



W.P.(MD)No.3775 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 26.02.2025

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD) No.3775 of 2025

N.Subbulakshmi

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai.

2.The District Collector,
Thoothukudi District,
Thoothukudi.

3.The Branch Manager,
State Bank of India,
Kovilpatti,
Thoothukudi District.

4.The Branch Manager,
Indian Overseas Branch,
High Ground Branch,
Maharaja Nagar, Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to declare the petitioner as a



W.P.(MD)No.3775 of 2025

guardian to her son, Leela Krishna Kumar for his all movable and immovable assets and further permit the petitioner to operate the savings banks accounts stands in the name of Leela Krishna Kumar with the 3 and 4th respondent.

For Petitioner :Mr.R.Murali

For R1 & R2 :Mr.S.Shaji Bino
Special Government Pleader

For R3 & R4 : Mr.N.Dilip Kumar

ORDER

This writ petition seeks for a Mandamus to appoint the petitioner as Guardian for her son, Dr.Leela Krishna Kumar, for his movable and immovable assets and to further permit the petitioner to operate the savings bank accounts standing in the name of the said Dr.Leela Krishnakumar with the respondents 3 and 4.

2. Dr.Leela Krishna Kumar is a medical Doctor. He is a specialist in anaesthesia. He married one Dr.Geetha. From the wedlock, a child, by name, Santhosh was born. Due to disputes and differences, Dr.Leela Krishna Kumar and Dr.Geetha separated. Dr.Geetha had initiated proceedings for divorce in H.M.O.P.No.37 of 2019 on the file of the 2/11



W.P.(MD)No.3775 of 2025

learned Subordinate Judge at Kovilpatti. Even at the time of presenting the divorce petition, she had stated that her husband is in a permanent vegetative state and hence, would be represented by her mother-in-law, the writ petitioner herein. During the course of the proceedings, the records do not reveal that the petitioner's mother was appointed as Guardian for Dr.Leela Krishna Kumar.

3. The reason for the present writ petition is that on account of self administration of certain Drugs, Dr.Leela Krishna Kumar went into a vegetative state. His father, Thiru.Mohan had passed away on 09.06.2002. Hence, his mother is taking care of him. The affidavit reads that the mother attempted to give him treatment at KIMS hospital, Trivandrum and Apollo hospital at Madurai. Despite several attempts to revive Dr.Leela Krishna Kumar, all were in vain. The hospitals have certified that Dr.Leela Krishna Kumar is in Ischaemic encephalopathy state, ie., the supply of blood and oxygen to the brain has completely stopped. Dr.Leela Krishna Kumar is being fed through feeding tube.

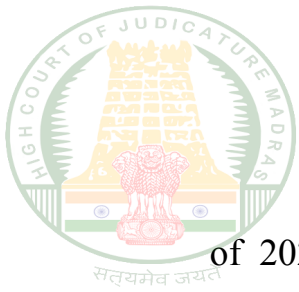


W.P.(MD)No.3775 of 2025

WEB COPY

4. The unfortunate mother, who has lost her husband and the support of her daughter-in-law and grandson, is fighting all alone to take care of her son. She pleads that her borrowings have touched nearly Rs. 10,00,000/-. She came to know that her son has appointed her as a nominee in his bank accounts maintained with Indian Overseas Bank, High Ground Branch, Tirunelveli District and State Bank of India, Kovilpatti Branch. The mere nomination of the mother would not enable her to access the funds, since the nomination would not operate as long as Dr.Leela Krishna Kumar is medically certified to be alive. Being left with no other alternative, the petitioner has approached this Court for the aforesaid relief.

5. When the matter came up for admission, I entertained a doubt as to whether a writ petition is maintainable for appointing a person as Guardian. Mr.R.Murali drew my attention to two judgments of this Court in ***S.Dhanalakshmi Vs. The Office of the Principal Accountant General, Chennai and others***, W.P.(MD) No.8976 of 2023, dated 26.04.2023 and that of a Division Bench in ***S.Sasikala Vs. The State of Tamil Nadu, rep by its Secretary, Chennai and another***, W.A.No.1538



W.P.(MD)No.3775 of 2025

of 2024 dated 23.05.2024. He pleaded that this Court in exercise of Article 226 of the Constitution of India had earlier appointed Guardians for persons similarly situated.

6. I went through the Hindu Minority and Guardianship Act, 1956, the Guardians and Wards Act, 1890, the Mental Healthcare Act, 2017 and the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

7. The first two legislations, which are general in nature, do not apply as Dr.Leela Krishna Kumar, as he attained majority in the year 2002. The the Mental Healthcare Act, 2017, does not help either, as there is no provision for appointment of a Guardian under the Act. Similar is the situation with respect to the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

8. It is here that the way forward, in cases where a person is alleged to be in comatose/vegetative state, has been shown by



W.P.(MD)No.3775 of 2025

Honourable Mr.Justice G.R.SWAMINATHAN in W.P.(MD) No.8976 of 2023. The learned Judge pointed out that as there is no provision under any of these legislations and since a person cannot be remediless, the power under Article 226 of the Constitution of India can be utilized for the purpose of appointing a person as a Guardian to a comatose patient.

9. The Division Bench, of which the Honourable Mr.Justice G.R.Swaminathan was a party, also has taken a similar view. The Division Bench relied upon a judgment rendered in ***Shobha Balakrishnan and another Vs. State of Kerala***, W.P.(C) No.37278 of 2018, dated 20.02.2019 to come to the aforesaid conclusion. However, I was not inclined to allow this writ petition, straight relying on these precedents. This was on account of the fact that tangible proofs, that were available before the Court in proceedings that the petitioner was in vegetative state.

10. In *Dhanalakshmi's case*, the learned Judge had the benefit of an order passed by the learned Principal District Judge at Tanjore in G.W.O.P.No.88 of 2020 to substantiate her case. Similarly, in *Sasikala's*



W.P.(MD)No.3775 of 2025

case, the Division Bench had unimpeachable materials that the husband of Sasikala was in comatose state. The Division Bench had interacted with the children of the appellant to come to a conclusion regarding the comatose state of a person involved in the Writ Appeal and the impoverished condition, in which the family had been placed.

11. Therefore, I directed the Dean, Thoothukudi Medical College Hospital, Thoothukudi, to appoint a Medical Board, of whom one would be an expert in Neurology to examine Dr.Leela Krishna Kumar and to submit a report. Apart from that, in order to verify whether the writ petitioner alone is taking care of Dr.Leela Krishna Kumar, I directed the Tahsildar, Kovilpatti to cause an inspection and to submit a report.

12. The Dean has submitted a report in Ref.No.1294/E5/2025 dated 24.02.2025. The conclusion of the Medical Board is as follows:-

“At present patient is clinically and orthopedically 100% disable. Impression:- Sequelae of hypoxic ischaemic encephalopathy/Persistent Vegetative State.”



W.P.(MD)No.3775 of 2025

WEB COPY

13. The Tahsildar, who conducted an independent enquiry, has submitted a report in Na.Ka.No.Aa1/1218/2025 dated 22.02.2025. In the said report, he has confirmed the assertions made in the affidavit regarding the divorce that has taken place between Dr.Leela Krishna Kumar and Mrs.Geetha and that the minor son born to the couple is in the custody of his mother. The report further states that the writ petitioner alone is taking care of Dr.Leela Krishna Kumar and confines that his father has predeceased him.

14. These materials read with the reports given by the KIMS hospital at Trivandrum and Apollo hospital at Madurai show that Dr.Leela Krishna Kumar is 100% disabled and is in persistent vegetative state. The report of the Tahsildar further points out that the only person, who is taking care of Dr.Leela Krishna Kumar, is his mother, the writ petitioner-Subbulakshmi. These materials convince me that the mother has to be appointed as the Guardian for the comatose patient, Dr.Leela Krishna Kumar.



W.P.(MD)No.3775 of 2025

15. Mr.N.Dilip Kumar representing the respondents 3 and 4

submits that the Indian Overseas Bank, High Ground Branch, Tirunelveli District has a balance of Rs.11,00,368.98/- to the credit of Dr.Leela Krishna Kumar's account. Similarly, the Branch Manager, State Bank of India, Kovilpatti Branch had stated that Dr.Leela Krishna Kumar is maintaining an outstanding balance of Rs.3,15,441.22/- in his account. Mr.N.Dilip Kumar, on instructions, reports that the Banks have no objection, if the accounts are operated by the writ petitioner.

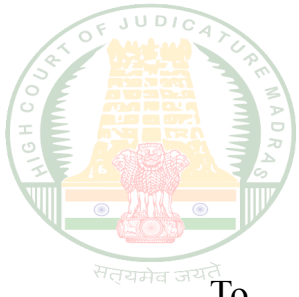
16. In the light of the above discussion, as Dr.Leela Krishna Kumar is in a persistent vegetative state and since it is the writ petitioner, who is taking care of him, she is declared to be the Guardian of Dr.Leela Krishna Kumar. She will be entitled to operate the Bank accounts, which stand in the name of Dr.Leela Krishna Kumar on the file of the respondents 3 and 4.

17. The Writ Petition stands ordered, accordingly. No costs.

Index :Yes / No
Internet :Yes / No

26.02.2025

9/11



W.P.(MD)No.3775 of 2025

To
WEB COPY

- 1.The Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai.
- 2.The District Collector,
Thoothukudi District,
Thoothukudi.



WEB COPY



W.P.(MD)No.3775 of 2025

V. LAKSHMINARAYANAN, J.

mm

W.P.(MD)No.3775 of 2025

26.02.2025