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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.11.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.24954 OF 2021

Arun Prabhu. M.M.
S/o Late M.Mahendran
rep. By K.Jayanthi as
Guardian & Maternal Aunt

.. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. by its Secretary
Dept. of Health & Family Welfare
Secretariat, Chennai 600 009.
2. The District Collector
Coimbatore.
3. The Tahsildar
Coimbatore North Taluk
Coimbatore.
4. The Dean
Coimbatore Medical College Hospital
Trichy Road, Coimbatore 641 018.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents 1 and 2 to recognize the petitioner, Mrs. K.Jayanthi, as guardian of Mr.Arun Prabhu M.M., S/o Late M.Mahendran, aged about 27 and to permit her to represent him as a guardian to obtain all the benefits, monies belonging to his late father M.Mahendran and to execute deeds of conveyance and other deeds with regard to the properties inherited by him and to operate his bank accounts.

For Petitioner : Mr. Mukunth, for
M/s. Sarvabhauman Associates

For Respondents : Mr. U.Bharanidharan, AGP



ORDER

The present petition has been filed for appointing Mrs. Jayanthi, the maternal aunt of the petitioner, as the guardian of the petitioner and to permit her to obtain all the benefits, monies belonging to the petitioner through his late father M. Mahendran and to execute deeds of conveyance and other deeds with regard to the properties inherited by the petitioner and to operate his bank accounts

2. The petitioner, Arun Prabhu, is diagnosed with Mild Mental Retardation, and with a social age of 9 years and is incapable of making any decisions and, therefore, ineligible to enter into any contract or agreement. The parents of the petitioner, viz., mother and father of the petitioner breathed their last in the year 2007 and 2019 respectively and the petitioner has no siblings and the paternal and maternal grandparents also died prior to the death of the parents of the petitioner and there are no legal heirs to take care of the petitioner and his properties.

3. It is the further averment in the petition that upon the death of the father of the petitioner, the retirement proceeds could not be realised and the medical expenses of the petitioner are too high, which requires financial resources and as caretaker, the maternal aunt of the petitioner is taking care of him. In the above backdrop, the petitioner represented by his maternal aunt has come up with the present petition for being recognized as the guardian of the petitioner for the purpose of realising the retirement benefits of the petitioner's father and also for entering into contracts and execution of deeds and operation of bank accounts to utilise the finances for the medical needs and other necessities of the petitioner. It is further averred that with regard to the medical condition of the petitioner, the Regional Medical Board has certified his condition as Mild Mental Retardation, which requires vocational training and that he is solely dependent on his maternal aunt, who, as on date is acting as caretaker. In the aforesaid backdrop, for the continuous treatment of the petitioner, it is just and necessary that his maternal aunt be recognized as the guardian for the person, properties and other financial resources of the petitioner. In this regard, it is the further averment of the petitioner that for transacting all the business aforesaid, since recognition of the maternal aunt of the petitioner as the guardian of the petitioner is necessary, she submitted an application before the 2nd respondent for granting the aforesaid recognition. However, no orders have been passed on the said application till date. In the aforesaid backdrop, the present petition has been filed by the petitioner seeking the relief supra.



4. Learned counsel appearing for the petitioner submitted that a provision was earlier available for filing a petition under the Guardian and Wards Act before the District Court. However, in the case on hand, the petitioner being a mentally disabled person, no provision is available either under the Mental Health Act, 1987, or under the Mental Healthcare Act, 2017, for appointment of guardian insofar as persons, who suffer from mental retardation. It is the further submission of the learned counsel for the petitioner that the petitioner is suffering from mental retardation and in the absence of the parents to take care of the mentally disabled petitioner, his rights needs to be safeguarded and the maternal aunt of the petitioner, who is aged about 68 years, has made representation before the 2nd respondent for recognizing her as the guardian to take care of the petitioner and carry out all the monetary transactions with regard to movable and immovable properties, including receipt of monetary benefits of his late father as also execution of deeds and operation of bank accounts, which are required to be carried out for the welfare of the petitioner. Since no orders have been passed by the 2nd respondent on the representation of the petitioner, the present petition has been filed by the petitioner for direction to the 2nd respondent to consider the representation within a particular time frame fixed by this Court.

5. Learned Addl. Government Pleader appearing for the respondents submitted that the 2nd respondent has no power to recognize the petitioner's maternal aunt as the legal guardian of the petitioner, as the petitioner is a mentally retarded person and neither the Mental Health Act nor the Mental Healthcare Act permits appointment of guardian for persons suffering from mental retardation. Therefore, it is submitted that the 2nd respondent not being clothed with any powers, orders as sought for by the petitioner could not be passed and the petitioner has to approach the competent forum for redressal of her grievance in accordance with law.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

7. The following issues arise for consideration in this writ petition :-

- i) Can the Court relegate a person to an unknown domain to avail his remedy, just because the Mental Health Act and the Mental Healthcare Act have rendered a mentally retarded persons an excluded lot and left such persons remediless?



8. As both the issues are intricately intertwined, both the issues are taken up together and are discussed below to arrive at a reasonable and legalistic finding.

10. In the case before this Court, the maternal aunt of the petitioner, lamenting that inspite of her age, when she is ready to act as guardian to take care of the petitioner, the State, which is the protector of such persons, is spreading its empty hands pleading that the Mental Health Act and the Mental Healthcare Act does not envisage guardianship insofar as mentally retarded persons, can this Court leave the petitioner in lurch, inspite of his aunt coming forward to take care of him and act as his guardian.

12. As already pointed out above, though the Mental Health Act, the Mental Healthcare Act as also the Guardian and Wards Act do not provide for appointment of guardian insofar as persons suffering from mentally retardation, however, a silver lining to the petitioner comes in the form of The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental



Retardation and Multiple Disabilities Act, 1999 (for short 'the Act').

13. The statement of objects and reasons for enacting the Act reveals that for the purpose of promoting independence, facilitating guardianship where necessary and address the concerns of those special persons, who do not have their family support, the National Trust will seek to strengthen families and protect the interest of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability after the death of their parents.

14. "Mental Retardation" has been defined u/s 2 (g) and "Person with disability" has been defined u/s 2 (j) of the Act and for proper appreciation, the relevant provision is extracted hereunder :-

"(g) "mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterised by sub-normality of intelligence;

* * * * *

(j) "persons with disability" means a person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability;"

15. Chapter III of the Act deals with the objects of the Trust and Section 10 prescribes the objects of the Trust, which are quoted hereunder :-

"10. The objects of the Trust shall be -

(a) to enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong;

(b) to strengthen facilities to provide support to persons with disability to live within their own families;

(c) to extend support to registered organisations to provide need based services during period of crisis in the family of persons with disability;

(d) to deal with problems of persons with disability who do not have family support;



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(e) to promote measures for the care and protection of persons with disability in the event of death of their parents or guardians;

(f) to evolve procedure for the appointment of guardians and trustees for persons with disability requiring such protection;

(g) to facilitate the realisation of equal opportunities, protection of rights and full participation of persons with disability; and

(h) to do any other act which is incidental to the aforesaid objects."

16. Chapter VI of the Act provides for the formation of Local Level Committees. Therein Section 13 provides for constitution of local level committees and Section 14 provides for appointment for guardianship and Sections 15 and 16 provides the duties of the guardian so appointed and the need for the guardian to furnish inventory and annual accounts. Section 17 provides for removal of guardian.

17. Section 14 to 16 of the Act, which are relevant for the purpose of deciding the relief to be granted in the present case, are quoted hereunder for better appreciation :-

"14. Appointment of guardianship -

(1) A parent of a person with disability or his relative may make an application to the local level committee for appointment of any person of his choice to act as a guardian of the persons with disability.

(2) Any registered organisation may make an application in the prescribed form to the Local Level Committee for appointment of a guardian for a person with disability. Provided that no such application shall be entertained by the local level committee, unless the consent of the guardian of the disabled person is also obtained.

(3) While considering the application for appointment of a guardian, the local level committee shall consider- - whether the person with disability needs a guardian; - the purposes for which the guardianship is required for person with disability.

(4) The local level committee shall receive, process and decide applications received under sub-sections (1) and (2), in such manner as may be determined by regulations: Provided that while making recommendation for the appointment of a guardian, the local level committee shall provide



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for the obligations which are to be fulfilled by the guardian.

(5) The local level committee shall send to the Board the particulars of the applications received by it and orders passed thereon at such interval as may be determined by regulations.

15. Duties of Guardian - Every person appointed as a guardian of a person with disability under this Chapter shall, wherever required, either have the care of such persons of disability and his property or be responsible for the maintenance of the person with disability.

16. Guardian to furnish inventory and annual accounts -

(1) Every person appointed as a guardian under section 14 shall, within a period of six months from the date of his appointment, deliver to the authority which appointed him, an inventory of immovable property belonging to the person with disability and all assets and other movable property received on behalf of the person with disability, together with a statement of all claims due to and all debts and liabilities due by such person with disability.

(2) every guardian shall also furnish to the said appointing authority within a period of three months at the close of every financial year, an account of the property and assets in his charge, the sums received and disbursed on account of the person with disability and the balance remaining with him. "

18. The line with the objects enumerated above coupled with the provisions of law relating to appointment of guardian and the duties and responsibilities of the guardian, clearly reveal that the safety of the mentally retarded person is taken care of even where a guardian is appointed.

19. Sub-section (1) of Section 14 of the Act, which provides for appointment of guardian clearly prescribe that a parent of a person with disability or his relative may make an application to the local level committee for appointment of any person of his choice to act as a guardian of the persons with disability. Sub-section (3) to Section 14 prescribes the matters which is to be considered by the Local Level Committee dealing with applications relating to appointment of guardian.



20. In the case on hand, the medical report of the petitioner inclusive of the opinion of the Medical Board clearly reveal that the petitioner is a person who is suffering a "person with disability" as provided u/s 2 (j) and that he suffers from mild mental retardation which squarely falls within the definition of "mental retardation" as provided u/s 2 (g) of the Act. Such being the case, the petitioner is definitely entitled to invoke the provisions of the Act for appointment of guardian as provided u/s 14 of the Act.

21. Further, in the case on hand, the person, who seeks to be appointed as guardian being a relative of the petitioner, as provided under Chapter VI of the Act, and is a person related by blood, definitely the said individual is not only entitled to file this writ petition, but equally is entitled to maintain an application for being appointed as guardian as provided u/s 14 (1) of the Act.

22. For the reasons aforesaid, this Court is of the considered view that though the relief sought for by the petitioner in this writ petition cannot be granted, however, in view of the benevolent provisions of law provided in the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, the maternal aunt, who is representing the petitioner can very well invoke Section 14 (1) of the Act for being appointed as guardian by approaching the Local Level Committee constituted for this purpose u/s 13 of the Act.

23. Accordingly, for the reasons aforesaid, this writ petition is disposed of directing the petitioner to file appropriate application u/s 14 of the Act along with a copy of this order before the Local Level Committee constituted u/s 13 of the Act within a period of four weeks from the date of receipt of a copy of this order and on such application being filed, the appropriate Local Level Committee, before which the said application is filed, shall entertain the said application and pass appropriate orders on the same within a period of eight weeks thereafter. In the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Dept. of Health & Family Welfare
Government of Tamil Nadu
Secretariat, Chennai 600 009.

2. The District Collector
Coimbatore.

3. The Tahsildar
Coimbatore North Taluk
Coimbatore.

4. The Dean
Coimbatore Medical College Hospital
Trichy Road, Coimbatore 641 018.

+1cc to M/s. Sarvabhauman Associates, Advocate, S.R.No.60385
+1cc to the Government Pleader, S.R.No.60669

W.P. NO.24954 OF 2021

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NSK 12/01/2022