

(2021) 04 DEL CK 0052

In the Delhi High Court

Case No : Civil Writ Petition No. 354 Of 2021, Civil Miscellaneous Application No. 915 Of 2021

Bhim Singh

APPELLANT

Vs

AGM State Bank Of India & Anr

RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

National Trust For The Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation And Multiple Disabilities Act, 1999 — Section 14, 14(4)
National Trust Regulations, 2001 — Regulation 12

Citation : (2021) 04 DEL CK 0052

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Dhruv Dwivedi, Rajiv Kapur, Akshit Kapur, Ramesh Singh, Tara Narula

Final Decision : Disposed Of

Judgement

Prateek Jalan, J

The proceedings in the matter have been conducted through hybrid mode [physical and virtual mode].

1. By way of the present writ petition, the petitioner seeks a direction upon the respondent/State Bank of India ["the Bank"] to release an amount of ₹ 30,000 per month to him from the bank account of his incapacitated nephew, Mr. Ajit Kumar Singh ["AKS"].

2. The case of the petitioner is that AKS has been rendered incapacitated and bedridden as he has been suffering from acute ischemic strokes since 2018. According to the petitioner, AKS's health worsened in November, 2020, for which he had to be hospitalized. A discharge report of the Department of Neurology of the All India Institute of Medical Sciences, New Delhi ["AIIMS"] dated 07.11.2020 has been placed on record [Annexure P-3 to the writ petition] in this regard. He further submits that an amount of ₹ 30,000 per month would be required so as

to meet AKS's daily and medical expenditure, including doctors' fees, medicines, food, therapist, nurse etc. Although AKS is married and has two children (who were impleaded in this petition as respondent nos. 3 to 5 vide order dated 11.01.2021), it is stated that he and his wife had mutually decided to part ways on account of marital discord. A settlement dated 06.02.2020 was entered into by them (Annexure P-5 to the writ petition), which has, however, not been enforced due to the ailing health of AKS. The petitioner, being the paternal uncle of AKS, states that he has been taking care of his nephew and has been acting as his guardian, in addition to maintaining his own family, but is not in a position to financially sustain his nephew indefinitely, and meet his medical expenditure as well.

3. The petitioner claims to have visited the Bank and made a request for the withdrawal of the said amount from the bank account of AKS to meet his medical expenses. However, the request was denied by the Bank on the ground that there was no policy which allowed for such withdrawals, even by family members in cases of medical emergencies, and that it can only be done under the orders of a competent court. The petitioner thereafter addressed a letter dated 09.12.2020, reiterating the above request. However, the letter has not elicited a response.

4. The present writ petition has been filed in the above circumstances, in which the petitioner has sought the following relief:

"a) Issue a writ in nature of Mandamus directing the Respondents to release a fixed monthly amount of Rs.30,000/- (Rupees thirty thousand) from the saving account no. 35865481566 of Sh. Ajit Kumar Singh to the Petitioner for meeting the his medical expenditure till Sh. Ajit Kumar Sing regains his health.

b) Pass any other orders that this Hon?ble Court deems just fit and necessary"

5. Notice was issued in this petition on 11.01.2021, including to the wife and children of AKS, who were arrayed as respondent nos. 3 to 5 in the petition. By the said order, this Court also requested Mr. Ramesh Singh, then learned Standing Counsel (Civil) for the Government of NCT of Delhi ["GNCTD"], to assist it as Amicus Curiae, and also take instructions as to whether the GNCTD can carry out any exercise of verification of the status of the petitioner and the averments made in the petition.

6. Pursuant to the aforesaid order, Mr. Singh appeared on 25.01.2021, and drew my attention to Clause 5.7 of the Master Circular on Maintenance of Deposit Accounts - UCB dated 01.07.2009 ["the Master Circular"], issued by the Reserve Bank of India ["RBI"], the relevant portions of which read as follows:

"5.7 Operation of Bank Accounts by Old/Sick/Incapacitated Customers

5.7.1 In order to facilitate old/sick/incapacitated bank customers to operate their bank accounts, procedure as laid down in paragraph 5.6.2 below may be followed. The cases of sick/old/incapacitated account holders fall into the

following categories:

- i. an account holder who is too ill to sign a cheque/cannot be physically present in the bank to withdraw money from his bank account but can put his/her thumb impression on the cheque/withdrawal form, and
- ii. an account holder who is not only unable to be physically present in the bank but is also not even able to put his/her thumb impression on the cheque/withdrawal form due to certain physical defect/incapacity.

5.7.2 The banks may follow the procedure as under:

- (i) Wherever thumb or toe impression of the sick/old/incapacitated account holder is obtained, it should be identified by two independent witnesses known to the bank, one of whom should be a responsible bank official.
- (ii) Where the customer cannot even put his/her thumb impression and also would not be able to be physically present in the bank, a mark obtained on the cheque/withdrawal form which should be identified by two independent witnesses, one of whom should be a responsible bank official.

5.7.3 In such cases, the customer may be asked to indicate to the bank as to who would withdraw the amount from the bank on the basis of cheque/withdrawal form as obtained above and that person should be identified by two independent witnesses. The person who would be actually drawing the money from the bank should be asked to furnish his signature to the bank."

7. Consequently, by the order dated 25.01.2021, this Court directed as follows:

"2. In view of the above, Mr. Singh submits that a certificate of a doctor would be required to determine whether an incapacitated person falls within any of the categories constituted by Clause 5.7, before any other person can be permitted to operate his/her bank account.

3. Mr. Dhruv Dwivedi, learned counsel for the petitioner, states that the petitioner's nephew, namely Mr. Ajit Kumar Singh, has been undergoing treatment at the All India Institute of Medical Sciences, ["AIIMS"] New Delhi. AIIMS, New Delhi is therefore requested to examine Mr. Ajit Kumar Singh and submit a report as to whether he falls within the category mentioned in 5.7.1(i) or 5.7.1(ii) of the aforesaid Master Circular.

4. Learned counsel for the petitioner will produce a copy of this order before the office of the Medical Superintendent, AIIMS, New Delhi, who is requested to nominate a suitable doctor or team of doctors for this purpose. The aforesaid be done within one week.

5. A copy of the report will be placed before this Court by the Medical Superintendent of AIIMS, New Delhi or an officer authorised by him/her. The Medical Superintendent will also ensure that a copy of the report is served upon Mr. Ramesh Singh, learned Standing Counsel (C), Government of NCT of Delhi,

and the learned counsel for the parties."

8. Pursuant to the aforesaid order, AKS was taken to AIIMS on 30.01.2021 and 02.02.2021 for a medical examination. AKS was examined by a five-doctor Medical Board of AIIMS ["the Medical Board"] comprising of (i) Dr. Achal Kumar Srivastava, Professor, Deptt. of Neurology, CNC, AIIMS, (ii) Dr. Awadh Kishor Pandit, Assistant Prof., Deptt. of Neurology, CNC, AIIMS, (iii) Dr. Divya M. R, Assistant Prof., Deptt. of Neurology, CNC, AIIMS, (iv) Dr. Khalid Mehmood, Duty Officer, CNC, AIIMS, (v) Dr. Paavan Gopathoti, Duty Officer, CNC, AIIMS. Vide its report dated 03.03.2021, the Medical Board opined as follows:

"The patient 45 years/male follow up case of Major Neurocognitive disorder (MRS 5) due to recurrent stroke, was examined in detail.

Opinion: The medical Board was of unanimous opinion that the above patient falls within the category of 5.7.1(ii) of the Master Circular on maintenance of Deposit Accounts UCBs dated: 01-07- 2021 issued by RBI."

9. Although the Medical Board has opined that AKS falls within the category of Clause 5.7.1(ii) of the Master Circular dated 01.07.2009 (incorrectly recorded in the report as 01.07.2021), it was submitted by Mr. Dwivedi that he is virtually in a comatose state, and will not even be able to indicate the person who would be entitled to operate his bank account in terms of Clause 5.7.3 of the Master Circular. As recorded in the order dated 15.03.2021, Mr. Ramesh Singh, learned Amicus Curiae, also had a telephonic conversation with the treating physician of AKS at AIIMS viz., Dr. Achal Kumar Srivastava, Professor, Department of Neurology, CNC, AIIMS, who was also the Chairperson of the Medical Board constituted pursuant to the order dated 25.01.2021. Dr. Srivastava clarified to Mr. Singh that AKS is indeed in a comatose state.

10. In these circumstances, reliance was placed on the judgment of a coordinate bench in Vandana Tyagi and Anr. vs. Government of National Capital Territory of Delhi (GNCTD) and Ors. [W.P.(C) 11003/2019, decided on 07.01.2020], which lays down guidelines that may be used to deal with situations such as the present one, where a person is unable to discharge his/her functions with respect to his/her assets.

11. In Vandana Tyagi, the Court was moved by the daughters of a comatose lady, seeking access to the Public Provident Fund account opened by their deceased father. A medical board reported that the mother did not fall within the ambit of the Mental Healthcare Act, 2017 ["the 2017 Act"] or the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 ["the 1999 Act"]. Although the respondent-bank in that case opposed the grant of relief, the Court came to the conclusion that the petitioners were not required to obtain a guardianship certificate, as a comatose person was not covered by either of the aforesaid Acts. The Court also considered the relevant guidelines of the RBI, and ultimately adopted the guidelines laid down by a Division Bench of the Kerala High Court in Shobha

Gopalakrishnan v. State of Kerala [2019 SCC Online Ker 739]. In paragraph 75 of the judgment in Vandana Tyagi, this Court held that the guidelines laid down by the Kerala High Court in the aforesaid judgment appeared to be robust, and can be used as a framework in the National Capital Territory of Delhi as well, until the legislative lacuna is filled. The Department of Social Welfare, GNCTD, was also given liberty to suggest modifications or suggestions to the guidelines issued to bring them in line with the local conditions. No such suggestions have been brought to my attention by Mr. Singh or by learned counsel for the parties.

12. For ready reference, the guidelines as laid down in Vandana Tyagi, read as follows:

"76. Guidelines

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

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

(iii) The court will also direct the concerned SDM/Tehsildar in whose jurisdiction the person lying in comatose is said to be located to carry out an enquiry to establish the veracity of the assertion and to gather material particulars concerning the person(s) who approach the court for being appointed as guardians. The enquiry will, inter alia, gather information as regards the relationship that the person(s) who wish to be appointed as guardians has/have with the person lying in comatose state. Information with regard to the financial condition of persons wanting to be appointed as guardians shall also be collected apart from other aspects which may have a material bearing in their discharging the duties of a guardian. Any conflict of interest concerning the affairs of the person lying in comatose state will be brought to fore in the report generated during the course of the enquiry.

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

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

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

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

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

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

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

(xi) The guardian appointed by the court shall intimate his appointment to the public official/Social Welfare Officer or officer of an equivalent rank designated by GNCTD. Both the guardian as well as the Registrar General of this court will cause a copy of the order of guardianship being served upon such officer. Such officer shall visit the person lying in comatose at least once in every quarter. The Social Welfare Officer will generate a report of his visit. In case the Social Welfare Officer finds that the guardian appointed by the court is not acting in the best interest of the person lying in comatose state, he will move the court, at the earliest, for seeking appropriate directions.

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

(xiii) In case a relative or a next friend of the person lying in comatose state finds that the guardian is not acting in the best interest of the person lying in comatose state, such person will also have the locus to approach the court for issuance of appropriate directions and/or for removal of the guardian.

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

13. By an order dated 04.03.2021, I had recorded my prima facie opinion that the aforesaid judgment is applicable to the present case, and had further directed the SDM/Tehsildar, Dwarka South West to file a report in terms of paragraph 76(iii) thereof, with regard to the petitioner's request for being appointed as the guardian of AKS.

14. The Enquiry Report dated 08.03.2021, submitted by the Tehsildar, Delhi Cantt., broadly supports the factual averments of the petitioner. It confirms that AKS's parents have passed away, and that divorce proceedings between him and his wife have resulted in a settlement which is pending implementation. It is also stated that AKS and his wife have two sons - Mr. Mayank Kumar, aged 20 years, who is stated to be living with his paternal relative in District Ghazipur, Uttar Pradesh, and Master Shubham Kumar, aged 14 years, who is stated to be living with his mother. AKS is employed as a Lower Division Clerk in the Ministry of Finance, and maintains Saving Account no. 35865481566 with the Bank at its Central Secretariat, North Block, New Delhi Branch. It is further confirmed that the petitioner herein is taking care of AKS. The financial condition of the petitioner has also been investigated. The statements of two neighbours have also been recorded in this connection.

15. By an order dated 15.03.2021, I had also directed Mr. Dwivedi to serve AKS's wife and children dasti and file an affidavit of service. The affidavit of service dated 24.03.2021 was duly filed, and the petition was next taken up on 26.03.2021, when the following order was passed:-

"1. Pursuant to the order dated 15.03.2021, an affidavit of service has been filed by Mr. Dhruv Dwivedi, learned counsel for the petitioner, stating that service has been effected upon Ms. Nivedita Singh, wife of Sh. Ajit Kumar Singh. Ms. Tara Narula, learned counsel assisting Mr. Ramesh Singh, learned Amicus Curiae, states that she has also personally spoken to Ms. Nivedita Singh on the mobile number referred to in the affidavit of service [Mob. No.: 8595398553], and informed her about the pendency of the present petition and the issue raised therein. Ms. Narula has also informed Ms. Nivedita Singh about the hearing scheduled for today and provided a link to attend the hearing by video conferencing.

2. According to Enquiry Report dated 08.03.2021 submitted by the Tehsildar, Delhi Cantt., Mr. Ajit Kumar Singh also has two sons, of whom the younger son,

Master Shubham Kumar Singh, is a minor and lives with his mother, Ms. Nivedita Singh. The older son, Mr. Mayank Kumar Singh, is 20 years old. He has filed an affidavit dated 18.03.2021 stating that he has no objection to the petitioner herein, i.e., Mr. Bhim Singh, being appointed as the legal guardian of Mr. Ajit Kumar Singh.

3. Ms. Nivedita Singh has not entered appearance, either on her behalf or on behalf of her minor son. It must therefore be presumed that she has no objection to the petition."

16. In the facts and circumstances aforesaid, I am of the view that the guidelines adopted by this Court in Vandana Tyagi are applicable to the present case. I am satisfied from the report of the Medical Board and the clarification given by Dr. Srivastava that AKS is in a comatose state, and incapable of operating his bank account himself or giving necessary directions for this purpose. The report of the Tehsildar corroborates the information placed on record by the petitioner.

17. As stated hereinabove, AKS is married and has two children, one of whom is an adult. Despite service of notice, his wife has not entered appearance. The material on record shows that the marital relationship of AKS and his wife is, in fact, the subject matter of legal proceedings wherein they have mutually agreed to a divorce upon certain terms and conditions. His adult son has stated upon affidavit that he has no objection to the petitioner being appointed as legal guardian of AKS. His second son is a minor. In these circumstances, I am of the view that neither AKS's spouse nor children are in a position to undertake his care, and, in any event, have no objection to the petitioner taking on the role of guardian to AKS. The petitioner is a close relative of AKS, being his paternal uncle. None of AKS's other relatives have come forward to act as his guardian.

18. As far as the petitioner's appointment is concerned, Mr. Singh has inter alia drawn my attention to the analogous provisions of the 1999 Act and the rules made thereunder. Under Section 14 of the 1999 Act, a "relative" of a person with disability may make an application for the appointment of a guardian to the local level committees constituted under the said Act. Regulation 12 of the National Trust Regulations, 2001 inter alia provides for any member of the family to be appointed as the guardian. Similarly, the provisions of the Delhi Rights of Persons with Disabilities Rules, 2018 relating to limited guardianship, provide for an application to be made inter alia by a blood relative of a person with disability (after parents, adult children and siblings) to be appointed as their guardian. In the absence of a nominated representative under the 2017 Act, Section 14(4) of the said Act also contemplates that a relative of the concerned person may be deemed to be the nominated representative.

19. I am therefore of the view that the petitioner may be appointed as the guardian of AKS for the purpose of withdrawal of a fixed monthly amount from the savings account of AKS, subject to the safeguards contained in the guidelines incorporated in Vandana Tyagi.

20. As far as the quantum of monthly withdrawal is concerned, the petitioner has sought withdrawal of ₹ 30,000 per month for the medical and boarding needs of AKS, including doctors' fees, medicines, food, therapist, nurse etc. The report of the Tehsildar, Delhi Cantt., records inter alia that the monthly salary of AKS is ₹ 47,962. Having regard to AKS's income and medical condition as borne out by the materials placed on record, I am of the view that the petitioner may be permitted to withdraw ₹ 20,000 per month from AKS's account at this stage.

21. Having regard to the aforesaid factors, and the guidelines laid down in Vandana Tyagi, the petition is disposed of with the following directions:

A. The petitioner, who is the paternal uncle of AKS, is appointed as his guardian for the purposes of operating his saving account no. 35865481566 with the State Bank of India at its Central Secretariat, North Block, New Delhi Branch, limited to withdrawal of the sum of ₹ 20,000 per month from the aforesaid bank account, beginning from April, 2021.

B. The Bank will file the statement of accounts of the aforesaid account before the learned Registrar General of this Court every three months to monitor the aforesaid aspect. The first such statement will be filed by 15.07.2021 for the period April-June, 2021.

C. The petitioner will also file a statement of accounts before the learned Registrar General every three months stating the items of expenditure with regard to the aforesaid amount of ₹ 20,000 per month. The first such statement will be filed by 15.07.2021 for the period April-June, 2021. The statement of accounts will be supported by appropriate documentation including bills, receipts, etc. The petition will be listed before the learned Registrar General/Registrar of this Court every three months for compliance of this aspect. It is open to the learned Registrar General/Registrar of this Court to require the petitioner to file further documentation to satisfy him with regard to the expenditure incurred.

D. In the event, the petitioner misuses his power or misappropriates, siphons or misutilizes the assets of AKS or fails to utilize the assets in AKS's best interests, the Court would have the power to remove him as the guardian and appoint another person in his place.

E. The petitioner shall intimate his appointment to the Director, Department of Social Welfare, GNCTD. Both the petitioner as well as the learned Registrar General of this Court shall transmit a copy of this order to the Director, Department of Social Welfare, GNCTD.

F. A representative of the Department of Social Welfare, GNCTD, shall visit the residence of the petitioner at least once every quarter, and make a report regarding the condition of AKS, which will be placed before the Director, Department of Social Welfare, GNCTD. In case the Director finds that the petitioner is not acting in the best interests of AKS, he will move the Court, at the earliest, for seeking appropriate directions.

G. The petitioner will ensure that the transactions entered into by him comport with the relevant provisions of the law.

H. In case any other relative or a next friend of AKS finds that the petitioner is not acting in the best interests of AKS, such person will also have the locus to approach the Court for issuance of appropriate directions and/or for removal of the petitioner as the guardian.

I. In case, the petitioner wishes to move AKS to another state or even to another country for the purposes of securing better medical treatment for him, he would approach the Court for necessary permission before undertaking such an exercise.

J. In the event the petitioner requires any modification of this order, or there are any significant alterations in the condition of AKS, including his medical or financial circumstances, the petitioner will make an application to this Court for necessary orders.

22. These directions dispose of the writ petition, which will, however, be listed before the learned Registrar General of this Court on 26.07.2021 for compliance with the directions contained in paragraph 21 above. In the event the learned Registrar General, upon examination of the materials placed before him, considers it necessary at any stage that the matter be placed before the Court for further orders, he may so direct.

23. I wish to place on record my sincere gratitude for the assistance rendered by Mr. Ramesh Singh, learned Amicus Curiae, and Ms. Tara Narula, learned counsel, who assisted him in these proceedings. They have gone beyond the call of duty to enable me to arrive at this decision. Mr. Dwivedi, who appeared for the petitioner, and Mr. Rajiv Kapur and Mr. Akshit Kapur, learned counsel for the Bank, also approached this matter very constructively, and provided valuable assistance and suggestions. Their assistance is also very much appreciated.

24. The petition and the pending application stand disposed of in terms of these directions.