



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10283/2019**

Date of Decision: **24.05.2023**

IN THE MATTER OF:

MOHAN G BHAGWANANI(DECEASED)

S/O LATE GOPAL DASS MOOLRAJ BHAGWANANI
PREVIOUSLY RESIDING AT K-56,
LAJPAT NAGAR-2, NEW DELHI – 110024

..... PETITIONER

Through: Mr.Ganeshan Subbian, Advocate.
Ms. Manini Brar, Advocate (*Amicus Curiae*) alongwith Mr. Naman Lohiya,
Advocate.

Versus

THE MANAGER, STATE BANK OF INDIA
SPECIALIZED NRI BRANCH,
11, PARLIAMENT STREET,
NEW DELHI — 110001

.... RESPONDENT NO.1

M/S MOOLCHAND HOSPITAL,
LAJPAT NAGAR -3, NEW DELHI — 110024
REPRESENTED THROUGH ITS
MEDICAL SUPERINTENDENT.

.... RESPONDENT NO.2

M/S CARE HANDS HEALTH. SERVICES,
WZ-399, MADIPUR VILLAGE,
NEW DELHI — 110063
REPRESENTED THROUGH ITS
CHIEF EXECUTIVE MANAGER

.... RESPONDENT NO.3



DR SUNDRI G. BHAGWANANI
D/O LATE GOPAL DASS MOOLRAJ BHAGWANANI
LYING HOSPITALIZED SINCE NOVEMBER 2017 UNDER
HUID NO. 100863373 IN MOOLCHAND HOSPITAL,
LAJPAT NAGAR — 3, NEW DELHI 110024 ...PROFORMA

.... RESPONDENT NO.4

GOVERNMENT OF NCT OF DELHI
(DEPARTMENT OF SOCIAL WELFARE),
GLNS COMPLEX, DELHI GATE,
NEW DELHI - 110002

.... RESPONDENT NO.5

Through: Ms. Jaya Tomar and Ms.Akansha,
Advocates for R-1.
Mr. Gaurav Bahl, Advocate for R-2.
Mr.Tushar Sannu, Standing Counsel
with Mr.Yash Singh, Advocate and
Dr. Amit Khanna, Associate
Professor.
Mr. Udit Malik, ASC for GNCTD
along with Mr.Jawahar Singh, Dept.
of Social Welfare, Superintendent.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The facts of the case would show that the respondent no.4- Dr. Sundri G. Bhagwanani is suffering from advanced Alzheimer's disease which has progressed to a stage, where, she is unable to take care of herself and requires medical supervision. She is, at present admitted in respondent no.2-

Moolchand Hospital and since 24.11.2017, has been undergoing treatment in the said hospital.

2. The petitioner, who approached this court for various reliefs *inter alia* to be appointed as the guardian of respondent no.4 in order to look after her medical bills and overall health, has unfortunately passed away during the pendency of the instant writ petition.

3. The respondent no.4 has FDRs with respondent no.1-State Bank of India with a cumulative value of Rs.1,05,64,506/- as on 10.01.2020. However, on account of various payments made to the hospital, the same has substantially reduced.

4. The bills that were being raised by the hospital were being paid as per the directions given by this court from time to time.

5. Learned counsel appearing on behalf of respondent no.2-Moolchand Hospital on instructions states that as on date there are outstanding bills of approximately Rs.37 Lakhs to be paid to the hospital.

6. Having noted the peculiar circumstances in the present case, this court appointed Ms. Manini Brar, Advocate as *Guardian ad litem, Amicus Curiae* in the matter to assist this court in resolving the issue involved in the instant writ petition.

7. The matter was taken up for hearing on various dates and learned *Amicus Curiae* was ably assisting this court to pass appropriate orders depending upon the circumstances prevailing at the relevant point of time.

8. On the last date of hearing, this court directed learned counsel appearing on behalf of respondent no.5- Government of NCT of Delhi to take instructions with respect to the future course of action to be adopted by this court. It was also directed that the *Institute of Human Behavior and Allied Sciences (IHBAS)*, *Department of Social Welfare* and *Department of Health Care* shall convene a joint meeting of their officers to apprise this Court as to who would be the appropriate authority to be appointed as guardian on behalf of the patient admitted in the Hospital.

9. Further, directions were issued to suggest as to where the patient can be shifted to ensure that the expenses which are being incurred on account of her treatment, can be reduced. The order dated 19.05.2023 passed by this court reads as under:-

“1. Learned ASC appearing on behalf of the respondent-GNCTD seeks some time to take instructions.

2. In view of the controversy involved in the instant petition the Institute of Human Behavior and Allied Sciences (IHBAS), Department of Social Welfare and Department of Health Care are directed to convene a joint meeting of their officers to apprise this Court as to who would be the appropriate authority to be appointed as guardian on behalf of the patients admitted in the Hospital.

3. Let the appropriate suggestion be made on the next date of hearing by the respondent-GNCTD.

4. The respondents while suggesting the appropriate authority to be appointed as guardian should also indicate as to where the patients can be shifted to ensure that the expenses which are being incurred can be reduced. Besides this, appropriate care to be taken with respect to the said patients.

5. List on 24th May, 2023.”

10. In pursuance to the directions given by this court, a joint meeting was convened by the Department of Social Welfare National Capital Territory of Delhi on 23.05.2023, which has been attended by the officers of the concerned department and IHBAS. The minutes of the meeting dated 23.05.2023 read as under:-

Minutes of the Meeting

A meeting was held under the Chairpersonship of Director, Social Welfare in the Chamber of Director, 7h Floor, MSO Building, I. P Estate, New Delhi-11 0002 on 22.05.2023 at 3:00 PM as per directions of Hon'ble Court in the matter of WP (c)10283/2019 titled Mohan Bhagwanani Vs the Manager, SBI & Ors.

The list of Officers/Officials who attended the meeting is enclosed as Annexure-I.

At the outset the Deputy Director, Social Welfare briefly apprised about the order of Hon'ble High Court dated 19.05.2023:

"Para- 2. In view of the controversy involved in the instant petition the Institute of Human Behavior and Allied Sciences (IHBAS), Department of Social Welfare and Department of Health Care are directed to convene a joint meeting of their officers to apprise this Court as to who would be the appropriate authority to be appointed as guardian on behalf of the patients admitted 'in the Hospital.

Para-3. Let the appropriate suggestion be made on the next date of hearing by the respondent-GNCTD.

Para-4. The respondents while suggesting the appropriate. Authority to be appointed as guardian should also indicate as to where the patients can be shifted to ensure that the expenses which are being incurred can be reduced. Besides this, appropriate care to be taken with respect to the said patients.'" The Next date of Hearing in the matter is 24.05.2023.

The deliberations of the meeting are as under:

Detailed discussion was held w.r.t. the various sections of Rights of Persons with Disabilities Act, 2016, Delhi Rights of Persons with Disabilities Rules, 2018 and The Mental Healthcare Act, 2017 in the present matter.

- **Nominated Representative-**

As per section-14 (4) of Mental Health care Act, 2017, where no nominated representative is appointed by a person under sub-section (1), the Following persons for the purposes of this Act in the order of precedence shall be deemed to be the nominated representative of, a person with mental illness, namely:-

- (a) The individual. appointed as the nominated representative in the advance Directive under clause (c) of sub-section (1) of section 5; or*
- (b) A relative, or if not-available or not willing to be the nominated Representative of such person; or*
- (c) a care-giver, or if not available or not willing to be the nominated representative of such person; or*
- (d) a suitable person appointed as such by the concerned Board; or*
- (e) if no such person is available to be appointed as a nominated representative, the Board shall appoint the Director, Department of Social Welfare, or his designated representative, as the nominated representative of the person with mental illness:*

Further, it has been informed by representative of IHBAS that the rules regarding The Mental Healthcare Act, 2017 are still under process. New Mental Health Review Board has not been constituted as per The Mental Health care Act, 2017 and presently the cases are being referred to previous Board which was constituted as per the provisions of previous Act.

- **Limited Guardianship-**

As per section-14 (1) of Rights of Persons with Disabilities Act, 2016, Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:

Explanation. For the purposes of this sub-section, "limited guardianship means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.

As per section-7 (1) of Delhi Rights of Persons with Disabilities Rules, 2018, A District Court 'on its own, or on an: application filed by the person with disability, or through a blood relative or filed on behalf of the person with disability through a Government organization or a Registered organization under whose care the person with disability is residing, shall grant the support of a limited guardian to take a legally binding decision on behalf of the person with disability in consultation with such person.

2. As per section-72 of Rights of Persons with Disabilities Act, 2016, District Level Committee have been created in each revenue district which is headed by the District Magistrate. As per Rule-40 (1), Delhi Rights of Persons with Disabilities Rules, 2018, one of the function of the District Level Committee is to advise the District Authorities on matters relating to rehabilitation and empowerment of persons with disabilities.

It is pertinent to mention that District Level Committee on Disability consists of District Magistrate, District Social Welfare Officer, Chief District Medical Officer, Psychiatrist, Public Prosecutor, Representatives of organization working in the field of disability and other officials of various departments.

Further, the appointment of Limited Guardian is for taking legally binding decisions which may involve incurring the expenditure, property matters related to sale & purchase, succession related issues and other similar matters which are being done by the Officials of Revenue Department.

Therefore, it will be appropriate that the concerned District Magistrate of the Revenue District may be appointed as the Limited Guardian who is also the Chairperson of District Level Committee on Disability i. e. under Rights of Persons with Disabilities Act, 2016 for the patients who are abandoned/destitute and are admitted in the hospital falling under the jurisdiction of Revenue District.

3. With respect to the direction of the Hon'ble Court "The respondents while suggesting the appropriate authority to be appointed as guardian should also indicate as to where the patients can be shifted to ensure that the expenses which are being incurred can be reduced. Besides this, appropriate care to be taken with respect to the said patients. It was submitted that the Department of Social Welfare has no such residential facility for keeping a patient with progressive neurological disease.

4. It was discussed that IHBAS and Department of Social Welfare run Half Way Homes for rehabilitating treated mentally ill patients which act as a midway before their integration in the society.

As per the Medical Report submitted by IHBAS, the patient needs round the clock monitoring and medical supervision because of her progressive neurological disease and physical health condition, Since the patient is not a treated mentally ill and is an active patient, it will not be feasible to shift the patient in homes being run by both the department, moreover, not in Halfway Homes of Department of Social Welfare as it does not have the requisite expertise and facilities to deal with such patients suffering from progressive neurological disease.

5. There was no representation from the Health Department for the meeting. This issues with the approval of Director, Social Welfare.

11. It is thus seen that in terms of paragraph no.2 of the minutes of the meeting, it is suggested that the District Magistrate of the concerned Revenue District may be appointed as the limited guardian who is also the Chairperson of the District Level Committee on Disability under the Rights of Persons with Disabilities Act, 2016 (RPD Act) for the patients who are abandoned/ destitute and are admitted in hospital, falling under the jurisdiction of the Revenue District.

12. In the instant case, the concerned district would be District South-East where the respondent no.4 is admitted in respondent no.2-Moolchand Hospital.

13. Learned *Amicus Curiae* submits that in terms of orders dated 14.10.2022 and 09.11.2022, this court had issued various directions including the constitution of a Medical Board to provide an independent expert opinion with respect to the care of respondent no.4- Dr. Sundri G. Bhagwanani.

14. The relevant portion of order dated 14.10.2022 is reproduced as under:-

“13. Given that as on date, it is yet to be ascertained whether Dr. Sundri G. Bhagwanani is in a position to take her financial decisions independently, and at the same time, since Respondent No. 2-Hospital has been providing care to her, and was directed not to press Petitioner (now deceased) for payment per order dated 12th December, 2019, directions for payment to Respondent No. 2-Hospital are deemed necessary. In view of the above, following directions are issued:

(a) Ms. Manini Brar, Advocate (Mobile Number: +91-9205591340) is appointed as amicus curiae who would also act as guardian ad litem till further directions are issued in this regard. She is requested to visit Respondent No. 2-Hospital to meet with Dr. Sundri G. Bhagwanani and the doctors treating her, to ascertain as to whether she is comfortable in the Respondent No. 2-Hospital, and subsequently, submit a report to this Court in consultation with the doctors as to whether she should continue to be under hospitalization.

(b) Respondent No. 2-Hospital is directed to file a complete statement of account relating to charges levied by them for care of Dr. Sundri G. Bhagwanani.

(c) State Government of Delhi is impleaded as a party. Mr. Gautam Narayan, Standing Counsel for GNCTD, accepts notice on behalf of GNCTD and is requested to have an independent expert examine Dr. Sundri G. Bhagwanani and report on her cognitive faculty and ascertain whether she is in a position to take her decisions independently.

(d) An ad hoc payment of Rs. 10 lakhs be made to Respondent No. 2-Hospital from proceeds of FDR No.10875356311 within a period of one week from uploading of this order. The balance amount be retained in FDR in the same currency, for a period of one year, with auto renewal facility. Further, if term of any of her FDR(s) has lapsed, the same is to be renewed forthwith for a period of one year.”

15. The relevant portion of order dated 09.11.2022 is reproduced as under:-

“5. In view of the above, and after hearing the counsel for parties, it is directed that Medical Board, IHBAS, shall submit the report on priority basis, preferably within a period of two weeks from today. In the report, in addition to queries raised in order dated 14th October 2022, the Medical Board shall also provide its opinion/ assessment as to whether Dr. Sundri G. Bhagwanani requires hospitalisation or alternatively, if a dementia care

centre would be better suited for her. The Medical Board shall intimate the date of visit to Respondent No. 2-Hospital.

16. She, therefore, suggests that in addition to a limited guardian to look after the financial decisions with respect to the property and assets of respondent no.4- Dr. Sundri G. Bhagwanani, the Medical Board, which was constituted pursuant to the directions given by this court on 14.10.2022 be also appointed as a nominated representative.

17. It is noted that on 24.11.2022, IHBAS submitted a report before the Registrar General of this court regarding respondent no.4- Dr. Sundri G. Bhagwanani. The said report indicates that the patient i.e. respondent no.4 was examined by seven doctors constituting the Medical Board.

18. According to learned *Amicus Curiae*, the District Magistrate who is suggested to be appointed as a limited guardian may not be in a position to take a decision with respect to the medical condition of the patient, and therefore, if a nominated representative i.e. the Board is appointed, the same would take care of the medical decisions to be taken for the care of the patient.

19. Learned counsel appearing on behalf of respondent no.2-Moolchand Hospital states that the hospital is taking due care of the patient and no grievance in that respect has been raised by any concerned party at any point of time. According to him, this court earlier directed for release of the appropriate amount towards bills raised by the hospital and as of now, the outstanding amount which is about Rs.37 Lakhs requires to be released in its favour.

20. I have considered the submissions made by learned counsel appearing for the parties. Having considered the aforesaid peculiar circumstances of this case, this court finds it appropriate to issue following directions:-

- (i) The District Magistrate of District South-East, Delhi is appointed as limited guardian as suggested in the minutes of meeting dated 23.05.2023 until any guardian is appointed by the Competent Court in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016;
- (ii) In addition, a Nodal Officer be appointed by IHBAS to look after the medical care of respondent no.4 and to take decisions in tandem with the limited guardian;
- (iii) The Nodal Officer would be at liberty to take assistance of the Medical Board.
- (iv) The Nodal Officer would be entitled to advise the District Magistrate with respect to the medical issues of the respondent no.4 to take appropriate decisions in the interest of the patient;
- (v) The decision with respect to shifting of respondent no.4 i.e. the patient will also be taken by the District Magistrate with the assistance of Nodal Officer;
- (vi) They are at liberty to shift respondent no.4 i.e. the patient to an appropriate place where not only the appropriate medical facilities can be provided to the patient but at the same time her financial position can also be taken care of.

21. With respect to the pending bills, the District Magistrate is directed to decide as to what is the outstanding amount payable to the hospital and he

would be at liberty to direct for release of the admissible amount in favour of respondent no.2-Moolchand Hospital.

22. Let an expeditious decision with respect to the aforesaid aspects be taken by all concerned and all the concerned parties including the bank are directed to abide by the directions issued by this court.

23. We appreciate the assistance rendered by learned *Amicus Curiae*. Without her assistance, this court would not have been able to pass the aforesaid directions.

24. With the aforesaid observations, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

MAY 24, 2023/nc

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