

Court No. - 40

Case :- WRIT - C No. - 28192 of 2022

Petitioner :- Smt. Pallavi Saxena And 2 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Varad Nath, Hariom Kamal Singh

Counsel for Respondent :- C.S.C., Ashish Mishra, Rahul Agarwal

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Shri Hariom Kamal Singh, learned counsel for the petitioners, Ms. Uttara Bahuguna, learned Additional Chief Standing Counsel for the State-respondents and Ms. Aakash Agrawal holding brief of Shri Rahul Agrawal, learned counsel appearing on behalf of respondent nos. 2 and 3.

2. That the respondent no. 6 who is a husband of the petitioner no. 1 and son of petitioner nos. 2 and 3 own certain movable and immovable assets in the nature of saving account, investment, residential house owned jointly and individually. Unfortunately, the petitioner's husband is lying in a comatose state. The petitioners have incurred huge expenses in the medical treatment of respondent no. 6 and now they are facing great difficulty to maintain the family as well as the medical expenses of Pranav Bhatnagar who was the sole bread-earner of the family.

3. The petitioner no. 1 who happens to be wife of the respondent no. 6 who is in the comatose state, the petitioner no. 2 is the mother of respondent no. 6 and petitioner no. 3 is father of Pranav Bhatnagar (respondent no. 6). They have approached this Hon'ble Court by means of the instant writ petition seeking the following reliefs :-

“(i) issue a writ, order or direction in the nature of mandamus directing the respondent nos. 1 to 4 to declare the petitioner no. 1 as the guardian of Sri Pranav Bhatnagar for the purposes of disposing of and managing the assets mentioned in the writ petition.

(ii) issue a writ, order or direction as this Hon'ble Court may deem fit and proper in the present circumstances of the case.

(iii) Award costs of the petition to the petitioners throughout.”

4. When this petition came up for hearing on 10.05.2023, this court was pleased to pass the following order :-

1. Heard learned counsel for the petitioner and Ms. Akashi Agrawal holding brief of Sri Rahul Agarwal, learned counsel for respondent nos. 2 & 3.

2. Petitioner no. 1 claims herself to be the wife and petitioner nos. 2 & 3 claims to be parents of respondent no. 6 who is allegedly in comatose state since July, 2017 as stated in paragraph no. 7 of the writ petition. Therefore, the petitioners have filed the present writ petition to declare the petitioner no. 1 as guardian of respondent no. 6, for the purpose of disposing and managing the assets, mentioned in the writ petition, which are owned by the respondent no. 6. In paragraph no. 5 of the writ petition it has been stated that all the petitioners and the respondent no. 6 are residing together under the same roof in an Apartment No. 507 B 5th Floor, Block No.- 2 Sector 1, Panchsheel Wellington Crossing Republic, District- Ghaziabad.

3. In view of the aforesaid, we direct the respondent no. 4 to obtain a report from the Medical Board, which shall examine and assess the physical and mental status of the respondent no. 6.

4. The respondent no. 4 shall submit his report alongwith report of the Medical Board constituted by him within two weeks.

5. List/put up on 24.05.2023 in the additional cause list before the appropriate Bench.

6. Registrar (Compliance) is directed to send a copy of this order to the respondent no. 4 within 48 hours for compliance.

5. In response of the aforesaid order dated 10.05.2023, a medical board was constituted who gave the following report :-

::मेडिकल रिपोर्ट::

जिलाधिकारी, गाजियाबाद के पत्र संख्या: 2928/एस0टी0-डी0एम0/2023 दिनांक 12 मई, 2023 के द्वारा मा0 उच्च न्यायालय इलाहाबाद में योजित रिट याचिका संख्या 28192/2022, श्रीमती पल्लवी सकसैना एवं दो अन्य बनाम उत्तर प्रदेश राज्य एवं अन्य, में मा0 उच्च न्यायालय, इलाहाबाद के आदेशों के अनुपालन में डा0 डी0एम0 सकसैना, अपर मुख्य चिकित्सा अधिकारी, गाजियाबाद, डा0 आर0पी0 सिंह, फिजिशियन, जिला एम0एम0जी0 चिकित्सालय, गाजियाबाद, डा0 वी0के0 मिश्रा, निश्चेतक, जिला एम0एम0जी0 चिकित्सालय, गाजियाबाद एवं डा0 संजय गुप्ता, सर्जन, जिला संयुक्त चिकित्सालय संजयनगर, गाजियाबाद के मेडिकल बोर्ड का गठन किया गया है। तत्क्रम में मरीज के चिकित्सीय परीक्षण के समय श्री देवेन्द्र मिश्रा, तहसीलदार सदर, गाजियाबाद उपस्थित रहे एवं उनके द्वारा मरीज श्री प्रणव भटनागर की पहचान की गयी। तदोपरान्त दिनांक: 22.05.2023 को मेडिकल बोर्ड द्वारा मरीज श्री प्रणव भटनागर का चिकित्सीय परीक्षण किया गया। चिकित्सा परीक्षणोपरान्त मेडिकल बोर्ड की आख्या निम्नवत् है:-

Patient Name & Address:- Pranav Bhatnagar, age-42 Y/M, s/o Navneet Bhatnagar R/o-507 B, Tower 2A, Panchsheel Wellington apartment Crossing Republic Ghaziabad.

Mark of Identification- A Black Mole over Left forearm on dorsal aspect.

Patient Identification verified by Shri Devendra Mishra, Tehsildar Sadar Ghaziabad.

::Medical Examination::

Alleged History of electric shock with cardiac arrest at home on dated 08- 07-2017. Then he was admitted and revived by CPR at Columbia Asia Hospital, Ghaziabad. MRI Brain dated 09-07-2017 shows acute infarcts involving bilateral parieto- occipital lobes and bilateral lentiform nuclei region of basal ganglia. CT Brain dated 23-08-2019 shows Features of Sequale of global hypoxic encephalopathy changes. EEG record dated 22- 08-2019 shows abnormal EEG record is suggestive of generalized slowing.

:: General Condition::

- Unconscious state, Not oriented with Time, Place and Person, Vitals- Normal, Respiratory movements and Rate are regular and normal. Not responding to verbal command.
- Both Eyes are open with spontaneous movements, blinking on clapping present. Pupils- B/L Normal size and normal reacting to light.
- Not able to speak or respond to verbal command. Tracheostomy tube present over lower part of front of neck in Situ.
- Chest- B/L vesicular breathing present no added sound
- CVS-S1S2 Normal
- Abdomen- Soft and Non tender feeding gastrostomy tube in Situ in epigastrium area.
- Condom connected with urethra and Urobag for Urination.
- No bed sore present lower back.
- CNS examination- Spasticity are present in all four limbs and neck.
- Pt. responding to deep painful stimuli by extending and internal rotating all the four limbs.
- All reflexes are exaggerated and jerky movement present in hands.
- Not responding to verbal commands and disoriented.
- On suction from tracheal tube gag reflex present.

::Opinion::

After examination and going through available documents, we are having the opinion that patient is having severe brain damage (due to hypoxic brain injury following electric shock/ cardiac arrest), patient appears to be awake but shows no evidence of awareness/consciousness. He can not speak and follows verbal command. Hence patient is in Persistent Vegetative State of Coma.

Enclosure: Twenty Two pages

(Dr Sanjay Gupta),

Surgeon

Dist. Combined Hospital,

Ghaziabad.

(Dr. V.K Mishra),

Anesthetist

Dist. MMG Hospital

Ghaziabad.

(Dr. R.P Singh),

Physician,

Dist. MMG Hospital

Ghaziabad.

(Mr. Devendra Mishra),

Tehsildar Sadar,

Ghaziabad.

(Dr. Dinesh Mohan Saxena)

ACMO,

Ghaziabad.

6. A perusal of the report of the Medical Board shows that the petitioner's husband is in coma and in vegetative state and is not in a situation to take a decision or to execute any conveyance. He needs a guardian to take care of him, his property and his affairs.

7. Under the Mental Healthcare Act, 2017 the nominated representative is responsible for providing support in respect of decisions of treatment, and for

taking decisions in respect of providing access to family, rehabilitation services, planning of admission, planning of discharge, appointments of attendants etc. on behalf of the mentally ill persons.

8. In the Rights of Persons with Disabilities Act, 2016 the person with disabilities would have the right of access to justice, and the right to legal capacity etc. The provision of the Rights of Persons with Disabilities Act, 2016 applies to persons with varying degrees of disabilities, as the definition of disabilities is extremely wide. It is clear that the intention of the Rights of Persons with Disabilities Act, 2016, is to first, examine if the Persons with Disabilities is capable of expressing his or her will or preferences, and second, under exceptional circumstances, where consultation is not possible, enable the provision of total support.

9. However, both the Acts provide for appointment of Support/Guardian for People with Particular Disabilities/Mental Illness, but do not address the situation of a person, who is in comatose state.

10. The Hon'ble Supreme Court in the matter of **Aruna Ramchandra Shanbaug vs Union Of India & Ors**¹, has explained difference between permanent vegetative state and minimal conscious state. Section 2(s) of the Rights of People with Disabilities Act, 2016 defines persons with disabilities. This category of persons are those who are able to interact though not fully coherent. Hence, Guardian was to be appointed under Section 14 of the Act. However, for a person in comatose state, there is no interaction and the victim would not respond to any stimuli, hence, the provisions of personal disability defined under Section 2(s) of the Act cannot be said to be attracted in such cases. Therefore, in the larger interest of patient lying in comatose state, who is in urgent need of treatment, support and for that they need funds to take care of this extraordinary situation, which cannot be ignored or compromised, hence, the Court is consciously bound to invoke power under Article 226 of

¹ 2011(4) SCC 454

the Constitution of India, to deal with such situation.

11. Insofar as India is concerned, the recent judgment of the Hon'ble Supreme Court in **Shafin Jahan v. Ashokan K.M. & Ors.**², the Court has considered the scope of 'parens patriae' jurisdiction and has observed as under:

"39. Constitutional Courts in this country exercise parens patriae jurisdiction in matters of child custody treating the welfare of the child as the paramount concern. There are situations when the Court can invoke the parens patriae principle and the same is required to be invoked only in exceptional situations. We may like to give some examples. For example, where a person is mentally ill and is produced before the court in a writ of habeas corpus, the court may invoke the aforesaid doctrine. On certain other occasions, when a girl who is not a major has eloped with a person and she is produced at the behest of habeas corpus filed by her parents and she expresses fear of life in the custody of her parents, the court may exercise the jurisdiction to send her to an appropriate home meant to give shelter to women where her interest can be best taken care of till she becomes a major.

12. The Court further held that in order to invoke the parens patriae jurisdiction, exceptional circumstances have to exist. The scope of parens patriae jurisdiction has to be exercised with great caution and with enormous seriousness. The Supreme Court recognises that Constitutional Courts, including High Courts, can also act under their parens patriae jurisdiction to "meet the ends of justice". Mental incompetency is listed as an exceptional circumstance which would justify the exercise of this jurisdiction. If the Court is satisfied that the person concerned is in a vegetative state, then surely "parens patriae" jurisdiction can be exercised.

13. Identical situations have arisen earlier also into various parts of the country. Different High Courts while dealing with identical situations has

² 2018 (16) SCC 368

passed the following orders.

14. In the matter of **Smt. Shalini Agarwal and others vs. State of U.P. and others**³, a Coordinate Bench of this Court in identical situation where husband of the petitioner was in vegetative state, declared his wife as guardian who was in comatose condition and further allowed her to do all the acts, deeds and things for proper medical treatment and welfare of her husband.

15. In **Uma Mittal vs. Union of India**⁴, the Allahabad High Court appointed the wife of a person in comatose state, as his guardian, and framed similar guidelines for the state of Uttar Pradesh, as the **Shobha Gopalakrishnan vs. State of Kerala**⁵ [W.P. (C). 37278 of 2018, decided on 20th February, 2019],

16. In **Vandana Tyagi and another vs. Government of National Capital Territory of Delhi and others**⁶, a single judge of this Court appointed the sons of a comatose lady as her guardians, to utilize her assets, including specifically her late husband's PPF account. The Court held that such a situation would not fall under the MHA-2017 or the RPWD-2016 and therefore, in absence of legislative guidance, relying upon the

17. In **Satula Devi vs. Govt. of NCT of Delhi**⁷, the Delhi High Court has appointed Guardianship Committee consisting of the wife, son and brother as nominated representatives under the Mental Healthcare Act, 2017 and also to manage all affairs of the patient including medical treatment, healthcare decisions qua daily living, financial affairs dealing with immovable and movable assets, decision qua shareholding of the patient, operate bank account.

18. In **Pooja Sharma v. State of U.P. & Ors. Passed in Writ-C No. 26406 of 2023**, this Hon'ble Court had appointed the wife as 'guardian' of her husband

3 Writ C No.5783 of 2020 decided on 14th October, 2020

4 2020 SCC OnLine All 777

5 2019 SCC OnLine Kerala 739

6 W.P.(C) No.11003 of 2019 decided on 7.1.2020

7 2021 SCC OnLine Del 4856

who was in comatose state and allowed to sell his property and manage other affairs to meet out the medical expenses.

19. Looking into the health condition of husband of the petitioner, it is clear that he needs 24 hours medical assistance. The petitioners have already suffered grave emotional trauma and are running out of resources to enable them to take good medical care of respondent no. 6 and also to meet out the daily expenses of the family. It is submitted that the petitioner nos. 2 and 3 who are parents of respondent no. 6 (who is in the comatose state) had given the wilful consent for appointment of petitioner no.1 as a guardian of Pranav Bhatnagar. It has been further prayed by the petitioners to allow petitioner no. 1 to manage all the movable and immovable properties and assets of Shri Pranav Bhatnagar and also to manage the saving accounts, investments, residential house and the house loan taken by him both jointly and individually.

20. Looking into the grave medical conditions in which, respondent no. 6 is in comatose state, and also perusing the medical report given by the medical board, the respondent no. 6 is certainly in need of some person to take care of his health and also his financial interest, hence, the permission to appoint petitioners as a “guardian” of respondent no. 6 is **accorded**.

21. Thus, on a perusal of the medical report of and various decisions of Hon’ble Supreme Court and other High Courts as well as this Court, and the guidelines laid down by aforementioned judgements in identical matters, we fix the following norms/guidelines for appointing the petitioner as guardian of her husband:-

(a) We appoint petitioner no. 1- Smt. Pallavi Saxena wife of Mr. Pranav Bhatnagar as guardian of her husband (who is in comatose state).

(b) She will have the right to take decisions on behalf of her husband for his proper medical treatment, nursing care, welfare and benefit of her husband and their children with power to do all acts, duties and things with respect to all the bank accounts, investments, residential

house, home loan, locker, provident fund, joint saving accounts and the joint home loan account, the details of which are as follows :-

- “a. Savings Account No. 30485629668 at State Bank of India Crossing republic branch, Dist. Ghaziabad
- b. Public Provident fund Account no. 33506339502 at State Bank of India Crossing republic branch, Dist. Ghaziabad.
- c. Locker No. 79/1 at State Bank of India Crossing republic branch, Dist. Ghaziabad.
- d. Times of India Provident fund Trust account no. 89800.
- e. Joint Owner of Residential house at Flat No. 507B, Tower 2A, Panchsheel Wellington Crossing Republic Ghaziabad, Uttar Pradesh.
- f. Joint Savings Account No. 0191104000143998 at IDBI bank Ltd. Lajpat Nagar 3, New Delhi-110024
- g. Joint Home loan account no. 191/019167510006784.”

(c) In case, any relative or friend of the person lying in comatose state points out that guardian is not acting in the best interest of the person lying in comatose state, such person will also have the locus to approach this Court for issuance of proper direction and for removal of the guardian.

22. The instant writ petition is **allowed**.

23. Copy of this order be placed before the Registrar General for necessary follow up and compliance thereof.

Order Date :- 21.11.2023

Rama Kant