

Vijay Ramachandra Salgaonkar	...	Petitioner
Vs.		
State	...	Respondent

Mr. I. A. Saiyed for Petitioner.
Ms. Purnima Kantharia, GP for Respondent State.

**CORAM : UJJAL BHUYAN &
MADHAV J. JAMDAR, JJ.**

Reserved on : JULY 09, 2021

Pronounced on : JULY 17, 2021

ORDER : (*Per Ujjal Bhuyan, J.*)

Heard Mr. Saiyed, learned counsel for the petitioner and Ms. Kantharia, learned Government Pleader for the respondent State.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the State to make provisions for guardianship of mentally sick persons who are not minor. He further seeks a direction to the respondent State to declare him as the guardian of his wife Mrs. Veena Salgaonkar for the properties listed at exhibit-B to the writ petition.

3. Petitioner is the husband of Mrs. Veena Salgaonkar who is aged about 65 years. Petitioner is presently 73 years of age. Both of them are living together as husband and wife without any children.

4. Petitioner's wife Mrs. Veena Salgaonkar is suffering from *vascular dementia* with *diabetes mellitus* and *hyper tension*. Because of her debilitating health condition she is unable to take care of herself, not to speak of her property. She is virtually a "living dead" person. Being

the only natural and legal guardian, petitioner has to constantly look after and take care of his wife. Properties of the wife Mrs. Veena Salgaonkar are mentioned in exhibit-B to the writ petition which includes residential tenement, savings bank accounts with IDBI Bank and Saraswat Co-operative Bank Limited, post office account and a number of investments. While looking after the person of his wife is not a difficult proposition, petitioner is handicapped in looking after her properties in the absence of being declared as her guardian.

5. In this connection petitioner had filed a guardianship petition before this Court which was registered as Guardian Petition (L) No.599 of 2021. However, the said petition was disposed of on withdrawal on 11.02.2021 with liberty to the petitioner to file a writ petition.

6. Accordingly the present writ petition has been filed seeking the reliefs as prayed for.

7. This Court by order dated 30.03.2021 directed the concerned Resident Deputy Collector to visit the residence of the petitioner where Mrs. Veena Salgaonkar is residing and to submit a report to this Court regarding her physical and mental condition including as to whether she is in a position to look after herself and to sign documents / cheques with understanding.

8. Pursuant thereto Mr. Sadanand Jadhav, Resident Deputy Collector, Mumbai City submitted report dated 18.04.2021 to the registry of this Court. He has stated in his report that he had visited the residence of Mrs. Veena Vijay Salgaonkar on 16.04.2021 at about 02:00 p.m.. As per report of the Resident Deputy Collector, Mrs. Veena Vijay Salgaonkar is a known patient of vascular dementia with diabetes mellitus and hypertension; this condition started about seven years back and its severity has increased to a great extent since 2020. Mrs. Veena Vijay Salgaonkar was found to be completely bedridden and disoriented.

Resident Deputy Collector further reported that Mrs. Veena Vijay Salgaonkar was not in a position to make voluntary movement and also make signature for withdrawing money from bank.

9. Respondent State has not filed any affidavit as Ms. Kantharia submits that the State would not like to treat it as an adversarial litigation. Respondent has also not disputed the certificate dated 18.04.2021 of the Resident Deputy Collector.

10. Learned counsel for the petitioner submits that though he has pleaded in the writ petition that his wife's ailment is mental illness, there is no provision for guardianship under the Mental Healthcare Act, 2017. Main purpose of the Mental Healthcare Act, 2017 is to provide medical care to mentally sick persons who are not looked after by anyone. Referring to the Guardians and Wards Act, 1890, he submits that the said act is applicable only to minors and does not provide for guardianship of majors. In the circumstances, he submits that this Court may pass appropriate order appointing him as the guardian of his wife Mrs. Veena Vijay Salgaonkar who is in a vegetative state.

11. On the other hand Ms. Kantharia, learned Government Pleader has referred to the definition of *mental illness* as defined under section 2(1)(s) of the Mental Healthcare Act, 2017. She has also referred to the provisions of section 14 which deals with appointment of nominated representative of a person who is not a minor. However, when this Court pointed out to section 17, she acknowledged that under that provision the nominated representative would not have any right to look after the property of a mentally ill person who is not a minor. However, she submits that taking an overall view Court may consider passing appropriate order to meet the ends of justice.

12. Submissions made by learned counsel for the parties have been duly considered.

13. Short point for consideration is whether petitioner i.e., the husband should be declared as the guardian of his wife Mrs. Veena Vijay Salgaonkar in a proceeding under Article 226 of the Constitution of India.

14. We have already noted that petitioner had initially filed Guardian Petition (L) No.599 of 2021 before this Court under the Guardians and Wards Act, 1890. However, the said writ petition was disposed of on withdrawal on 11.02.2021 with liberty to the petitioner to file a writ petition. Thereafter the present writ petition has been filed.

15. Writ Petition No.9712 of 2017 was filed before this Court by Santosh Rohidas Deshmukh seeking a direction to appoint him as a guardian of his father Rohidas Deshmukh who was not in a position, physically and mentally, to take care of himself and managing his property. After referring to the decision of Madras High Court in the case of *Sairabanu Mohammed Rafi Vs. State of Tamil Nadu*, **Writ Petition No.28435 of 2016** decided on **06.01.2016**, this Court appointed the petitioner as guardian of his father including for the purpose of operating bank accounts.

15.1. Likewise in **Writ Petition (L) No.28269 of 2017**, *Philomena Leo Lobo Vs. Union of India* **decided on 13.10.2017**, a Division Bench of this Court allowed the prayer of the petitioner Philomena Leo Lobo for declaring her as guardian of her husband Leo Lobo who was in a comatose condition.

16. In *Sikha Arijit Bhattacharya Vs. Union of India*, **Writ Petition No.11757 of 2018 decided on 27.10.2020**, a Division Bench of this Court accepted the prayer of the petitioner Sikha Arijit Bhattacharya and declared her as the guardian of her husband Dr. Arijit Bhattacharya who was in a vegetative state.

16.1. Very recently, a Division Bench of this Court in *Smt. Reshma Salam Kondkari Vs. Union of India*, **Writ Petition (L) No.11394 of 2021 decided on 17.06.2021**, declared the petitioner Reshma Salam Kondkari as the guardian of her husband Abdul Salam Ismail Kondkari who is in a vegetative state, for managing the bank accounts and immovable property of the husband including selling of flat.

17. In *Rajni Hariom Sharma Vs. Union of India*, **Writ Petition (St.) No.3883 of 2020 decided on 27.08.2020**, this Court decided the claim of the wife to be the guardian of her husband who was stated to be in a vegetative state. Regarding a person being in a vegetative state, it was held as under:-

“17.1. From the above, we can say that patients in coma have complete failure of the arousal system with no spontaneous eye opening and are unable to be awakened by application of vigorous sensory stimulation. They may have normal heart beat and may not require advanced life support to preserve life but they remain unconscious, cannot even be awakened by painful stimulus. Regarding vegetative state, it is stated that in such a state, there is complete absence of behavioral evidence for self or environmental awareness. Patients are awake but have no awareness. They cannot produce a purposeful, co-ordinated, voluntary response in a sustained manner, although they may have primitive reflexive responses to light, sound, touch or pain. They cannot understand, communicate, speak or have emotions. They are unaware of self and environment and have no interaction with others. They cannot voluntarily control passing of urine or stool. As the centres in the brain controlling the heart and breathing are intact, there is no threat to life and patients can survive for many years with expert nursing care. Thereafter, various behavioral instances have been mentioned as being present in vegetative state.”

17.1. In that case it was held that when a person is in coma or in a comatose condition or in a vegetative state, it cannot be construed that such a person is a physically challenged person or a mentally challenged person as is understood under the relevant statutes. Nor such a person can be construed to be a minor for the purpose of appointment of guardian. In the circumstances it was held that statutes like the Guardians and Wards Act, 1890, Mental Healthcare Act, 2017 etc. would

not be applicable to persons in a comatose condition or in a vegetative state. It was also held that there is no legislation in India relating to appointment of guardians to patients lying in comatose or vegetative state.

17.2. On the crucial issue as to relief that may be granted to the petitioner by invoking writ jurisdiction under Article 226 of the Constitution of India, it was noticed that there is no statutory provision governing the field relating to appointment of guardian of a person lying in a comatose condition or in a vegetative state. This Court referred to and deliberated upon the doctrine of *parens patriae* whereafter it was held that in a case like this it is the Court alone as the *parens patriae* which must take the ultimate decision though views of the near relatives, next friend and doctors must be given due weightage. After referring to decisions of various High Courts including our High Court, this Court examined the width and plenitude of the power of the High Courts under Article 226 of the Constitution of India and also relied upon the decision of the Supreme Court in *Aruna Ramchandra Shanbaug Vs. Union of India*, **(2011) 4 SCC 454**, and held that when the High Court exercises jurisdiction under Article 226 of the Constitution of India, it does so to further the cause of justice. It was held as under:

38. From the above, it is clearly deducible that when the High Court exercises jurisdiction under Article 226 of the Constitution of India, it does so to further the cause of justice. To provide justice or discharge *ex debito justitiae* is the *raison d'etre* of the courts. The Latin expression *ex debito justitiae* literally means a debt of justice; on account of justice; a claim, the refusal of which would involve an injustice, and therefore, one which justice owes it to the claimant to recognize and allow. The doctrine of *ex debito justitiae* is well established and requires no further elaboration. In addition to Article 226 of the Constitution, such power of the High Court is traceable to section 151 of the Civil Procedure Code, 1908 and section 482 of the Code of Criminal Procedure, 1973.”

17.3. While acceding to the prayer of the petitioner in that case, this Court also sounded a note of caution that there should be some kind of

monitoring of the functioning of the petitioner as guardian to ensure that guardianship was being used for the benefit of the person who was in a vegetative state observing that such monitoring may be carried out through the forum of Maharashtra State Legal Services Authority constituted under the Legal Services Authorities Act, 1987.

18. Adverting to the present case we find that as per certificate of the medical officer dated 11.11.2020 of the Lokmanya Tilak Municipal General Hospital, Sion, Bombay-22 which is under the Municipal Corporation of Greater Mumbai, it has been certified that Mrs. Veena Vijay Salgaonkar is under treatment of the said hospital since 11.09.2020 suffering from *vascular dementia with diabetes mellitus and hypertension*. It has been certified that she is unable to look after herself and her financial affairs.

19. As already noted, medical condition of petitioner's wife Mrs. Veena Vijay Salgaonkar is not being contested by the respondent who is also not disputing the medical certificate dated 11.11.2020.

20. In the circumstances and considering all aspects of the matter, we are of the view that if the following directions are issued, the same would meet the ends of justice:-

1. Petitioner Mr. Vijay Ramachandra Salgaonkar shall be treated and accepted as the guardian of his wife Mrs. Veena Vijay Salgaonkar;
2. All authorities shall accept his status as such and allow him to operate or manage the movable and immovable properties of his wife Mrs. Veena Vijay Salgaonkar;
3. Member Secretary of Maharashtra State Legal Services Authority either through himself or a designated official of the said authority or through a legal aid counsel or through a para legal volunteer shall monitor functioning of the petitioner

as guardian of Mrs. Veena Vijay Salgaonkar and shall submit monthly report to the Maharashtra State Legal Services Authority which shall be compiled for a period of two years. If it is found necessary for extension of the period of monitoring or in case of any exigency, Member Secretary of Maharashtra State Legal Services Authority shall be at liberty to move the High Court.

21. Ordered accordingly.
22. Copy of this order be furnished to Member Secretary of Maharashtra State Legal Services Authority for doing the needful.
23. With the above directions, writ petition is disposed of. However, there shall be no order as to costs.

(MADHAV J. JAMDAR, J.)

(UJJAL BHUYAN, J.)

Minal Parab