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Reserved on 27.5.2020

Delivered on 15.6.2020

In Chamber

Case :- WRIT - C No. - 40096 of 2019

Petitioner :- Uma Mittal And 4 Others

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Bidhan Chandra Rai

Counsel for Respondent :- A.S.G.I., Amrish Sahai, C.S.C., Maneesh Mehrotra, Satish Chaturvedi, Seema Singh, Manish Mehrotra

Hon'ble Shashi Kant Gupta,J.

Hon'ble Saurabh Shyam Shamsbery,J.

(Delivered by Hon'ble Shashi Kant Gupta, J.)

1. The present writ petition has been preferred seeking the following relief:

(a) issue a writ, order or direction in the nature of mandamus appointing petitioner No.1, namely Uma Mittal, W/o Sri Sunil Kumar Mittal, as the guardian of her husband to protect his interest, administer bank accounts, investments, proprietorship business, etc. and in the event of necessity, to sell the immovable property standing in the name of her husband and to use the proceeds towards medical treatment of her husband and family welfare expenses;

Backdrop

2. The material facts of the case as pleaded in the writ petition are as follows:

3. Petitioner No.1, is the wife of Sri Sunil Kumar Mittal (in short 'SKM'), son of Late Visheshwar Dayal Mittal. The couple had four children (Petitioners Nos. 2 to 5) i.e. three daughters

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namely Mrs. Mohini Mittal Raizada, Ms. Ritika Mittal, Ms. Ruchika Mittal and a son Mr. Raghav Mittal; Petitioner No. 2 is a married daughter, married to Sri Mukul Raizada and is presently residing with her husband at Gurgaon, Haryana. However, Petitioners No. 3 and 4 are unmarried daughters and Petitioner No. 5 is the son. The Petitioners No. 3, 4 and 5 are residing with Petitioner No. 1 at their parental house 43-A/9B, Clive Road, Civil Lines, Prayagraj;

4. It has been pleaded that on 22-12-2018 at about 1:30 a.m., it was discovered that SKM had fallen in the bathroom of his residence where he was lying unconscious, suffering from a severe head injury, nasal bleeding and vomiting. He was immediately taken to Haridaya Super-speciality Centre and thereafter to Kriti Scanning Centre where C.T. scan of his brain was carried out. On the same day about 3:30 AM, he was discharged from Haridaya Nursing Home. The discharge card mentioned that he was suffering from intracranial bleeding. The Glasgow Coma Scale (GCS) was 6 (E1V1M4) and pupil right NSRL and left dilated non-reacting; Subsequently, he was taken to Dr. Ram Manohar Lohia Institute of Medical Sciences, Lucknow where he was operated upon on 22-12-2018. Tracheostomy tube was inserted on 24-12-2018 and he was shifted to incentive care

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unit for almost fifteen days. The certificate dated 01-01-2019 shows that treatment of brain haemorrhage is going on and patient is in a comatose state; since treatment did not show any sign of meaningful neurological recovery at R.M.L. Institute, SKM was flown to New Delhi where he was admitted in Indraprastha Apollo Hospital on 07-01-2019, where he was kept in incentive care unit; after being hospitalized almost for five months, SKM was discharged from Apollo Hospital on 01-05-2019 at GCS E4VtM4, which means that he was in a comatose state. He was taken to his sister's residence in Noida on 01-05-2019, which is near to Apollo Hospital. The petitioner arranged two nursing staff from H.D.U. Care Unit, New Delhi to look after SKM. Petitioner No.1 stayed together with him up to 26-08-2019 for routine check-ups.

5. On 29-05-2019, SKM was again admitted for routine check-up. Thereafter he was discharged on 01-06-2019 at GCS 7 (E4VtM2). It is noteworthy that during the routine check-up, the Doctors opined that till his eventual demise, patient would remain in comatose condition. Petitioner No.1 has been further advised that continued supportive treatments have to be followed up for his entire life time; In these circumstances, SKM was brought back home at Prayagraj. A room in the house of the petitioners, has been converted into a ward (like

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ICU) and petitioner No.1 has arranged two nursing staff for the care and comfort of SKM. After being discharged from the Apollo Hospital, SKM has not been able to communicate and has been breathing with the help of 'Tracheotomy Tube' in his throat.

6. It has been further pleaded that petitioner No. 1 applied for a disability certificate before the Chief Medical Officer, Prayagaraj. According to Chief Medical Officer, SKM does not come within the definition of a person with multiple disabilities within the meaning of 'National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999' (hereinafter referred to as "the National Trust Act, 1999"). The Chief Medical Officer issued a certificate on 04-11-2019, to the effect that he is bed ridden, in a comatose state; SKM is being fed by a 'Peg Tube' attached to his stomach. His position has to be changed after intermittent intervals to avoid bedsores. It is stated that the expenses of the treatment and nursing care of SKM has been met by the family savings and by taking loans from relatives and partly from the rent earned from his properties; SKM needs to be taken to the hospital for his periodic review. Apart from that the Petitioner No. 1 is also responsible for the marriage of the

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second and third petitioners for which she has to arrange the necessary expenses while also meeting the other needs of the family; medical expenses for the day-to-day treatment, are also more than the rent being received and the petitioners are also unable to repay the loans without drawing money from the bank accounts. However, the Bank accounts stand in the name of SKM, and as such petitioners are not in a position to operate the same; Petitioner No.1 has already incurred huge expenses, by borrowing money from various quarters for his treatment. Having exhausted all her financial resources, Petitioner No.1 is in state of depression, despair and abandonment, besides undergoing from irretrievable agony, stress and suffering on account of the plight of her husband lying in a vegetative state; parents of SKM have already expired. After the family settlement, the petitioners are residing in the family house at 43-A/9B Clive Road, Civil Lines, Prayagraj. The said residential house is mortgaged with the State Bank of India against two loans bearing Account Nos. 30867822772 and 31948452304.

7. It has been further pleaded that SKM was carrying on business as a sole proprietor, till December 2018. He also owns a shop bearing no. B-36, Upper Basement, Indra Bhawan, Civil Lines, Prayagraj. However, in the year 2015, he

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sold the shop to one Sri Zakir Husain after receiving consideration, which has been shown in his books of accounts but the registry of the said shop could not be done as SKM is lying in a comatose state; SKM is the owner of property in Vinayak Enclave, M.G. Marg, Civil Lines, Prayagraj fetching a rent of Rs. 54,000/- per month; the aforesaid property has been let out to UPTEC Computer Consultancy Ltd. at the rate of Rs. 33,110/- in terms of agreement dated 15-11-2007; SKM also owns a shop bearing Shop No. G-1, Gayatri Dham, Milan Square, 128/24, M.G. Marg, Civil Lines, Prayagraj wherein Plywood retail business was being carried out in the name of Ply House. This shop was purchased on 24-05-2012 in the name of petitioner no. 1. The said shop is also mortgaged with South Indian Bank Ltd. against cash credit limit for running the business of Ply House as well as for getting an overdraft loan.

8. SKM has Savings Bank Account, Current Account, PPF Account, Loan Account, Overdraft Account and Cash Credit Limit Account with the Respondent No. 5, State Bank of India and Respondent No. 6, South Indian Bank Limited. SKM is the sole signatory of the accounts and being in a comatose condition, the Petitioners are unable to operate the various bank accounts, the details of which are as follows:

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Bank Name	Name of Account Holder	Account Number	Type of Account
S.B.I.	SKM	11076362778	PPF
S.B.I.	SKM (HUF)	11076362778	PPF
S.I.B.L.	SKM	0627053000003369	Saving
S.I.B.L.	SKM	0627081000000061	Overdraft General
S.I.B.L.	SKM	0627652000000249	Car Loan
S.I.B.L.	S. K. Mittal (HUF)	0627053000002676	HUF
S.I.B.L.	Ply House	0627084000000005	Cash Credit
S.I.B.L.	Furniture House	0627084000000003	Current

9. It has been further pleaded that apart from the aforesaid immovable properties, SKM also holds some investments in 'Anand Rathi' having customer I.D. as ALBDS176 and ALBDS177, out of which some of them are mutual funds, shares and S.I.P.'s. SKM also holds various LIC Policies, Insurance Policies from various companies;

Submissions of the learned counsel for the parties.

10. Sri Bidhan Chandra Rai, learned counsel for the petitioner, submitted 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. LegB.C.51/ 09.07.005/2007-08 dated 19-11-2007 advising the Banks to accept Guardianship Certificates issued under National Trust Act, 1999 but the circular, as stated, is not applicable in respect of a person lying in a comatose state.

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11. In support of his contention, learned counsel for the petitioner has placed reliance upon the following decisions:-

(I) *Aruna Ramchandra Shanbaug Vs. Union of India*; (2011) 4 SCC 454 (Paras 127 & 131);

(II) *Shafin Jahan Vs. Asokan KM*; (2018) 16 SCC 368 (Paras 45 & 46);

(III) *Shobha Gopalakrishnan and others Vs. State of Kerala and others*; (2019) SCC Online Ker 739 (Para 42 & 43)

(IV) *Vandana Tyagi Vs. Government of National Capital Territory of Delhi and others*; (2020) SCC Online Del 32 (Para 76)

(V) *Philomena Leo Lobo Vs. Union of India and others*; (2017) SCC Online Bom 8836 (Para 6)

(VI) *Dr. Kuldeep Chand Maria Vs. Union of India & Others*; (2016) SCC Online HP 497 (Para 4)

12. He further submitted that this Court in exercise of its powers under Article 226 of the Constitution of India can invoke the doctrine of *Parens patriae* and appoint the petitioner No. 1, Uma Mittal as a Guardian of her husband SKM, who is still lying in a comatose state. Learned counsel for the petitioner while referring to various legislative enactments has submitted that none of the provisions of any of the Acts provide for appointment of guardians for a person in a comatose state, unlike legislations for appointment of guardian for minors and persons with other multiple

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disabilities or mental illnesses like mental retardation etc. In this regard he referred to the provisions of the following enactments:

- (a) The Guardians and Wards Act, 1890,
- (b) The Code of Civil Procedure, 1908,
- (c) The Indian Lunacy Act, 1912 (repealed),
- (d) The Hindu Minority and Guardianship Act, 1956,
- (e) The Mental Health Act, 1987 (repealed),
- (f) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (repealed),
- (g) The National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999,
- (h) The Rights of Persons with Disabilities Act, 2016 and The Mental Health Care Act, 2017

13. Sri Saurabh Srivastava, learned Chief Standing Counsel, appearing on behalf of the Respondents No. 2 to 4 has not disputed the averments made by the petitioner and has filed a short counter affidavit annexing the Medical Report of SKM by a Three Members Committee constituted for the purpose, in pursuance of the earlier directions issued by this Court.

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14. Sri Amrish Sahai, learned counsel for the Respondent No. 5, State Bank of India, has not disputed the facts narrated in the writ petition, but has raised a sole objection to the effect that the State Bank of India should have been impleaded through its main Branch, but the same has no bearing on the merit of the matter and as such we find no substance in the preliminary objection so raised.

Discussion

15. Heard learned counsel for the parties through Video Conferencing and perused the record.

16. A perusal of the order sheet dated 7.12.2019 passed by this Court indicates that the learned Standing Counsel appearing on behalf of Respondents No. 2 to 4 was granted two weeks' time to file counter affidavit annexing the medical report of SKM, husband of Petitioner No. 1. In pursuance of the aforesaid direction, a short counter affidavit has been filed annexing therewith a medical report by a "Medical Board" consisting of Dr. Rahul Singh, Deputy Chief Medical Officer, Dr. R.C. Pandey, Deputy Chief Medical Officer, Prayagraj and Dr. Anil Kumar, Additional Chief Medical Officer, Prayagraj. For ready reference, the said report is quoted hereinebelow:-

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“Medical Examination Report

As per order of Hon'ble High Court Prayagraj dated 06/01/2020, in respect to WRIT PETITION No. 40096 OF 2019, Uma Mittal and (4) Four others versus Union of India with 5 (Five) Others and C.M.O. Prayagraj, Order No. A Medical board is constituted that comprised of Dr. Anil Kumar A.C.M.O Prayagraj, Dr. R.C. Pandey, Deputy C.M.O Prayagraj and Dr. Rahul Singh, Deputy C.M.O. Prayagraj, the board thoroughly examined the patient at his residence, 43A/9B, Clive Road, Civil Lines, Prayagraj at 11.30 AM on 11/01/2020.

As per records available, the patient had sustained injuries on 22/12/2018. His general condition is very poor state.

The Examination report is as follows:

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Patient was found lying on bed with life support, (Tracheostomy tube is present in situ with oxygen support, pulse omimeter is there and SPO2 reading-100% on 1.5 Litre of Oxygen, with heart rate 92 beats per minute, Peg tube was in situ and Foley's Catheter is in situ.)

On examination, the patient is found in Unconscious state is not oriented in time place and person and also was not responding to any painful stimulus.

Patient is not in position to recognize surrounding people around him and not in position to make any signature or perform any other physical activity.

Patient's Right Thumb Impression is attested below.

Medical Board Members:

Dr. Anil Kumar Dr. R.C. Pandey Dr. Rahul Singh
A.C.M.O,Prayagraj Deputy C.M.O, Prayagraj Dy.C.M.O Prayagraj”

17. A perusal of the said report clearly indicates that on examination, the patient was found in an unconscious state and is not oriented in time or place and was also not responding to any painful stimuli. Patient is also not in a position to recognize the people around him and not in a position to make any signatures or perform any other physical activity. Thus, the husband of Petitioner No. 1 was found in a vegetative state.

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18. From a perusal of the record and the submissions made by the learned counsel for the petitioner, it is evident that the husband of the petitioner, SKM is lying in a comatose state. The petitioners have already incurred huge expenses in connection with the treatment and have exhausted their financial resources. They are in a state of despair, abandonment, isolation and are undergoing agony, stress and depression on account of pathetic condition of the victim who is lying in a vegetative state, as such, the petitioners were compelled to approach this Court for appointing the petitioner no. 1, wife of the SKM to be his Guardian submitting that no legislation in India provides for appointment of Guardian for a person lying in comatose state unlike legislation for appointment of Guardians for minor and persons with other disabilities like mental retardation etc. While referring to the judgment passed by Kerala High Court in the case of **Shobha Gopalkrishnan (supra)**, learned counsel for the petitioner has submitted that, while invoking the doctrine of "*parens patriae*", the Kerala High Court, has appointed the legal heir of the victim as a guardian, holding that no legislation in India provides for appointment of guardian to a person in a comatose state. The said judgment of **Shobha Gopalkrishnan (supra)** has been followed by the Delhi High Court in the case of **Vandana Tyagi (supra)**,

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wherein discussions in this regard, have been made from Paragraphs 57 to 68 which are being quoted hereinbelow:-

"57. 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.

58. 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.

59. 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.

60. 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.

61. 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 was enacted. While, this Act, inter alia, makes provisions for rights and entitlements of persons with disability, persons with benchmark disability, and persons with disability with high support needs, there appears to be no provision in this statute concerning persons in comatose state. It is relevant to note that Section 14 of the RPWD Act makes a provision for guardianship with respect to persons with disability. The definition provided under Section 2(s) of the very same Act, qua persons with disability, does not cover a person, who is in comatose state :

"2. Definitions.-

xxx

xxx

xxx

(s)"person with disability" means a person with long term physical, mental, intellectual, or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others."

62. Likewise, the 2017 Act which was enacted to provide for mental healthcare and services of persons with mental illness and matters connected and incidental thereto it does not take

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within its sweep a person, who is in comatose state. Section 2(s) of the 2017 Act which defines mental illness reads as follows:

"2. Definitions.-

xxx xxx xxx
(s) "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub-normality of intelligence."

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

64. 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.

65. 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)."

66. 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.-

xxx xxx xxx
(i) "disability" means-
(i) blindness;
(ii) low vision;
(iii) leprocy-cured;
(iv) hearing impairment;
(v) locomotor disability;
(vi) mental retardation;
(vii) mental illness."

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67. As is obvious, there are seven disabilities adverted to in Section 2(i) of the PWD Act. The definition of "mental retardation" in Section 2(r) of the PWD Act is identical to the definition of the expression "mental retardation" given in Section 2(g) of the 1999 Act. The expression "mental illness" has been defined in Section 2(q) of the PWD Act, which reads as follows:

"2. Definition.-

xxx xxx xxx
(q)"mental illness" means any mental disorder other
than
mental retardation."

68. A careful perusal of these definitions would show that a person who is in comatose state is not covered."

19. We have gone carefully through the aforementioned judgments of Kerala High Court and Delhi High Court as referred to hereinabove. We are in total agreement with the analysis and the view expressed by them holding that none of legislative enactments provide for appointment of a guardian for a person lying in a comatose state.

20. Now the question arises that when there is no legislative enactment, providing for appointment of a guardian for a person lying in a comatose state, how the matter with regard to appointment of guardian should be dealt with. We cannot lose sight of the fact that we have been called upon to discharge '*parens patriae*' jurisdiction. The Court under Article 226 of the Constitution of India can pass orders and given directions as are necessary for subserving the ends of justice when no remedy is provided in any statute in respect to persons lying in comatose condition.

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21. The doctrine of *Parens Patriae* (father of the country) had originated in British law as early as the 13th century. It implies that the King is the father of the country and is under obligation to look after the interest of those who are unable to look after themselves. The idea behind '*Parens Patriae*' is that if a citizen is in need of someone who can act as a parent who can make decisions and take some other action, sometimes the State is best qualified to take on this role.

22. In the Constitution Bench decision of this Court in **Charan Lal Sahu vs. Union of India (1990) 1 SCC 613** (vide paras 35 and 36), the doctrine has been explained in some detail as follows:

"In the "Words and Phrases" Permanent Edition, Vol. 33 at page 99, it is stated that *parens patriae* is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words *parens patriae* meaning thereby 'the father of the country', were applied originally to the King and are used to designate the State referring to its sovereign power of guardianship over persons under disability. *Parens patriae* jurisdiction, it has been explained, is the right of the sovereign and imposes a duty on the sovereign, in public interest, to protect persons under disability who have no rightful protector. The connotation of the term *parens patriae* differs from country to country, for instance, in England it is the King, in America it is the people, etc. The government is within its duty to protect and to control persons under disability".

23. The duty of the King in feudal times to act as *parens patriae* (father of the country) has been taken over in modern times by the State.

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24. The Apex Court in the case of **Shafin Jahan (supra)** has further expanded the jurisdiction of the Court in application of doctrine of *parens patriae* and has held as under:

“45. Thus, the Constitutional Courts may also act as Parens Patriae so as to meet the ends of justice. But the said exercise of power is not without limitation. The courts cannot in every and any case invoke the Parens Patriae doctrine. The said doctrine has to be invoked only in exceptional cases where the parties before it are either mentally incompetent or have not come of age and it is proved to the satisfaction of the court that the said parties have either no parent/legal guardian or have an abusive or negligent parent/legal guardian.

46. Mr. Shyam Divan, learned senior counsel for the first respondent, has submitted that the said doctrine has been expanded by the England and Wales Court of Appeal in a case DL v. A Local Authority and others¹⁹. The case was in the context of "elder abuse" wherein a man in his 50s behaved aggressively towards his parents, physically and verbally, controlling access to visitors and seeking to coerce his father into moving into a care home against his wishes. While it was assumed that the elderly parents did have capacity within the meaning of the Mental Capacity Act, 2005 in that neither was subject to "an impairment of, or a disturbance in the functioning of the mind or brain", it was found that the interference with the process of their decision making arose from undue influence and duress inflicted by their son. The Court of Appeal referred to the judgment in Re: SA (Vulnerable Adult with Capacity : Marriage)²⁰ to find that the parens patriae jurisdiction of the High Court existed in relation to "vulnerable if 'capacitous' adults". The cited decision of the England and Wales High Court (Family Division) affirmed the existence of a "great safety net" of the inherent jurisdiction in relation to all vulnerable adults. The term "great safety net" was coined by Lord Donaldson in the Court of Appeal judgment which was later quoted with approval by the House of Lords in In Re F (Mental Patient: Sterilisation)²¹. In paragraph 79 of Re: SA (Vulnerable Adult with Capacity : Marriage), Justice Munby observes:“

The inherent jurisdiction can be invoked wherever a vulnerable adult is, or is reasonably believed to be, for some reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent. The cause may be, but is not for this purpose limited to, mental disorder or mental illness. A vulnerable adult who does not suffer from any kind of mental incapacity may nonetheless be entitled to the protection of the inherent jurisdiction if he is, or is reasonably believed to be, incapacitated from making the relevant decision by reason of such things as constraint, coercion, undue influence or other vitiating factors.”

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25. Thus, a perusal of the aforesaid decisions clearly indicates that the Constitutional Courts may also act as *parens patriae* so as to meet the ends of justice. The Constitutional Courts in the country have exercised *parens patriae* jurisdiction in the matter of child custody, treating the issue of custody of a child to be of paramount concern. Similarly, the doctrine has been invoked in cases where a person who is mentally retarded, is produced before a Court in a writ of Habeas Corpus. These are the rare situations, when the Court can invoke the aforesaid doctrine.

26. In our opinion, in the present case this Court cannot shirk its responsibility when a distress call is given by a sinking family of a person lying in a comatose state for the past year and a half. The dominant factor, after all, is not enforcement of rights guaranteeing protection of life of warring parties under Article 226 of the Constitution but the protection of the rights of a human being lying in a comatose state under Article 21 of the Constitution of India. The Court under Article 226 can pass orders and give direction as are necessary for subserving the ends of justice or to protect the person who is lying in a vegetative state. Under the circumstances, this Court, under Article 226 of the Constitutions of India, is the ultimate guardian of a person who is lying in a

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comatose/vegetative state and may provide adequate relief of appointment of a Guardian.

27. It may be noted that the Division Bench of Kerala High Court in the case of **Shobha Gopalakrishnan (supra)** has framed certain broad guidelines with regard to appointment of guardian qua a person lying in a comatose state since no specific provision was available in any statute in this regard, The guidelines framed by the Division Bench of Kerala High Court appear to be formidable and sound and, therefore, can be used as framework for formulating guidelines that need to be implemented in the State of Uttar Pradesh till such time, the legislative enactments are framed and specific provisions are made as to how guardians are to be appointed qua persons in a comatose state.

28. Thus, taking a cue from the decision of **Shobha Gopalakrishnan (supra)**, we fix the following norms/guidelines as a temporary measure till an appropriate enactment is legislated as to how guardians are to be appointed vis-a-vis an individual who is lying in comatose state:-

“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 High Court (in short '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

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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.

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(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 will ensure that the transactions entered into by him or her comport with the relevant provisions of the law.

(xii) 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.

(xii) 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.”

29. That it goes without saying that the aforesaid guidelines are general in nature and the Court would always have the power to relax the same or add certain other conditions as may be required in each case.

Conclusion:

30. Having gone through the medical examination report, (annexed with the short counter affidavit) prepared by the Medical Board constituted in pursuance of the directions given by this Court and the averments made in the writ petition, we are satisfied that SKM, husband of the petitioner No. 1, who was the sole bread earner in the family, is lying in a comatose state. Perusal of the record further indicates that SKM, has properties (immovable/movable, investments, bank

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accounts, deposits etc.) in his name, but the petitioners are not in a position to deal with the same due to legal hurdles. Further the Petitioners have incurred huge expenses for his treatment which has already lasted for more than a year and a half, for which they have even resorted to borrowing money from relatives and friends. Thus, petitioners who are in precarious financial condition are knocking on the door of this Court for redressal of their grievances.

31. Also, in view of the above discussions made hereinabove, there appears to be no dispute that none of legislative enactments as discussed in the earlier part of the judgment are applicable qua SKM, a person lying in a comatose state. Further, the petitioners are in dire need of money towards medical treatment of SKM and for the welfare of the family as they have exhausted their financial resources in the past one and a half years.

32. It is worthwhile to note, that the instant writ petition has been filed jointly by all the legal heirs of SKM namely Smt. Uma Mittal, Petitioner No. 1 (wife), Smt. Mohini Mittal Raizada, Petitioner No. 2 (married daughter), Ms. Ritika Mittal and Ms. Ruchika Mittal, Petitioners No. 3 and 4 (unmarried daughters) and Mr. Raghav Mittal, Petitioner No. 5 (son) with a prayer to appoint the Petitioner No. 1, Uma Mittal, wife of the SKM as guardian of her husband for the purpose of

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protecting his interest, administer bank accounts, investments, proprietorship business, etc. and in the event of necessity, to sale the immovable property standing in the name of SKM and to use the proceeds towards medical treatment of her husband and family welfare expenses. Thus, it is also clear that there is no dispute amongst the legal heirs of SKM.

33. Accordingly, while accepting the medical report of SKM submitted by the Medical Board, we hereby appoint the Petitioner No. 1, Uma Mittal, wife of SKM as the guardian of her husband SKM, who is in a comatose condition, vested with the property of her husband SKM to do all acts, deeds and things for the proper medical treatment, nursing care, welfare and benefit of the SKM and his children and with power to do all acts, deeds and things with respect to assets and properties of the SKM including; (i) operate bank accounts in the name of SKM; (ii) deal with shares, bonds, debentures in the name of SKM; (iii) invest the monies to earn optimum returns thereon; (iv) utilise the monies for proper upkeep and for fulfilling the needs of SKM and his children (v) represent the SKM before all persons/authorities/bodies; (vi) sign wherever required as guardian of SKM including for discharging any person/authority/body from duty/obligation/liability owed to

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SKM (vii) take possession and charge of all properties movable or immovable to SKM; (viii) take actions in law to protect interest of SKM; (ix) sign all deeds, documents, cheques as guardian of SKM; (x)petitioner No. 1 shall also be entitled to incur expenses for the family welfare purposes including marriages of her daughters namely Ms. Ritika Mittal, Petitioner No. 3 & Ms. Ruchika Mittal, Petitioner No. 4.

34. It is reiterated that the upon fulfilment of requisite formalities, the concerned Banks (Respondents No. 5 and 6)/any other financial institutes will permit the Petitioner No. 1, Uma Mittal to operate the bank accounts and deal with other financial affairs standing in the name of SKM.

35. It is made clear that the Petitioner No. 1, Uma Mittal shall not sell, alienate encumber any of the immovable properties of the SKM except with the express permission of the Registrar General of this Court. The same will however not come in the way of the petitioner no. 1 letting out the immovable properties of the SKM from time to time and getting back the possession thereof. The petitioner No. 1, Uma Mittal shall comply with other requirements of being the guardian of petitioner No.1. Needless to state, such appointment is till SKM is unable to look after his affairs and subject to revocation in accordance with law.

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36. It is further directed that the Petitioner No. 1 would file a report with the Registrar General of this Court every six months, detailing the transactions in respect of the assets of SKM.

37. Before parting, we wish to recommend to the Central Government to consider enacting an appropriate legislation pertaining to appointment of guardians qua persons lying in a comatose state, as no remedy is provided in any statute to persons in comatose/vegetative state, (as already discussed in detail in earlier part of this judgment), unlike legislations for appointment of guardians for minors and persons with other disabilities, including like mental retardation etc.

38. With these observations, this petition stands **disposed of** finally.

39. The Copy of this Order be placed before the Registrar General for necessary follow up/compliance in the matter.

40. Registry is required to forward a copy of this judgment to the Secretary, Law, Ministry of Law and Justice, Government of India, for information and appropriate steps.

Order Date:- 15.6.2020

Vinay/Arun