
(2009) 02 KL CK 0030

In the High Court Of Kerala

Case No : R.P. No. 143 of 2009 (H)

Narayanankutty Menon

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Mental Health Act, 1987 — Section 50, 51, 52, 53, 54, 54

Citation : (2009) 1 KLJ 741 : (2009) 1 KLT 910 : (2009) 5 RCR(Civil) 887

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : K.P. Balasubramanyan, for the Appellant; Pushpalatha (G.P.) and Parameswaran Nair (Asst. Solicitor), for the Respondent

Judgement

V. Giri, J.—The petitioner in this review petition has sought for a review of the judgment dated 4-11-2008, essentially with regard to the observations made in the judgment in the writ petition, "as to the absence of a suitable statutory frame work for dealing with cases of mentally retarded persons both in the context of appointing a guardian for management of the person and the property of the mentally retarded person or for any other ancillary purpose dealing with the person and properties in that regard." After having observed so, this court also proceeded to exercise the jurisdiction under Article 226 of the Constitution of India. The writ petition was filed alleging that one Sunilkumar, son of late Mudakodi Chandrasekhara Menon and late Mulappilli Kamalamma is a mentally retarded person. Certain items of properties were obtained by Chandrasekhara Menon and Kamalamma from their respective tar wards. Chandrasekhara Menon died on 24-3-1995; the mentally retarded person was being looked after by his father till his death. It was also noted that Kamalamma, the mother of Sunilkumar developed some mental illness at the time of Sunilkumar's childhood. She was also being looked after by her husband. One Govindankutty Menon was looking after the person and property of both Kamalamma and Sunilkumar. He was appointed as the Guardian by the District Court, Ernakulam

in O.P.No.429/05. Govindankutty Menon also died. In the meanwhile, the District Court had rejected an application filed by a stranger for appointing him as the guardian of Sunilkumar. The present writ petition was filed by Narayanankutty Menon, son of the aforementioned Govindankutty Menon, to be appointed as the guardian of the person and property of Sunilkumar.

2. The District Collector had forwarded a report to the Register (Judicial), pursuant to an interim order passed by this court opining that the petitioner has a good financial background and he is also having the privilege of being an uncle, to protect Sri. Sunilkumar. This court had issued an interim order on 24-7-2008, after admitting the writ petition, inter alia, requiring the petitioner to take out a paper publication as regards the pendency of the writ petition and also be enable any interested person to oppose the prayer made in the writ petition. No person came forward to oppose the writ petition.

3. After hearing Sri. Balasubhramanyan, learned counsel for the petitioner, as stated above, the writ petition was allowed, and obviously, petitioner does not have any grievance as regards the directions issued in the operative portion of the judgment. The review petition has been filed in relation to certain observations made in the judgment regarding the absence of an appropriate statutory frame work for dealing with cases of mentally retarded persons both in the context of appointing a guardian for the person and the property of the mentally retarded person.

4. I heard Mr. K.P. Balasubramanyan, learned counsel for the petitioner, learned Government Pleader and Mr. P. Parameswaran Nair, Assistant Solicitor General.

5. Mr. Balasubramanyan is right, in his submission, that the observations made in the judgment to the effect that there is no statutory frame work to deal with appointment of a person as the guardian of a mentally retarded person are not correct. Reference has been made in this regard to "the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999" (hereinafter referred to as "the Act"). Section 14 of the Act deals with the appointment of a guardian. Sub-Section (1) thereof reads as follows:

A parent of a person with disability or his relative may make an application to the local level committee for appointment of any person of his choice to act as a guardian of the persons with disability.

6. In spite of the said enactment, the writ petition was filed before this court, Mr. Balasubrahmanyman submits, in view of the fact that the Act does not specifically empower the appointment of a person as a guardian for the property of a mentally retarded person. Reference in this regard was made, for the purpose of contra distinction, to Sections 50 to 54 of the Mental Health Act, where no separate provisions are made for appointment of a person as the guardian of the mentally ill person and the guardian of the properties of such person. It is contended that Section 14 of the aforementioned Act specifically empowers the

appointment of any person as the guardian of the person with disability and not as the guardian for the property of the person with disability.

7. It is true that Section 14 of the aforementioned Act refers only to the appointment of a guardian of the person with disability. But Section 15 of the said enactment, in my view, reflects the legislative intent, to clothe the person, who is appointed u/s 14 of the Act, to act as the guardian with regard to the property of the mentally retarded person also. Section 15 reads as follows:

Every person appointed as a guardian of a person with disability under this chapter shall, wherever required either have the care of such person of disability and his property or be responsible for the maintenance of the person with disability.

8. Again, that this seems to be the legislative intent is evident from Section 16(1) of the Act, which obliges the guardian to furnish inventory and annual accounts on being appointed as the guardian u/s 14.

9. In the circumstances, though there is no specific provision in the aforementioned Act authorising the competent authority to appoint any person as the guardian of the property of a person with disability, on appointment of a person as the guardian u/s 14 of the Act, his duties are governed by Sections 15 and 16, I agree with the submission made by Mr. Balasubramanyan that it would have been much better on the part of the legislature to avoid a confusion and specifically provide for the appointment of a guardian for the properties of a person with disability in the lines of what has been provided u/s 54 of the Mental Health Act. But, in circumstances where Section 15 empowers the guardian appointed u/s 14 to have care of such person with disability and his properties, it would only be appropriate that the provisions contained in Section 15 be constructed as one enabling the competent authority, empowered to effect appointment of a guardian u/s 14 of the Act to see that such guardian also is responsible for the property of the person with disability.

10. It seems that a Local Level Committee has also been constituted u/s 13 of the Act and such Local Level Committee is headed by the District Magistrate. In the present case, I had issued a direction to the petitioner to file periodical accounts before the District Collector. In these circumstances, it will be appropriate that the petitioner, who has now been appointed as the guardian of the person and property of the disable person, to file an application before the Local Committee u/s 14 of the enactment. Unless the said Local Level Committee, with reference to any specific material, finds that the petitioner is incompetent to be appointed as the guardian of the disabled person, the petitioner shall be appointed as the guardian by the Local Level Committee also. For this purpose, the petitioner shall file an application u/s 14 of the Act before the Local Level Committee within three months from today and such Local Level Committee shall take a decision within six months thereafter. The petitioner shall continue as the guardian of the person and property of the person with disability,

Sri. Sunilkumar unless and until a contra view is taken by the Local Level Committee. Review Petition is disposed of accordingly.

In circumstances where I had directed a copy of the judgment in the writ petition to be forwarded to the Central Government and the State Government and in circumstances where I have reviewed certain observations made in the earlier judgment, it is only appropriate that a copy of this order is also forwarded to the Central Government and State Government. Registry shall do so.