

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.35796 OF 2016

ORDER:

This writ petition is filed seeking to issue a writ or order more particularly, one in the nature of writ of mandamus to declare the action of the respondents in issuing letter, dated 6.10.2016, directing the petitioner to get the consent of her husband for the purpose of enabling her to donate part of her liver to her sister - Smt.Anuradha Chittari (Patient UH ID No.1010378802) contrary to the provisions of the Transplantation of Human Organs Act, 1994 (for short, "the Act") and the Rules 2014 made there under as illegal and arbitrary, and further, to direct respondent No.2 to perform the surgery basing on the documents executed by the petitioner, her sister - Anuradha Chittari and her brother - Satish Varma.

2. Heard and perused the material available on record.
3. The petitioner, who is married and knew about the consequences of donating part of her liver, decided to donate part of her liver to the patient - C.Anuradha, who is none other than her own sister. She filed this writ petition on the ground that the Act contemplates that the permission of the husband and children is also to be obtained for donating any organ by a person. Admittedly, the petitioner is not living with her husband. The said fact is not disputed by any of the parties herein. The Global Hospital has taken a decision on 6.10.2016 in its Internal Hospital Verification Committee, which reads as follows:

“...We do concede that Ms. Anitha is a major and can give her consent for the above mentioned procedure, however the hospital administration has suggested to the next of kin to have the subject brought to the notice of the honourable court.”

Challenging the same, the petitioner filed this writ petition.

4. The learned Government Pleader for Medical, Health and Family Welfare appearing for respondent No.1 also submitted that since the Act requires the concurrence of the husband of the petitioner, they are unable to take any decision and the Court can take a decision in this issue.

5. Considering the rival contentions on either side, this Court is of the view that the intention of the Act is to protect the innocent persons, who were subjected to such donations for the sake of huge amount without knowing the consequences of donating their organs. The same has to be necessarily curtailed, but in the present case, the petitioner, who is a major and capable of understanding all things, informed before the Internal Hospital Verification Committee that she is separated from her husband and intends to donate part of her liver to the patient, who is none other than her own sister. To that effect, she filed an affidavit also.

6. Considering all the facts and circumstances of the case and taking into consideration of the decision already taken by the Global Hospital in its letter, dated 6.10.2016, and the affidavit filed by the petitioner giving her consent, respondent No.2 is hereby directed to proceed with the operation of the sister of the petitioner herein.

7. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

8. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE RAJA ELANGO

28.10.2016

Note:-

Furnish C.C. by 31.10.2016.
B/O
AMD



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WRIT PETITION No.35796 OF 2016

Date: 28.10.2016

AMD