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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 18.12.2019
Judgement pronounced on 07.01.2020

+ **W.P.(C)No.11003/2019 & CM No.45428/2019**

VANDANA TYAGI AND ANR. Petitioners
Through Mr. Praful Shukla and Mr. Umang
Kapoor, Advs.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI (GNCTD) AND ORS. Respondents
Through Mr. Kushagra Pandey, Panel Counsel
for GNCTD with Mr. Chandra
Shekar, (Patwari).
Mr. Akshit Kapur and Ms. Tanya
Kapoor, Advs for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

Preface

1. The petitioners' cause raises a serious public concern even while it espouses a private grievance *qua* respondent no.2 i.e. the State Bank of India (hereafter referred to as "SBI"). The petitioners before me are the daughters of, one, Mrs. Saroj Sharma, wife of deceased Mr. Anand Ballabh Sharma. Mrs. Saroj Sharma has been arrayed as respondent no.4 in the instant writ petition.

2. The petitioners are aggrieved by the fact that the SBI has not given them recourse to the Public Provident Fund account bearing No.10819169395 (hereafter referred to as “PPF Account”) which was opened and maintained by their father i.e. Mr. Anand Ballabh Sharma, during his lifetime, upon their mother Mrs. Saroj Sharma slipping into a comatose state.

3. Notice in this petition was issued on 16.10.2019. On behalf of respondent no.1 i.e. Government of National Capital Territory of Delhi (hereafter referred to as “GNCTD”), notice was accepted by Mr. Kushagra Pandey, Advocate, while, on behalf of the SBI, notice was accepted by Mr. Rajiv Kapoor, Advocate.

3.1. Notably, on that date, Ms. Ruchika Arora, Deputy Manager, SBI was also present in court.

4. After recording, broadly, the grievance of the petitioners advanced by their counsel, a direction was issued to GNCTD to appoint a doctor having the necessary expertise who would visit Mrs. Saroj Sharma and thereafter report to the court as regards her mental health. It was also indicated in the order that the doctor who would visit Mrs. Saroj Sharma would also opine as to whether or not the disease from which she was said to be suffering fell within the ambit of the Mental Healthcare Act, 2017 (in short “2017 Act”) and/or the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (in short “1999 Act”).

4.1. The writ petition was posted for further proceedings on 20.11.2019.

5. On 20.11.2019, learned counsel for GNCTD placed before me a report of the medical board constituted by the Institute of Human Behaviour and Allied Sciences (IHBAS) comprising Dr. Kumar Abhinav, Senior Resident, Neurology; Dr. Shubhangi Singh, Senior Resident, Psychiatry; and Dr. Jagdish Sadiza, Clinical Psychologist. The report was submitted under a cover of the letter dated 20.11.2019.

5.1. As noted in the order dated 20.11.2019, Dr. Kumar Abhinav and Dr. Shubhangi Singh were present in court. Both the doctors, on being queried, confirmed that Mrs. Saroj Sharma, (erroneously referred to as respondent no.1 in paragraph 4 of the order dated 20.11.2019), was in “coma (vigil)” state, which, according to them, was equivalent to being in a “vegetative state”.

5.2. Furthermore, the medical board also opined that the condition of Mrs. Saroj Sharma was such that it did not fall within the ambit of either the 2017 Act or the 1999 Act. Although the report did suggest that a further assessment could be carried out by a multi-speciality general hospital such as AIIMS, RML, or G.B. Pant Hospital, I concluded, in the order dated 20.11.2019, that in view of the opinion rendered by the medical board concerning the condition of Mrs. Saroj Sharma, any further assessment, as suggested, would only prolong the matter.

5.3. In the very same order, I also noticed the guidelines suggested by the Division Bench of the Kerala High Court in the matter of *Shobha Gopalakrishnan vs. State of Kerala, 2019 SCC OnLine Ker 739*.

5.4. Resultantly, having regard to the guidelines framed in the said matter, I directed the concerned SDM/Tehsildar to submit a report to the court with

regard to the relevant facts and circumstances, concerning the matter at hand, including the particulars of close relatives, their financial conditions and such other aspects, as may be found necessary in terms of the guideline No.(iii) ¹ contained in the aforementioned judgment.

6. I also noticed in the very same order the judgment of the Madras High Court, on a similar issue, in the matter of *K. Sailaja v. The State of Tamilnadu & Ors.*, 2016 SCC OnLine Mad 5171.

7. The matter was thereafter posted for hearing on 04.12.2019, when, I was informed by learned counsel for GNCTD that the SDM, Tehsildar and Kanoongo, Kalkaji had visited Mrs. Saroj Sharma at her house on 20.11.2019.

7.1. Since further time was sought to collect information with regard to the properties of Mrs. Saroj Sharma and the petitioners, the matter was posted for hearing on 18.12.2019.

7.2. *Via* this order, a direction was issued *qua* the petitioners which required them to file affidavits with regard to the details of their properties which would include immovable and movable properties and details of their bank accounts. Furthermore, the petitioners were also required to aver in their respective affidavits that the properties of Mrs. Saroj Sharma, which would include money available or credited to her bank account, would be used in her best interest. The petitioners were also required to undertake that they would file a report every six months with the Registrar General of this

¹ (iii) A simultaneous visit of the person lying in comatose state, at his residence, shall be caused to be made through the Revenue authorities, not below the rank of a Tahsildar and a report shall be procured as to all the relevant facts and figures, including the particulars of the close relatives, their financial conditions and such other aspects.

court concerning the mode and manner in which properties of Mrs. Saroj Sharma would be utilized in her best interest.

8. It is in this context that the matter was taken up on 18.12.2019. On that date, I was informed by learned counsel for GNCTD that the SDM/Tehsilder/Kanoongo, Kalkaji had filed their report with the Registry of this court.

9. The record shows that the SBI has filed an affidavit in the matter. The SBI resists the grant of any relief to the petitioners. The SBI in support of its plea seeks to place reliance on its circular dated 05.12.2018 and the circular dated 19.11.2007, issued by the Reserve Bank of India (RBI).

9.1. Besides this, the SBI also seeks to place reliance on the following statutes to oppose the prayers made in the writ petition:

- (a) The Guardians and Wards Act, 1890.
- (b) The Mental Health Act, 1987 (repealed).
- (c) The National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.
- (d) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- (e) The Mental Healthcare Act, 2017.
- (f) The Rights of Persons with Disabilities Act, 2016.

9.2. In sum, the stand of the SBI, based on the aforementioned circulars and statutes, is that, in order to operate the PPF Account maintained with it, the petitioners are necessarily required to obtain a “**guardianship certificate**” from the competent court, and hence no relief could be given to the petitioners, as sought for in the writ petition.

10. Thus, given the fact that Mrs. Saroj Sharma (as opined by the medical board), is in comatose state, the crucial question which arises for

consideration is : are the petitioners required to obtain a guardianship certificate under the aforementioned statutes and/or circulars, as contended by the SBI before they can be permitted to operate the PPF Account maintained by their father with SBI?

11. Pertinently, SBI's own officer Mrs. Ruchika Arora has visited Mrs. Saroj Sharma at her house, as noted in the order dated 16.10.2019, and found that she was not responsive.

Backdrop

12. However, before I proceed further, it may be relevant to advert to the background in which the petitioners have approached this court by way of the instant writ petition.

13. It appears that the petitioners' father Mr. Anand Ballabh Sharma had executed a Will dated 08.01.1998 before he passed away on 14.01.1998. The Will was, apparently, executed in the presence of two witnesses. *Via* this Will, Anand Ballabh Sharma made a bequest of his immovable and movable properties which included cash, amounts lying in bank, post office, stocks, etcetera exclusively in favour of his wife i.e. Mrs. Saroj Sharma.

13.1. This Will also alluded, *inter alia*, to the fact that after the death of Mrs. Saroj Sharma, all his (i.e. Mr. Anand Ballabh Sharma's) properties which included the immovable property situate at E-40, Greater Kailash-II, New Delhi – 110048 (hereafter referred to as "Greater Kailash property") would be divided in equal measure between his daughters (i.e. the petitioners herein) and thereafter among their respective children.

13.2. In respect of the Greater Kailash property, the Will demarcated the areas which would fall to the share of the two petitioners.

14. The petitioners claim that Mrs. Saroj Sharma, who after the demise of their father, became the absolute owner of his assets, on 23.07.2010, executed a Will in their favour. As per this Will, the petitioners were appointed as the executors of the said Will.

14.1. *Via* this Will, Mrs. Saroj Sharma has, broadly, divided all her properties which includes immovable and movable properties as well as monies available in bank accounts, post offices, and stocks equally between the petitioners. This Will, though, unlike the Will executed by the deceased Anand Ballabh Sharma was registered with the Sub-Registrar – VII, New Delhi.

15. It appears that neither Mrs. Saroj Sharma nor the petitioners were aware of the PPF Account maintained by the deceased Anand Ballabh Sharma with the SBI. There is in fact, no specific mention of the PPF Account maintained by Mr. Anand Ballabh Sharma during his lifetime with the SBI, in his Will dated 08.01.1998.

15.1. The petitioners claim that they and their mother i.e. Mrs. Saroj Sharma became aware of the PPF Account *via* a letter dated 30.07.2018 addressed by the SBI to their deceased father i.e. Anand Ballabh Sharma. The SBI *via* this communication sought to inform the addressee that his PPF Account had matured on 31.03.2008 and, therefore, he had three options available with him, i.e. (i) to close the account as it had matured on completion of 15 years; (ii) to enlarge the tenure for another five years, *albeit*, without fresh subscription to the PPF Account; and (iii) to enlarge the tenure for another five years, though, with subscription to the PPF Account.

15.2. This communication was obviously issued by the SBI under the belief, at the relevant point in time, that Mr. Anand Ballabh Sharma was alive.

16. It is averred in the petition that since at the relevant point in time, Mrs. Saroj Sharma was residing with petitioner no.1 in Jaipur, it was thought fit to approach the SBI for closure of the PPF Account after she returned to Delhi.

17. It is the petitioners' case that upon Mrs. Saroj Sharma returning to Delhi, her health deteriorated which resulted in her being admitted to the Max Hospital on 09.03.2019, with the history of fall resulting in head trauma, which was diagnosed as left frontotemporoparietal SDH condition. Furthermore, according to the petitioners, Mrs. Saroj Sharma was also diagnosed as being H1N1 positive.

17.1. It is averred that even though, Mrs. Saroj Sharma was discharged on that very date, her health deteriorated and, on 11.03.2019 she had another fall which led to her being admitted, once again, to the Max Hospital.

17.2. It is stated that on 11.03.2019, an emergent surgery had to be performed on Mrs. Saroj Sharma as diagnostic tests revealed that she suffered from large left cerebral convexity acute subdural haemorrhage with midline shift.

17.3. Accordingly, Mrs. Saroj Sharma, as per the petitioners, was subjected to the following procedure at the Max Hospital:

“.... Left FTP decompressive craniectomy with evacuation of SDH with lax duraplasty....”

17.4. It is the petitioners' case (which is backed by the discharge-summary issued by the Max Hospital) that when Mrs. Saroj Sharma was operated and

thereafter discharged, her medical history and/or condition was briefly described as follows:

“DISCUSSION :

Patient was admitted with above mentioned complaints. She was examined and evaluated in detail. CT head was done on 11.03.2019 which showed large left cerebral convexity acute subdural hemorrhage with midline shift to right and mass effect. There were patchy foci of chronic small vessel ischemia in bilateral frontoparietal white matter and basal ganglia. The condition and prognosis was discussed with the attendant in detail and need for surgery was explained. After a written and informed consent, she was taken up for surgery and left FTP decompressive craniectomy with evacuation of SDH with lax duraplasty was done under GA on 11.03.2019. She was operated under platelet cover, tolerated the surgery well & postoperatively she was shifted to the NSICU-B for the post op care. Bone flap was kept in the bone bank. Repeat CT head was done on 12.03.2019 which showed craniectomy with postoperative changes. In comparison with previous dated 11/03/2019, the left subdural collection has been completely evacuated. Respiratory review was taken on 12/3/19 for N1 and cap. tamiflu treatment was continued for 5 days. Patient was shifted to isolation room in MICU. Patient had right UL focal seizures on morning of 13/3/19 and loading dose of inj. Levipil was given. Cardiology review was taken from Dr. Roopa Salwan on 13/3/19 and advice was incorporated. She had persistent focal seizures so she was given loading dose of Inj. Phenytoin on 14/3/19. Neurology review was taken from Dr. Rajshekar Reddi and advice was followed. Lacosamide was also added. EEG was done on 15.03.2019 epileptiform discharges over left hemisphere and anticonvulsants were continued. Tamiflu was stopped after treatment, H1N1 report came negative on 15/03/19. There was no clinically evident seizure activity from previous evening but on EEG seizure

activity was seen. She was put on Inj. Midazolam infusion on 16/3/19. Neurology reference was taken and advice was incorporated. Tracheal secretion culture was sent on 16.03.2019 which showed Klebsiella pneumonia and antibiotic were modified accordingly. Endocrinology reference was taken from Dr. Sujeet Jha on 16/3/19 and advice was incorporated for T2DM. Patient was shifted back to ISICU on 16/3/19. MRI brain was done on 18.03.2019 which showed chronic SDH along both cerebral hemispheres, acute infarct. In the left frontal and temporal lobe and chronic small lacunar infarcts in the supratentorial white matter. As compared to the previous CT dated 12th March 2019 there is reduction in the mass effect. EEG was done on 18.03.2019 showed epileptiform discharges over left hemisphere. Patient had started Phenytoin, presently no focal fits. Tracheal secretion culture was sent on 18.03.2019 which showed Klebsiella pneumoniae and Ralstonia mannitolilytica, paired blood culture was sterile, urine routine showed RBC-5-7/HPF, leukocytes-3-5 and budding yeast (3+), she was managed with IV antibiotics. Tracheostomy was done on 19/3/19 in view of prolonged hospital stay and ventilation requirement. Chest x-ray was done on 19.3.2019 which showed no significant interval change seen from x-ray dated 16.03.2019. TLC was raised (12) on 20.3.2019. On 23.3.2019 tracheal secretion C&S showed Stenotrophomonas maltophilia, urine culture & sensitivity showed enterococcus faecium and urine routine showed RBC-high no. leukocytes-30-50/HPF, budding yeast (2+) and antibiotic was added according to sensitivity. Chest x-ray was done on 24.3.2019 which showed no significant interval change seen from x-ray dated 19.03.2019. Weaning trials were continued and she was on T-piece support for last 48 hours. Patient might be considered for BIPAP support if tolerated, meanwhile she will continue to be weaned off. Patient was shifted to the HDU on 28.3.2019 for further management. Rest of the course in the hospital was uneventful. Patient also received regular chest and limb

physiotherapy. Now patient is being discharged in condition mentioned below with following advice.

CONDITION AT DISCHARGE

Patient is afebrile, vitals stable, GCS=E4VtM4, Pupils B/L 2mm RTL, operative wound is healthy.”

17.5. GCS is an abbreviation for Glasgow Coma Scale². It is a neurological scale used by medical experts for assessing a person’s consciousness. The elements of the GCS scale would show that Mrs. Saroj Sharma’s condition, broadly, on the day of discharge was as follows:

Glasgow Coma Scale	
	4
Eye	Opens eyes spontaneously
Verbal	Confused, disoriented
Motor	Flexion / Withdrawal to painful stimuli

² https://en.wikipedia.org/wiki/Glasgow_Coma_Scale

* “E” would stand for Eye Response

** “V” would stand for Verbal Response

*** “M” would stand for Motor Response

18. The petitioners claim that at that time of her discharge, they had run up a bill of nearly Rs.12 to 13 lakhs and that once she was brought home, she was put on a life support equipment under the observation of Dr. Anish Kumar Gupta. The petitioners aver that Mrs. Saroj Sharma was receiving intensive care at home under the aegis of the organization going by the name Healthcare Home. The petitioners also state that since the cost of managing the life support machines at home was huge, they decided to buy some part of the medical equipment.

18.1. It is in this context that the petitioners sought release of the amount in the PPF Account so that part of the cost could be met out of the money available therein.

19. According to the petitioners, the SBI had at first refused to entertain their request on account of the name of their deceased father in the photo-identity card being mentioned as “Anand Ballabh Sharma” whereas in the death certificate, issued by the concerned municipal authority, his name was mentioned as “A.B. Sharma”.

19.1. The petitioners in order to get over this discrepancy got the hospital, where their father was treated, to issue a letter dated 11.05.2019 addressed to the Sub-Registrar, Death and Birth Office, Municipal Corporation of Delhi. *Via* this letter, the concerned hospital (i.e. Fortis Escorts Heart Institute, where the petitioners’ father was treated), conveyed to the Sub-Registrar that the petitioners’ father, who was their patient had expired on 14.01.1998 and that his name was entered as A.B. Sharma. The letter went on to state that as per the affidavit of petitioner no.2, her father’s full name was Anand Ballabh Sharma.

19.2. This letter, apparently, was then, submitted by the petitioners to SBI.

20. Since, SBI did not move in the matter, despite the aforementioned letter being furnished to it, petitioner no.2, on 03.06.2019, wrote to the concerned Branch Manager of SBI. *Via* this letter, petitioner no.2 called upon the Branch Manager of SBI to inform her as to the formalities and documents required to be furnished to effect transfer of funds lying in the PPF Account to the account of Mrs. Saroj Sharma.

20.1. Furthermore, a request was also made to depute an officer to visit Mrs. Saroj Sharma to ascertain her physiological condition. With this letter, the relevant documents which included the discharge summary, issued by the hospital, as also the letter dated 16.05.2019 along with the photo-identity card of their father was also appended. Besides this, petitioner no.2 also appended her own photo-identity card.

20.2. Apparently, petitioner no.2's entreaties had no effect and on 06.06.2019, SBI's Assistant General manager wrote to petitioner no.2 that she would require a "guardianship certificate", issued by the competent court under the Mental Health Act, 1987 (in short "1987 Act") for enabling her to close the PPF Account.

21. The petitioners being dissatisfied with the approach adopted by the SBI lodged a complaint dated 13.06.2019 with the Banking Ombudsman i.e. respondent no.3.

22. The petitioners claim that since they received no intimation concerning disposal of their complaint, they were constrained to approach this court by way of the instant writ petition.

Analysis and reasons

23. It is in this background that the petitioners were propelled to institute the present writ petition. As noted hereabove, only the SBI has filed a counter affidavit to the writ petition. A perusal of the SBI's counter affidavit shows that it does not dispute the fact that Mrs. Saroj Sharma is unresponsive and that she is in comatose state. Furthermore, SBI also does not dispute the fact that the petitioners, apart from Mrs. Saroj Sharma, are the only Class-I legal heirs of the deceased Anand Ballabh Sharma. The SBI, however, insists that given the state of Mrs. Saroj Sharma's health, the petitioners can be permitted to deal with the PPF Account only if they are issued a guardianship certificate from a competent court.

23.1. Although, in the letter dated 06.06.2019, SBI had taken the position that the guardianship certificate had to be obtained from the concerned district court under the 1987 Act, in the counter affidavit, a reference has been made to certain circulars and other statutes as well, to which I have made a reference in paragraph 9 & 9.1 above.

Circulars

24. Thus, to adjudicate upon the core issue, one needs to examine the scope of the circulars preferred to by the SBI and the statutes on which it seeks to rely to resist the relief(s) sought for in the writ petition.

25. Firstly, the SBI has referred to its own policy circular dated 05.12.2018 and RBI's circular dated 19.11.2007. The RBI's circular dated 19.11.2007 seeks to advice banks, generally, which includes the SBI, to rely upon the guardianship certificate issued either by the district court under the 1987 Act or by the Local Level Committee under the 1999 Act. It would be

relevant to note that when this circular was issued by the RBI, the 1987 Act had not been repealed.

25.1. That being said, there is no reference in the RBI's circular dated 19.11.2007 as to whether the 1987 Act or the 1999 Act would apply to a person who is in comatose state.

25.2. Insofar as the SBI's own policy circular dated 05.12.2018 is concerned (especially the part relied upon), it deals with accounts of persons disabled on account of autism, cerebral palsy, mental retardation, and multiple disabilities.

25.3. This circular, while it adverts to the requirement to obtain a guardianship certificate from a district court under the 1987 Act or from the Local Level Committee under the 1999 Act it confines itself to account holders who suffer from conditions described above. It does not advert at all to persons who are in comatose state.

Statutes

25.4. Therefore, the stand of SBI that a guardianship certificate had to be obtained from the concerned district court under the now repealed 1987 Act or from a Local Level Committee under the 1999 Act is, to my mind, clearly untenable. However, as to whether other statutes relied upon by SBI would apply would be known only after examining their scope, width and amplitude.

26. Therefore, I will now deal with each of the statutes on which reliance has been placed by SBI.

27. A bare perusal of the Guardians and Wards Act, 1890 (in short “the 1890 Act”) would show that it deals with appointment of guardians *qua* minors. The 1890 Act, thus, has no applicability to persons who are major.

28. Insofar as the 1987 Act is concerned, it cannot be relied upon by the SBI which, as noticed above, even according to the SBI, stands repealed. This Act, once again, would have no applicability. The 1987 Act was repealed with the enactment of the 2017 Act. The provision *qua* repeal is made in Section 126 of the 2017 Act. The 1987 Act, thus, as noticed above, can have no applicability in the instant case.

29. Insofar as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short “PWD Act”) is concerned, the same also stands repealed with the enactment of the Rights of Persons with Disabilities Act, 2016 (in short “RPWD Act”). The provision to this effect is made in Section 102 of the latter Act.

30. This, essentially, leaves one with the task of considering the scope and ambit of three statutes i.e. the 2017 Act, the 2019 Act, and the RPWD Act.

30.1. Insofar as the RPWD Act is concerned, it was enacted with the view to give effect to the United Nations Conventions on the rights of persons with disabilities and for matters connected therewith or incidental thereto. The United Nations General Assembly adopted the aforementioned convention on 13.12.2006. India is a signatory to this convention which was ratified by it on 01.10.2007. The convention came into effect from 03.05.2008. Though, India enacted the PWD Act in 1995, subsequent learning propelled India to adopt a rights based approach. Consequent thereto, the PWD Act, as adverted to above, was repealed and RPWD Act

30.3. A bare perusal of the same shows that a person who is in comatose state is not covered.

30.4. The 1999 Act which was enacted to create a national trust for welfare of persons afflicted with autism, cerebral palsy, mental retardation and multiple disability also does not appear to cover a person, who is in comatose state. The definition of autism, cerebral palsy and mental retardation given in Sections 2(a), 2(c) and 2(g) respectively, on a plain reading, are suggestive of the fact that a person, who is in comatose state cannot fall within the scope and ambit of any of the three diseases defined in these sections.

30.5. Insofar as the multiple disabilities are concerned, the said expression has been defined in Section 2(h) of the 1999 Act. This provision reads as follows :

“2. Definitions.-

xxx

xxx

xxx

(h) "Multiple Disabilities" means a combination of two or more disabilities as defined in clause (i) of section 2 of the Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)."

30.6. As would be evident, the definition of multiple disabilities has been tied in with Section 2(i) of the PWD Act which, as noticed above, stands repealed. However, for the sake of convenience, Section 2(i) of the PWD Act is extracted hereafter :

“2. Definitions.-

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xxx

xxx

(i) "disability" means-

(i) blindness;

32. Since the petitioners have filed affidavits, as directed vide order dated 20.11.2019, which advert to the assets held by them and the undertaking to the effect that they would utilize the assets of Mrs. Saroj Sharma, which includes money credited to her bank account(s), in her best interest and that they would file a report in that behalf with the Registrar General of this court every six months, I am inclined to appoint them as guardians.

33. This direction is being issued in the backdrop of the discussion above and upon a consideration of the opinion rendered by the medical board and the report submitted by the SDM/Tehsildar/Kanoongo, Kalkaji, Delhi.

34. The report of the SDM/Tehsildar/Kanoongo adverts to the assets owned by Mrs. Saroj Sharma. The report also alludes to the fact that the SDM along with Tehsildar and Kanoongo had visited Mrs. Saroj Sharma at her residence and that the petitioners are her daughters.

34.1. Besides this, the report also refers to the fact that Mrs. Saroj Sharma is housed at the Greater Kailash property and that petitioner no.2, is presently, staying with her.

35. Before I conclude, I may indicate, as was noticed by me in the interim order dated 20.11.2019, that certain broad guidelines have been laid down by the Division Bench of the Kerala High Court with regard to how, such like cases, are to be dealt with. The guidelines framed by the Division Bench of the Kerala High Court appear to be robust and, therefore, can be used as a framework for formulating guidelines that need to be applied in the National Capital Territory of Delhi till such time the legislative chasm is filled-up and a specific provision is made as to how guardians are to be appointed *qua* persons in comatose state.

36. **Guidelines**

(i) A person(s) who seek(s) to be appointed as guardians vis-à-vis an individual, who is lying in comatose state, shall in their petition to the court disclose the details of all tangible and intangible assets of such an individual. The details as to their location and approximate market value shall also be disclosed. In case of bank accounts, stocks, shares, and debentures and other investments are concerned, material particulars will be provided.

(ii) The court will have the person lying in comatose examined by a duly constituted medical board which would include, *inter alia*, a neurologist.

(iii) The court will also direct the concerned SDM/Tehsildar in whose jurisdiction the person lying in comatose is said to be located to carry out an enquiry to establish the veracity of the assertion and to gather material particulars concerning the person(s) who approach the court for being appointed as guardians. The enquiry will, *inter alia*, gather information as regards the relationship that the person(s) who wish to be appointed as guardians has/have with the person lying in comatose state. Information with regard to the financial condition of persons wanting to be appointed as guardians shall also be collected apart from other aspects which may have a material bearing in their discharging the duties of a guardian. Any conflict of interest concerning the affairs of the person lying in comatose state will be brought to fore in the report generated during the course of the enquiry.

(iv) Ordinarily only that person will be appointed as guardian who is a spouse or a progeny of the person lying in comatose. The person seeking appointment as a guardian in his petition to the court will, however, disclose

the particulars of all legal heirs of the person lying in comatose. In the event, the person lying in comatose has neither a spouse nor any children or even any legal heirs or if he/she has such persons in his life but stands abandoned by them subject to the permission of the court his next friend who wishes to be appointed as a guardian can approach the court with such a request. In the alternative, the Court could direct the Department of Social Welfare, GNCTD to appoint a public official such as a Social Welfare Officer or a person holding equivalent rank to act as the guardian of the person lying in comatose state.

(v) Only that person shall be appointed as a guardian who is otherwise in law competent to act as a guardian.

(vi) The order directing appointment of a guardian shall specify the assets *qua* which the guardianship order is passed. The court will be empowered to modify the order and bring within its sweep other assets, if required, in the interest of the person lying in comatose state. In case liquid funds are not available and there is a requirement to sell the assets of the person lying in comatose state, upon the guardian approaching the court, necessary directions could be passed in that behalf.

(vii) The person appointed as a guardian will file every six (6) months (or within such period as the court may indicate in its order) a report with the Registrar General of this court. The report shall advert to the transactions undertaken by the guardian in respect of the assets of the person lying in comatose state. Besides this, the report shall also indicate the funds, if any,

received by the guardian and their utilization for the purposes of maintaining the person lying in comatose state.

(viii) The Registrar General of this court will cause a separate register to be maintained which will set out *inter alia* the details of the proceedings, the particulars of the person appointed as a guardian and orders, if any, passed after the appointment of the guardian. Measures will also be taken by the Registrar General to preserve the reports filed by the guardian from time to time.

(ix) It will be open to the court to appoint a guardian either temporarily or for a limited period, as may be deemed fit.

(x) In the event, the guardian appointed by the court misuses his/her power or misappropriates, siphons or misutilizes the assets of the person lying in comatose state or fails to utilize the assets in the best interest of the person lying in comatose state, the court would have the power to remove the guardian and appoint another person in his/her place. The substituted person could also be a public officer such as a Social Welfare Officer or an officer holding an equivalent rank.

(xi) The guardian appointed by the court shall intimate his appointment to the public official/Social Welfare Officer or officer of an equivalent rank designated by GNCTD. Both the guardian as well as the Registrar General of this court will cause a copy of the order of guardianship being served upon such officer. Such officer shall visit the person lying in comatose at least once in every quarter. The Social Welfare Officer will generate a report of his visit. In case the Social Welfare Officer finds that the guardian

appointed by the court is not acting in the best interest of the person lying in comatose state, he will move the court, at the earliest, for seeking appropriate directions.

(xii) The guardian appointed by the court will ensure that the transactions entered into by him or her comport with the relevant provisions of the law.

(xiii) In case a relative or a next friend of the person lying in comatose state finds that the guardian is not acting in the best interest of the person lying in comatose state, such person will also have the locus to approach the court for issuance of appropriate directions and/or for removal of the guardian.

(xiv) In case, the guardian wishes to move the person lying in comatose state to another state or even to another country for the purposes of securing better medical treatment for the person lying in comatose state, he/she would approach the court for necessary permission before undertaking such an exercise.

37. Insofar as present petition is concerned, the prayer made in the same is allowed. The petitioners are appointed as guardians *qua* the PPF Account bearing No.10819169395 maintained by their deceased father Mr. Anand Ballabh Sharma.

38. Upon fulfilment of requisite formalities, SBI will transfer the amount available in the aforementioned PPF Account along with accrued interest to the joint account maintained by the petitioners along with Mrs. Saroj Sharma bearing No.00271000066085 maintained with HDFC Bank, Greater Kailash – I Branch, New Delhi.

39. Once a request in that behalf is made, the same shall be complied with at the earliest, though, not later than three days of the request being made.

40. The Department of Social Welfare, GNCTD will ensure that public officials/Social Welfare Officer(s) or officials of equivalent rank are appointed for each district in the National Capital Territory of Delhi. The Department of Social Welfare, GNCTD will also ensure that an oversight mechanism is put in place to ensure that the public official(s)/Social Welfare Officer(s) or officer(s) of equivalent rank visits the person(s) lying in comatose state and submit a detailed report in that behalf. The Department of Social Welfare will have liberty to prepare a format of the report keeping in mind the aforementioned guidelines and the purpose and object of the exercise. The report(s) prepared shall be preserved so that, if necessary, the court can have access to the same.

41. List for compliance *qua* this aspect of the matter by the Department of Social Welfare, GNCTD on 23.01.2020.

42. The Department of Social Welfare, GNCTD is also given liberty to suggest any modifications or additions to the guidelines set forth hereinabove so as to bring the same in line with the local conditions prevailing in the NCT of Delhi.

RAJIV SHAKDHER, J

JANUARY 07, 2020

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