



W.P.(MD)No.22719 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.11.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.22719 of 2024

and

W.M.P.(MD)No.19234 of 2024

Sowmiya Ganesh

... Petitioner

/Vs./

1.The Union of India

Represented by its Secretary,
Ministry of Health and Family Welfare,
Room No. 201-D, Nirman Bhawan,
New Delhi 110 011

2. The Dean,

Kauvery Hospital,
No.1, K.C. Road, Tennur,
Tiruchirappalli 620 017.

3. G. Smruthi

4. G. Sarath

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, declaring the petitioner as the guardian of her husband namely Ganesh to protect his interest administer bank accounts investments etc. and in the event of necessity to sell the shares in businesses and immovable properties standing in the name of her husband as stated above and to use the proceeds towards medical treatment of her husband and family welfare expenses.



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For Petitioner : Mr.R.Baskaran, Senior Counsel
for Mr.B.R.Ashwin Raja Someshwerar
For Respondents : Mr.V.S.Karthi for R1

ORDER

This Writ Petition has been filed seeking for declaration, declaring that the petitioner as the guardian of her husband, namely, Ganesh, to protect his interest administer bank accounts, investments, etc., and also to sell the shares in business and immovable properties stand in the name of her husband and to use the proceed towards medical treatment of her husband and family welfare expenses.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner is the mother of the respondents 3 and 4. The petitioner got married one Ganesh on 14.02.1994 and two children born out of the said wedlock, viz., respondents 3 and 4 herein. While being so, the petitioner's husband, who is being the business man, when he was



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went to office on 15.02.2023, he suffered a stroke, which caused brain hemorrhage. Though he was immediately admitted in the hospital and had taken treatment in the higher hospitals, he had suffered fronto temporo parietal compression for which, cranioplasty also done and now he is in bedridden and in poor sensorium in the second respondent hospital. Now. He is undergoing physiotherapy and supportive measure. However, without any improvement, he is still in bedridden. The petitioner's husband owned several properties and also doing somany business. Under these circumstances, the petitioner, who is being the wife, could not be able to meet out the medical expenses of her husband. In fact, they decided to take him to Abroad for further treatment, for which, the petitioner is in need of money. However, the petitioner could not be able to sell immovable property or withdraw the money from the Bank, which is lying with the petitioner's husband account and in his name. Therefore, the petitioner approached this Court to appoint her as guardian for her husband in order to deal with his movable and immovable properties. The present position is that there is no legislations in India that provides for appointment of guardian that a persons in comatose state. The Hon'ble Division Bench of several High



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Court held that there is no enactment of any law to appoint the guardian for a person in a comatose state. Though on several occasions, issued directions and framed guidelines to enact specific provision for appointment of guardian for the person, who is in a comatose state, till today, no enactment has been done by the first respondent.

4. It is relevant to extract the portion of the judgment of the Hon'ble Division Bench of the Kerala High Court, dated 20.02.2019 made in ***W.P.(C) No.37278 of 2018 (Shobha Balakrishnan and another V. State of Kerala)***, which reads as follows:

“34. Considering the role of this Court, jurisdiction under Article 226 of the Constitution of India springs up, when no remedy is provided under any Statute to persons like patients in 'comatose state'. It is something like 'parens patriae' jurisdiction. A reference to the verdict in Nothman vs. Barnet London Borough Council [1978 (1)WLR 220] (at 228) is also relevant. In such cases, it is often said, Courts have to do what the Parliament would have done. A reference to the verdict in Surjit Singh Karla vs. Union of India and another [1991(2) SCC 87 explaining the principle



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of -causes omissus- is also brought to the notice of this Court; to the effect that if it is an accidental omission, court can supply/fill up the gap. This Court however does not find it appropriate to ?re-write? the provision, as it is within the exclusive domain of the Parliament. This is more so, when the relevant statutes like Mental Health Act, 1987 and PWD Act, 1995 came to be repealed, on introducing the new legislations, such as the Mental Healthcare Act 2017 and The Rights of persons with Disabilities Act, 2016 in conformity with the mandate of U.N.Convention, 2006. This Court does not say anything whether any amendment is necessary, also in respect of the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (National Trust Act, 1999) with reference to the U.N.Convention 2006. It is for the Government to consider and take appropriate steps in this regard, as it is never for the Court to encroach into the forbidden field. This Court would only like to make it clear that, in so far as the case of a patient lying in 'comatose state' is not covered by any of the statutes, (as discussed above), for appointment of a Guardian, the petitioners are justified in approaching this court seeking to invoke



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the power under Article 226 of the Constitution of India. It is declared accordingly.

35. Coming to the incidental aspects; since no specific provision is available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in 'comatose state', it is necessary to stipulate some 'Guidelines', based on the inputs gathered by this Court from different corners, as suggested by the learned counsel for the petitioners, the learned Government Pleader and also by the learned Amicus Curiae, till the field is taken over by proper legislation in this regard. This Court finds it appropriate to fix the following norms/guidelines as a temporary measure:

i) petitioner/s seeking for appointment of Guardian to a person lying in comatose state shall disclose the particulars of the property, both movable and immovable, owned and possessed by the patient lying in comatose state.

ii) The condition of the person lying in comatose state shall be got ascertained by causing him to be examined by a duly constituted Medical Board, of whom one shall definitely be a qualified Neurologist.

iii) A simultaneous visit of the person lying in



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comatose state, at his residence, shall be caused to be made through the Revenue authorities, not below the rank of a Tahsildar and a report shall be procured as to all the relevant facts and figures, including the particulars of the close relatives, their financial conditions and such other aspects.

iv) The person seeking appointment as Guardian of a person lying in comatose state shall be a close relative (spouse or children) and all the persons to be classified as legal heirs in the due course shall be in the party array. In the absence of the suitable close relative, a public official such as 'Social Welfare officer' can be sought to be appointed as a Guardian to the person lying in 'comatose state'.

v) The person applying for appointment as Guardian shall be one who is legally competent to be appointed as a Guardian

vi) The appointment of a Guardian as above shall only be in respect of the specific properties and bank accounts/such other properties of the person lying in comatose state; to be indicated in the order appointing the Guardian and the Guardian so appointed shall act always in the best interest of the person lying in 'comatose state'.

vii) The person appointed as Guardian shall file



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periodical reports in every six months before the Registrar General of this Court, which shall contain the particulars of all transactions taken by the Guardian in respect of the person and property of the patient in comatose state; besides showing the utilization of the funds received and spent by him/her.

viii) The Registrar General shall cause to maintain a separate Register with regard to appointment of Guardian to persons lying in 'comatose state' and adequate provision to keep the Reports filed by the Guardian appointed by this Court.

ix) It is open for this Court to appoint a person as Guardian to the person lying in comatose state, either temporarily or for a specified period or permanently, as found to be appropriate.

x) If there is any misuse of power or misappropriation of funds or non-extension of requisite care and protection or support with regard to the treatment and other requirements of the person lying in comatose state, it is open to bring up the matter for further consideration of this Court to re-open and revoke the power, to take appropriate action against the person concerned, who was appointed as the Guardian and also to appoint



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another person/public authority/Social Welfare Officer (whose official status is equal to the post of District Probation Officer) as the Guardian.

xi) It shall be for the Guardian appointed by the Court to meet the obligations/duties similar to those as described under Section 15 of the National Trust Act and to maintain and submit the accounts similar to those contained in Section 16.

xii) The Guardian so appointed shall bring the appointment to the notice of the Social Welfare Officer having jurisdiction in the place of residence, along with a copy of the verdict appointing him as Guardian, enabling the Social Welfare Officer of the area to visit the person lying in -comatose state- at random and to submit a report, if so necessitated, calling for further action/ interference of this Court.

xiii) The transactions in respect of the property of the person lying in 'comatose state', by the Guardian, shall be strictly in accordance with the relevant provisions of law. If the Guardian appointed is found to be abusing the power or neglects or acts contrary to the best interest of the person lying in 'comatose state', any relative or next friend may apply to this Court for removal of such Guardian.

xiv) The Guardian appointed shall seek and



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obtain specific permission from this Court, if he/she intends to transfer the person lying in comatose state from the jurisdiction of this Court to another State or Country, whether it be for availing better treatment or otherwise. state-, any relative or next friend may apply to this Court for removal of such Guardian.

xiv) The Guardian appointed shall seek and obtain specific permission from this Court, if he/she intends to transfer the person lying in comatose state from the jurisdiction of this Court to another State or Country, whether it be for availing better treatment or otherwise.

36. In view of the above discussion, we hereby hold and declare that the petitioners in W.P. (C)No. 37278 of 2018 are justified in approaching the Court for appointment of Guardian to the person by name Gopalakrishnan (husband of the first petitioner and father of the second petitioner), who was lying in 'comatose state' to get the first petitioner declared as the Guardian of Gopalakrishnan, the victim. “

5. The above judgment is followed by the Hon'ble Division Bench of the Allahabad High Court in the case of ***Uma Mittal and Ors. V. Union of India, reported in 2020-SCC-Online All-777.*** After citing



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various judgments including the judgment of the Hon'ble Division Bench of the Kerala High Court as referred supra, framed guidelines as follows:

"Guidelines

(i) A person(s) who seek(s) to be appointed as guardians vis-à-vis an individual, who is lying in comatose state, shall in their petition to the High Court (in short 'Court') disclose the details of all tangible and intangible assets of such an individual. The details as to their location and approximate market value shall also be disclosed. In case of bank accounts, stocks, shares, and debentures and other investments are concerned, material particulars will be provided.

(ii) The Court will have the person lying in comatose examined by a duly constituted medical board which would include, inter alia, a neurologist.

(iii) The court will also direct the concerned SDM/Tahsildar in whose jurisdiction the person lying in comatose is said to be located to carry out an enquiry to establish the veracity of the assertion and to gather material particulars concerning the person(s) who approach the court for being appointed as guardians. The enquiry will, inter alia, gather information as regards the relationship that the person(s) who wish to be appointed as guardians



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has/have with the person lying in comatose state. Information with regard to the financial condition of persons wanting to be appointed as guardians shall also be collected apart from other aspects which may have a material bearing in their discharging the duties of a guardian. Any conflict of interest concerning the affairs of the person lying in comatose state will be brought to fore in the report generated during the course of the enquiry.

(iv) Ordinarily only that person will be appointed as guardian who is a spouse or a progeny of the person lying in comatose. The person seeking appointment as a guardian in his petition to the court will, however, disclose the particulars of all legal heirs of the person lying in comatose. In the event, the person lying in comatose has neither a spouse nor any children or even any legal heirs or if he/she has such persons in his life but stands abandoned by them subject to the permission of the court his next friend who wishes to be appointed as a guardian can approach the court with such a request. In the alternative, the Court could direct the Department of Social Welfare, GNCTD to appoint a public official such as a Social Welfare Officer or a person holding equivalent rank to act as the guardian of the person



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lying in comatose state.

(v) Only that person shall be appointed as a guardian who is otherwise in law competent to act as a guardian.

(vi) The order directing appointment of a guardian shall specify the assets qua which the guardianship order is passed. The court will be empowered to modify the order and bring within its sweep other assets, if required, in the interest of the person lying in comatose state. In case liquid funds are not available and there is a requirement to sell the assets of the person lying in comatose state, upon the guardian approaching the court, necessary directions could be passed in that behalf.

(vii) The person appointed as a guardian will file every six (6) months (or within such period as the court may indicate in its order) a report with the Registrar General of this court. The report shall advert to the transactions undertaken by the guardian in respect of the assets of the person lying in comatose state. Besides this, the report shall also indicate the funds, if any, received by the guardian and their utilization for the purposes of maintaining the person lying in comatose state.

(viii) The Registrar General of this court will



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cause a separate register to be maintained which will set out inter alia the details of the proceedings, the particulars of the person appointed as a guardian and orders, if any, passed after the appointment of the guardian. Measures will also be taken by the Registrar General to preserve the reports filed by the guardian from time to time.

(ix) It will be open to the court to appoint a guardian either temporarily or for a limited period, as may be deemed fit.

(x) In the event, the guardian appointed by the court misuses his/her power or misappropriates, siphons or misutilizes the assets of the person lying in comatose state or fails to utilize the assets in the best interest of the person lying in comatose state, the court would have the power to remove the guardian and appoint another person in his/her place. The substituted person could also be a public officer such as a Social Welfare Officer or an officer holding an equivalent rank.

(xi) The guardian appointed by the court will ensure that the transactions entered into by him or her comport with the relevant provisions of the law.

(xii) In case a relative or a next friend of the person lying in comatose state finds that the guardian



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is not acting in the best interest of the person lying in comatose state, such person will also have the locus to approach the court for issuance of appropriate directions and/or for removal of the guardian.

(xiii) In case, the guardian wishes to move the person lying in comatose state to another state or even to another country for the purposes of securing better medical treatment for the person lying in comatose state, he/she would approach the court for necessary permission before undertaking such an exercise."

6. Further, held that the above guidelines are general in nature and the Court would always have the power to relax the same or add certain other conditions as may be required in each case.

7. In the case on hand, as stated supra, admittedly, the petitioner's husband is in comatose state and he requires immediate treatment. That apart, the petitioner has to meet out the other family expenses. Admittedly, the petitioner and the respondents 3 and 4 are the family members and they are dependant on the petitioner's husband. Therefore, in order to meet out all expenses, including treatment for her husband,



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the petitioner necessarily be declared as guardian of her husband to deal with his movable and immovable properties.

8. In view of the above, the respondents 3 and 4, who are being daughter and son of said Ganesh, have no objection to appoint the petitioner as guardian, the petitioner, who is being the wife of Ganesh, is hereby appointed as guardian of her husband, viz., Ganesh, to deal with his movable and immovable properties, on condition that she shall maintain the statements and accounts and made readily available when ever it requires for verification.

9. With the above observation, this Writ Petition is allowed.
No costs. Consequently, connected Miscellaneous Petition is closed.

26.11.2024

Internet : Yes/No
NCC : Yes / No
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TO:-

- 1.The Secretary,
Ministry of Health and Family Welfare,
Room No. 201-D, Nirman Bhawan,
New Delhi 110 011
2. The Dean,
Kauvery Hospital,
No.1, K.C. Road,
Tennur,
Tiruchirappalli 620 017.



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G.K.ILANTHIRAIYAN, J.

LS

Order made in
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Dated:
26.11.2024