

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.6926 OF 2021

AND

W.M.P.NO.7486 OF 2021

1. Dr.Vijailakshmi Acharya,
2. Chetan Acharya
3. Varun Acharya

... Petitioners

Vs

1. The State of Tamil Nadu,
Represented by the Secretary of Health and Family Welfare,
Secretariat,
Chennai - 600 009.
2. The District Collector,
62, Rajaji Salai,
Fourth Floor,
Chennai - 600 001.
3. The Tahsildar, Egmore,
Spur Tank Road,
M.S.Nagar,
Mukta Gardens,
Egmore, Chennai - 600 031.

... Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration, declaring the 1st petitioner Dr.Vijailakshmi Acharya as the guardian of her husband Mr.J.P.Acharya, who is in a comatose condition, for operating his bank accounts / investments and dealing with immovable properties for the purpose of protecting his interests.

For petitioner ... Mr.L.Maithili

For respondents ... Mr.V,Shanmuga Sundar
Special Government Pleader

ORDER

The instant case involves a desperate family, who are short of financial means and are seeking for appointment of a guardian in respect of the assets for a coma patient, who requires constant medical treatment which involves huge costs.

2. (i) The petitioners are the wife and children of a coma patient, named, J.P.Acharya, who is an Entrepreneur. According to the petitioners, on the fateful day i.e., on 26.02.2021, the first petitioner husband viz., J.P. Acharya suffered severe head-ache and immediately, he was rushed to the hospital and it was found that he suffered an aneurysm due to the rupture of the blood vessels in the brain coupled with intercranial hemorrhage and due to which, he suffered heavy bleeding in his brain. Thereafter, a surgery has been done to stop the bleeding and he was moved to Intensive Care Unit (ICU). According to the petitioners, J.P.Acharya is now lying in a comatose condition. According to the petitioners, till the date of hospitalisation of J.P.Acharya i.e., on 26.02.2021, J.P.Acharya was actively running his business and personally handling his finances. It is the case of the petitioners that J.P.Acharya, the coma patient owns several properties and bank accounts with sufficient funds for his medical expenses and to meet his business commitments. However, according to the petitioners, the Banks, in which, J.P. Acharya is having bank accounts, are refusing to allow the petitioners to operate his accounts on his behalf to clear the mounting hospital bills and for his business commitments.

(ii) According to the petitioners, there is no provision under any Legislation for appointment of a guardian for a person in Coma. Hence, according to them, they have no other alternative except to approach this Court under Article 226 of the Constitution of India, seeking for an extraordinary relief to declare the first petitioner, who is the wife of J.P.Acharya, as his guardian. It is also stated in the affidavit filed in support of this Writ Petition that the 1st petitioner, who is the wife of J.P.Acharya is the nominee in all his bank accounts and investments and, hence, the petitioners unanimously wish to appoint the first petitioner as the guardian for J.P.Acharya.

(iii) In the affidavit filed in support of this Writ Petition, the petitioners have also referred to various Legislations including (1) Mental Health Act, 1987, Mental Health Care Act, 2017, Persons with Disabilities (Equal Opportunities, Protection of Rights and Field Participation) Act, 1995, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple

Disabilities Act, 1999 and would submit that none of the statutes enables any person to be appointed as a guardian in respect of the properties belonging to a coma patient. In such circumstances, this Writ Petition has been filed for a declaration to declare the first petitioner as a guardian of the movables and immovables assets and estate of J.P.Acharya, the Coma patient, who is presently in a vegetative state of mind.

3. Heard Ms.L.Maithili, learned counsel for the petitioners and Mr.V.Shanmuga Sundar, learned Special Government Pleader for the respondents.

4. The learned counsel for the petitioners drew the attention of this Court to various judgments passed by different High Courts in identical matters. She first drew the attention of this Court to a judgment of the Delhi High Court in the case of Vandana Tyagi & Anr. -vs- Government of National Capital Territory of Delhi and Others, reported in 2020 SCC Online Del 32 and in particular, she referred to paragraph 61, which reads as follows:-

"61. Insofar as the RPWD Act is concerned, it was enacted with the view to give effect to the United Nations Conventions on the rights of persons with disabilities and for matters connected therewith or incidental thereto. The United Nations General Assembly adopted the aforementioned convention on 13.12.2006. India is a signatory to this convention which was ratified by it on 01.10.2007. The convention came into effect from 03.05.2008. Though, India enacted the PWD Act in 1995, subsequent learning propelled India to adopt a rights based approach. Consequent thereto, the PWD Act, as adverted to above, was repealed and RPWD Act was enacted. While, this Act, inter alia, makes provisions for rights and entitlements of persons with disability, persons with benchmark disability, and persons with disability with high support needs, there appears to be no provision in this statute concerning persons in comatose state. It is relevant to note that Section 14 of the RPWD Act makes a provision for guardianship with respect to persons with disability. The definition provided under Section 2(s) of the very same Act, qua persons with disability, does not cover a person, who is in comatose state:

"2. Definitions.-

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(s) "person with disability" means a person with long term physical, mental, intellectual, or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others."

5. She then drew the attention of this Court a Full Bench judgment of the Kerala High Court in the case of Shobha Gopalakrishnan -vs-State of Kerala, reported in 2019 SCC Online Ker 739 and in particular, he referred to paragraph 42, which reads as follows:

"42. Considering the role of this Court, jurisdiction under Article 226 of the Constitution of India springs up, when no remedy is provided under any Statute to persons like patients in 'comatose state'. It is something like 'parens patriae' jurisdiction. A reference to the verdict in Nothman v. Barnet London Borough Council, [1978 (1) WLR 220] (at 228) is also relevant. In such cases, it is often said, Courts have to do what the Parliament would have done. A reference to the verdict in Surjit Singh Karla v. Union of India [1991 (2) SCC 87 explaining the principle of

'causes omissus' is also brought to the notice of this Court; to the effect that if it is an accidental omission, court can supply/fill up the gap. This Court however does not find it appropriate to "re-write" the provision, as it is within the exclusive domain of the Parliament. This is more so, when the relevant statutes like Mental Health Act, 1987 and PWD Act, 1995 came to be repealed, on introducing the new legislations, such as the Mental Healthcare Act 2017 and The Rights of persons with Disabilities Act, 2016 in conformity with the mandate of U.N. Convention, 2006. This Court does not say anything whether any amendment is necessary, also in respect of the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (National Trust Act, 1999) with reference to the U.N. Convention 2006. It is for the Government to consider and take appropriate steps in this regard, as it is never for the Court to encroach into the forbidden field. This Court would only like to make it clear that, in so far as the case of a patient lying in 'comatose state' is not covered by any of the statutes, (as discussed above), for appointment of a Guardian, the

petitioners are justified in approaching this court seeking to invoke the power under Article 226 of the Constitution of India. It is declared accordingly."

6. The learned counsel for the petitioners also drew the attention of this Court to the orders passed by this Court in identical matters, which are as follows:-

(a) Order dated 06.01.2016 in W.P.No.28435 of 2015 and the relevant paragraph is 4, which reads as follows :

"4. In view of the above, there appears to be no dispute on facts. The petitioner's husband is in coma. Neither under the Mental Health Act nor under the Guardian and Wards Act, 1890, there is any provision for appointment of a guardian in such a situation. Though the petitioner could have approached the jurisdictional Civil Court by way of common law remedy, in view of the report of the 3rd respondent and the urgency expressed, coupled with the fact that there is no dispute on facts, this Court is inclined to consider the prayer sought by the petitioner."

(b) Order dated 23.02.2016 passed by this Court in W.P.No.4358 of 2016 in the case of Sailaja -vs- The State of Tamil Nadu and others, reported in 2016 SCC Online Mad 5171 and the relevant paragraph is 6, which reads as follows:

"6. In view of the above, there appears to be no dispute of facts. The petitioner's husband is in coma. Neither under the Mental Health Act nor under the Guardian and Wards Act, 1890, there is any provision for appointment of a guardian in such a situation. Though the petitioner could have approached the jurisdictional Civil Court by way of common law remedy, in view of the report of the 3rd respondent and the urgency expressed, coupled with the fact that there is no dispute on facts, this Court is inclined to consider the prayer sought by the petitioner".

(c) Order dated 31.07.2018 passed in W.P.No.16819 of 2018 and the relevant paragraph is 4, which reads as follows:

"4. In view of the joint report submitted by the Tahsildar and Executive Magistrate, Myalpure Taluk Office, Chennai and Prof.Dr.M.Jawahar, MD. DM (Neuro), NV Unit Chief, Institute of Neurology, Rajiv

Gandhi Government General Hospital, Chennai, the 1st petitioner, who is the wife of the 5th respondent, is hereby appointed as a Legal Guardian of the 5th respondent, namely, Mr.S.Sekaran, S/o.Late K.Subba Rao residing at New No.184, Old No.180, Indira Gardens, Peters Road, Royapettah, Chennai-14. Therefore, the respondents 1 to 4 are hereby directed to recognize the 1st petitioner as a Legal Guardian of the 5th respondent and also to execute and register a deed of Conveyance and other deeds on the properties belonging to the 5th respondent, particularly, in respect of his 1/9th share over the property bearing Old No.3, New No.7, Govardhan Singh Street, Royapettah, Chennai-14, comprised in Old Survey Nos.3045 and 3046, R.S.No.133/9 of Myalpore Village. The said exercise shall be completed within a period of two weeks from the date of receipt of a copy of this Order."

7. As seen from the aforesaid decisions, none of the statutes provide for appointment of a guardian for the administration of properties belonging to a coma patient. A perusal of the medical reports reveal that J.P.Acharya, has suffered rupture of blood vessels of brain leading to aneurysm coupled with intercranial hemorrhage and has slipped into coma. The petitioners cannot be left remediless when there is no statutory provision available for appointment of a guardian to administer the movable and immovable properties of a coma patient. The doctrine of parens patriae will come into play and hence, this Court cannot shut its eyes when there is undisputed evidence placed before it to show that the properties both movable and immovables belonging to a coma patient could not be administered due to non-availability of statutory provisions enabling one of the family members to be appointed as his guardian for the said purpose, that too when the family requires money to support his medical treatment. Hence, this Court is of the considered view that a guardian will have to be necessarily appointed on his behalf. The first petitioner is admittedly the wife of J.P.Acharya, who is also the nominee for the bank accounts and therefore, she will be the most suitable person to be appointed as guardian for J.P.Acharya.

8. For the foregoing reasons, this Court declares that Dr.Vijailakshmi Acharya, the first petitioner herein, is the guardian for the movable and immovable assets and estate including bank accounts maintained by J.P.Acharya. However, the guardian appointed by this Court shall act as a true guardian for J.P.Acharya and anything detrimental to his interest should not be done by the guardian. This Court deems it fit to impose

certain conditions which shall be necessarily fulfilled by the guardian, which are incorporated hereunder:

(a) The guardian appointed by this Court shall disclose the particulars of the properties both movable and immovables owned by J.P.Acharya, the Coma patient before the Registry of this Court within a period of four weeks from the date of receipt of a copy of this order.

(b) J.P.Acharya, the coma patient shall be examined by a Government Doctor and a report to that effect from the said Government Doctor shall be filed before the Registry of this Court every four months.

(c) The guardian appointed by this Court shall file a statement before the Registry of this Court every six months, disclosing the bank balances of J.P.Acharya, the coma patient available with various banks/financial institutions.

(d) The guardian appointed by this Court shall render true accounts of the funds belonging to J.P.Acharya, the coma patient and shall file a report before the Registry of this Court every six months.

(e) If it is brought to the notice of any Court / any statutory authority about misuse of funds belonging to J.P.Acharya, the coma patient, the said Court / authority is empowered to cancel the guardianship after holding a proper enquiry.

(f) The transactions in respect of the property of the person lying in coma state by the guardian shall be strictly in accordance with the relevant provisions of law.

(g) If the guardian appointed by this Court is found to be abusing the power or neglects or acts contrary to the best interest of J.P.Acharya, the coma patient, any relative or next friend may apply before the appropriate Court for removal of such guardian.

9. With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The State of Tamil Nadu,
Represented by the Secretary of Health and Family Welfare,
Secretariat,
Chennai - 600 009.
2. The District Collector,
62, Rajaji Salai,
Fourth Floor,
Chennai - 600 001.
3. The Tahsildar, Egmore,
Spur Tank Road, M.S.Nagar,
Mukta Gardens,
Egmore, Chennai - 600 031.

+1cc to Mr.L.Maithili, Advocate, S.R.No.17387

W.P.No.6926 of 2021

JP-1(CO)
CS/18/03/2021



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