



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2021

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.15971 of 2021

R.Sankara Raman

... Petitioner

**Vs.**

- 1.The Secretary,  
Ministry of Finance,  
Government of India,  
North Block,  
New Delhi.
- 2.The Pay and Accounts Officer,  
Central Pension Accounting Office,  
Trikoort II Complex,  
Bhikaji Cama Place,  
New Delhi - 110066.
- 3.The Deputy Collector of Accounts,  
Central Board of Direct Taxes,  
Zonal Accounts Office,  
New Block (Ground Floor) Aayakar Bhawan,  
121, Nungampakkam High Road,  
Chennai-600034.
- 4.The Senior Accounts Officer (Pension),  
ZAO CBDT,  
121, Mahatma Gandhi Road,  
Nungampakkam,  
Chennai-600034.
- 5.The Chairman Local Level Committee (Pension),  
Tirunelveli District,  
Tirunelveli.

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents particularly 5<sup>th</sup> respondent to issue the Guardianship Certificate to the petitioner to take care of S.Karthick, S/o. V.Subramaniam by considering the petitioner's representation dated 22.10.2020.

|                |   |                                             |
|----------------|---|---------------------------------------------|
| For Petitioner | : | Mr.P.Thanga Chamy                           |
| For R1 to R4   | : | Mr.A.B.Nagarajan,<br>Standing Counsel.      |
| For R5         | : | Mr.K.S.Selva Ganesan,<br>Counsel for State. |



**ORDER**

The petitioner seeks a direction for issuance of a Guardianship Certificate to him by the fifth respondent in relation to S.Karthick S/o. V.Subramaniam on the basis of a representation dated 22.10.2020.

2.The petitioner states that S.Karthick has mental disability to the extent of 80%. His father died on 17.07.2007. Upon his death, the family pension was received by his wife Tmt.S.Kannamal. The said Kannammal died on 29.12.2017. The petitioner asserts that the said Kannammal executed a Will dated 08.11.2017 in terms of which the petitioner was empowered to maintain S.Karthick, his property, bank accounts etc.

3.After the demise of S.Karthick's mother, the petitioner approached the third respondent and submitted a requisition letter seeking payment of family pension to S.Karthick. For such purpose, it appears that the petitioner submitted a representation to the respondents on 22.10.2020 seeking issuance of a Guardianship Certificate under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (Act 44 of 1999). The present Writ Petition is filed on account of the alleged failure of the respondents to act thereon.

4.Mr.S.Nagarajan, learned standing counsel, accepts notice on behalf of respondents 1 to 4 and Mr.K.S.Selva Ganesan, learned counsel for the State, accepts notice on behalf of the fifth respondent. Mr.K.S.Selva Ganesan submits that the present Writ Petition is not maintainable since the petitioner has not been appointed as the guardian of the said S.Karthick in a manner known to law.

5.The petitioner relies on Act 44 of 1999. Section 14 thereof deals with the appointment of Guardian. The said Section, inter alia, provides as under:

*"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."

6. Upon perusal of Section 14, it is evident that an application to the Local Level Committee for appointment as a guardian shall not be entertained by such Local Level Committee unless it is in compliance with the requirements thereof. Pursuant to powers conferred by Section 34 of Act 44 of 1999, the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules, 2000 were framed. Rule 16 thereof provides for the application to be filed for appointment of guardian. Such application is required to be in Form A, and should fulfil the requirements specified therein. The petitioner's representation does not satisfy the requirements of Rule 16.

7. In the alternative, the Mental Healthcare Act, 2017 deals with the appointment of a nominated representative for majors under Section 14 thereof. Section 14 (1) enables a person with disability to appoint a nominated representative. Sub-section 4 thereof also provides for the procedure to be followed where a nominated representative has not been appointed by the disabled person concerned or if such person is not in a position to appoint a nominated representative.

8. Therefore, the petitioner should either take recourse to the applicable provisions of the Mental Healthcare Act, 2017 or submit an application under Section 14 of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 by complying with the requirements of Rule 16 of the 2000 Rules.

9. The present Writ Petition is consequently premature and a Mandamus of the nature prayed for cannot be issued.

10. Subject to the above observations, W.P.(MD).No.15971 of 2021 is disposed of by leaving it open to the petitioner to take appropriate action in accordance with applicable law.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



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Tirunelveli.

+1 CC to M/s.A.B.NAGARAJAN, Advocate ( SR-29161[F] dated 15/09/2021 )

+1 CC to M/s.P.THANGACHAMY, Advocate ( SR-29170[F] dated 15/09/2021 )

+1 CC to M/s.SPL. GP ( SR-29347[F] dated 16/09/2021 )

**W.P (MD) No.15971 of 2021  
15.09.2021**

**RS (22.09.2021) 4P 9C**