannot be meaningfully implemented.”

9 The apprehension expressed by the Petitioners is taken care of by Sub-Rule (2) of Rule 4 of the said Rules and Form 6 prescribed by the said Rules. Hence, it is not possible for us to issue a writ by interpreting Section 6 of the said Act of 1994, the way the Petitioners want us to interpret.

10. Hence, there is no merit in the Petition and the same is rejected. Thus, the order will not prevent the Petitioners for taking out appropriate proceedings before the appropriate Forum.

(P. D. NAIK, J)

(A.S. OKA, J)