
(2010) 07 KL CK 0223
In the High Court Of Kerala
Case No : M.F.A. No. 159 of 2004

Mrs. Indira

APPELLANT

Vs

K.P.V. Menon and Another

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Mental Health Act, 1987 — Section 2(1), 50, 52, 53, 54

Citation : (2011) 130 FLR 602 : (2011) 2 ILR (Ker) 102 : (2011) 2 KLJ 126 :
(2011) 2 KLT 37 : (2012) 1 RCR(Civil) 760

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : Sajan Vargheese K. and Liju M.P, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Basheer, J.—Appellant is the wife of one Sankaranarayanan. She filed a petition before the District Court, Palakkad u/s 50, 52 and 54 of the Mental Health Act 1987 (for short, the Act) with a prayer to appoint her as the Manager of her mentally ill husband for the specific purpose of receiving the family pension due from the Ministry of Steel, Govt, of India. The parents of Sankaranarayanan who were arrayed as respondents in the Original Petition, did not respond to the notice issued from the court below. The District Court after considering the oral testimony of the appellant who was examined as Pw.1 and also Exts.A1 to A3 documents produced by her, took the view that Sankaranarayanan is not a mentally ill person and therefore rejected the prayer for her appointment as manager and dismissed the petition.

2. Learned counsel submits that the appellant had approached the court below under the Act only to enable her family comprising herself, her husband Sankaranarayanan and the two minor children to get family pension from the Central Government as provided under Rule 54 of the Central (Civil Services) Pension Rules. It is contended by the learned counsel that the father of Sankaranarayanan who was impleaded as respondent No. 1 before the court

below was an employee under the Central Government. He had been drawing a family pension of about Rs. 8000/- per month. Going by the provisions contained in Rule 54 referred to above, Sankaranarayanan will also be entitled to get family pension since he is suffering from disorder or disability of mind.

The preamble of Act 1987 says that the Act is intended "to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto".

(emphasis supplied by us)

3. Section 2 (1) defines mentally ill person thus:

Mentally ill person" means a person who is in need of treatment by reason of any mental disorder other than mental retardation:

(Emphasis supplied)

A perusal of the above definition will unambiguously show that mental retardation is taken out of the fold or ambit of mental illness. Chapter 6 of the Act deals with "judicial inquisition regarding alleged mentally ill person possessing property, custody of his person and management of his property.

4. As has been noticed already, appellant approached the court below with a petition u/s 50, 52 and 54 of the Act. These sections are extracted hereunder for easy reference:

50, Application for judicial inquisition:-- (1) Where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either--

(a) by any of his relatives, or

(b) by a public curator appointed under the Indian Succession Act, 1925 (39 of 1925), or

(c) by the Advocate General of the State in which the alleged mentally ill person resides, or

(d) where the property of the alleged mentally ill person comprises land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate, to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides,

(2) On receipt of an application under sub-section (1), the District Court shall, by personal service or by such other mode of service as it may deem fit, serve a notice on the alleged mentally ill person to attend at such place and at such time as may be specified in the notice or shall in like manner, serve a notice on the

person having the custody of the alleged mentally ill person to produce such person at the said place and at the same time, or being examined by the District Court or by any other person from whom the District Court may call for a report concerning the mentally ill person:

Provided that, if the alleged mentally ill person is a woman, who according to the custom prevailing in the area where she resides or according to the religion to which she belongs, ought not to be compelled to appear in public, the District Court may cause her to be examined by issuing a commission as provided in the CPC 1908 (5 of 1908).

(3) A copy of the notice under sub- section (2) shall also be served upon the applicant and upon any relative of the alleged mentally ill person or other person who, in the opinion of the District Court, shall have notice of judicial inquisition to be held by it.

(4) For the purpose of holding the inquisition applied for, the District Court may appoint two or more persons to act as assessors....

52. Provision for appointing guardian of mentally ill person and for manager of property:-- (1) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, it shall make an order for the appointment of a guardian u/s 53 to take care of his person and of a manager u/s 54 for the management of his property.

(2) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but capable of taking care of himself, it shall make an order u/s 54 regarding the management of his property.

(3) Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application.

(4) Where the District Court deems fit, it may appoint under sub-section (1) the same person to be the guardian and manager...

54. Appointment of manager for management of property of mentally ill person:--

(1) Where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law for the time being in force, the District Court shall authorise the Court of Wards to take charge of such property, and thereupon notwithstanding anything contained in such law, the Court of Wards shall assume the management of such property in accordance with that law.

(2) Where the property of the mentally ill person consists in whole or in part of land or of any interest in land which cannot be taken charge of by the Court of Wards, the District Court may, after obtaining the consent of the Collector of the District in which the land is situate, direct the Collector to take charge of the

person and such part of the property or interest therein of the mentally ill person as cannot be taken charge of by the Court of Wards.

(3) Where the management of the property of the mentally ill person cannot be entrusted to the Court of Wards or to the Collector under sub-section (1) or subsection (2), as the case may be, the District Court shall appoint any suitable person to be the manager of such property.

5. Section 50 provides for an application for judicial inquisition into the mental condition of the alleged mentally ill person if he is possessed of property. This can be done before the District Court at the instance of any of his relatives or by a public curator appointed under the Indian Succession Act 1925 or by the Advocate General of the State in which the alleged mentally ill person resides. In order to enable such persons or authority concerned to hold an inquisition into the mental condition of such mentally ill person, subsection (2) of Section 50 mandates that the District Court shall, on receipt of an application serve a notice on the alleged mentally ill person to attend at such place to subject him to such examination by the District Court or by any other person from whom the court may call for a report concerning the mentally ill person. Section 52 empowers the District Court to issue an order to appoint a guardian and manager, if it is found that that person is incapable of taking care of himself and of managing his property. Section 54 deals with appointment of manager for management of property of mentally ill person, if it is found that mentally ill person is incapable of managing it.

6. In this context it is necessary to take a look at the averments in the petition filed by the appellant before the court below.

7. It is revealed from the petition that appellant and Sankaranarayanan got married in May 1996. The two daughters born in the said wedlock were aged 6 and 4 respectively at the time of filing of the petition in the year 2003. Appellant states in the petition that her husband Sankaranarayanan was "even at birth a mentally retarded person but he was capable of taking care of himself and managing his properties". She further states that at the time of marriage also his condition was the same. It is seen admitted by the appellant that she was having "a normal married life with him and begot two children even though his mental development was not normal". But according to the appellant, after the birth of the second child he has become a mentally ill person and is not capable of managing his properties, though "he is capable to manage himself. Thereafter appellant proceeds to refer to the status of the parents of Sankaranarayanan. She states that her father in law is drawing a monthly family pension of Rs. 8,000/- and that the application filed by her father in law before the Government for grant of pension to his son was returned with a direction "to furnish a guardianship certificate from an appropriate court. In short, appellant wanted an order from the court below to enable her family to get family pension from the Central Government as provided under Rule 54 of the Pension Rules. To be fair to the appellant, she has made the above facts explicit in the petition itself. But the

short question is whether her husband has to be declared as a "mentally ill person" before the whole world solely for the purpose of enabling the appellant to get the family pension.

8. A reading of the averments contained in the petition will undoubtedly show (hat the appellant does not have a case that her husband is a mentally ill person. She repeatedly refers to him as a mentally retarded person. As has been noticed already, the appellant candidly admitted that even at the time of their marriage Sankaranarayanan was a mentally retarded person. She asserted that she did have a normal married life with Sankaranarayanan and two children were born in the said wedlock. At the risk of repetition we may say that she further stated that "even though Sankaranarayanan was mentally retarded he was capable of "taking care of himself and managing his properties".

9. In this context we may refer to Ext.A2 medical certificate obtained by the appellant from the Medical Board attached to the District Hospital, Palakkad. In this certificate it has been stated by the Doctors comprising the Board that Sankaranarayanan is permanently incapacitated due to sensori neural deafness of both ears due to deafmutism and mild mental retardation (emphasis supplied by us). The above certificate, in our view, leaves no room for any doubt or ambiguity that Sankaranarayanan is not a mentally ill person. No doubt Sankaranarayanan may be suffering from "mild mental retardation". But by no stretch of imagination can it be said that Sankaranarayanan ever was or even now is a mentally ill person. The averments made by the appellant in the petition before the court below are sufficient corroboration for the fact that he is only mentally retarded and not mentally ill. We need not refer to the definition of "mentally ill person" yet again. The definition specifically and pointedly excludes "mental retardation" from the ambit of mental illness. No evidence has been adduced by the appellant to show that Sankaranarayanan has been undergoing any treatment for his alleged mental illness. In any view of the matter, the impugned order passed by the court below cannot be faulted. We do not find any reason to interfere with the said order.

The appeal fails and it is accordingly dismissed.