

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7680 OF 2019

**SURESH DAMU PATIL
VERSUS
THE UNION OF INDIA AND OTHERS**

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Advocate for the Petitioner : Shri Farooqui Kamaloddin N.
Standing Counsel for Respondent 1 : Shri D.G. Nagode
Advocate for Respondent 2 : Shri A.D. Aghav
Advocate for Respondents 4 and 5 : Shri Dhiraj Jethliya h/f Shri P.B.
Gamot

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 08th February, 2022

Per Court:

1. Heard the learned counsel for the petitioner and the learned counsel for respondent No.2.
2. Though the request is made by the learned advocate Shri Dhiraj Jethliya on behalf of Shri Praveen B. Gamot, learned advocate on record for respondent Nos.4 and 5, to adjourn the matter, I have declined his request, since the earlier order passed by this Court on 08.12.2021 is brought to my notice.
3. The controversy involved in the petition lies in very narrow compass. The petitioner and respondent No.4 are two brothers and respondent No.5 is their sister, who is differently able (mentally retarded)

and the controversy revolves around her guardianship.

The father of the petitioner and respondent Nos.4 and 5 was in service with the Railways and he was getting pension on his retirement and on his death on 20.11.1996, their mother was availing the pension. However, on her death on 22.09.2006, in terms of the notification/circular issued by the Ministry of Railways, it contemplated that the dependent mentally retarded children of the employee are eligible to draw pension through the guardian. It is in the backdrop of these circumstances, the tug of war began between the petitioner and respondent No.4.

4. The petitioner filed Misc. Civil Application No.12/2008 under Sections 8 and 10 of the Guardians and Wards Act, 1890, which came to be granted by the learned Adhoc District Judge-2, Jalgaon on 28.04.2008 and thereafter, the petitioner started drawing pension on behalf of respondent No.5. This prompted another brother, respondent No.4, to file Misc. Civil Application No.67/2015 under Sections 8 and 10 of the Guardians and Wards Act, 1890, for being appointed as a guardian of respondent No.5, by removing the petitioner as such. The learned Adhoc District Judge-2, in Misc. Civil Application No.67/2015, granted relief in favour of respondent No.4 and appointed him as a guardian and removed the petitioner.

5. This constrained the petitioner to file an appeal before this

Court, which came to be numbered as First Appeal No.2985/2016 and this Court, by making exhaustive reference to the provisions of the Mental Health Act, 1987, recorded the finding to the effect that both Courts have manifestly erred in entertaining the applications seeking guardianship of respondent No.5 under the provisions of the Guardians and Wards Act, coupled with the provisions of the Mental Health Act, 1987 and therefore, both the orders were quashed and set aside. By referring to the provisions of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules, 2000, (for short “the National Trust Rules, 2000”), framed by the Central Government under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (for short “the National Trust Act, 1999), which prescribed the mechanism for appointment of a guardian, this Court deemed it fit to refer the parties to file an application for guardianship before the Local Level Committee under Section 14 of the National Trust Act, 1999, in Form A in terms of Rule 16(1) of the National Trust Rules, 2000 and granted liberty to both brothers to adopt the said course by preferring an application. In the interregnum, since respondent No.5 was staying with respondent No.4, the said arrangement was continued for the next six months till the necessary orders were passed.

6. On 16.01.2017, respondent No.2 Committee granted the

certificate in favour of the petitioner and immediately thereafter, on 21.11.2017, the very same Committee granted the certificate in favour of respondent No.4.

7. When I enquired from the learned counsel for respondent No.2 Committee as to how the second certificate can be granted while the first certificate was in existence, the learned counsel submits that there is power vested in the Committee to cancel the certificate if it is obtained by fraud or by concealing certain information and since the enquiry was made by the Local Level Committee by personally visiting the place of residence of respondent No.5, it was found that she was staying with respondent No.4 and therefore, he came to be appointed as guardian under the National Trust Rules, 2000.

8. I have perused the National Trust Rules, 2000, formulated in exercise of the power conferred by Section 34 of the National Trust Act, 1999 and by virtue of Rule 17, which prescribes the procedure for removal of guardian, certain procedure has been prescribed, which contemplates appointment of a team of investigators consisting of not less than three persons and who shall be the members of the said team, is also set out in the said rules. The team is expected to submit a fact finding report and upon submission of such report, it is imperative for the Local Level Committee to take a final decision within ten days for removal of the guardian against whom the complaint is received, after giving an

opportunity of hearing to the said guardian. The Local Level Committee shall record its reasons in writing for removal of guardian.

9. The learned counsel for the petitioner is perfectly justified in submitting that on an application being preferred by him under Rule 16 of the National Trust Rules, 2000, the guardianship has been conferred upon him and if the said guardianship has to be cancelled, it has to be only after following the procedure prescribed under Rule 17, which contemplates an enquiry being conducted by the team of investigators and opportunity of hearing being afforded to the guardian who is sought to be removed.

10. Admittedly, the aforesaid procedure has not been followed before passing the impugned order. In the wake of the above, since the National Trust Rules, 2000, prescribe the procedure for conferring the guardianship and also for removing a person from guardianship in terms of Rule 17, the impugned order which has been passed without adhering to the said procedure, cannot be sustained and is liable to be set aside. Accordingly, the impugned order is quashed and set aside. While remitting the matter back to respondent No.2 Committee before it takes an action under Rule 17, it is directed that the Local Level Committee shall follow the procedure under Rule 17 and necessary procedure shall be completed within eight weeks from today.

The situation prevailing as on today that respondent No.5 being in custody of respondent No.4 and he is taking care of her, shall be

maintained till the decision is taken by respondent No.2 in the period stipulated above.

The Writ Petition is disposed of in the aforesaid terms.

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(SMT. BHARATI H. DANGRE, J.)