

(2022) 04 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3196 Of 2021

Ayan Kumar Das And Anr.

APPELLANT

Vs

Union Of Indai And 9 Ors

RESPONDENT

Date of Decision : 06-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 226
National Trust Act, 1999 — Section 15, 16

Citation : (2022) 04 GAU CK 0013

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : D Deka

Final Decision : Disposed Of

Judgement

1. Heard Mr. R. Kaman, learned counsel for the petitioners; Ms. P. Sarma, learned counsel appearing on behalf of the respondent Nos. 1 and 2; Mr. R. Chakraborty, learned counsel appearing on behalf of the respondent No. 9; and Mr. B. Gogoi, learned counsel appearing on behalf of the respondent No. 3. I have also heard Ms. S. Sarma, learned counsel appearing for the Assistant Commissioner, Kamrup(M), Assam and Mrs. R.S. Choudhury, learned counsel appointed by this Court as Amicus Curiae.

2. In the instant writ petition, the question that arises for consideration is as to whether in law and on facts the petitioner can be appointed as guardian of the mother of the petitioners who is in 'persistent vegetative state' and 'coma'.

3. The brief facts of the instant case are that the petitioner No. 1 is the son and the petitioner No. 2 is the daughter of Smt. Madhumita Das. The said Madhumita Das herein after referred to as the mother of the petitioners was living in Naharlagun in Arunachal Pradesh and was found in an unconscious state in the morning of 18.12.2020. She was thereupon brought to Guwahati for treatment and was initially admitted to the Apollo Hospitals, Guwahati on 19.12.2020.

Thereafter on 20.12.2020, she underwent emergency recompressive Craniectomy with evacuation of SDH and ICH Surgery. On the basis of the said surgery, a part of the skull of the petitioners' mother was removed. Post surgery, the mother of the petitioners was in ventilation support and in comatose state and vegetative state. On 13.01.2021 she was discharged from Apollo Hospitals, Guwahati.

4. Upon discharge, the mother of the petitioners was admitted in a Neurorehabilitation Centre named 'Palon Rewalk' on 13.01.2021. In the said Centre, she was being provided with care and support for regaining consciousness. Thereafter on 18.02.2021, the mother of the petitioners was discharged from 'Palon Rewalk' and on the same day she was admitted to the Downtown Hospitals and underwent surgery to attach the part of the skull that was removed in the surgery on 19.12.2020. On 08.03.2021, the mother of the petitioners was released from Down Town Hospital and since 08.03.2021 till the filing of the writ petition, the mother of the petitioners was at her home at Patharkuchi, Guwahati. It is the case of the petitioners that till the date of filing of the writ petition, the petitioners have already spent an amount of Rs. 22,00,000/- towards the treatment and care for their mother and thereby they have almost emptied all resources to secure finances for the treatment of their mother and at present they are borrowing from their friends and family to meet the expenses for daily treatment of their mother who is in vegetative state. The petitioners have filed an additional affidavit bringing on record the various movable and immovable properties of the mother of the petitioners the details of which are as herein under:

Movable Properties:

Sl.

No.

Type of Asset

Details

1.

Jewellery

Jewellery in locker SBI

Naharlagun

2.

Kisan Vikas Patra

40BC50632

3.

Kisan Vikas Patra

23CE549176

4.

Kisan Vikas Patra

86320087

5.

Kisan Vikas Patra

86320414

6.

National Savings Certificate

04EF84209-10

7.

National Savings Certificate

04EF841582-83

8.

National Savings Certificate

04EF844350

9.

National Savings Certificate

35EF992075

10.

National Savings Certificate

35EF992074

11.

National Savings Certificate

35EF992073

12.

National Savings Certificate

35EF992042

13.

National Savings Certificate

35EF992041

14.

National Savings Certificate

35EF992094

15.

National Savings Certificate

35EF992095

16.

National Savings Certificate

35EF992098

17.

National Savings Certificate

35EF992097

18.

National Savings Certificate

35EF992096

19.

National Savings Certificate

94DD562946

20.

National Savings Certificate

36EF779170

21.

National Savings Certificate

36EF779171

22.

National Savings Certificate

94DD562932

23.

National Savings Certificate

52EF185582

24.

National Savings Certificate

52EF185583

25.

National Savings Certificate

52EF185564

26.

National Savings Certificate

52EF185565

27.

National Savings Certificate

52EF185435

28.

National Savings Certificate

52EF185436

29.

National Savings Certificate

52EF185437

30.

National Savings Certificate

94DD562918

31.

National Savings Certificate

38EF627967

32.

National Savings Certificate

38EF627968

33.

National Savings Certificate

94DD562953

34.

National Savings Certificate

35EF991703

35.

National Savings Certificate

35EF991704

36.

National Savings Certificate

35EF991705

37.

National Savings Certificate

35EF991706

38.

National Savings Certificate

35EF991707

39.

National Savings Certificate

35EF991708

40.

National Savings Certificate

35EF991709

41.

National Savings Certificate

5083

42.

National Savings Certificate

9820017

43.

National Savings Certificate

35EF99177377

44.

National Savings Certificate

36EF78008084

45.

National Savings Certificate

36EF78000105

46.

National Savings Certificate

89320009

47.

National Savings Certificate

79111089320210

48.

National Savings Certificate

79111089320265

49.

National Savings Certificate

79111089320195

50.

National Savings Certificate

79111089320337

51.

National Savings Certificate

79111089320498

52.

National Savings Certificate

79111089320397

53.

National Savings Certificate

79111089320439

54.

National Savings Certificate

79111089320524

55.

Bank Balance

United Bank of India, Account Number 1431010101010

56.

Bank Balance

Punjab	National	Bank,	Account	Number
4783000100029600				

57.

Bank Balance

State Bank of India, Account Number 20005417146

58.

Post Office Savings Account

838921

59.

Bank Balance

HDFC Bank, Account Number 50100199146730

60.

Fixed Deposit

Post Office, Account Number 5185

61.

Fixed Deposit

Post Office, Account Number 200452

62.

Fixed Deposit

HDFC Bank, Number 397619767

63.

Fixed Deposit

HDFC Bank, Number 397651777

64.

Fixed Deposit

Post Office, Account Number 5737

65.

Recurring Deposit

Post Office, Account Number 63096

66.

Recurring Deposit

Post Office, Account Number 3201

67.

Recurring Deposit

Post Office, Account Number 70063

68.

Recurring Deposit

Post Office, Account Number 69194

69.

Recurring Deposit

HDFC Bank, Account Number 1925135

70.

Recurring Deposit

Post Office, Account Number 71957

71.

Bank Locker

SBI Naharlagun

72.

Other Fixed and Recurring Deposits

Post Office

73.

Other Fixed and Recurring Deposits

Banks

Immovable Properties:

A. Details of Land at Kolkata:-

A piece of land measuring about 3 Kathas situated and lying in RS and LR Dag No. 1176 in RS Khatian no. 260 and LR Khatian no. 10703 at Mouza-Amgachia JL No. 93, RS No. 326, Touzi No. 85, 87 and 94 Pargana Magura ADSR office at Bishnupur, Police Station- Bishnupur, District- South 24-Paraganas within the local limit of Amgachia Anchal Panchayat.

B. Details of Land at Jalpaiguri:-

Area- 3.53125 Kathas, Mouza- Dabgram, JL No. 2, Part of Plot of no. 418, Khatian no. 129/1, Sheet no. 20, Police Station- Bhaktinagar, District-Jalpaiguri.

5. It is the further case of the petitioners that as per the Doctors, there is no aggressive treatment that can bring their mother out of coma and she can be provided with all possible care and follow a treatment regime at home only. In doing so, each passing day, calls for expenditure for treatment and care to be provided to the mother of the petitioners at home by making/running hospital set up which the petitioners are doing so by borrowing money from their family members. Taking into consideration that the parents of the petitioners during their lifetime have saved certain money and made immovable properties for their future and it would be difficult on the part of the petitioners to further continue with treatment without adequate finances, the petitioners have approached this Court for appointing the Petitioner No. 1 as the legal guardian of the mother of the petitioners and allow the petitioner No. 1 to deal with the properties owned by the mother of the petitioners so as to take care of the expenses of treatment of the petitioners' mother. The instant writ petition came up for motion on 02.07.2021 when this Court had issued notice. Thereupon vide an order dated 30.09.2021 this Court passed an order directing the Assistant Commissioner, Kamrup (Metro) to make a physical verification of the facts pleaded in the case by visiting the residence and verify the state of the mother of the petitioners and also other attending facts and circumstances. The said order dated 30.09.2021 is quoted herein below:

"30.09.2021

Peculiar facts and circumstances have confronted this Court by means of this writ petition whereby the petitioners, who are the son and daughter of one Smti. Madhumita Das, have prayed for directions to enable any one of them to operate the bank accounts in the name of their mother, who is in a 'Persistent Vegetative State' after undergoing a surgery on 19.12.2020. It is the case of the petitioners that post the said surgery, their mother had slipped into a 'Coma' and is

presently in a vegetative state. It has also been pleaded that expenditure to the tune of about Rs. 22 lakhs have been incurred for the treatment and care of their mother, and for further treatment, resource is necessary. Though certain amounts are lying in the bank accounts and post office in the form of saving accounts and recurring deposits of the mother, in absence of the appropriate person to operate the same, the funds are not being able to be utilized.

Though certain issues regarding the maintainability of this writ petition under Article 226 of the Constitution of India has arisen as the matter involves factual aspects, the learned counsel for the petitioner, Shri R Kaman has placed reliance upon two judgments passed, one by the Hon'ble Kerala High Court and another by the Hon'ble Delhi High Court. In both the aforesaid cases were petitions under Article 226 of the Constitution of India in which the Courts have sorted out a particular mode to give relief to the parties.

Following the guidelines and in the interest of justice, this Court is of the view that before passing any effective relief, a factual determination of the case projected by the petitioners may be necessary and considering the peculiar facts and circumstances, this Court is of the opinion that such factual determination can be made by directing an Officer from the office of the Deputy Commissioner, Kamrup (M) within whose jurisdiction, the petitioners as well as their mother are residing.

In this regard, this Court had requested Shri D Nath, learned Senior Govt. Advocate, Assam to take necessary instructions and as per the instructions received, the office of the Deputy Commissioner (M) has suggested the name of one Smt. Rimjhim Konwar, Assistant Commissioner, Kamrup (M), Guhwahati-1 for the said purpose.

In that view of the matter, the said Smt. Rimjhim Konwar, Assistant Commissioner is directed to make a physical verification of the facts pleaded in this case by visiting the residence and verify the state of the mother of the petitioners and also the other attending facts and circumstances. The said exercise is directed to be completed expeditiously as the petitioners have expressed grave urgency.

The report of the verification may be furnished to this Court through the Senior Govt. Advocate, Assam within two weeks from today and the matter be listed for consideration on 27.10.2021.

It is needless to mention that the date of visit to the residence of the petitioners may be indicated in advance to the parties or to their counsel and the petitioners would render all necessary cooperation in the said verification.

A copy of the writ petition along with a copy of today's order be furnished to the said Officer, Smt. Rimjhim Konwar through the office of the Senior Govt. Advocate, Assam for doing the needful."

6. On the basis of the aforementioned order, the said Smt. Rimjhim Konwar filed

an affidavit before this Court on 06.12.2021. A perusal of the said affidavit would show that the deponent on 28.10.2021 at about 1.30 p.m. visited the residence of the petitioners to physically verify the state of ailing mother of the petitioners and after physical verification, prepared a report on 29.10.2021. On the basis of the physical verification it was found that the mother of the petitioners seems to be in a vegetative state showing no signs of awareness or response to the happenings around her. The said report was made a part of the affidavit filed on 06.12.2021. To the said report a photograph of the bed ridden condition of the mother of the petitioners was enclosed.

7. The instant writ petition was listed before this Court on 23.03.2022 on which date taking into consideration the matter invokes an important facet of the rights of persons in vegetative state, Mrs. R.S. Choudhury, learned counsel was requested to assist this Court as an Amicus Curiae.

8. I have heard the learned counsel for the parties at length. Mrs. R.S. Choudhury, learned Amicus Curiae after taking this Court through the various enactments i.e.

- i. The Guardians and Wards Act, 1980;
 - ii. The Mental Health Act, 1987 (repealed);
 - iii. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (repealed);
 - iv. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;
 - v. The Rights of Persons with Disabilities Act, 2016;
- and
- vi. The Mental Health Care Act, 2017.

had submitted that none of these legislative enactments have dealt with a situation of a patient who is in vegetative state or a comatose state. She submits that taking into consideration that there is no legislative enactments insofar as patients in vegetative state or comatose state various High Courts have passed orders thereby appointing guardians of persons who are in vegetative state by laying down certain conditions. The learned Amicus Curiae draws the attention of this Court to the following decisions:

- 1. Shobha Gopalakrishnan Vs. State of Kerela, 2019 SCC Online Ker. 739;
- 2. Vandana Tyagi Vs. Government of National Capital Territory of Delhi, 2020 SCC OnLine Del. 32;
- 3. Uma Mittal Vs. Union of India, 2020 SCC OnLine Allahabad 777;
- 4. Philomena Leo Lobo Vs. Union of India, 2017 SCC OnLine Bom. 8836;

5. Dr. Madhu Vijaykumar Gupta Vs. State of Maharashtra, 2019 (3) RCR (Civil) 259; and

6. Rajni Hariom Sharma Vs. Union of India & Anr., 2020 SCC OnLine Bom. 880.

9. Mr. R. Kaman, learned counsel appearing on behalf of the petitioners submits that from a perusal of the affidavit filed by the Assistant Commissioner, Kamrup(M) in pursuance to the order passed by this Court and the documents which have been enclosed to the instant writ petition would clearly show that the petitioners' mother is in a vegetative state or a comatose state. He further submitted when the writ petition was filed, the petitioners have together spent an amount of Rs. 22,00,000/- on her treatment. As on date the petitioners have already spent more than Rs. 35,00,000/-. The mother of the petitioner is at present at Chennai getting her treatment and doing so as on date the petitioners have already spent more than Rs. 35,00,000/-. He further submits referring to a judgment of the Supreme Court in the case of Shafin Jahan Vs. Asokan K.M. reported in (2018) 16 SCC 368 that the doctrine of *parens patriae* was extended by the Supreme Court to meet the ends of justice. He further submitted that a human being lying in a comatose state has rights under Article 21 of the Constitution and right to life also includes the right to treatment. He further submitted that in a situation like the present, this Court under Article 226 of the Constitution can pass orders and give directions as are necessary for subserving the ends of justice or protecting the person who is lying in a vegetative state as in circumstances like the present one, the Constitutional Court is the ultimate guardian of the person who is lying in a comatose/vegetative state.

10. I have heard Ms. S. Sarma, learned counsel appearing on behalf of the Assistant Commissioner, Kamrup(M) who submitted that the Assistant Commissioner upon being directed by the order dated 30.09.2021 of this Court had made physical verification and found that the mother of the petitioners seemed to be in a vegetative state showing no signs of awareness or response to the happenings around her. She has also drawn the attention of this Court to two unreported judgments of the Madras High Court in the case of Dr. Vijailakshmi Acharya & 2 Ors. V. State of Tamil Nadu dated 17.03.2021 [WP(C) No. 6926/2021] and R. Usha & 2 Ors. Vs. the State of Tamil Nadu & 4 Ors. dated 05.02.2021 [WP(C) No. 13060/2020] and submitted that the Madras High Court had also followed similar directions as was given by the Kerela High Court in Shobha Gopalakrishnan (Supra).

11. I have heard the learned counsel for the parties and given my anxious consideration to the matter. Annexure A to the writ petition is the status report given by Dr. Altaf Khan, In-charge Neurointensive Care Unit, Apollo Hospitals dated 08.01.2020. In the said status report the condition of the mother of the petitioners has been stated as herein under:

"STATUS REPORT

Mrs. Madhumita Das, 59 years, female, IHL No – 0000644349 admitted under

Neurosurgery Group on 20.12.20 with history of unable to wake up since morning 19.12.20, known hypertensive since 3-4 years, as her GCS was poor at the time of admission. E1V1M3, Pupil - anisocoria, immediately intubated. CT brain showed (R) FTP SDH with (R) temporal ICH, Mode of injury – not known. After pre-op optimization underwent Emergency (R) FTP decompressive craniectomy with evacuation of SDH and ICH (20.12.20), post operatively shifted to ICU on ventilation support. Bed side tracheostomy was done on 24.12.20. Blood parameters -?? septic markers, TC??, CRP?? and altered LFT. Medicine and Gastroenterologist opinion taken and advice followed. ABG – CO2 retention, not able to weaned off from ventilation.

Present condition: PVS (Persistent vegetative stage & E1VTTM2). Pupil- (R) 5 mm N/R & (L) 4 mm S/R, afebrile, PR: 98/min, BP: 90/60 mmHg, poor brain stem reflex on mechanical ventilation (CPAP/PSV)."

12. Further to that the discharge certificate issued by the Down Town Hospital Ltd. On 08.03.2021 reveals that the diagnosis was POC of Acute SDH (elsewhere of persistent vegetative state).

13. From the status report dated 08.01.2020 and the discharge summary, it becomes quite evident that at the time of the discharge, the petitioners' mother was in persistent vegetative state. The affidavit filed by the Assistant Commissioner, Kamrup(M) district on 06.12.2021 and the report enclosed therein shows that upon physical verification of the state of the mother of the petitioners and the other facts and circumstances, it can be concluded that the patient seems to be in a vegetative state showing no signs of awareness and response to the happening around her. The photograph enclosed to the said report bears testimony of the conclusions mentioned in the said report.

14. Before proceeding further, it would be necessary to have a brief understanding of what is meant when a person is in comatose state or in a vegetative state. Though more often than not the two expressions are used interchangeably. As per dictionary meaning 'coma' has been defined to mean a state of prolonged deep unconsciousness caused especially by a severe injury or illness; 'comatose' has been defined to mean being in a state of coma. On the other hand, 'vegetative state' has been defined to mean being alive but comatose and without apparent brain activity or responsiveness. Therefore, from a layman's perspective there is not much of a difference between a state of coma i.e. comatose and being in a vegetative state. At this stage it may be relevant to refer to the judgment of the Supreme Court in the case of Aruna Ramachandra Shanbaug Vs. Union of India reported in (2011) 4 SCC 454, wherein the Supreme Court observed at paragraph No. 12 on the basis of a report of examination of Ms. Aruna Ramachandra Shanbaug wherein some of the terminology relating to brain damage were gone into. In doing so the Supreme Court observed that the words coma, brain death and vegetative state are often used in common language to describe severe brain damage. However, in medical terminology, these terms have specific meaning and significance. The relevant

extract of the said definitions as could be seen in the said judgment is quoted herein below:

"Brain death

A state of prolonged irreversible cessation of all brain activity, including lower brainstem function with the complete absence of voluntary movements, responses to stimuli, brainstem reflexes, and spontaneous respirations.

Explanation.—This is the most severe form of brain damage. The patient is unconscious, completely unresponsive, has no reflex activity from centres in the brain, and has no breathing efforts on his own. However the heart is beating. This patient can only be maintained alive by advanced life support (breathing machine or ventilator, drugs to maintain blood pressure, etc). These patients can be legally declared dead (brain dead) to allow their organs to be taken for donation.

Aruna Shanbaug is clearly not brain dead.

Coma

Patients in coma have complete failure of the arousal system with no spontaneous eye opening and are unable to be awakened by application of vigorous sensory stimulation.

Explanation.—These patients are unconscious. They cannot be awakened even by application of a painful stimulus. They have normal heart beat and breathing, and do not require advanced life support to preserve life.

Aruna Shanbaug is clearly not in coma.

Vegetative state (VS)

The complete absence of behavioural evidence for self or environmental awareness. There is preserved capacity for spontaneous or stimulus-induced arousal, evidenced by sleep-wake cycles i.e. patients are awake, but have no awareness.

Explanation.—Patients appear awake. They have normal heartbeat and breathing, and do not require advanced life support to preserve life. They cannot produce a purposeful, coordinated, voluntary response in a sustained manner, although they may have primitive reflexive responses to light, sound, touch or pain. They cannot understand, communicate, speak, or have emotions. They are unaware of self and environment and have no interaction with others. They cannot voluntarily control passing of urine or stools. They sleep and awake. As the centres in the brain controlling the heart and breathing are intact, there is no threat to life, and patients can survive for many years with expert nursing care. The following behaviours may be seen in the vegetative state:

Sleep-wake cycles with eyes closed, then open;

Patient breathes on her own;
Spontaneous blinking and roving eye movements;
Produce sounds but no words;
Brief, unsustained visual pursuit (following an object with her eyes);
Grimacing to pain, changing facial expressions;
Yawning; chewing jaw movements;
Swallowing of her own spit;
Non-purposeful limb movements; arching of back;
Reflex withdrawal from painful stimuli;
Brief movements of head or eyes towards sound or movement without apparent localisation or fixation;
Startles with a loud sound.

Almost all of these features consistent with the diagnosis of permanent vegetative state were present during the medical examination of Aruna Shanbaug."

15. From the above definitions, it would be clear that patient in coma have complete failure of the arousal system with no spontaneous eye opening and are unable to be awakened by application of vigorous sensory stimulation. They may have normal heart beat and may not require advance life support to preserve life but they remain unconscious, cannot even be awakened by painful stimulus. Regarding a patient in vegetative state, it is stated that in such a state, there is complete absence of behavioural evidence for self or environmental awareness. Patients are awake but have no awareness. They cannot produce a purposeful, coordinated, voluntary response in a sustained manner, although they may have primitive reflexive responses to light, sound, touch or pain. They cannot understand, communicate, speak or have emotions. They are unaware of self and environment and have no interaction with others. They cannot voluntarily control passing of urine or stool. As the centres in the brain controlling the heart and the breathing are intact, there is no threat to life and the patients can survive for many years with expert nursing care. Thereafter, various behavioural instances have been mentioned as being present in vegetative state.

16. Therefore, a person in coma or in a comatose condition or in a vegetative state, it cannot be construed that such a person is physically challenged person or a mentally challenged person as is understood under the various relevant statutes to which the Amicus Curiae Mrs. R.S. Choudhury as duly referred to nor such a person can be construed to be a minor for the purpose of appointment of a guardian. The various judgments which have been referred to by the learned counsels appearing before this Court and a perusal thereof would show that

there is a consensus in each of the decisions that at present there is no legislation in India relating to appointment of guardians to patients lying in comatose or vegetative state.

17. Accordingly, the doctrine of *parens patriae* assumes importance in such cases. The said doctrine of *parens patriae* (father of the country) had originated in British Law as early as in the 13th Century. It implies that the King is the father of the country and is under obligation to look after the interest of those who are unable to look after themselves. The idea behind *parens patriae* is that if a citizen is in need of someone who can act as a parent, who can make decisions and take some other action, sometimes the State is best qualified to take this role. The Supreme Court in the case of *Aruna Ramachandra Shanbaug (Supra)* observed in paragraph 127, 128, 129 and 130 as herein under:

"127. In the Constitution Bench decision of this Court in *Charan Lal Sahu v. Union of India* the doctrine has been explained in some detail as follows: (SCC p. 648, para 35)

"35. ... In the 'Words and Phrases' Permanent Edn., Vol. 33 at p. 99, it is stated that *parens patriae* is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words *parens patriae* meaning thereby 'the father of the country', were applied originally to the King and are used to designate the State referring to its sovereign power of guardianship over persons under disability. *Parens patriae* jurisdiction, it has been explained, is the right of the sovereign and imposes a duty on [the] sovereign, in public interest, to protect persons under disability who have no rightful protector. 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 Government is within its duty to protect and to control persons under disability." (emphasis in original)

The duty of the King in feudal times to act as *parens patriae* (father of the country) has been taken over in modern times by the State.

128. In *Heller v. DOE Mr Kennedy, J.* speaking for the US Supreme Court observed: (US p. 332)

" '... the State has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable ... to care for themselves."

129. In *State of Kerala v. N.M. Thomas, SCR* at p. 951 Mr Mathew, J. observed: (SCC p. 343, para 64)

"64. ... the Court also is 'State' within the meaning of Article 12 (of the Constitution)..."

130. In our opinion, in the case of an incompetent person who is unable to take a decision whether to withdraw life support or not, it is the Court alone, as *parens patriae*, which ultimately must take this decision, though, no doubt, the

views of the near relatives, next friend and doctors must be given due weight.”

18. From a perusal of the above quoted paragraphs, it would reveal that the Supreme Court after dealing with the said doctrine of *parens patriae* had observed that in the case of an incompetent person who is unable to take a decision, it is the Court alone, as *parens patriae*, which ultimately must take this decision though no doubt the view of the near relatives, next friend, doctors must be given due weight. In the said case, the Supreme Court observed that the High Court under Article 226 of the Constitution can grant approval for withdrawal of life support to such incompetent person. Taking a clue from the said judgment, this Court is, therefore, of the opinion that Article 226 of the Constitution empowers this Court to pass suitable orders on an application being filed to appoint a guardian or a next friend to an incompetent person like the petitioners’ mother who is in persistent vegetative state. The judgments of the various High Courts as referred to herein above also comes to the conclusion that a patient lying in comatose state or in a vegetative state, the High Court in exercise of the jurisdiction under Article 226 of the Constitution, in absence of any appropriate legislation, can issue guidelines as temporary measures till the field is taken over by a proper legislation for appointment of guardian to a person lying in a comatose state or a vegetative state. Accordingly, on the basis of the materials on record, this Court is of the view that the reliefs sought for by the petitioners are reasonable and may be granted considering the peculiar facts and circumstances of the case. However, to ensure that the order of this Court is followed in letter and spirit and there is no breach thereof, it is also essential that there should be some kind of monitoring of the functioning of the guardian though for a limited duration to ensure that guardianship is being used for the benefit of the person who is in a vegetative state and such monitoring be carried out through the forum of the Assam State Legal Services Authority constituted under the Legal Services Authority Act, 1987.

19. Accordingly, in the light of the above, the following directions are issued:

(i) The petitioner No. 1 Sri Ayan Kumar Das shall be treated and accepted as the guardian of Smt. Madhumita Das who is in a vegetative state. The petitioner No. 2 i.e. Ms. Ankita Das who is the daughter of Smt. Madhumita Das shall see to it that the petitioner No. 1 is appointed as the guardian functions in the best interest of Smt. Madhumita Das, their mother.

(ii) All authorities shall accept that the petitioner No. 1 i.e. Ayan Kumar Das is the guardian of Smt. Madhumita Das.

(iii) The Member Secretary of the Assam 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 No. 1 as guardian of Smt. Madhumita Das every 3(three) months and submit report to the Assam State Legal Services Authority which shall be complied for a period of 2(two) years. If it is found necessary for extension of the period of monitoring or in case

of any exigency, the Member Secretary of the Assam State Legal Services Authority shall be at liberty to move this Court.

(iv) If there is a misuse of the power or misappropriation of funds or non-extension of requisite care and protection or support with regard to the treatment and other requirements of Smt. Madhumita Das, it is open to bring up the matter for further consideration of this Court either by the petitioner No. 2 or even by a relative of Smt. Madhumita Das to reopen and revoke the appointment of the petitioner No. 1 as guardian hereby. In such an event if this Court finds that the petitioner No. 1 has been indulging in activities of 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 Smt. Madhumita Das, this Court may appoint another person/public authority/social welfare office as the guardian.

(v) The petitioner No. 1 who has been appointed as the guardian shall meet the obligations/duties similar to those as described under Section 15 of the National Trust Act, and to maintain and submit the account similar to those contained in Section 16 of the said Act before the Member Secretary, Assam State Legal Services Authority every 6(six) months.

(vi) The transactions in respect to the properties of Smt. Madhumita Das by the Petitioner No. 1 as guardian shall be strictly in accordance with the relevant provisions of law. If the Petitioner No. 1 is found to be abusing the power or neglects or acts contrary to the interest of Smt. Madhumita Das, the petitioner No. 2 or any relative or next friend may apply to this Court for removal of the guardian. It is, however, made clear that if the guardian appointed herein wishes to transfer any immovable property of Smt. Madhumita Das, the same shall be done with a leave of this Court.

(vii) The petitioner No. 1 herein shall file undertakings before the Registry of this Court that he would comply with the abovementioned conditions set out herein above and only upon the basis of filing the said undertaking, the instant order of appointment of guardianship in favour of the petitioner No. 1 shall become operational.

20. The details of the properties of Smt. Madhumita Das have already been mentioned herein above and the respective authorities shall act and recognize the Petitioner No. 1 as the guardian duly appointed by this Court of Smt. Madhumita Das and act thereupon.

21. This Court records and extends appreciation to Mrs. R.S. Choudhury, the learned Amicus Curiae as well as Ms. S. Sarma for helping this Court to facilitate proper adjudication of the matter.

22. With the above observations, the petition stands disposed. The Registry is directed to send a copy of this order to the Member Secretary, Assam State Legal Services Authority for due compliance.