

HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.26240 OF 2019

ORDER:

This Writ Petition is filed to declare the orders of the 1st respondent in letter No.3808/D/2019 dated 06.11.2019 in rejecting the petitioner's application for approval of Kidney Swap transplantation, as being illegal and arbitrary.

Heard the learned Counsel for the petitioner and the learned Government Pleader for Medical and Health.

As seen from the impugned proceedings issued by the 1st respondent, the application of the petitioner for Swap donation was rejected by placing reliance on Rule 7(4) of the Transplantation of Human Organs and Tissues Act, 1994 as amended by the Transplantation of Human Organs (Amendment) Act, 2011. However, it is to be seen that the provisions of the Central enactment and the Rules made thereunder have no application as the erstwhile Unified State of Andhra Pradesh has put in place its own legislation to regulate Transplant of Human Organs. The Central Enactment is applicable in the States of Goa, Himachal Pradesh, Maharashtra and all other Union Territories. This fact would also be further evident from the objects and reasons as stated in the 2011 Amendment Act.

Having regard to the above, this Court is of the view that the impugned proceeding issued by the 1st respondent placing reliance on the Transplantation of Human Organs and Tissues Act, 1994 is misplaced and the applications of the petitioner should be considered in the light of the State Legislation viz., the Andhra Pradesh Transplantation of Human Organs Act, and the Rules, 1995 which has been adopted by the State of Telangana upon the bifurcation of the State under G.O.Ms. Nos.33 and 34 Health, Medical & Family Welfare (D1) Department, dated 25.05.2016.

Accordingly, the impugned proceeding is set aside and the matter is remanded back to the respondent to consider the same in accordance with the observations made hereinabove.

With the above direction, the Writ Petition is disposed of. No order as to costs.

The miscellaneous petitions pending, if any, shall also stand dismissed.

T. VINOD KUMAR, J

Date: 09.12.2019.

Note: Issue copy by 10.12.2019

B/o
MRKR