

CASE COMMENT

RAJNI HARIOM SHARMA VS. UNION OF INDIA AND ANOTHER

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ABSTRACT

The law relating to guardianship in India is a narrow one as it prescribes only for the appointment of guardians of individuals who are either minor or suffering from one or the other kind of mental or physical disability. The statutes do not take into consideration the cases of those individuals who because of some serious ailments are not able to attend to the regular vocations of life. The present case deals with a similar situation in which the husband is in a state of persistent vegetation because of which the wife has filed a petition before the Hon'ble Court seeking an order appointing her as the guardian of her husband.

The facts of the case evolve the situation of a financial crisis being faced by the family of the petitioner because of the incapability of the husband to continue to manage the affairs of his business. The issues deal with a question of wider public importance that relates to the appointment of a guardian of the individuals who are in a persistent vegetative state. The arguments from the parties involve arguments from both the petitioner as well as the respondents. The respondents, however, disputed only the maintainability of the present petition before the Hon'ble High Court. The judgment by the Hon'ble Court tends to resolve the controversy which has been created because of the absence of the law with regard to a particular situation.

Key words: *Parens Patriae, Guardianship, Comatose situation, persistent vegetative state, Hindu Vedic philosophy, husband, wife.*

I. CITATION

Writ Petition (St) no. 3883 of 2020

II. PARTIES

- 1) Rajni Hariom Sharma (Petitioner)

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- 2) Union of India and State of Bombay (Respondents)

III. JUDGES

- 1) Justice Ujjal Bhuyan
- 2) Justice Milind N. Jadhav

IV. FACTS OF THE CASE

The present case arises out of a writ petition filed under Article 226 of the Constitution of India by the Petitioner Rajni Hariom Sharma seeking an order from the Hon'ble Court to appoint her as the guardian of her husband who is in a comatose situation from the past two years. The petitioner entered into a wedlock with her husband Mr. Hariom Sharma on February 20th, 1999. Two children were born out of the marriage between the petitioner and her husband. Out of the two children born, one of them is a minor at present.

The petitioner's husband is a businessman having a directorship in several companies such as M/s. Solus Software and Systems LLP, M/s. Solus Security Systems Private Limited and M/s. PSIM Community LLP and is a partner at M/s. Ampa Enterprises. However, on November 15th, 2018, the petitioner's husband suffered a cardiac arrest pursuant to which he was admitted to Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute where he was given extensive treatment for a period of almost three months. However, the husband did not recover despite the various surgeries performed by the doctors. The petitioner's husband went into a vegetative state as there was no improvement in his health conditions.

The petitioner's husband was discharged from the hospital on February 6th, 2019. However, he continued to remain in a comatose situation. The doctors advised the petitioners to keep the husband under the care of trained paramedic personnel and provide him with physiotherapy as well as speech therapy treatment. However, since it was the petitioner's husband who was running all the businesses, therefore because of his ailment, the family started facing a financial crisis. It was the contention of the petitioner that a substantial cost is incurred in providing all the medical facilities to the husband. Moreover, the petitioner's children, as well as her mother-in-law, was also dependent upon her because of which she had to face a huge financial burden.

Since the petitioner was not earning enough to make both the ends meet, therefore she has filed a petition before the Hon'ble Court to appoint her as the guardian of her husband so that she is able to manage the business of her husband and take care of her family.

V. ISSUES FRAMED

The Hon'ble High Court deliberated upon the following issues:

1. Whether the petitioner wife can be appointed as a guardian of her husband because of his comatose/vegetative condition?
2. Whether the Hon'ble Court has a jurisdiction to issue a writ in the present case despite the personal remedy being demanded by the petitioner?

VI. ARGUMENTS ADVANCED

• *Arguments on behalf of the Petitioner*

The petitioner wife in the present case was represented by Advocate Ms. Kenny V. Thakkar. Justifying the petitioner's appointment as the guardian of her husband, it was contended:

- That because of the sudden ailment of the petitioner's husband, the family has slipped into a financial crisis because of which difficulties have arisen in meeting the household expenses and in taking care of the dependent family members.
- That the petitioner's mother-in-law and her major son has given their consent to the appointment of the petitioner as the guardian of her husband.
- That Mr. Hariom Sharma has a fundamental right to live with dignity despite his vegetative state. Therefore, it is in his best interest that the petitioner is appointed as his guardian.
- That the petitioner has to discharge her obligations towards her husband and her family by taking care of their needs and requirements.

The petitioner also justified the invocation of the extraordinary writ jurisdiction of the Court by stating that since no statutory provision has been enacted for the appointment of the guardian of a person who is in a vegetative state, therefore, it is the Hon'ble High Court who has the power to grant the appropriate remedy.

• *Arguments on behalf of the Respondents*

Respondent no. 1 (Union of India) was represented by Advocate Mr. A.D. Yadav and Respondent No. 2 (State of Bombay) was represented by AGP Mr. S. S Panchpor. The respondent did not dispute the correctness of the factual circumstances as has been laid down by the petitioners. The sole contention of the respondents was that what petitioners sought to enforce is a remedy of a private nature. Therefore, they had no right to move the writ jurisdiction of the Hon'ble High Court which is essentially a remedy of a public nature. Thus it was the contention of the respondents that the writ petition is not maintainable before the Hon'ble High Court.

VII. JUDGMENT

The Hon'ble Bench began the judgment by opining that the question involved in the present writ petition was an extraordinary one and involved a significant amount of public interest. Taking cognizance of the discharge summary of the petitioner's husband issued by the hospital as well as various certificates issued by the medical professionals, the Hon'ble Bench concluded that the petitioner's husband was in a persistent vegetative state and was unable to speak or communicate with anyone in any manner.

The Hon'ble Bench also observed the difference between the situation of persons who are in coma and persons who are in a persistent vegetative state and opined that such persons cannot be termed as physically challenged or mentally challenged as the brain and heart of these persons are intact and they can survive for many years without any advanced life-saving equipment. Since these persons are neither physically nor mentally challenged nor they are a minor, therefore, the relevant statutes that provide for the appointment of guardians of such persons cannot be made applicable to the petitioner's husband.

Justifying the appointment of the petitioner as the guardian of her husband, the Court opined that in Hindu Vedic philosophy, the marriage is considered to be a sacred union of two souls. The wife is considered to be the better half of her husband and is under an obligation to discharge and perform all the duties of her husband. The petitioner has been married to her husband for more than twenty years now and two children were also born out of the wedlock which rules out any doubt concerning the stability of the marriage between the parties. Therefore, in the present case, the petitioner wife is best suited to be appointed as the guardian of her husband who is in a vegetative state.

Furthermore, the Hon'ble Court threw light on the doctrine of *parens patriae* and held that the State is under an obligation to look after the needs of all those individuals who are not able to look after themselves. The Hon'ble Bench opined that the definition of State as provided under Article 12 includes Courts because of which duty is cast upon the Courts to act as a *parens patriae* and take such decisions as are best suited to the interests of incompetent persons. Therefore, even though the petitioners could have filed a suit in a Civil Court under Order XXXII-A of the Code of Civil Procedure, 1908, which deals with the suits concerning family, the Hon'ble Court is justified in disposing of the writ petition in the present case taking into consideration the peculiar nature of the facts involved.

The Hon'ble Bench also took note of the earlier precedents of the various other High Courts dealing with similar situation and held that the Court can exercise writ jurisdiction and pass any order or direction which protects the fundamental rights of the individuals and advances the course of justice. This power of the High Court has also been provided under Section 151 of the Code of Civil Procedure, 1908 which provides that the Court may pass any order which meets the ends of justice. Therefore, the Court opined that the writ jurisdiction can be exercised in the present case despite an alternative remedy available under the Code of Civil Procedure, 1908. Therefore, the Court granted its approval to the appointment of the petitioner as the guardian of her husband.

VIII. COMMENT

Marriages under the Hindu Marriage Act is considered to be a sacrament, unlike the Muslim marriages which are in the nature of a contract. The parties to the marriage are considered to be part of one soul although externally they are divided into two bodies i.e. the man and the woman. The parties to the Hindu marriage are considered to be under an obligation to take care of each other and to perform the duties and the obligations of the other. In fact, the Hindu Vedic philosophy has granted the position of 'Ardhangini' to the wife which means the better half of the husband. The parties to the Hindu marriage are often referred to as the 'Sahyogi' of each other who must enjoy the company of each other in good times and help each other during bad times. This position of the Hindu Vedic philosophy has also been adopted by the Hon'ble Supreme Court of India in the case of *Kollam Chandra Sekhar vs. Kollam Padma Latha* wherein the Hon'ble Supreme Court, while rejecting the appeal of the

husband to set aside the decree of divorce, held that if one partner to the marriage is suffering from the illness, the other partner should take care of him and must not ask for the divorce.

Therefore, the Hindu Vedic philosophy, as well as the law, casts an obligation on the spouses to take care of the needs of each other in all circumstances, whether good or bad. Talking from this perspective, the Hon'ble Bombay High Court was justified in appointing the wife as the lawful guardian of her husband.

Moreover, there is no specific legislation in India which provides for the appointment of a guardian of an individual who is in a comatose or a persistent vegetative condition. Various statutes enacted by the legislature such as the Guardians and Wards Act, 1980, Mental Health Care Act, 2017 and Rights of Persons with Disabilities Act, 2016 provides for the appointment of guardians of individuals who are either physically or mentally incapacitated. Since as per the medical opinion, the person who is in a comatose situation cannot be considered as physically or mentally incapacitated, therefore no guardians can be appointed under the relevant statutes for such persons.

Therefore, the Hon'ble Bombay High Court by exercising its writ jurisdiction appointed the wife as the guardian of her husband which is in consonance with the interests of justice and the dignity of the husband who is in a comatose situation. Therefore, the present decision by the Bombay High Court advances the cause of justice and is made for the benefit of the husband.