(2009) 04 DEL CK 0400

In the Delhi High Court

Case No : Writ Petition (C) 5271 of 2008

Sushma Sharma APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

National Trust for Welfare of Persons with Autism, Cerepral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 — Section 10, 11, 14, 14(1), 14(2)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2

Citation : (2009) 04 DEL CK 0400

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Ashwin Vaish, Vinod Kumar Pandey and Sanjeev Manchanda, for the Appellant; S.L. Gupta and Virender Singh for Resp. No. 1, V.K. Tandon, Sravan Bagaria, SDM, H.S. Parihar and M.L. Khan, for Resp. Nos. 3 and 4, for the Respondent

Judgement

S. Ravindra Bhat, J.—Heard counsels of the parties.

2. The petitioner seeks a direction to the respondents that she should be allowed to open Bank Account in the name of her son with herself as

guardian.

3. The petitioner claims to be the widow of Mr. J.P. Sharma, with three children. She has a son Mr. Kuldeep Sharma, aged 21 years. It is

contended that the said Mr. Kuldeep Sharma is suffering from acute mental disability; a certificate issued by the Safdurjung Hospital on

10.09.2007 confirms that Mr. Kuldeep Sharma is suffering from mental retardation is 90% disabled. A copy of the certificate is also produced

along with the writ petition.

4. The petitioner claims to have approached the State Bank of India on 01.05.2007 for opening a joint Savings Bank Account along with Mr.

Kuldeep Sharma with herself as a guardian. She relies upon legal notice issued to the State Bank of India that was sent to the bank on

15.02.2008.

5. The petitioner relies upon Sections 14 and 15 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and

Multiple Disabilities Act, 1999 (hereafter called ""Multiple Disabilities Act"") and submits that persons suffering under such disabilities are entitled to

procedure for appointment for guardians. She seeks a direction to the respondents that the provision should be honored and given effect to, so as

to benefit her son.

6. The Reserve Bank of India (RBI), which has filed its return, relies upon a circular dated 19.11.2007. The same is in the following terms:

RBI/2007-2008/ 189

DBOD. No. Leg.BC. 51 /09.07.005/2007-08

November 19, 2007

All Scheduled Commercial Banks

(Excluding RRBs)

Dear Sir,

Legal Guardianship Certificate issued under the National Trust Act, 1999 empowering the disabled persons with autism, cerebral palsy, mental

retardation and multiple disabilities

We have been advised by the National Trust for the Welfare of Persons with Autism, Cerebral Palsy,Mental Retardation and Multiple Disabilities

(the Trust) that a question has been raised as to whether the banks and the banking sector can accept the guardianship certificates in regard to

persons with disabilities issued by the Local Level Committees set up under the National Trust for the Welfare of Persons with Autism, Cerebral

Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

2. The Trust has mentioned that the above Act was specifically passed by the Parliament in order to provide for appointment of legal guardians for

persons with disability that is covered under the said Act. The above Act provides for appointment of legal guardians for persons with disability by the Local Level Committees set up under the Act. The Trust has opined that a legal guardian so appointed can open and operate the bank account

as long as he remains the legal guardian.

3. The matter has been examined in consultation with the Indian Banks'' Association. They have concurred with the above views expressed by the

Trust. It may also be noted that the provisions of Mental Health Act, 1987 also allows appointment of Guardian by District Courts.

4. Banks are therefore advised to rely upon the Guardianship Certificate issued either by the District Court under Mental Health Act or by the

Local Level Committees under the above Act for the purposes of opening/ operating bank accounts. A list of Local Level Committees forwarded

to us by the above Trust is enclosed.

5. Banks may also ensure that their branches give proper guidance so that the parents/relatives of the disabled persons do not face any difficulties

in this regard.

Yours faithfully

Sd/-

(Prashant Saran)

Chief General Manager-in-Charge

SUMMARISED LIST OF LOCAL LEVEL COMMITTEES FORMED TILL 26 FEBRUARY, 2007

At present LOCAL LEVEL COMMITTEES have been constituted in 499 districts out of the total of 591 districts in the country except J&K.

State and UTS wise list are as follows:

STATES - 27

Sr. States Districts Total

No. LLCs formed

1. ANDHRA PRADESH EAST GODAVARI, KRISHNA, 23

NIZAMABAD, NELLORE,

SRIKAKULAM, CHITTOOR,

KURNOOL, ADILABAD,

WARANGAL, NALGONDA,

KARIMNAGAR, PRAKASAM,

RANGAREDDY, VISAKHAPATNAM,

ANANTHAPUR, MEDAK,

CUDDAPAH, KHAMMAM, GUNTUR,

MAHABOOBNAGAR,

VIZIANAGRAM, HYDERABAD,

WEST GODAVARI

2. ASSAM KAMRUP, NAGAON, NALBARI, 17

JORHAT, DARRANG,

CACHAR, DHUBRI, KARIMGANJ,

SONITPUR, SIVASAGAR, TINSUKIA,

DIBRUGARH, GOALPARA,

HAILAKANDI, NC HILLS,

GOLAGHAT, LAKHIMPUR

3. BIHAR NAWADA, KATIHAR, BHABUA, 24

SHEIKHPURA, MUNGER, KISHANGANJ,

LAKHISARAI, NALANDA, MADHEPURA,

ROHTAS, SHEOHAR, MAHDUBANI,

SUPAUL, BEGUSARAI, JAMUI, SIWAN,

PATNA, BHOJPUR, GOPALGANJ,

VAISHALI, SAMASTIPUR, PURNEA,

BHAGALPUR, KHAGARIA

4. CHATTISGARH KOREA, JANJAGIR-CHAPA, BASTAR, 16

DANTEWADA, RAIPUR, MAHASUMUND,

JASHPUR, RAIGARH, KORBA,

SURGUJA, DURG, BILASPUR,

JAGDALPUR, KAWARDHA, DHAMTARI,

KANKER

5. DELHI SOUTH, SOUTH-WEST, NORTH- 9

EAST, CENTRAL, NEW DELHI, NORTH,

WEST, NORTH WEST, EAST

7. The SBI submits that pursuant to the directions of RBI, it issued circulars to its various Branches on 14.12.2007; same is in the following terms:

Dear Sir/Madam,

Account opening

Empowerment of the Disabled Persons with Autism,

Cerebral palsy, Mental Retardation and Multiple Disabilities

Legal Guardianship Certificate issued under the National Trust Act, 1999

The Reserve Bank of India has advised that legal guardian appointed by Local Level Committee set up under the National Trust for the Welfare of

the Disabled Persons with Autism, Cerebral palsy, Mental Retardation and Multiple Disabilities Act, 1999 can open and operate bank accounts on

behalf of persons with disabilities as long as he remains the legal guardian. The provision of Mental Health Act, 1987 also allows appointment of

Guardian by District Court.

Branches are therefore advised to rely upon the Guardianship Certificate issued either by the District Court under Mental Health Act or by the

Local Level Committees under the above Act for the purposes of opening/ operating bank accounts.

A copy of the RBI letter DBOD No. Leg. BC 51/09.07.005/2007-08 dated 19.11.2007 issued in this connection is enclosed. Please ensure that

branches are given proper guidance in this regard so that the persons/relatives of the disabled persons do not face any difficulties.

Yours faithfully,

General Manager

(Personal Banking)

Enclosure:- as above.

8. This Court had, by an order dated 16.10.2008, enabled the petitioner to approach the Local Level Committee under the Multiple Disabilities

Act. On 22.01.2009, the Court made the following order:

It was submitted by the counsel that the petitioner had moved for appointment of guardian under The National Trust for Welfare of Persons with

Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, sometime in October. It is submitted that till date appropriate

authority, the S.D.M. (Hauz Khas) has not made any order.

The appropriate authority is hereby directed to make an order having regard to the facts of the case u/s 14 of the Act, within two weeks. In case

no order is made, the concerned authority shall be present in Court on the next date of hearing.

List on 17.02.2009.

Order dasti to the parties under signature of the Court Master.

9. There was some doubt as to whether the Local Level Committees indicated, have indeed been constituted and whether the petitioner had

approached the concerned authority. In the circumstances, the SDM (Hauz Khas) was directed to participate in the present proceedings. He is

present in Court and has filed an affidavit disclosing that Local Level Committee concerned consisted of the District Magistrate, District South,

M.B. Road, Saket. It is submitted that the petitioner has preferred an application before the said Committee and that the certificate has been

issued. Learned Counsel for the petitioner concurs with this statement.

10. Sections 14 and 15 of the Multiple Disabilities Act are in the following terms:

14. Appointment for guardianship-

1. 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.

2. Any registered organization may make an application in the prescribed form to the local level committee for appointment of a guardian for a

person with disability: Provided that no such application shall be entertained by the local level committee, unless the consent of the guardian of the

disabled person is also obtained.

3. While considering the applications for appointment of a guardian, the local level committee shall consider:

(a) whether the person with disability needs a guardian;

(b) the purpose for which the guardianship is required for person with disability.

4. The local level committee shall receive, process and decide applications received under Sub-section (1) and (2), in such manner as may be

determined by regulations:

Provided that while making recommendation for the appointment of a guardian, the local level committee shall provide for the obligations which are

to be fulfilled by the guardian.

5. The local committee shall send to the Board the particulars received by it and orders passed thereon at such interval as may be determined by

regulations.

15. Duties of guardian.-

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.

11. The terms ""Mental Regardation"", ""Multiple Disability"" and ""Persons with Disability"" are defined in the following manner:

(g) Mental retardation"" means a condition of arrested or incomplete development of mind of a person which is specially characterized by sub-

normality of intelligence;

(h) Multiple disabilities"" means a combination of two or more disabilities as defined in Clause (i) of Section 2 of the Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1995;

(j) Persons with disability"" means a person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a

combination of any two or more of such conditions and includes a person suffering from severe multiple disability;

12. The Multiple Disabilities Act was brought into force for constitution of a body at the national level for welfare of persons with autism, cerebral

palsy, mental retardation and multiple disabilities. A corpus of Rs. 100 crores has been provided to the Trust created under the enactment to

facilitate its functioning. Besides creation of various functionaries, Section 10 has spelt-out the objectives of the Trust, which are inter alia to evolve

a procedure for appointment of guardians and trustees for persons with disabilities requiring such protection. The general superintendence,

direction and management of the affairs and business of the Trust shall vest in a Board which may exercise all powers and do all acts and things as specified u/s 11.

13. The pleadings in this case show that the RBI initially had some reservations about the procedure adopted under the Multiple Disabilities Act

and whether the certificate issued by the Local Committees could be used for the purpose of banking. The RBI discerned some conflict between

the provisions of Mental Health Act, 1987 and the Multiple Disabilities Act. Eventually, as the circular of 19.11.2007 discloses, it took the view

that the certificate issued under the 1999 Act could be acted upon without any further formality by the banks.

14. The submissions made by the SDM and the petitioner itself were sufficient to dispose of the proceedings. However, what this Court cannot

ignore is the circumstance that it is not always possible for persons with disabilities or their guardians to seek recourse to writ proceedings, as has

been done in this case. This Court is also conscious of its limitations in regard to implementation of the enactment. However, at least, as regards

functioning of banks, this Court is of the opinion that the RBI should issue appropriate guidelines using the powers under the Banking Regulation

Act and the RBI Act and direct that all banks in India must ensure that in their Branches, essential details about the facilities under the enactment;

that certificate issued under the Mental Disabilities Act are acceptable; and the fact that the parties can approach the Local Level Committees, for

the purposes of issuance of the certificate etc.; along with the details of Local Level Committees (wherever applicable) in that area are displayed in

a conspicuous place for the information of general public. This shall be both in the local language and English/Hindi (or both), as may be deemed

appropriate in view of the demographic conditions of the area where the particular branch is located. The RBI shall evolve a suitable direction in

that regard in exercise of its powers in accordance with law. A direction is also issued to the RBI to ensure that such directions are complied with

and appropriately monitor their implementation.

15. Learned Counsel for the SBI submits that the petitioner''s request would be processed and a joint account will be opened, within two weeks

from today.

16. The writ petition and the accompanying application are disposed of in the above terms.

17. Order dasti.