

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2251 OF 2018

Swapnil Raut

... Petitioner

V/s.

State of Maharashtra and ors.

... Respondents

Mr.Sunny Shah with Mr.Ashish Mehta, Mr.Mohit Sahani for the Petitioner.

Ms.P.H.Kantharia , GP with Ms.Deepali Patankar, AGP for the State-Respondent Nos. 1 to 3.

Mr.R.Shekhawat for Respondent No.4.

Mr.Advait M. Sethna with Ms.Ruju R. Thakker for Union of India/Respondent No.6.

**CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.**

DATE : JUNE 26, 2019.

P.C.:-

1. Though this petition initiated as one for the benefit of the petitioner, by virtue of the issues which by necessity this Court would have to go into, has been virtually converted into one of Public Interest Litigation. The petitioner has raised issues of organ donation for the benefit of different patients requiring organ replacement.

2. In the process of hearing this petition, Division

Bench of this Court on 24th July, 2018 had passed following order:-

“Leave to add Union of India as a party respondent. Copy of this petition be served on Union of India.

2. During the course of hearing today, following issues emerged:

(a) Whether in view of the statement of objects of The Transplantation Of Human Organs and Tissues Act, 1994 more precisely Section 1 Subclauses (2) and (3), the State would be entitled to frame guidelines, rules independently on the subject issue;

(b) Whether subject central enactment permits removal/retrieval/transplantation of human organs in registered hospitals only;

(c) Whether unregistered hospitals would be permitted to even allow retrieval of an organ of a patient admitted in the said hospital by doctors attached to a registered hospital.

3. The learned Counsel appearing for the petitioner submits that on the next date, he would formulate the issues raised on law and an advance copy of the same would be furnished to the State and the learned Counsel appearing for Union of India. We may reproduce the SubSections (1),(2) and (3) of Section 1 which read as under:

“1. Short title, application and commencement.

— (1) This Act may be called the Transplantation of [Human Organs and Tissues] Act, 1994.

(2) It applies, in the first instance, to the whole of the States of Goa, Himachal Pradesh and Maharashtra and to all the Union territories and it shall also apply to such other State which adopts this Act by resolution passed in that behalf under clause (1) of article 252 of the Constitution.

(3) It shall come into force in the States of Goa, Himachal Pradesh and Maharashtra and in all the Union territories on such date as the Central Government may, by notification, appoint and in any other State which adopts this Act under clause (1) of article 252 of the Constitution, on the date of such adoption; and any reference in this Act to the commencement of this Act shall, in relation to any State or Union territory, means the date on which this Act comes into force in such State or Union territory.”

4. The learned Advocate General be briefed on the issue.

5. Petitioner to remove office objections till the next date.

6. Stand over to 7th August, 2018.”

3. This order thus sets the tone and tenor of the inquiry that the Court wishes to make. These are issues of public importance and interest. This petition in our opinion therefore is one of public interest. The same may be registered as such and placed before the appropriate Court.

4. Learned counsel for the petitioner tenders his submissions pursuant to the said order dated 24th July, 2018, which are taken on record.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)