

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

WRIT PETITION NO. 18548 OF 2024

Anita Atmaram Matale. ... Petitioner
Versus
The Union of India & Anr. ... Respondents.

Mr. S.R. Nargolkar i/b. Mr. Sachin S. Gite, for Petitioner.

Ms. V.R. Raje, AGP, for Respondent/State.

Mr. D.P. Singh, for Respondent No. 1-UOI.

**CORAM: BHARATI DANGRE &
ASHWIN D. BHOBE, JJ.
DATED : 21st JANUARY, 2025**

P.C:-

1. The Petitioner, wife of Shri Atmaram Narayanrao Matale has approached this Court seeking a declaration that she be declared as a guardian of her husband-Shri Atmaram Narayanrao Matale who is presently in a vegetative state and direct the Respondents as well as all authorities including the Banks, financial institutions etc. to allow the Petitioner to represent/operate the affairs of her husband and permit him to be represented by her as and where, it is required.

2. We have heard the learned Counsel Mr. Nargolkar for the Petitioner and Ms. Raje for Respondent No. 2.

The Union of India is represented by Mr. D.P. Singh.

3. The background facts necessitating the reliefs prayed in the Writ Petition reveal that the Petitioner is the legally wedded wife of Shri Atmaram Narayanrao Matale and out of the wedlock the couple had one son and two daughters who are married and residing in their matrimonial home.

Shri Atmaram Matale a contractor/builder by profession, on 18th February, 2024 suffered a severe heart attack, requiring him to be hospitalised in a private hospital in Nashik. He suffered a brain stroke on 19th February, 2024 and was shifted to the Sahyadri Hospital in Nashik, where he received treatment till 3.4.2024.

During his treatment he has underwent multiple surgeries to rectify the damage caused and he was discharged from hospital on 3.4.2024 and is presently a outdoor patient under the treatment of Dr. Samir Futane in Sahyadri Hospital, Nashik.

The necessary documents depicting his illness effect including the discharge card is annexed to the Petition.

4. On account of the affliction of her husband's illness, the Petitioner, his wife has pleaded that Shri Atmaram is unconscious and bedridden and developed left sided hemiplegia(paralysis of left hand and leg) and aphasia(loss of speech and comprehension) and he requires feeding tube and tracheostomy for breathing. As a result of the aforesaid, he is unable to carry out any independent activities including his daily chores and he is unable to sign or take any independent decision by applying his mind and in fact, he cannot be left all alone by himself and cannot cope up with the outside environment and therefore, he is home-bound.

He is advised a long term physiotherapy, rehabilitation and medication and is required to undertake regular visits to the Hospital.

5. It is in this background, the Petitioner plead that since her husband is a builder by profession and he possessed a plot in his name, which is to be developed by constructing a residency over it, for which he has also accepted some advance amounts

from the proposed purchasers. A commencement certificate was also issued in respect of the said project by the Nashik Municipal Corporation in the name of Shri Atmaram Matale.

However, in the wake of the aforesaid unforeseen calamity which had occurred on account of his medical condition, the development of the project has come to a stand still and it is the specific contention of the Petitioner that she alongwith her son is ready to complete the construction, but in the wake of vegetative state of Shri Atmaram Matale, the project is suffering a huge setback.

It is in this background, she has approached this Court seeking appointment of herself as a guardian of her husband so that she can act as his authorized signatory, for all purposes including effecting transactions, obtaining requisite permissions etc. for the purpose of the project.

The children of the Petitioner have accorded their no objection for the Petitioner being appointed as Guardian of Shri Atmaram Matale.

6. By a detailed order dated 28th November, 2024, this Court had issued a direction to the Dean of Civil Hospital, Nashik to constitute a medical board to examine the physical and mental

health of Shri Atmaram Matale and submit a report.

In furtherance of the said directions, Ms. Raje has placed before us the report from the Medical Board headed by the Professor and Head of the Department of General Surgery, Government Medical College, Nashik, with the Associate Professor & Head, General Medicine, Government Medical College, Nashik as its member and Neurosurgeon, Sahyadri Hospital, who is treating Atmaram in Sahyadri Hospital, as the Member Secretary.

The report dated 12th December, 2024, on clinical examination of Shri Atmaram Matale has reported as below :

“The committee findings are as follows :

- 1) As per the documents (discharge summary, OPD visit papers) provided by the family members Shri Mayur Atmaram Matale (Patient's son) and identification of patient confirmed by Aadhar card. It is confirmed that, Shri Atmaram Naraynrao Matale, a 58-year-old male (vide MR 2894657). suffered from an acute inferior wall myocardial infarction (heart attack) and right hypertensive basal ganglia bleed (bleeding in the right central portion of the brain due to high blood pressure) on 19th February 2024.*
- 2) He was admitted and treated (operation for brain bleeding and medical supportive care) for the same at Sahyadri Super-speciality Hospital, Nashik.*
- 3) At present, he is on a home rehabilitation program since approximately eight months.*
- 4) However, due to the aforementioned illnesses, the brain was severely damaged. Hence, He has developed left-sided hemiplegia (paralysis of the left upper and lower limb) and*

aphasia (loss of speech).

5) Thus he is bedridden and follows only simple verbal commands. He occasionally opens his eyes but cannot carry out a meaningful conversation. He is unable to comprehend any complex command or request.

6) He requires a feeding tube and tracheostomy for breathing assistance and a catheter for urine drainage. For other bodily needs such as feeding or cleaning, he is dependent on the caretaker or family members.

7) He certainly cannot utilize all the mental faculties or carry out any independent activities.

8) He is not capable of signing or making any independent willful decisions.

9) Thus it can be certified that Shri. Atmaram Matale is not in a position to make any decision on his own nor he is able to understand the implications of his decisions, at present.

10) However, it can be added that there is a remote possibility of a slow or delayed neurological development later which will need a reassessment by a neurophysician after a few months."

The report is inked by the members of the Committee on 20th December, 2024.

7. In the light of the aforesaid report, from which we can ascertain the physical and mental health status of Shri Atmaram Matale, we find the prayer of the Petitioner to appoint her as guardian to be a justiciable one. In exercise of the powers under Article 226 of the Constitution, it would be within our jurisdiction

to step in and by taking recourse to the doctrine of parents patria, issue the necessary directions.

The learned Counsel for the Petitioner has placed before us a decision of this Court in the case of ***Rajni Hariom Sharma v/s. Union of India & Anr.*** pronounced on 27th August, 2020 where this Court by referring to the decision of the Apex Court in the case of ***Aruna Ramchandra Shanbaug vs. Union of India, (2011) 4 SCC 454*** has specifically observed thus :

*“36. In **Aruna Ramchandra Shanbaug** (supra), Supreme Court after examining and applying the doctrine of parens patriae also delved into the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India. After advertent to the said article, Supreme Court held that the High Court under Article 226 of the Constitution of India is not only entitled to issue writs but is also entitled to issue directions or orders. After referring to previous decisions of the Supreme Court dealing with the wide powers of the High Court, it was held that from the very language of Article 226, a petition can also be made to the High Court under Article 226 praying for an order or a direction and not for any writ. In the context of that case, it was opined that Article 226 gives abundant power to the High Court to pass suitable orders on the application filed by the next relative or next friend or the attending doctors to withdraw life support to an incompetent person.*

*37. In fact in **T. K. Rangarajan Vs. Government of Tamil Nadu, (2003) 6 SCC 581**, which dealt with the unprecedented action of Tamil Nadu government terminating the services of all employees who had resorted to strike to press their demands, Supreme Court reiterated that under Article 226 of the Constitution of India, the High Court is empowered to exercise its extra-ordinary jurisdiction to meet unprecedented extra-ordinary situation having no parallel; though such a power is*

required to be used sparingly.

38. From the above, it is clearly deducible that when the High Court exercises jurisdiction under Article 226 of the Constitution of India, it does so to further the cause of justice. To provide justice or discharge ex debito justitiae is the raison d'etre of the courts. The Latin expression ex debito justitiae literally means a debt of justice; on account of justice: a claim, the refusal of which would involve an injustice, and therefore, one which justice owes it to the claimant to recognize and allow. The doctrine of ex debito justitiae is well established and requires no further elaboration. In addition to Article 226 of the Constitution, such power of the High Court is traceable to section 151 of the Civil Procedure Code, 1908 and section 482 of the Code of Criminal Procedure, 1973."

8. We have no doubt in our mind that the reliefs sought by the Petitioner in the peculiar facts and circumstances deserve to be granted, as she find herself in a vulnerable condition, as her husband being left in a vegetative state and is unable to take decision or sign the necessary papers for the purpose of giving shape to the project, which he had already commenced and for which he has received certain amounts.

However, while allowing the prayers in the Petition, we also direct the monitoring of the health condition of the Petitioner through Maharashtra State Legal Services Authority constituted under the Legal Services Authority, 1987.

Hence the following order :

(i). The Petitioner is directed to be treated and permitted to act as a guardian of Shri Atmaram Narayanrao Matale, in the wake of his health condition, which is specifically reflected through the report of the Medical Board constituted in terms of the order passed by this Court and in light of the specific observations in the report dated 12th December, 2024.

Since we have declared her to be a guardian, any decision taken by her on behalf of her husband shall be binding upon him and all those who are required to accept or act upon the decision of Shri Atmaram Matale would be bound by her decision since she is authorised to take decision on his behalf.

(ii) Pursuant to the above declaration, Petitioner is authorised to sign the necessary papers /documents whatever are necessary for implementing any decision to be taken on behalf of her husband.

(iii) Member Secretary of 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 functioning of the petitioner as guardian of Shri Atmaram Narayanrao Matale every three months and submit report to the Maharashtra State Legal Services Authority which

shall be compiled for a period of two years.

If it is found necessary to the period of monitoring or in case of any exigency, Member Secretary of Maharashtra State Legal Services Authority shall be at liberty to move the this Court.

The Writ Petition is made absolute in the aforesaid terms.

Registry to furnish a copy of this Order to Member Secretary, Maharashtra State Legal Services Authority for doing the needful.

(ASHWIN D. BHOBE, J.)

(BHARATI DANGRE, J.)