



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3800 OF 2023

Sou. Jayshree P. Aware

.. Petitioner

Versus

Union of India and Another

.. Respondent

Mr. Ashutosh Kulkarni a/w Siddharth Shitole,
Advocates for the Petitioner.

Ms. Anusha P. Amin i/b Mr. Sandesh Patil, Advocate for
Respondent No. 1/Union OF India

Mr. Vikas Mali , AGP for Respondent No.2-State.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

DATE : NOVEMBER 02, 2023

P. C.

1. Rule. The learned counsel for Respondent No. 1 as well as the learned AGP waive service. With the consent of parties, rule is made returnable forthwith and heard finally.

2. The above Writ Petition is filed seeking the following reliefs:

“(a) Issue Rule;

(b) Grant a declaration that Petitioner Sou. Jayshree Pramod Aware is a legal guardian of Shri.Pramod Vitthalrao Aware who is a vegetative state and that she is entitled to manage the estate of Shri. Pramod Vitthalrao Aware on his behalf ;

(c) Grant the permission to the Petitioner to operate Saving Accounts/Demat account of Shri. Pramod Vitthalrao Aware in the HDFC Bank, to transfer the shares or securities to the Petitioner’s account and to deal with the same, to sell and otherwise deal with the shares of securities from the Demat account of Shri. Pramod Vitthalrao Aware and to deal with any movable or immovable property or asset of Shri Pramod Aware.”

3. It is the case of the Petitioner that her Husband – Mr. Pramod Vitthalrao Aware suffered a serious brain injury on 14th March 2017 in a household accident. It is contended that the said injury has impacted her husband 83% and he is completely bed ridden with food being fed through pipes, for the last more than 5 years. It is contended that his recovery is very very slow and he is dependent on others for everything. In short, it is Petitioner’s case that her husband has gone in a vegetative state and his recovery is very difficult and in such circumstances, she can not operate or deal with the available resources for expenses required for his medical treatment as also for education of their two minor school-going

daughters. It is therefore urged that she be appointed as a legal guardian of her husband.

4. At the outset we had put a query to the learned Counsel appearing on behalf of the Petitioner as to how this Writ Petition would be maintainable and why the Petitioner could not be appointed as a legal guardian under the provisions of Guardian and Wards Act, 1890. The learned Counsel appearing on behalf of the Petitioner brought to our attention the judgment of the Division Bench of this Court in the case of ***Rajni Hariom Sharma V/s Union of India and others*** [2020 SCC Online Bom. 880] wherein this Court, after considering the concerned law and judgments related thereto, has taken the view that because there was no statutory provision dealing with the case relating to appointment of guardian of a person who was in a state of coma [which is a persistent vegetative state], a Writ Petition can be entertained.

5. On going through the aforesaid decision, we find that the reliance placed on the aforesaid Judgment in the case of ***Rajni Hariom Sharma*** (supra), is well founded.

6. As far as the the present case is concerned, by an order dated 07/10/2023, this Court, in the above Writ Petition, had directed the Civil Surgeon, Pune to constitute a panel of 3 expert Doctors, one of whom shall be a physician, to visit the house of the Petitioner and examine her husband clinically and by means of forensic tests, if felt necessary, and submit their opinion to this Court about the present condition of the husband of the Petitioner and possibility of his recovery, if any. Pursuant to these directions, a Committee was constituted and on 20/10/2023 at 11.30 am, the husband of the Petitioner was examined. The said report has been submitted in the sealed cover to us and copies of the same have also been made available to the parties. The said report is taken on record and marked as “X” for identification.

7. We have gone through the aforesaid report, which shows that the husband of the Petitioner has limited neurological improvements in the last 6 years and considering his past history and present clinical neurological status, it seems that the patient is less likely to improve in the near future. For the sake of convenience, the opinion of the expert panel is reproduced hereunder.

“The opinion is given as :-

- I) *Present condition of the husband of the Petitioner -*
 - a) *Patient has quadriparesis, so bed ridden.*
 - b) *Patient has spontaneous eye opening.*
 - c) *Patient is aphasic.*
 - d) *Patient does not obey verbal commands.*
 - e) *Patient is not oriented to time/place/person.*
 - f) *Patient is not aware of hunger/bowel/ bladder.*

- II) *The possibility of his recovery, if any-*
Patient has limited neurological improvement in last 6 years. With past history and present clinical neurological status, it seems that the patient is less likely to improve in near future.”

8. Apart from this report, the mother and father of Petitioner’s husband have also given their no objection to the Petitioner being appointed as the legal guardian of their son, namely the husband of the Petitioner. This consent affidavit is also annexed to the Writ Petition at Exhibit E (page 21 of the paper book).

9. Considering the report of the expert committee as well as the consent affidavit given by the parents of Petitioner’s husband, the following order is passed :

(a) The Writ Petition is allowed in terms of prayer clause

(b) reproduced above.

(b) All authorities shall accept the Petitioner as legal guardian of her husband i.e. Mr. Pramod Vitthal Aware.

(c) We clarify that if the parents of the Petitioner's husband (who have given their consent to the Petitioner's appointment as the legal guardian of their son), find that the Petitioner is in any way misusing this order, they shall be at liberty to approach this Court for the purpose of vacating/ suitably modifying this Order.

11. Rule is made absolute in the aforesaid terms. No order as to costs.

12. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]