

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

Cont P.No.2104 of 2019
and
Rev.Appln.No.1 of 2020
in
W.P.No.33279 of 2017

T.K.Sreelatha
Wife of S.R.Rajan ... Petitioner in Cont P.No.2104/2019/
Respondent in Rev.Appln.No.1/2020

.Vs.

1.S.Madhumathi
Secretary to Government
Social Welfare Department
Fort St.George
Chennai-600 009.

2.B.Mageshwari
Officer-in-charge
The Local Level Committee
(Under the National Trust for the welfare of persons
with Autism, Cerebral Palsy, Mental Retardation and
Multiple Disabilities Act, 1999)
Office of the Director of Social Welfare
DMS Complex,
Teynampet, Chennai-600 086.

3.R.Seethalakshmi
The District Collector
Chennai.

4.Joseph Ravi
The District Differently Abled Welfare Officer
DMS Complex, Teynampet
Chennai-600 086.

... Respondents in Cont P.No.2104/2019
Review petitioners in
Rev.Appln.No.1/2020

Contempt Petition filed under Section 11 of the Contempt of Courts Act 1971, praying to punish the respondents for the willful disobedience of the order dated 04.01.2019 passed by this Court in W.P.No.33279 of 2017.

Review Petition filed under Order 47 Rule 1 read with Section 114 of CPC, praying to review the order dated 04.01.2019 passed in W.P.No.33279 of 2017.

For Petitioner
in Cont P.No.2104/2019 /
Respondent
in Rev.Appln.No.1/2020 : Mr.T.Sai Krishnan
For Respondents
in Cont P.No.2104/2019/
Review petitioners
in Rev.Appln.No.1/2020 : Mr.A.Kumar
Additional Advocate General
assisted by
Mr.D.Suriyanarayanan
Additional Government Pleader

COMMON ORDER

Contempt Petition No.2104 of 2019 has been filed by complaining that the order dated 04.01.2019 passed in W.P.No.33279 of 2017 is not complied with.

2. Review Application No.1 of 2020 is filed to review the above said order dated 04.01.2019 passed by this Court in W.P.No.33279 of 2017.

3. The above said writ petition was filed seeking for mandamus directing the respondents to consider the

application dated 08.05.2017 filed by the writ petitioner for appointing her as a Guardian in respect of the property of the person viz., T.K.Sreekanth, on merits without insisting for Disability Certificate from the Government General Hospital, Chennai and appoint the writ petitioner as Guardian of T.K.Sreekanth, Son of T.K.Sreenivasacharlu in accordance with law.

4. This Court, after hearing both sides, disposed the said writ petition on 04.01.2019 by directing the second respondent therein to consider the writ petitioner's application dated 08.05.2017 and pass appropriate orders in the light of the report submitted by the competent Medical Officer, which was obtained during the course of hearing the said writ petition. This Court has also directed the second respondent to pass such order within a period of four weeks. In order to avoid repetition of the facts and circumstances, which warranted the above order of this Court, the order passed in the above said writ petition on 04.01.2019, is extracted as hereunder:

"The petitioner seeks for Mandamus directing the respondents to consider for application dated 08.05.2017 for appointing her as guardian in respect of the property and person of Mr.T.K.Srikanth without insisting for

disability certificate from the Government General Hospital, Chennai and appoint the petitioner as guardian to said Mr.T.K.Srikanth S/o. T.K.Sreenivasacharlu.

2. The petitioner is the sister of one T.K.Sreekanth. It is stated that while her brother was working as a Software Professional, he got married to one E.Latha and they begotten two daughters. It is further stated that when all the four of them viz., the petitioner's brother and his family members went on a vacation to Nepal and the places around Himalayas, unfortunately, the flight in which they travelled crashed against the mountain and in the said accident, the mother of the minor children viz., E.Latha, wife of T.K.Sreekanth died on the spot. It is further stated that the children escaped with grievous injuries while the petitioner's brother suffered severe head injuries and due to lack of oxygen supply to his brain cells, he is in a state of coma ever since the accident. It is stated that the petitioner's brother is lying in such state with 100% physical and mental disability. The petitioner further states that her aged parents are living with her along with those two unfortunate minor children of her brother. Thus, it is stated by the petitioner that she is the only person taking care of her brother and consequently for all practical purpose, she needs guardianship certificate from the concerned authorities to

certify that she is the guardian of her brother and his children. Therefore, the petitioner made an application on 08.05.2017 for appointing her as guardian in respect of the property and the person of the said T.K.Sreekanth. However, the said application has not been considered for want of disability certificate from the Government General Hospital, Chennai. Therefore, the petitioner has filed the present Writ petition seeking for a Mandamus directing the respondents to consider her application dated 08.05.2017 for appointing her as the guardian in respect of the property and the person of the said T.K.Sreekanth on merits, without insisting for disability certificate from the Government General Hospital, Chennai.

3. Heard both sides.

4. When this matter was taken up earlier on 04.01.2018, this Court after noticing the fact that the said Mr.T.K.Srikanth has not been physically assessed by a competent person viz., a Psychiatrist working in the Government Hospital, passed an interim order directing the Dean, Rajiv Gandhi Government General Hospital, Chennai, to depute a competent Psychiatrist to assess the disability of her brother by name, T.K.Srikanth, at her residence itself and after making such assessment, to file a report before this Court. Thereafter, when the matter was taken up on 30.11.2018, it was informed by the learned counsel for the petitioner that in

pursuant to the order passed by this Court on 04.01.2018, the petitioner's brother was examined by a Psychiatrist at Rajiv Gandhi Government General Hospital, who in turn, referred him to Kilpauk Institute of Mental Health, Chennai. He further informed that the petitioner's brother was examined at the said Centre and a report was also sent by them to the Registrar of this Court. Accordingly, the Registry is directed to file the report before this Court. Thus, the matter is listed today along with the report submitted by the Director, Institute of Mental Health, Kilpauk, Chennai-10. The Observation Report dated 20.04.2018 filed by the Medical Officer of Kilpauk Institute of Mental Health, reads as follows:

"As per the reference cited above Mr.T.K.Sreekanth, 44 years, male was brought by his sister to Institute of Mental Health outpatient department, on 04.04.2018 for assessment. He was subjected to detailed history, clinical, and psychological assessment.

Based on the above it is opined that following head injury on 14th May 2012 patient is in a vegetative state he is having severe cognitive impairment due to Hypoxic brain injury - post traumatic.

He is unlikely to earn his own livelihood.

Encl. psychological assessment Report."

5. Perusal of the above report submitted by

the competent person clearly indicate that the

brother of the petitioner is not in a vegetative state and is having severe cognitive impairment. The report also states that the said person is unlikely to earn his own livelihood. Since, the said report clearly speaks about the health condition of the said person viz., T.K.Srikanth, this Court is of the view that the petitioner's application dated 08.05.2017 has to be considered by the respondents, more particularly, the 2nd respondent and pass appropriate orders, appointing the petitioner as the guardian to the property and person of the said T.K.Srikanth. Accordingly, the 2nd respondent is directed to consider the petitioner's application and pass appropriate orders in the light of the report submitted by the competent Medical Officer as stated supra. Such exercise shall be done by the 2nd respondent, within a period of four weeks from the date of receipt of a copy of this order. The legal report submitted by the Kilpauk Institute of Mental Health, Kilpauk, Chennai - 10 dated 24.10.2019 shall form part of the order. No costs. Consequently, the connected miscellaneous petition is closed".

5. As the above said order was not complied within the time, this contempt petition is filed as stated supra. At the same time, the respondents in the writ petition filed

the above review application to review the above said order.

6. The contempt petition and the review application are heard together.

7. Mr.A.Kumar, learned Additional Advocate General appearing for the review petitioners/contemnors fairly submitted that though the review application is filed, it would suffice if the interest of these respondents are protected by imposing certain conditions as has been done by the Delhi High Court in a case of **Vandana Tyagi and another Vs. Government of National Capital Territory of Delhi (GNCTD) and others, in W.P.(C) No.11003/2019 dated 07.01.2020.**

8. An affidavit dated 12.02.2020 is filed by the review petitioners, who are the respondents in the contempt petition, praying this Court to consider those conditions and pass appropriate orders. It is also stated therein that after receiving the order copy from this Court, these official respondents would issue legal Guardianship Certificate to the writ petitioner within 10 days, as a special case.

9. The learned counsel for the writ petitioner fairly

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submitted that in order to protect the interest of both parties, requisite conditions may be imposed as this Court deem fit and necessary for issuing such Guardianship Certificate to the petitioner.

10. Considering the above stated facts and circumstances, more particularly, the stand now taken by the respondents in the contempt petition and in order to protect the interest of all the parties, more particularly, the said Mr.T.K.Sreekanth for whom and his properties, the writ petitioner seeks to be appointed as guardian, this Court is of the view that the above contempt petition and review application can be disposed of by passing the following order.

11. Accordingly, the respondents are directed to issue Legal Guardianship Certificate to the petitioner as already ordered by this Court, subject to the following conditions:

- (a) The writ petitioner, as the Guardian will file a report before the Registrar General of this Court every six months by specifically indicating the transactions undertaken by her in respect of the assets of the said person viz.,

T.K.Sreekanth and also the details regarding the funds, if any, received by her and utilization of the same for the purpose of maintaining the said person.

(b) The Registrar General of this Court will maintain a separate register setting out the details of the proceedings, particulars of the person appointed as a guardian and orders, if any, passed after the appointment of the guardian. The Registrar General shall preserve the reports filed by the writ petitioner/guardian from time to time.

(c) In the event, the guardian appointed misuses or misappropriates or misutilize her power in respect of the assets of the said person viz., T.K.Sreekanth or fails to utilize the assets in the best interest of the said person, this Court will have the power to remove the writ petitioner from guardianship and appoint another person in her place.

(d) The guardian appointed shall

intimate her appointment to the District Differently Abled Welfare Officer, Chennai. The said officer shall visit the said person viz., T.K.Sreekanth at least once in every quarter and prepare a report of his visit and file it before the Registrar General of this Court. In case, the District Differently Abled Welfare Officer, Chennai, finds that the writ petitioner, who is appointed as the guardian, is not acting in the best interest of the said person T.K.Sreekanth, he/she will move the Court for seeking appropriate directions.

(e) The guardian appointed will ensure that the transactions entered into by her is in accordance with the provisions of law.

(f) In case, a relative or next friend of the said person T.K.Sreekanth finds that the guardian is not acting in the best interest of the said T.K.Sreekanth, such relative or next friend will have the locus to approach

the Court for issuance of appropriate directions for removal of the guardian.

(g) In case, the guardian wishes to move the said person T.K.Sreekanth, to another State or even to another Country for the purpose of securing better medical treatment, she shall approach this Court for necessary permission before undertaking such an exercise.

12. Thus, the contempt petition and review application are disposed of, accordingly. Consequently, the respondents are directed to issue Guardianship Certificate to the writ petitioner by incorporating the above conditions imposed by this Court, within a period of 10 days as indicated supra.

SD/-

ASSISTANT REGISTRAR (COMM. CASES)

mk

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER (O.S.)

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SMI/14.02.2020

To

- 1.The Secretary to Government
Social Welfare Department
Fort St.George, Chennai-600 009.
- 2.Officer-in-charge
The Local Level Committee
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with Autism, Cerebral Palsy, Mental Retardation and
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