
(2016) 02 DEL CK 0222

In the Delhi High Court

Case No : W.P. (C) No. 10198/2015, CMs No. 25224/2015 & 27297/2015

Pratibha Pande and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Constitution of India, 1950 — Article 21, Article 226

National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 — Section 13

Citation : (2016) 5 ADDelhi 541 : (2016) 229 DLT 512 : (2016) 155 DRJ 682

Hon'ble Judges : Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : Prosenjeet Banerjee, Princy Ponnann and Taran Gupta, Advocates, for the Appellant; Jyoti Dutt Sharma, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Rajiv Sahai Endlaw, J.—1. The petition impugns the Minutes of the Meeting held on 24th September, 2015 of the respondent No. 3 the Local Level Committee (LLC), New Delhi (South District) constituted under Section 13 of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (National Trust Act) rejecting the application of the petitioner no. 2 Ms. Madhvi Pande for appointment as guardian of her mother i.e. the petitioner no. 1 herein on the ground that the respondent No. 4 Govind Ballabh Pant Hospital, New Delhi had clarified that the petitioner No. 1 cannot be categorized as a person suffering from multiple disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Disabilities Act) read with National Trust Act.

2. It is the case of the petitioners:

(i) that the petitioners no. 1 aged about 60 years, was married to one Mr. Jyoti Swarup Pande and from which marriage has two children i.e. a daughter Ms. Madhvi Pande (petitioner no. 2) and a son viz. Mr. Vinayak Pande;

(ii) that the petitioner no. 1 is otherwise estranged from her husband since 1987 and been living separately;

(iii) that the petitioner no. 1 till March, 2014 was carrying on business as a Director of Allwyn Cooper Pvt. Ltd.; she was in March 2014 diagnosed with suffering from a rare and debilitating neurodegenerative disease and within four weeks lost her ability to perform activities of daily living and suffered from progressive dementia and in May, 2014 went into a coma;

(iv) that since the disease from which the petitioner no. 1 was suffering could not be confirmed in India, the petitioner no. 1 was flown to Philadelphia, United States of America (USA) where she was found to be suffering from sporadic Creutzfeld-Jacob Disease (CJD) and was on 23rd May, 2014 brought back to India and though was initially admitted to Fortis Hospital but upon the doctors advising that till her eventual demise, she would remain in comatose condition only, was brought home i.e. D-353, Second Floor, Defence Colony, New Delhi;

(v) that the petitioner since May, 2014 has been in a comatose persistent vegetative state;

(vi) that the petitioner no. 1 has Savings Bank Account no. 3066324734 with the respondent no. 5 Central Bank of India (CBI), Ashoka Hotel branch, New Delhi having a sum of Rs. 4,13,70,925/- as on 5th October, 2015 and Savings Bank Account No. 1021771857 with the respondent.6 Bank of India (BoI), Khan Market branch, New Delhi having a sum of Rs. 3,27,581/- as on 5th October, 2015; however the petitioner no. 1 is the sole signatory of the said accounts and being in a comatose situation is unable to draw any monies therefrom;

(vii) that the petitioner no. 1 is also the owner of property no. G-3, Dhawandeep Building, 6, Jantar Mantar Lane, New Delhi fetching a rent of Rs. 1,32,000/- per month;

(viii) that the expenses of the treatment and nursing care of the petitioner no. 1 till now have been met by taking loan of Rs. 60,04,473/- (USD 92,671 converted into rupees at Rs. 64.79p to a dollar) from Dr. Pragati Shukla, sister of the petitioner no. 1 living in USA and from M/s. Allwyn Cooper Pvt. Ltd. in which the petitioner no. 1 is a Director and partly from the rent aforesaid earned from the properties of the petitioner no. 1 and cheques whereof are being deposited in the bank account in the joint names of the two petitioners and money wherefrom is being drawn by the petitioner no. 2;

(ix) that expenses continue to be incurred in the day-to-day treatment and nursing care of the petitioner no. 1 of much more than the rent being received and the petitioners are also unable to repay the loans without drawing the monies from the bank accounts aforesaid of the petitioner no. 1 owing to the petitioner no. 1 being not in a position to operate the same;

(x) that the Reserve Bank of India, in order to help sick and disabled people to operate their accounts, has issued Circulars No. RBI/2007-2008/189;DBOD. No.

Leg.BC.51/09.07.005/2007-08 dated 19th November, 2007 and no. RBI/2008-09/58:UBD. BPD(PCB) MC.No:13/13.01.000/2008-09 dated 1st July, 2008 advising the banks to accept Guardianship Certificates issued by the respondent no. 2 National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities (National Trust) established under the National Trust Act;

(xi) that though the petitioner no. 1 approached the respondent no. 2 National Trust as far back as in April, 2015 but has been made to run from pillar to post and without any result and without any regard to the urgency;

(xii) the petitioner no. 2 was asked to first get a Disability Certificate from the respondent No. 4 Hospital before her application could be considered and ultimately Disability Certificate dated 6th August, 2015 was issued to the effect that the petitioner no. 1 was bed bound, in a comatose situation having 100% motor handicap;

(xiii) the petitioner No. 2 submitted the aforesaid Certificate with the respondent no. 3 Local Level Committee constituted under the National Trust Act but the Local Level Committee sought certain clarifications from the respondent no. 4 G.B. Pant Hospital with respect to the Disability Certificate issued; and,

(xiv) the respondent no. 4 G.B. Pant Hospital in the said clarification declared that the petitioner no. 1 did not come within the definition of a person with multiple disability within the meaning of National Trust Act and on the basis thereof the respondent No. 3 Local Level Committee has rejected the application of petitioner No. 2 for appointment as guardian of petitioner No. 1.

3. On the statement of the counsel for the petitioners that no appeal has been provided against such a decision and that the High Court of Madras in G. Nityanandam Vs. Tmt. D. Saritha held that in such a situation the provisions of the Guardian and Wards Act, 1890 also cannot be attracted, notice of the petition was issued.

4. Vide order dated 18th November, 2015 the respondent no. 4 Hospital was directed to file an affidavit explaining the position and in pursuance where to an affidavit was filed giving reasons for opining that the petitioner no. 1 cannot be said to be suffering from multiple disability within the meaning of National Trust Act read with Disabilities Act.

5. On perusing the said affidavit, in the order dated 8th December, 2015 it was observed that even if the petitioner no. 1 was held to be not a person suffering from multiple disability within the meaning of National Trust Act read with Disabilities Act, if this Court were to be satisfied that for the welfare and benefit of the petitioner no. 1 there is urgent need for appointment of guardian of the petitioner no. 1 and if finds the petitioner no. 2 to be a suitable and most appropriate person therefor, would otherwise also be entitled and authorized to appoint petitioner no. 2 as guardian of the petitioner no. 1. The counsels for the

respondents also, de hors the provisions of the National Trust Act and Disabilities Act agreed that in the exercise of powers under Article 226 of Constitution of India, the petitioner no. 2 could be appointed as the guardian of the petitioner no. 1 if found to be competent, especially as the respondent no. 4 Hospital had not disputed the factum of the petitioner no. 1 being in a comatose position.

6. On enquiry it was informed (and recorded in the order dated 8th December, 2015) that the petitioner no. 1 is 60 years of age and the petitioner no. 2 is 36 years of age and that the estranged husband of the petitioner no. 1 as well as the son of the petitioner no. 1 have also furnished their affidavits by way of "No Objection" to the appointment of the petitioner no. 2 as the guardian of the petitioner no. 1

7. Being of the view that in a petition for appointment of a guardian, the State would be a necessary party, vide order dated 8th December, 2015 Government of National Capital Territory of Delhi (GNCTD) was asked to make an enquiry, verify the facts pleaded in the petition by making enquiries from local Police Station, neighbours where the petitioners reside, from the estranged husband and from the son and other close relatives of the petitioner no. 1 as well as relating to the assets of the petitioner no. 1. The Sub Divisional Magistrate (SDM) who was informed to be also a member of the Local Level Committee was directed to conduct the enquiry. The petitioner no. 2 was also directed to place before this Court a complete list of assets of the petitioner no. 1 with their present status and the manner in which the petitioner no. 2 as guardian of the petitioner no. 1 intended to deal therewith.

8. In compliance with the above, affidavits and report of the SDM have been filed. During the hearing on 21st December, 2015, further enquiries were made from Mr. Ravinder Kumar, SDM present in Court. The SDM did not find anything negative for appointment of the petitioner no. 2 as the guardian of the person and property of her mother i.e. the petitioner no. 1.

9. After hearing the counsels, judgment was reserved on 21st December, 2015 but as an ad-interim measure, Rs. 3,50,000/- in the months of December, 2015 and January, 2016 were ordered to be released from the Bank Account aforesaid of petitioner No. 1 with respondent No. 5 CBI in favour of the petitioner no. 2 to enable the petitioner No. 2 to meet the expenses of treatment of the petitioner no. 1.

10. Owing to the turn which the matter has taken, need to go into the question whether the actions of the respondents no. 2&3 National Trust and Local Level Committee refusing to appoint the petitioner no. 2 as guardian of petitioner No. 1 does not arise. Suffice it is to state that Supreme Court recently in ABC Vs. The State (NCT of Delhi) , (2005) 10 SCC 1 has underscored that the High Court in seisin of the appeal (in that case) against the order of the Guardianship Court ought not to have lost sight of the fact that it had been called upon to discharge its parens patriae jurisdiction and that upon a guardianship petition being laid

before the Court the concerned child ceases to be in exclusive custody of parents and that thereafter the child continues in curial curatorship. It was further observed that the Court in that case had derelicted in its duty in inspite of receiving knowledge of the situation that vitally affected the future and welfare of the child, without considering all the problems, complexities and complications brought within its portal, having refused to exercise jurisdiction. In my view, what has been held / observed with respect to a child equally applies to a 60 years old person in an admittedly comatose condition.

11. The Division Bench of this Court as far back as in Nandita Virmani Vs. Raman Virmani also held that existence of a remedy under the Guardians and Wards Act is not a bar to entertaining a petition under Article 226 and to secure the custody of a child because in the petition under Article 226 the dominant factor is not enforcement of rights of warring parties but protection of rights of a child as a human being under Article 21 of the Constitution of India which guarantees protection of life. Similarly, this Court in Pratidhi Vs. NCT of Delhi held that even if the order of the Juvenile Welfare Board could not be sustained under provisions of Juvenile Justice Act, 1986, the Court under Article 226 can pass orders and give directions as are necessary for subserving the ends of justice or to protect minor's person or property. The High Court of Kerala also in Narayanankutty Menon Vs. State of Kerala held that the High Court exercising power under Article 226 is the ultimate guardian of the minor and disabled persons who are non sui juris; accordingly directions with respect to properties of a mentally retarded person were issued.

12. I should of course not be construed as opening the doors of this Court as an alternate to the Special Courts / Fora created under different laws and which should ordinarily be approached. However, in the peculiar facts, I choose to exercise the jurisdiction vested in this Court.

13. The petitioner no. 2, in the affidavit filed in response to the directions in these proceedings has stated:-

A. that the movable assets of the petitioner no. 1 comprise of monies lying in three saving bank accounts with the respondent no. 5 CBI and one saving bank account with the respondent no. 6 BoI besides 24% shareholding in M/s. Allwyn Cooper Pvt. Ltd. and 20% share in the partnership firm Shri Radhe Shyam Krishi Udyog;

B. that the immovable assets of the petitioner no. 1 comprise of G-3, Dhawandeep Building, 6, Jantar Mantar Lane, New Delhi and flat no. NGQ212, DLF, New Town Heights, Sector 90, Gurgaon; while the former is let out at a rent of Rs. 1.32 lacs per month (i.e. Rs. 1.18 after TDS) the flat at Gurgaon is ready for possession;

C. that the petitioner no. 1 incurs a current monthly expenditure on medical and nursing care of Rs. 4,16,296/- and on electricity and water of Rs. 26,000/- per month;

D. that M/s. Allwyn Cooper Pvt. Ltd. and Shri Radhey Shayam Business Centre has till now incurred expenses of Rs. 1,15,14,211/- for the treatment of the petitioner no. 1 and Dr. Pragati Shukla sister of the petitioner no. 1 has incurred expenses of Rs. USD92,671/- on the petitioner no. 1;

E. that the petitioner no. 2 seeks:

(i) to withdraw Rs. 3,24,296/- per month with escalation from the bank account of the petitioner no. 1, to take care of the expenses of the petitioner no. 1, after adjusting the rent being received of Rs. 1,18,000/- per month.

(ii) to from time to time withdraw from the accounts to purchase new equipment and hospitalization as and when required;

(iii) to withdraw monies from the accounts to re-pay the loan;

(iv) permission for investment of the amounts lying in the saving bank account into FDRs;

(v) permission to renew/enter into fresh Lease Deed with respect to flat no. G-3, Dhawandeep Building, 6, Jantar Mantar Lane, New Delhi.

(vi) permission to take possession of flat no. NGQ212, DLF, New Town Heights, Sector 90, Gurgaon and to lease out the same; and,

(vii) to sell the immovable properties of the petitioner no. 1.

F. The petitioner no. 2 has undertaken to this Court:-

(i) to submit all originals bills of expenses;

(ii) to submit quarterly statement of accounts of the amounts withdrawn and the expenses incurred; and,

(iii) not to create any third party interest with respect to the immovable properties of the petitioner no. 1 without prior permission of this Court.

G. The petitioner no. 1 has also filed a list of her assets.

14. The SDM, Hauz Khas has reported:-

(i) that the petitioner no. 2, her husband and her brother reside on the second floor of D-353, Defence Colony, New Delhi where the petitioner no. 1 is lying in a comatose state;

(ii) that the said second floor is in the name of the company in which the petitioner no. 1 is a Director;

(iii) two nurses from Health Care at home were at the time of his visit found attending to the petitioner no. 1;

(iv) the petitioner no. 1 appeared to be sleeping but did not respond and is being fed through pipe;

(v) that the other floors of the said Defence Colony house do not belong to the petitioners and were found to belong to others;

(vi) that the estranged husband and son of the petitioner no. 12 namely Shri Jyoti Swarup Pande and Shri Vinayak Pande were also met; and,

(vii) that the petitioner no. 1 also has equity shares, bonds and debentures and mutual funds.

15. In my view, considering:

(a) that it stands proved that the petitioner no. 1 is lying in a comatose position and is unable to look after her affairs;

(b) that the petitioner no. 2 who seeks appointment as the guardian of the person and property of the petitioner No. 1 is the daughter of the petitioner no. 1 and the other close relatives of the petitioner no. 1 namely her son and her estranged husband have given their No Objection to such appointment of the petitioner no. 2;

(c) that the SDM, Hauz Khas has enquired into the matter and not found anything to indicate that the petitioner No. 2 is not the appropriate and most suitable person to be entrusted with the person and property of the petitioner No. 1.

I find this to be a fit case to appoint the petitioner no. 2 as a guardian of person and property, movable and immovable, of the petitioner no. 1

16. The petition is accordingly disposed of appointing the petitioner No. 2 Madhvi Pande D/o Mr. Jyoti Swarup Pande and W/o Mr. Mukund Raina and R/o D-353, 2nd Floor, Defence Colony, New Delhi as the guardian of the person and vested with the property of the petitioner No. 1 Mrs. Pratibha Pande W/o Mr. Jyoti Swarup Pandey R/o D-353, 2nd Floor, Defence Colony, New Delhi, to do all acts, deeds and things for the proper medical treatment, nursing care, welfare and benefit of the petitioner No. 1 Mrs. Pratibha Pande and with power to do all act, deeds and things with respect to assets and properties of the petitioner no. 1 including; (i) operate bank accounts in the name of petitioner No. 1; (ii) deal with shares, bonds, debentures in the name of petitioner No. 1; (iii) invest the monies to earn optimum returns thereon; (iv) utilise the monies for proper upkeep and for fulfilling the needs of petitioner No. 1; (v) represent the petitioner No. 1 before all persons / authorities / bodies; (vi) sign wherever required as guardian of petitioner No. 1 including for discharging any person / authority / body from duty / obligation / liability owed to petitioner No. 1; (vii) take possession and charge of all properties movable or immovable to petitioner No. 1; (viii) take actions in law to protect interest of petitioner No. 1; (ix) sign all deeds, documents, cheques as guardian of petitioner No. 1, etc., subject however to following conditions:-

(i) The petitioner no. 2 furnishing administration bond and a surety bond with

one guarantor in the sum of Rs. 5 crores to the satisfaction of worthy Registrar General of this Court.

(ii) Maintaining regular accounts of dealings with the properties of the petitioner no. 1.

(iii) The petitioner No. 2 shall not sell, alienate or encumber any of the immovable properties of the petitioner no. 1 save with express permission of this Court. The same will however not come in the way of the petitioner no. 2 letting out the immovable properties of the petitioner no. 1 from time to time and getting back the possession thereof.

(iv) The petitioner No. 2 shall comply with other requirements of being the guardian of petitioner No. 1.

17. Needless to state, such appointment is till the petitioner No. 1 is unable to look after her affairs and subject to revocation in accordance with law.