

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4360 OF 2024

Mrs. Pushpa Kalyani

.. Petitioner

Versus

Union of India
& Others

.. Respondents

Adv. Mr. Chetan A. Alai along with **Adv. Ms. Rama Somani** along with
Adv. Mr. Bhushan Bhadgale, for the Petitioner.

Mr. A. I. Patel. Addl. G. P. along with **Ms. S. S. Bhende, AGP**, for
Respondent-State.

Adv. Ms. Avani Bhanushali, for Respondent No.3-Bank.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: AUGUST 22, 2024

P. C.

1. By way of present Writ Petition, the Petitioner seeks to appoint and declare her as the legal guardian of her husband – Mr. Akhilesh Kumar who is suffering from Hypoxic Ischemic Encephalopathy, Cardiogenic Shock post cardiac arrest, Ischemic Liver Injury, Urosepsis and Pulmonary Oedma.

2. It is the case of the Petitioner that Mr. Akhilesh Kumar is in a comatose condition and therefore she be appointed as the legal guardian.

3. It is the case of the Petitioner that she married Mr. Akhilesh Kumar on 10th March, 2002 and out of the said wedlock, she has two daughters namely – Sakshi Kalyani born on 6th January, 2004 and Shaumya Kalyani born 23rd March, 2010. The mother of Mr. Akhilesh Kumar, namely Shanti Devi, and his father, namely, Mr. Rishi Kumar Singh also reside with the Petitioner. It is stated that the Petitioner is the Senior Branch Manager with Punjab National Bank (Respondent No.3) at the branch office at Dadar, Mumbai. It is stated that the said Mr. Akhilesh Kumar holds movable properties such as Jewellery, certain shares and LIC Policies as well as gold bonds. Further, he also owns immovable property being a residential plot ad-measuring 2800 sq. ft. at Madhubani, Bihar.

4. The Petitioner has stated that on 18th March, 2022, the Petitioner's husband, namely, Mr. Akhilesh Kumar, due to an electric shock, suddenly fell in the bathroom and was found unconsciousness and was immediately admitted to Kokilaben Dhirubhai Ambani Hospital. In the said hospital, he was treated for almost five months. During the said treatment, the said Mr. Akhilesh Kumar remained in a coma and there was very little

progress in his health condition. Since, even after five months, he was in the very same comatose state [though his health was stable], he was discharged from the hospital and is currently residing at home. It is in these circumstances, the present Petition is filed by the Petitioner seeking to be appointed as the legal guardian of Mr. Akhilesh Kumar.

5. When the above matter had come up on 16th July, 2024, we were of the view that before we proceed further in the above Writ Petition, it would be just and proper if we direct the Authorities of Sir J. J. Group of Hospitals and Grant Medical College, Mumbai, to Constitute a Medical Board to examine the physical and mental health of Mr. Akhilesh Kumar and submit a report to this Court. The Petitioner was to facilitate and co-operate with the Members of the Board so constituted, to examine Mr. Akhilesh Kumar. Since Mr. Akhilesh Kumar has two daughters, and out of which one is a major, we directed the Petitioner to file an Affidavit of the major daughter indicating that she consents to the Petitioner being appointed as the legal guardian of Mr. Akhilesh Kumar.

6. There was also another order passed on 6th August, 2024, because the Members of the said Medical Board could not examine Mr.

Akhilesh Kumar in the time frame set out by us in our order dated 16th July, 2023.

7. Today, when the matter is called out, the report of the Medical Board dated 7th August 2024 has been placed before us. The said report clearly states that Mr. Akhilesh Kumar is bed bound since March, 2022 in a comatose state. He has suffered from hypoxic brain damage in March 2022 and does not have spontaneous eye opening and does not respond to verbal commands. It is stated that he has irreversible organic brain damage and is permanently unfit to do his basic and instrumental activities of daily living. In the opinion of the Medical Board, Mr. Akhilesh Kumar is mentally unfit to do any legal/ financial transactions and is unlikely to recover from his condition. For the sake of convenience, the relevant portion of the report is reproduced herein below:-

“ We, the medical board, have examined Mr. Akhilesh Kumar 47 years old Male at his residence in Malad on 06/08/2024.

He is bed bound since March 2022 in comatose state. He has suffered from hypoxic brain damage in March 2022 and has sequelae to hypoxic encephalopathy. He was tracheostomized and was on feeding through PEG tube. He does not have spontaneous eye opening and does not respond to verbal commands. He has irreversible organic brain damage and is permanently unfit to do his basic and instrumental activities of daily living.

He is mentally unfit to do any legal/ financial transactions and is unlikely to recover from his condition.”

8. The said report is taken on record and marked “X” for identification.

9. The learned Counsel for the Petitioner has also tendered the consent Affidavit of the elder daughter- Sakshi Kalyani as well as consent Affidavit of the mother of Mr. Akhilesh Kumar, namely, Shanti Devi as well as that of the father, namely, Mr. Rishi Kumar Singh. The same are taken on record. All these Affidavits state that they have no objection if the Petitioner is appointed as the legal guardian of Mr. Akhilesh Kumar.

10. We have heard the learned Counsel for the parties. Considering the report dated 7th August, 2024 given by Grant Government Medical College and Sir J. J. Group of Hospitals, Mumbai, coupled with the fact that the elder daughter of Mr. Akhilesh Kumar as well as the parents of Mr. Akhilesh Kumar have given their consent to the Petitioner being appointed as the legal guardian of Mr. Akhilesh Kumar, we do not find any impediment in allowing the present Writ Petition.

11. As far as the maintainability of Writ Petition is concerned, we find that same is squarely covered by a Division Bench’s decision of this Court in the case of *Rajni Hariom Sharma v/s. Union of India & Another*¹.

¹ (2020) SCC Online Bom. 880

12. In view of the foregoing discussion, the following order is passed:-

- (a) The Petitioner – Mrs. Pushpa Kalyani is appointed as the legal guardian of her husband Mr. Akhilesh Kumar who is in a comatose state.
- (b) All Authorities shall accept her status as such.
- (c) The Member Secretary of the Maharashtra State Legal Services Authority, either through officials of the said Authority, or through a Legal Aid Counsel or through a para legal volunteer, shall monitor the functioning of the Petitioner as the guardian of Mr. Akhilesh Kumar every three months and submit a report to the Maharashtra State Legal Services Authority, and which shall be compiled for a period of two years. If it is found necessary to extend the time in case of any exigency, the Member Secretary of the Maharashtra State Legal Services Authority shall be at liberty to move this Court for further orders.

13. With the aforesaid directions, the above Writ Petition is disposed of. However, there shall be no costs.

14. The Registry is directed to furnish a copy of this order to the Member, Secretary, Maharashtra State Legal Services Authority, for doing the needful.

15. 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.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]