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Neutral Citation No. - 2023:AHC:193153-DB

Reserved on : 27th September, 2023

Delivered on : 6th October, 2023

Court No. - 40

Case :- WRIT - C No. - 26406 of 2023

Petitioner :- Pooja Sharma

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Vishal Pandey, Ashvaneer Kumar Srivastav

Counsel for Respondent :- C.S.C., Paras Nath Rai

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)

1. Heard Shri Anupam Kulshreshtha, learned Amicus Curiae assisted by Shri Ashvaneer Kumar Srivastav, learned counsel for the petitioner; Shri S.P. Singh, learned Additional Solicitor General of India assisted by Shri Paras Nath Rai, learned Senior Standing Counsel for Union of India, Shri Ambrish Shukla, learned Additional Chief Standing Counsel and Sri Fuzail Ahmad Ansari, learned Standing Counsel for the State respondents.

2. By means of present writ petition, the petitioner has prayed for following reliefs:-

"I. Issue a writ, order or direction in the nature of mandamus directing the respondent authority to permit the petitioner to sell the property of her husband for the treatment of her husband namely Vikas Sharma, who is suffering from head injury.

II. Issue a writ, order or direction in the nature of mandamus directing the respondent no.3 to provide the Government help for the treatment of the husband of the petitioner.

III. Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the aforesaid facts and circumstances of the case.

IV. To award the cost of the petition in favour of the petitioner."

3. The husband of the petitioner has purchased a piece of land through a registered sale deed dated 5.9.2011. After purchasing the land, his name has also been mutated in the revenue records. Unfortunately, the petitioner's husband, who had bought the land, met with an accident and sustained serious head injury. He is lying in a comatose state since then. The petitioner, who comes from a very average family, has been subjected to lot of medical expenses, which she is unable to pay. She has already incurred huge expenses in connection with the treatment. Having exhausted all financial resources, she is in despair, isolation and abandonment besides undergoing agony, stress on account of her husband lying in "permanent vegetative state".

4. The petitioner (Pooja Sharma), being the wife of Vikas Sharma, has come forward with the aforesaid prayer. She has approached this Court by means of instant petition seeking permission to sell the property purchased by her husband from his own income, to meet out the expenses of treatment of her husband. The petitioner submits that in India there is no legislation, which provides for appointment of Guardian for a person in comatose state, unlike legislations for appointment of 'Guardian for minors' and persons with other disabilities like mental retardation etc.

5. When the matter came up before this Court on 20.9.2023, this Court was pleased to pass the following orders:-

"1. Heard Shri Anupam Kulshreshtha, learned Amicus Curiae assisted by Shri Ashvaneer Kumar Srivastava appearing for the petitioner; Shri S.P. Singh, learned Addl. Solicitor General of India assisted by Shri Paras Nath Rai, learned counsel for Union of India and Shri Ambrish Shukla, learned Addl. Chief Standing Counsel along with Shri F.A. Ansari, learned Standing Counsel for the State respondents.

2. Present writ petition has been preferred for a direction to respondents to permit the petitioner to sell the property of her husband namely Vikas Sharma, situated at Gautam Budh Nagar, for his

treatment, who is in critical medical condition due to head injury. It is further prayed for a direction to respondents to provide the government help for treatment of her husband.

3. It appears that the husband of the petitioner had purchased the land in question through registered sale deed and his name has also been mutated in the revenue record. Unfortunately, the husband of the petitioner met with an accident and sustained serious head injuries and, therefore, he is lying in Comatose State since then. The petitioner comes from very humble family and has been subjected to lot of medical expenses, which she is unable to pay at present. She has already incurred huge expenses in connection with the treatment and having exhausted all her financial resources, therefore, at present she is in very pathetic condition.

4. This Court vide order dated 28.8.2023 has allowed learned counsel for the petitioner to implead Union of India through its Social Welfare Department, New Delhi and mother-in-law of the petitioner namely Smt. Rajeshwari Sharma w/o Late Mahesh Kumar Sharma as respondent nos.4 and 5 in the present writ petition. It is informed that Smt. Rajeshwari Sharma is not keeping good health and as such previously memo of appearance on her behalf could not be filed. However, a statement was made that she has no objection, if the property in question is sold for better treatment of her son.

5. Before proceeding further in the matter, we find that present mental status of petitioner's husband may be verified by the competent doctors. As it is informed that at present the petitioner and her ailing husband are residing at New Delhi, we request the Director, All India Institute of Medical Sciences, New Delhi (AIIMS) to constitute a Medical Board consisting of specialist doctors dealing with such kind of ailment for examining the mental condition of petitioner's husband namely Vikas Sharma. Accordingly, the petitioner is directed to appear along with her ailing husband before the Director, AIIMS on 25.9.2023 at 10.30 a.m. The medical report in this regard be submitted to this Court through learned Addl. Solicitor General of India on the next date.

6. Put up this matter as fresh on 27.9.2023 at 2.00 p.m.

7. Let a copy of this order be given to learned counsel for parties within 24 hours for necessary compliance. We also request learned Addl. Solicitor General of India to ensure compliance of this order."

6. In response of the aforesaid order dated 20.09.2023, Sri S.P. Singh, Additional Solicitor General of India has produced a report before this Court dated 25.09.2023, which is taken on record. The report is as follows:

ALL INDIA INSTITUTE OF MEDICAL SCIENCES
Ansari Nagar, New Delhi-110029

No.F.-46-23/2023/MB-Estt.(CNC)

Dated:25.09.2023

Subject: Report of the Medical Board to examine the Mental condition of petitioner's husband namely, Sh. Vikash Sharma in writ petition (Civil) No.26406 of 2013 (in the matte of Pooja Sharma vs. State of U.P. and 2 others)-reg.

A medical board was constituted by the Medical Superintendent, AIIMS on aforementioned subject, consisting of the following members:

1. Dr. Shashwat Mishra

Professor, Deptt. Of Neurosurgery

- Chairperson

2. Dr. Divya M.R.

Asstt. Professor, Deptt. Of Neurology

- Member

3. Dr. Tilotma Jamwal

Department of Hospital Administration

- Member Secy.

The first meeting of the Medical board was held on Monday 25th September, 2023 at 12:00 P.M. in the Consultation Room no.13, M.S. Office Wing, Ground floor, AIIMS, New Delhi. All members were present.

Mr. Vikas Sharma s/o Mahesh Kumar was examined by the medical board constituted as per direction of the honourable court. As per the medical records and history provided by patient's wife, patient suffered from severe head injury on dated 4/3/2020 following which he was admitted and treated at Sri Venkateshwar Hospital. Patient underwent bilateral fronto-temporal parietal (FTP) decompressive craniectomy (DC) on 6/3/2020. Patient was discharged from hospital on 4/4/2020 on tracheostomy tube, nasogastric (NG) tube and was making some neurological recovery at the time of discharge.

Patient's wife stated that the patient became ambulatory with the support around 15 days from discharge. However, patient developed bilateral flap site swelling and was discovered to have post traumatic hydrocephalus on follow up CT imagine done on 26/6/2020. In response, patient underwent

right ventriculo peritoneal shunt on 1/7/2020. However, following this procedure patient was discharged in semi-comatose status on tracheostomy and NG tube feeding. Shunt revision was done several times in different hospitals.

At present, patient remains in unresponsive wakefulness (persistent vegetative state, unable to follow simple commands or communicate meaningfully), bed ridden and completely dependent on caregivers for basic needs. He is being fed via NG tube, voiding via urinary catheter and is tracheostomised; requires frequent suctioning for airway clearance. Looking at the recent MRI Brain scans (dated 18/7/2023, showing extensive cerebral atrophy) and the poor clinical condition of the patient, the board is of the opinion that the patient will require prolonged supportive and nursing care and is unlikely to make significant neurological recovery in near future and may require frequent hospital visits for health needs.

<i>Sd./-</i>	<i>Sd./-</i>	<i>Sd./-</i>
<i>(Dr. Shashwat Mishra)</i>	<i>(Dr. Divya M.R.)</i>	<i>(Dr. Tilotma Jamwal)</i>
<i>Chairperson</i>	<i>Member</i>	<i>Member Secy.</i>

7. A perusal of the report of the Medical Board shows that the petitioner's husband is in coma and in vegetative state and is not in a situation to take a decision or to execute any conveyance. He needs a guardian to take care of him, his property and his affairs. Neither under the Mental Health Act nor under the Guardian and Wards Act, 1890, there is any provision for appointment of a guardian in such a situation.

8. The issue before this Court is as to who should be the Guardian of a person who can administer or handle the property of such a person who is in comatose state, as he does not fall under the ambit of mental illness nor will come under the ambit of person with disabilities.

History of Legislation Dealing with People with Disabilities

9. Before dealing with the current legislation, which allows appointment of Guardian for those who cannot take a decision or to take care of themselves, we need to look into the history of various legislation which caters to such a situation.

10. The concept of taking care of patient in comatose state is being recognized several hundreds of years. The concept of 'PARENS PATRIAE' was first found in United Kingdom. The doctrine of 'Parens Patriae' was originated in Britain as early as in the 13th Century, it means that the king is the father of the country and he was under the obligation to look after the interest of those who are unable to look after themselves. Even in India, the concept of doctrine of 'Parens Patriae' was also recognized in the same way where the king was supposed to be the protector of the citizens as parent. The connotation of the term parens patriae differs from country to country, for instance, in England it is the King, in America it is the people, etc. The concept of taking care of patient in comatose state is being recognized several hundreds of years.

11. During the British rule in India, the first legislation introduced in the sphere of mental law was for the purpose of transporting the British patients back to England and this Act came to be known as the Lunatic Removal Act, 1851.

12. From 1858 the British Crown brought upon various legislations such as the Lunacy (Supreme Courts) Act, 1858, Lunacy (District Court) Act, 1858, Indian Lunatic Asylum Act, 1858 (with amendments passed in 1886 and 1889) and the Military Lunatic Act, 1877 for the care and interest of the person with intellectual disabilities, but these acts failed to generate a healthy and humane outcome as the provisions were restrictive rather than reformatory to mental patients.

13. These problems culminated into the introduction of a bill in 1911 which led to enactment of the Indian Lunacy Act, 1912. This was the first legislation that governed mental health in India as it regulated the management of asylums, but the main criticism of this act of 1912 was the provisions reeked of the protection of the public from those who were considered dangerous to

the society; the act did not promote the interest or rights of the mentally ill persons. This Act also had lot of lacunas so the Indian Psychiatric Society suggested the amendment to the Act.

14. The Parliament in U.K. had taken away the concept of ‘PARENS PATRIAE’ as the entire concept was enacted in an Act called the Mental Health Act, 1959. In fact, a Constitution Bench of Canada in **E (Mrs.) v. Eve**¹ has cautioned that this jurisdiction cannot be taken away unless and until it is removed by a specific legislation. The Preamble of the Mental Health Act, 1959 of U.K. is as follows:-

*“An Act to repeal the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1938, and to make fresh provision with respect to the treatment and care of mentally disordered persons and **with respect to their property** and affairs; and for purposes connected with the matters aforesaid.”*

15. The Preamble of the Act made it clear that this Act was for treatment of such patients and also to handle the property and affairs of the patient. Part IV of the Act dealt with compulsory admission to hospital and guardianship to such patient. Section 33 of the Mental Health Act, 1959 of U.K. lays down the procedure for making the application of guardianship. Section 34 lays down the procedure to deal with such application. Section 35 lays down regulation on the guardians and Section 42 lays down transfer of guardian in case of death or in capacity of guardian. Part VIII of this Act is for the management of property and affairs of the patients. Section 103 granted power to the Judge to administer the patients’ properties and affairs. Section 105 granted Judge the power to appoint a receiver, Section 107 deals with preservation of interest of patients’ properties.

16. Thereafter, the Indian Lunacy Act was replaced by the Mental Health Act, 1987, it took approximately three decades for this Act to be formulated

¹ (1986) 2 SCR 388 Canada

and it finally received the President's assent on May, 1987 but was implemented in 1993. The provisions of Mental Health Act, 1987 carried out significant and commendable changes in the object as well as in the definition of mental illness .

United Nation Convention

17. To address this issue, the United Nation held a Convention on the Rights of People with Disabilities (hereinafter, for the sake of brevity, to be referred as 'UNCRPD'). This Convention was signed by 164 member countries. Article 1 of this convention covered physical and intellectual disabilities within the broad definition of disabilities. It also gave primacy to the Persons with Disabilities (hereinafter, for the sake of brevity, to be referred as 'PwD'), to exercise freedom of choice, and dignity. The opportunity for decision making was to be vested with the PwD. It intended to promote their full and effective participation in society on an equal basis. The UNCRPD imposes various obligations on the member countries to ensure protection of the disabled persons and help them in exercising their complete freedoms. The UNCRPD recognizes in its Preamble as under:

"24. Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,"

18. India was also signatory of this United Nation Convention on the Right of Disability. UNCRPD, which was a convention in respect of persons with all kind of disabilities and was subsequently notified the same on 1.10.2007, this resulted in the enactment of two statutes in India, namely:

- a) The Rights of Persons with Disabilities Act, 2016; and
- b) The Mental Healthcare Act, 2017.

LEGISLATION IN INDIA FOR APPOINTMENT OF GUARDIANS FOR MINORS, DISABLED AND MENTALLY CHALLENGED, AND ITS APPLICABILITY FOR THE PEOPLE IN COMATOSE STATE:-

19. There are various Acts made by the Legislation under which a guardian could be appointed, which are as follows:-

- (i) The Guardian and Wards Act, 1890
- (ii) The Hindu Minority and Guardianship Act, 1956
- (iii) The Mental Health Act, 1987 (Repealed)
- (iv) Persons With Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995. This Act has been repealed by the Rights of Persons with Disabilities Act, 2016.
- (v) The National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999
- (vi) The Mental Healthcare Act, 2017
- (vii) The Rights of persons with Disabilities Act, 2016

The Guardians and Wards Act, 1890

20. The Guardians and Wards Act, 1890 was enacted to consolidate various laws relating to guardians and wards applicable to all the classes, creeds and races, who were subjects to British India. As per this Act, the Court can appoint a Guardian to take care of the properties of the minor. This Act was only to provide guardians for the minors and was not applicable for appointing Guardian to a person lying in comatose state.

The Hindu Minority and Guardianship Act, 1956

21. The Hindu Minority and Guardianship Act, 1956 was an Act that regulated the guardianship of Hindu minors and to manage their properties. It

was a supplement to the Guardians and Wards Act, 1890. It also defined rights and duties of natural guardian. In this Act, the welfare of the child was paramount consideration. This Act again was only confined to the Hindu minors and have no applicability for appointing a Guardian of person lying in comatose state.

The Mental Health Act, 1987

22. The Parliament had enacted The Mental Health Act, 1987. The need for introduction of this Act was because The Indian Lunacy Act, 1912 had become outdated as there was a considerable development in the medical science. Mental illness was curable if diagnosed at an early stage. The attitude of the society towards such people was also changing. Hence, it was necessary to bring in fresh legislation for treatment of mentally ill persons in accordance with the new approach. Accordingly, The Mental Health Act, 1987 was enacted and had come into force with effect from 1.4.1993.

Though Chapter VI of The Mental Health Act, 1987 dealt with judicial imposition regarding alleged mentally ill person possessing property, custody of such person and the management of his property. Section 52 lays down for appointment of Manager for mentally ill person for management of property. Section 54 provides for appointment of Manager for management of property of mentally ill person. However, there is no provision in the Act for appointment of Guardianship for a person who is in comatose state.

Persons With Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995

23. The Parliament enacted the Persons With Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995. The object of the Bill was to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. Subsequently, Persons With Disabilities (Equal Opportunities,

protection of Rights and Full Participation) Act, 1995. This Act has been repealed by the Rights of Persons with Disabilities Act, 2016.

The National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

24. This Act was enacted to provide for constitution of national body for the welfare for autism, cerebral palsy, mental retardation and multiple disabilities and for the matters connected therewith or incidental thereto. This Act was again focussed for the welfare of the person suffering from above mentioned disabilities. Section 14 of this Act deals with appointment of guardian but it was only confined to the diseases or disabilities mentioned in the Act. Though, the Preamble of the Act states that matters connected therewith or incidental thereto, however, the provisions of that, do not cover people lying in comatose state. Further the benefit of this Act will only be applicable to people who are having any two or more disabilities, to fall under 'multiple disabilities', in order to come within the purview of the Retardation and Multiple Disabilities Act, 1999 (National Trust Act, 1999).

The Mental Healthcare Act, 2017

25. This Act was the outcome of The United Nations Convention on the Rights of Persons with Disabilities, which was ratified by the Government of India in October, 2007. The Convention made it obligatory on the Government to align its policies and laws with the Convention. The Mental Health Act, 1987 could not protect the rights of persons with mental illness and promote their access to mental healthcare in the country.

Since, The Mental Health Act, 1987 had its limitations. There was no provision to protect the rights of persons with mental illness, and did not promote access to mental healthcare in the country.

26. To ensure healthcare, treatment and rehabilitation of persons with

mental illness as well as to protect and promote the rights of persons with mental illness during the delivery of healthcare inter alia, the Mental Health Bill was introduced in 2013. Hence, The Mental Health Act, 1987 was repealed and The Mental Healthcare Act, 2017 was enacted with effect from 29.5.2018.

In the Mental Healthcare Act, 2017, mental illness is defined in Section 2(s), which is as follows:-

"(s) "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;"

Section 14 permits the mentally ill person to appoint a nominated representative. However, where a nominated representative is not appointed, the persons who would be deemed to be the nominated representative in the order of precedence, is laid down under Section 14 (4) of the Mental Healthcare Act, 2017. The duties of the nominated representative has been laid down under Section 17 of the Act.

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

27. After the United Nations Convention on the Rights of Persons with Disabilities(UNCRPD), India being a signatory State, enacted the Rights of Persons with Disabilities Act, 2016 (for the sake of brevity hereinafter referred as 'RPWD Act, 2016).

Section 2(s) of the Rights of Persons with Disabilities Act, 2016 lays down that "person with disability" means a person, who has a long term physical, mental, intellectual or sensory impairment which, in interaction with

hinders an effective participation of patient in the society. Section 14 lays down provision for guardianship for a person with disability who is unable to take decisions and needs limited support by the guardian. Section 14(2) lays that every guardian appointed for a person with disability will be deemed to function as a limited guardian.

28. A joint reading of the provisions of Rights of Persons with Disabilities Act, 2016 and the Mental Healthcare Act, 2017 shows that there is clear distinction between both the Acts.

29. The Mental Healthcare Act, 2017 only deals with the delivery of mental healthcare, and services and for connected matters. The deletion of provisions with respect to property and affairs and the absence of any provisions in respect of moveable or immovable assets, financial affairs. Hence, we can see a clear departure from Management of the Property of mentally ill person which was available in the Mental Health Act, 1987.

30. Under the Mental Healthcare Act, 2017 the nominated representative is responsible for providing support in respect of decisions of treatment, and for taking decisions in respect of providing access to family, rehabilitation services, planning of admission, planning of discharge, appointments of attendants etc. on behalf of the mentally ill persons.

Therefore, the nominated representative has to be a person who has to ensure that the rights and benefits of the mentally ill person is well protected. As per Section 14(4)(b) while appointing a nominated representative, a relative by blood or marriage or adoption is given precedence over a caregiver. Section 14(4)(c) recognizes that the care given to a mentally ill person by a family member, would be far more than a relative.

31. In the Rights of Persons with Disabilities Act, 2016 the person with disabilities would have the right of access to justice, and the right to legal

capacity etc. under Section 13 of the Rights of Persons with Disabilities Act, 2016, the Persons with Disability has a right to take all decisions in respect of his or her financial affairs, and own or inherit movable or immovable property etc. To protect this right further, Section 13(3) provides that if a conflict of interest arises between the Persons with Disability and the person providing support then such supporting person shall abstain from providing support to the disabled person. Section 14 envisages limited guardianship in the case of such Persons with Disabilities, who have expressed their desires in the past or are able to express their desires, going forward. The provision of the Rights of Persons with Disabilities Act, 2016 applies to persons with varying degrees of disabilities, as the definition of disabilities is extremely wide.

32. It is clear that the intention of the Rights of Persons with Disabilities Act, 2016, is to first, examine if the Persons with Disabilities is capable of expressing his or her will or preferences, and second, under exceptional circumstances, where consultation is not possible, enable the provision of total support. However, both the Acts provide for appointment of Support/Guardian for People with Particular Disabilities/Mental Illness, but do not address the situation of a person, who is in comatose state.

33. The Hon'ble Supreme Court in the matter of **Aruna Ramchandra Shanbaug vs Union Of India & Ors²**, has explained difference between permanent vegetative state and minimal conscious state. Section 2(s) of the Rights of People with Disabilities Act, 2016 defines persons with disabilities. This category of persons are those who are able to interact though not fully coherent. Hence, Guardian was to be appointed under Section 14 of the Act. However, for a person in comatose state, there is no interaction and the victim would not respond to any stimuli, hence, the provisions of personal disability defined under Section 2(s) of the Act cannot be said to be attracted in such

2 2011(4) SCC 454

cases. Therefore, in the larger interest of patient lying in comatose state, who is in urgent need of treatment, support and for that they need funds to take care of this extraordinary situation, which cannot be ignored or compromised, hence, the Court is consciously bound to invoke power under Article 226 of the Constitution of India, to deal with such situation.

34. Insofar as India is concerned, the recent judgment of the Supreme Court in **Shafin Jahan v. Ashokan K.M. & Ors.**³, the Court has considered the scope of 'parens patriae' jurisdiction and has observed as under:

"39. Constitutional Courts in this country exercise parens patriae jurisdiction in matters of child custody treating the welfare of the child as the paramount concern. There are situations when the Court can invoke the parens patriae principle and the same is required to be invoked only in exceptional situations. We may like to give some examples. For example, where a person is mentally ill and is produced before the court in a writ of habeas corpus, the court may invoke the aforesaid doctrine. On certain other occasions, when a girl who is not a major has eloped with a person and she is produced at the behest of habeas corpus filed by her parents and she expresses fear of life in the custody of her parents, the court may exercise the jurisdiction to send her to an appropriate home meant to give shelter to women where her interest can be best taken care of till she becomes a major.

35. The Supreme Court of Canada in **E. (Mrs.) v. Eve (supra)** observed thus with regard to the doctrine of Parens Patriae has held as under :-

"The Parens Patriae jurisdiction for the care of the mentally incompetent is vested in the provincial superior courts. Its exercise is founded on necessity. The need to act for the protection of those who cannot care for themselves. The jurisdiction is broad. Its scope cannot be defined. It applies to many and varied situations, and a court can act not only if injury has occurred but also if it is apprehended. The jurisdiction is carefully guarded and the courts will not assume that it has been removed by legislation.

3 (2018) 16 SCC 368

While the scope of the parens patriae jurisdiction is unlimited, the jurisdiction must nonetheless be exercised in accordance with its underlying principle. The discretion given under this jurisdiction is to be exercised for the benefit of the person in need of protection and not for the benefit of others. It must at all times be exercised with great caution, a caution that must increase with the seriousness of the matter. This is particularly so in cases where a court might be tempted to act because failure to act would risk imposing an obviously heavy burden on another person."

36. Recently, the Supreme Court of New South Wales, in the case of **AC v. OC (a minor)**, has observed:-

"36. That jurisdiction, protective of those who are not able to take care of themselves, embraces (via different historical routes) minors, the mentally ill and those who, though not mentally ill, are unable to manage their own affairs: Re Eve [1986] 2 SCR 388 at 407-417; Court of Australia in Secretary, Department of Health and Community Services v. JWB and SMB (Marion's Case (1992) 175 CLR 218 at 258; PB v. BB [2013] NSWSC 1223 at [7]-[8], [40]-[42], [57]-[58] and [64]-[65].

37. The Court further held that in order to invoke the parens patriae jurisdiction, exceptional circumstances have to exist. The scope of parens patriae jurisdiction has to be exercised with great caution and with enormous seriousness. The Supreme Court recognises that Constitutional Courts, including High Courts, can also act under their parens patriae jurisdiction to "meet the ends of justice". Mental incompetency is listed as an exceptional circumstance which would justify the exercise of this jurisdiction. If the Court is satisfied that the person concerned is in a vegetative state, then surely "parens patriae" jurisdiction can be exercised.

38. Identical situations have arisen earlier also into various parts of the country. Different High Courts while dealing with such identical situations has passed the following orders.

39. In the matter of **Smt. Shalini Agarwal and others vs. State of U.P. and**

others⁴, a Coordinate Bench of this Court in identical situation where husband of the petitioner was in vegetative state, declared his wife as guardian who was in comatose condition and further allowed her to do all the acts, deeds and things for proper medical treatment and welfare of her husband.

40. In **Uma Mittal vs. Union of India**⁵, the Allahabad High Court appointed the wife of a person in comatose state, as his guardian, and framed similar guidelines for the state of Uttar Pradesh, as the **Shobha Gopalakrishnan vs. State of Kerala**⁶ [W.P. (C). 37278 of 2018, decided on 20th February, 2019],

41. In an identical situation in the matter of **Sairabanu Mohammed Rafi Vs. State of Tamil Nadu**⁷, passed by Madras High Court the wife of a person in comatose state was appointed as the guardian of her husband and she was allowed to deal with his immovable properties and also operate the bank accounts.

42. Likewise in Writ Petition (L) No.28269 of 2017, **Philomena Leo Lobo Vs. Union of India**⁸ decided on 13.10.2017, a Division Bench of Bombay High Court had allowed the prayer of the petitioner Philomena Leo Lobo for declaring her as guardian of her husband Leo Lobo, who was in a comatose condition.

43. In an identical case, in the matter of **Dr. Madhu Vijaykumar Gupta v. The State of Maharashtra and others**⁹, Bombay High Court vide its judgment dated 30th April, 2019 has allowed the petitioner to be the guardian of her husband, who was in comatose condition and appointed her as Manager to all the movable and immovable properties of her husband.

44. A Division Bench of Bombay High Court in **Smt Reshma Salam**

4 Writ C No.5783 of 2020 decided on 14th October, 2020

5 2020 SCC OnLine All 777

6 2019 SCC OnLine Kerala 739

7 Writ Petition No.28435 of 2015 decided on 6.1.2016

8 (2017) SCC Online Bom 8836

9 W.P. No.2476 of 2017 decided on 30th April, 2019

Kondkari Vs. Union of India¹⁰, declared the petitioner Reshma Salam Kondkari as the guardian of her husband Abdul Salam Ismail Kondkari, who is in a vegetative state, for managing the bank accounts and immovable property of the husband including selling of flat.

45. In Writ Petition (L) No.10787 of 2022, **Rita Arvind Kakodkar vs. State of Maharashtra**¹¹, decided on 11.4.2022 a Division Bench of Bombay High Court has considered the similar matter and appointed the petitioner as guardian at law of Shirishkumar Shantilal Parekh and also permitted to manage his movable and immovable property.

46. In **Vijay Ramachandra Salgaonkar vs. State of Maharashtra**¹², the Bombay High Court appointed the husband of a woman with vascular dementia (with diabetes mellitus and hypertension), as her guardian. The Maharashtra State Legal Services Authority was designated for monitoring the functioning of the guardian and the guardian would submit monthly reports to the authority.

47. In **Rajni Hariom Sharma v. Union of India**¹³, the Bombay High Court appointed the wife as the guardian of a man, who was in coma. It was held that this is not covered by the existing legislations concerning mentally or physically challenged persons.

48. Kerala High Court in the matter of **Shobha Gopalakrishnan vs. State of Kerala (supra)** has framed guidelines for appointment of guardians for comatose persons in NCTD.

49. In **Vandana Tyagi and another vs. Government of National Capital Territory of Delhi and others**¹⁴, a single judge of this Court appointed the sons of a comatose lady as her guardians, to utilize her assets, including

10 W.P. (L) No.11394 of 2021 decided on 17.06.2021

11 2022 SCC OnLine Bom 10243

12 W.P. no.637 of 2021 decided on 17.7.2021

13 2020 SCC OnLine Bom 880

14 W.P.(C) No.11003 of 2019 decided on 7.1.2020

specifically her late husband's PPF account. The Court held that such a situation would not fall under the MHA-2017 or the RPWD-2016 and therefore, in absence of legislative guidance, relying upon the

50. In **Satula Devi vs. Govt. of NCT of Delhi**¹⁵, the Delhi High Court has appointed Guardianship Committee consisting of the wife, son and brother as nominated representatives under the Mental Healthcare Act, 2017 and also to manage all affairs of the patient including medical treatment, healthcare decisions qua daily living, financial affairs dealing with immovable and movable assets, decision qua shareholding of the patient, operate bank account.

51. In **Sikha Arjit Bhattacharya Vs. Union of India**¹⁶, the Division Bench of Bombay High Court has accepted the prayer of the petitioner Sikha Arjit Bhattacharya and declared her as the guardian of her husband Dr Arjit Bhattacharya, who was in a vegetative state.

52. Looking to the health condition of husband of the petitioner, it is clear that he needs 24 hours medical assistance. The petitioner submits that she comes from a very humble background and also works at private place to make her ends meet. She has a minor son also to take care of. All her savings have been exhausted.

53. Mr. Kulshreshtha, learned Amicus further submits that she has also taken loan from people to meet out the medical as well as her household expenses. He further submits that the petitioner, in order to sustain herself, her minor son and her husband, who is in comatose stated, is in desperate need to sell the property bought by her husband, so as she could have some fund to meet out the expenses of medical treatment of her husband. Petitioner herein has sought permission of this Court to sell the property bought by her husband

15 2021 SCC OnLine Del 4856

16 W.P. No.11757 of 2018 decided on 27.10.2020

in Noida.

54. The permission is accorded.

55. Thus, on a perusal of the medical report of husband of the petitioner and various decisions of other High Courts as well as this Court, it is clear that a constraint Court may act as *Parens Patriae* so as to meet the ends of justice. The guidelines laid down by various Courts in identical matters appear to be sound. Thus, we fix the following norms/guidelines for appointing the petitioner as guardian of her husband:-

(a) We appoint Smt. Pooja Sharma, wife of Vikas Sharma, as guardian of her husband (who is in comatose state).

(b) She will have the right to take decisions on behalf of her husband for his proper medical treatment, nursing care, welfare and benefit of her husband and their children with power to do all acts, duties and things with respect to all the assets, properties of her husband Vikas Sharma. She will be allowed to operate bank accounts of Vikas Sharma.

(c) To sell the land situated at khasra no.209/2, Village-Elahbaans, Tehsil-Dadri, District-Gautam Budh Nagar.

(d) The entire sale consideration will be deposited with the Registrar General of this Court. This amount should be invested in a fixed deposit so that the petitioner gets the maximum interest. Registrar General is further directed to request the bank to remit Rs.50,000/- every month in the account whose details are being mentioned below, as it would be sufficient enough to meet out the medical expenses of the husband of the petitioner :

Account holder's name : Pooja Sharma

Account Number : 20163256946

Branch : Dwarka Sector 7, New Delhi

Bank : State Bank of India

IFSC Code : SBIN0011565

(e) Needless to say that while selling the properties of her husband Vikas Sharma, the petitioner may ensure that the best possible price or consideration amount is fetched.

(f) In case, any relative or friend of the person lying in comatose state points out that guardian is not acting in the best interest of the person lying in comatose state, such person will also have the locus to approach this Court for issuance of proper direction and for removal of the guardian.

56. The instant writ petition is allowed.

57. Copy of this order be placed before the Registrar General for necessary follow up and compliance thereof.

Order Date :-6.10.2023

Manish Himwan