

(2024) 11 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition Miscellaneous Single No. 2553 Of 2024

Kamakshee Bisht

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 07-11-2024

Acts Referred:

Citation : (2024) 11 UK CK 0011

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Sandeep Kothari, Devendra Pant, Tarun Pande, Siddhartha Sah, Siddharth Jain, Abhilasha Tomar

Final Decision : Allowed

Judgement

Pankaj Purohit, J

1. Heard learned counsel for the parties.
2. The present writ petition has been filed by the petitioner for the purpose of appointment of a Guardian for her husband (Mukesh Joshi), permanent r/o Alma Cottage Compound, Mallital, who is presently residing at All Saints College Campus, Nainital on the premise that husband of the petitioner is in a comatose state.
3. Since there was no law holding in the field to appoint a Guardian of such a person, therefore, learned counsel for the petitioner placed reliance on the judgment rendered by Hon'ble High Court of Kerala dated 20.02.2019, passed in the case of Shobha Gopalkrishnan & another vs. State of Kerala & others, wherein certain guidelines have been issued which are mentioned in para 35 of the said judgment. The judgment has already been annexed with the writ petition as annexure-8 to the writ petition.
4. Though as many as 14 guidelines have been issued by the Hon'ble High Court of Kerala in the aforesaid judgment, but at this juncture, first and foremost, it

was necessary that condition of the person lying in a comatose state shall be ascertained by examining him, through a duly constituted medical board of whom one member shall be definitely a qualified Neurologist and in lieu of condition no.3 of the guidelines issued by the Hon'ble High Court of Kerala, a Revenue Authority not below the rank of Tehsildar was also required to submit a report with relevant facts and figures including the particulars of close relatives, their financial condition and other aspect of the petitioner and her husband.

5. Since there was consensus between the parties to the proposition that the Medical Board is to be constituted as per the guidelines and be directed to conduct the proceedings as per the guidelines, this Court vide order dated 25.09.2024 directed respondent no.3-Chief Medical Officer, Nainital to coordinate with the Director, Medical Health, Kumaon Region to constitute a medical board (one member being Neurologist) and to examine the husband of the petitioner (Mukesh Joshi), who is presently residing in his home, in a comatose state.

6. Pursuant to the order passed by this Court on 25.09.2024, the Medical Board has been constituted and the compliance affidavits have been filed by the respondent no.2-Tehsildar and respondent no.3-Chief Medical Officer, Nainital, which are taken on record. Delay in filing the compliance affidavits is condoned for the reasons stated therein.

7. From perusal of the compliance report of respondent no.3, which is annexed as annexure-1 to the said compliance report, the opinion of the Medical Board is given wherein it has been stated that the patient-Mukesh Chandra Joshi, husband of the petitioner is in comatose and in bed ridden state. It is also reflected from the said report that the Medical Board was properly constituted as per the directions passed by this Court on 25.09.2024 and similarly, the compliance report has also been filed by the respondent no.2-Tehsildar, Nainital wherein the details of the family members and specific property of the husband of the petitioner have been verified in para 3 to 7 of the said affidavit.

8. There is no difference of opinion of the learned counsel for the parties with regard to the compliance reports and they are in consensus regarding the fact that the husband of the petitioner is in comatose state and is bed ridden and he owns a property as detailed by respondent no.2 in compliance of the order passed by this Court. Petitioner thus prayed for appointment of the Guardian of the petitioner.

9. There is no opposition from the side of the respondents who includes brother, family members and partner in the property of the husband of the petitioner, if the petitioner is appointed as Guardian of the husband of the petitioner.

10. Accordingly, the writ petition is allowed. Petitioner-Smt. Kamakshee Bisht, w/o Shri Mukesh Chand Joshi is hereby appointed as Guardian of her husband-Mr. Mukesh Chand Joshi in respect of the property moveable or immovable recorded in his name and to deal with the bank accounts of her husband and further to do all such acts as are necessary to the best interest of her husband. It is also

clarified that the petitioner as Guardian shall be entitled to sign any documents which are required to be signed by her husband.

11. Needless to say that if there is any 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 the person lying in comatose state, it is open to bring up the matter for further consideration of this Court to re-open and revoke the power, to take appropriate action against the person concerned, who was appointed as the Guardian and also to appoint another person/public authority/Social Welfare Officer (whose official status is equal to the post of District Probation Officer) as the Guardian.

12. It is also provided that the Guardianship so awarded by this Court can be revoked by the husband of the petitioner, in case he recovers and attains the healthy life.

13. The affidavit of Tehsildar filed in compliance of the Court's order dated 25.09.2024 detailing the property of the husband of the petitioner shall form part of this order.

14. Pending application, if any, stands disposed of accordingly.