

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO.3883 OF 2020

Rajni Hariom Sharma ... Petitioner
Vs.
Union of India and another ... Respondents

Ms. Kenny V. Thakkar for Petitioner.
Mr. A. D. Yadav for Respondent No.1-UOI.
Mr. S. S. Panchpor, AGP for Respondent No.2-State.

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

**Reserved on : AUGUST 07, 2020
Pronounced on : AUGUST 27, 2020**

P.C. :

This petition under Article 226 of the Constitution of India raises an important issue of significant public interest though essentially grievance of the petitioner is private.

2. Petitioner is the wife whose husband Mr. Hariom Sharma is in a state of comatose, a vegetative state, with no signs or prospect of revival. Besides the husband, petitioner has two sons one of whom is a minor and a dependent mother-in-law to look after. With mounting medical bills and other household expenses and having hardly any income of her own, petitioner in a state of helplessness has turned to this Court invoking its writ jurisdiction for relief.

3. We have heard Ms. Kenny Thakkar, learned counsel for the petitioner; Mr. A. D. Yadav, learned counsel for respondent No.1 - Union of India; and Mr. S. S. Panchpor, learned Assistant Government Pleader for respondent No.2 - State of Maharashtra.

4. Facts lie within a narrow compass. However, for the sake of

adjudication, the same are narrated hereunder.

5. Petitioner had married Mr. Hariom Sharma on 20.02.1999. Out of their wedlock, two children were born, namely, Yudhi Sharma on 27.02.2000 and Arjun Sharma on 19.01.2011. As would be evident, one of the sons is a minor. It is stated that father-in-law of the petitioner i.e., father of Mr. Hariom Sharma, Shyam Babu Sharma, had expired on 08.11.2015. Mother-in-law of the petitioner i.e., mother of Mr. Hariom Sharma, Mrs. Chandrawati Sharma is residing with the petitioner and is dependent on her.

5.1. Mr. Hariom Sharma is a businessman having multiple businesses. He is the Director of several companies like M/s. Solus Software and Systems LLP, M/s. Solus Security Systems Private Limited and M/s. PSIM Community LLP. That apart, he is a partner in the firm M/s. Ampa Enterprises. In all the above business enterprises, shareholding of Mr. Hariom Sharma is either 50% or 40%.

5.2. On 15.11.2018, petitioner's husband Mr. Hariom Sharma suffered a cardiac arrest while jogging leading to sudden unresponsiveness. He was rushed to and immediately admitted in Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute. Husband was treated in the said hospital for a period of almost three months. Despite extensive treatment including surgeries by a panel of doctors, husband did not recover and there was very little improvement though his health condition stabilized. However, he remained in a vegetative state.

5.3. After about 80 days of hospitalization, condition of Mr. Hariom Sharma became stable though he continued to remain in comatose condition. He was discharged from the hospital on 06.02.2019 although he continued to remain in a paralytic vegetative state. As per medical advice, he was required to take all necessary care under trained paramedic personnel 24x7 along with physiotherapy and speech therapy.

5.4. Petitioner has stated that she has religiously followed the advice given by the doctors of Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute and despite all the care and monitoring, husband Mr. Hariom Sharma continues to remain in a vegetative state from 15.11.2018 till date.

5.5. According to the petitioner, the medical expense incurred in looking after husband Mr. Hariom Sharma is quite substantial. She had to create a well-equipped air conditioned nursing room having amenities like recliner bed, air mattress and life-saving support system, etc. Besides, a full time nurse and part time physio and speech therapists have been appointed to continue with the treatment of her husband. Though his condition is stable, there has been no improvement and husband continues to remain in the same very comatose condition.

5.6. Petitioner has stated that in addition to her husband, she also has to look after her mother-in-law who is having her own age related ailments; besides looking after her children who are all dependents. That apart, there are other household expenses for herself and for the family combined.

5.7. Petitioner has only 10% shares in the company called M/s. Solus Security Systems Private Limited. Income earned by her through such shareholding is not sufficient to meet the expenses. Since the husband is in a comatose condition, he is not in a position to use his intellect, converse and sign various documents. Accordingly, petitioner is required to act as his guardian so as to safeguard the business and other interests of Mr. Hariom Sharma and also to look after her family.

5.8. When petitioner approached the concerned banks to allow her to put her signature in place of her husband, such a request was turned down; rather, petitioner was advised to approach the competent court to

get herself appointed as the guardian of Mr. Hariom Sharma.

6. It is in the above circumstances that petitioner has filed the present writ petition seeking a declaration from the Court that petitioner is the guardian of Mr. Hariom Sharma who is in a comatose condition, further directing the respondents and the institutions functioning under them to allow the petitioner to represent the interest of Mr. Hariom Sharma and to discharge functions on his behalf.

6.1. Contention of the petitioner is that because of the sudden ailment of husband Mr. Hariom Sharma which he never expected or visualized, rendering him to lead a life in coma, petitioner is staring at a totally uncertain future with very little income of her own to meet the medical expenses of her husband as well as the expenses of her family including her mother-in-law who herself is having lot of medical issues apart from the educational expenses of the two sons. Petitioner's mother-in-law and her son who has attained majority have consented to the petitioner being appointed as the guardian of Mr. Hariom Sharama. The other son being a minor, petitioner is his natural guardian. Mr. Hariom Sharma has fundamental right to live his life with dignity even though he is in a comatose / vegetative condition. Being the wife, petitioner has legal, moral, familial and societal obligations to look after the needs of her husband Mr. Hariom Sharma as well as the needs of the family. With her limited income, it is not possible for her to meet the above expenses. There being no statutory provision for appointment of guardian to look after persons in comatose condition or in vegetative state, petitioner has approached this Court under Article 226 of the Constitution for relief.

7. This matter was taken up by the Court on 12.03.2020. Thereafter on 23.06.2020, this Court had issued notice making it returnable on 08.07.2020. While calling upon the respondents to file affidavit, it was observed that Court may consider passing appropriate order on the next date. Thereafter the matter was heard on 09.07.2020 when the Court

directed learned AGP to file affidavit in reply. The matter was further heard on 23.07.2020. Ultimately, the matter was finally heard on 07.08.2020 when judgment was reserved. Be it stated that despite orders by this Court, respondents did not file any affidavit. As a matter of fact, learned counsel for the respondents did not dispute the factual narrative of the petitioner. What was disputed or contended was that the petition was sketchy as material particulars were not furnished and the writ court was not the proper forum for ventilation of the grievance of the petitioner considering the declaratory relief sought for by the petitioner.

8. Learned counsel for the petitioner submits that by virtue of being the wife of Mr. Hariom Sharma, petitioner is in the best position to act as his guardian considering his comatose condition and vegetative state for the last more than two years with no sign or prospect of revival. She can certainly be construed as the next friend and appointed as the guardian. On a query by the Court on what basis she was invoking writ jurisdiction of the Court, learned counsel for the petitioner submits that there is no statutory provision relating to appointment of guardian of a person who is in a state of coma or lying in a vegetative state. Therefore, a writ court exercising jurisdiction under Article 226 of the Constitution of India would be in the best position to grant relief to the petitioner. In support of her submissions, learned counsel for the petitioner has placed reliance on the following decisions:-

1. *Shobha Gopalakrishnan Vs. State of Kerala*, **2019 SCC OnLine Ker. 739**;
2. *Vandana Tyagi Vs. Government of National Capital Territory of Delhi*, **2020 SCC OnLine Del.32**;
3. *Uma Mittal Vs. Union of India*, **2020 SCC OnLine Allahabad 777**;
4. *Philomena Leo Lobo Vs. Union of India*, **2017 SCC OnLine Bom.8836**; and
5. *Dr. Madhu Vijaykumar Gupta Vs. State of Maharashtra*, **2019 (3) RCR (Civil) 259**.

8.1. Ms. Thakkar, learned counsel has particularly referred to the

decision of this Court in **Philomena Leo Lobo** (*supra*) and submits that the present writ petition is identical to the writ petition in the said decision and therefore, a similar order may be passed in the present case.

9. As alluded to hereinabove, learned counsel for the respondents while not contesting the factual narrative of the petitioner, have questioned maintainability of the writ petition contending that the relief sought for is basically a private relief; invoking public law remedy may not be justified. Their further contention is that in the absence of details, Court may not be in a position and may not pass an omnibus declaratory order enabling the petitioner to represent her husband in all his financial affairs.

10. We have heard learned counsel for the parties and considered the materials on record.

11. As we have already indicated in the introductory part of this judgment, the present petition has thrown up a rather piquant and extraordinary situation.

12. Exhibit 'C' to the writ petition is the discharge summary of Mr. Hariom Sharma issued by Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute. As per the discharge summary, Mr. Hariom Sharma was admitted in the hospital on 15.11.2019 and discharged on 06.02.2019. It says that at the time of admission, Mr. Hariom Sharma was brought in an unresponsive state. He had a sudden onset of breathlessness followed by collapse while jogging 15 minutes back. Discharge summary gives details of investigation and treatment carried out while he was in hospital. At discharge he was found to be haemodynamically stable, looked around but did not follow commands; he was on indwelling ryle's tube and suprapubic catheter, spastic quadriplegia and completely bed bound status. Discharge summary mentioned the treatment extended to Mr. Hariom Sharma as follows:

“40 years old male presented to A and E on 15/11/18 with episode of sudden unresponsiveness while jogging followed by cardiac arrest. Cardiopulmonary Resuscitation was given as per ACLS Protocol and ROSC was achieved after 17 minutes. He was admitted under Dr. Pravin Kahale’s care. Coronary Angiography was done and showed 95% stenosis at LAD and 90% stenosis at mid LAD followed by PTCA done under all aseptic precautions by Dr. P. Kahale. He was managed in Intensive Care Unit with strict neuro-monitoring, inotropic support, dual antiplatelets and LMWH, intubated, sedated and put on ventilator support. 17/11/18 MRI Brain showed extensive gliosis and sequelae of hypoxic insult. He was tracheostomised on 22/11/18 followed by weaning off ventilator support. He had episodes of involuntary jerky movements of limbs with persistent hiccoughs. Neurology (Dr. Jayanti Mani) advice was sought and antiepileptic medications were added. Gastrology (Dr. Gaurav Mehta) advice was sought in view of deranged liver profile and USG Abdomen suggestive of mild hepatitis and Tab. Udiliv was added. He was later shifted to the wards and reference was given to Dr. Abhishek Srivastava for neuro rehabilitation and was later transferred under his care for further management. Comprehensive Rehabilitation program was started comprising of Neurostimulants, Antispastics, Physical Therapy, Occupational Therapy, Orthoses, Hyperbaric Oxygen Therapy. He was started on Swallow therapy with speaking valve trials which were gradually increased as per his tolerance. He had multiple episodes of haematuria with catheter blocks and urinary tract infection which was managed with Inj. Piptaz for course of 7 days. Urology (Dr. Ismail) advice was sought and on 31/12/18 he underwent suprapubic catheter insertion under LA. He had episodes of exaggerated bite reflex causing trauma to oral cavity, hence on 5/1/19 Inj. Botulinum Toxin 100U was given in divided doses over bilateral masseter muscles with all aseptic precautions by Dr. Abhishek Srivastava. He had intermittent episodes of dysautonomia which was managed conservatively. On 22/1/19 FDG Brain Pet Scan was done and showed hypometabolism over bilateral cerebral, cerebellar area and grey matter. He was given a trial of TT block followed by successful decannulation on 30/1/19 which was tolerated well.

At discharge he is haemodynamically stable, looks around, doesn’t follow commands, on indwelling ryle’s tube and suprapubic catheter, spastic quadriparesis and completely bed bound status.”

12.1. Regarding rehabilitation, it was mentioned as follows:

“REHABILITATION:

Mobility training - Extensive physical therapy, tilt table

standing, passive left limb movements, trunk rotation, bridging, standing with AFO + gaiter.

Activities of daily living - Extensive occupational therapy, bed mobility and transfer, left UL strengthening and co-ordination, trunk strengthening + exercises.

Speech and language - speaking valve trials.

Swallowing and Diet - On RT feeds.

Bladder - On SPC (silicon catheter)

Bowel - Incontinent on diaper.”

12.2. He was advised to follow therapy as per home programs.

12.3. Therefore, from the discharge summary it becomes quite evident that at the time of discharge, petitioner’s husband was in a completely bed bound status. Though he was found to be stable, he did not follow any commands and was on various support system.

13. Dr. Jayanti Mani, Consultant Neurologist of Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute who had treated the husband while he was admitted in the said hospital has issued a certificate on 20.02.2020 certifying that patient Mr. Hariom Sharma was admitted to Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute on 15.11.2018 having UHID No.KH1000622088 and discharged on 06.02.2019. She has certified that Mr. Hariom Sharma is currently in a persistent vegetative state. Due to his aforesaid condition, he is unable to speak, sign or communicate in any manner. He would need continuous monitoring and nursing care at home along with physiotherapy and speech therapy.

14. Likewise Dr. Pravin Kahale, Interventional Cardiologist of the said hospital under whose care husband was admitted has also issued a certificate dated 19.02.2020. He has certified that Mr. Hariom Sharma was admitted in Kokilaben Dhirubhai Ambani Hospital and Medical

Research Institute under his care on 15.11.2018 and discharged on 06.02.2019. Like Dr. Mani, he has certified that Mr. Hariom Sharma is in a persistent vegetative state, unable to speak, sign or communicate in any manner.

15. As already indicated above, respondents have not filed any affidavit despite orders by the Court. In fact as has transpired, respondents have not questioned the foundational facts as stated by the petitioner. The objection is to the forum considering the relief(s) sought for. The facts as stated by the petitioner having not been controverted or disputed we would proceed on the basis of correctness of the facts.

16. Before proceeding further it is necessary to have a brief understanding of what we mean when we say a person is in coma or in a vegetative state though more often than not the two expressions are used interchangeably. As per dictionary meaning, 'coma' has been defined to mean a state of prolonged deep unconsciousness caused especially by severe injury or illness; 'comatose' has been defined to mean being in a state of coma. On the other hand, 'vegetative state' has been defined to mean being alive but comatose and without apparent brain activity or responsiveness. Therefore, from a layman's perspective there is not much of a difference between a state of coma i.e., comatose and being in a vegetative state.

17. In *Aruna Ramchandra Shanbaug Vs. Union of India*, (2011) 4 SCC 454, the related writ petition under Article 32 of the Constitution was filed on behalf of the petitioner Aruna Ramchandra Shanbaug by her friend Ms. Pinki Virani. A rape victim Aruna damaged her brain due to strangulation. She lived in a persistent vegetative state for long 36 years. Prayer was made that the respondents be directed to stop feeding Aruna and let her die peacefully. It was in that context, Supreme Court examined the more perplexing issue of euthanasia and the legal questions related thereto or arising therefrom. What is of relevance to us

is that a doctors' panel was appointed by the Court which submitted report upon medical examination of Aruna. In that report, significance of various terminologies was explained. It was stated that the words "coma, brain death and vegetative state" are often used in common language to describe severe brain damage. However, in medical terminology, these terms have specific meanings and significance. While we are not concerned with brain death, we may extract for the purpose of our present deliberation, what the team of doctors had reported and extracted by the Supreme Court in **Aruna Ramchandra Shanbaug** (*supra*) vis-a-vis coma and vegetative state:

"Coma

Patients in coma have complete failure of the arousal system with no spontaneous eye opening and are unable to be awakened by application of vigorous sensory stimulation.

Explanation: These patients are unconscious. They cannot be awakened even by application of a painful stimulus. They have normal heart beat and breathing, and do not require advanced life support to preserve life.

Aruna Shanbaug is clearly not in Coma.

Vegetative State (VS)

The complete absence of behavioral evidence for self or environmental awareness. There is preserved capacity for spontaneous or stimulus-induced arousal, evidenced by sleep-wake cycles i.e. patients are awake, but have no awareness.

Explanation: Patients appear awake. They have normal heart beat and breathing, and do not require advanced life support to preserve life. They cannot produce a purposeful, co-ordinated, voluntary response in a sustained manner, although they may have primitive reflexive responses to light, sound, touch or pain. They cannot understand, communicate, speak, or have emotions. They are unaware of self and environment and have no interaction with others. They cannot voluntarily control passing of urine or stools. They sleep and awake. As the centres in the brain controlling the heart and breathing are intact, there is no threat to life, and patients can survive for many years with expert nursing care. The following behaviours may be seen in the vegetative state:

Sleep-wake cycles with eyes closed, then open;

Patient breathes on her own;

Spontaneous blinking and roving eye movements;
Produce sounds but no words;
Brief, unsustained visual pursuit (following an object with her eyes);
Grimacing to pain, changing facial expressions;
Yawning; chewing jaw movements;
Swallowing of her own spit;
Non-purposeful limb movements; arching of back;
Reflex withdrawal from painful stimuli;
Brief movements of head or eyes towards sound or movement without apparent localization or fixation;
Startles with a loud sound.

Almost all of these features consistent with the diagnosis of permanent vegetative state were present during the medical examination of Aruna Shanbaug.”

17.1. From the above, we can say that patients in coma have complete failure of the arousal system with no spontaneous eye opening and are unable to be awakened by application of vigorous sensory stimulation. They may have normal heart beat and may not require advanced life support to preserve life but they remain unconscious, cannot even be awakened by painful stimulus. Regarding vegetative step, it is stated that in such a state, there is complete absence of behavioral evidence for self or environmental awareness. Patients are awake but have no awareness. They cannot produce a purposeful, co-ordinated, voluntary response in a sustained manner, although they may have primitive reflexive responses to light, sound, touch or pain. They cannot understand, communicate, speak or have emotions. They are unaware of self and environment and have no interaction with others. They cannot voluntarily control passing of urine or stool. As the centres in the brain controlling the heart and breathing are intact, there is no threat to life and patients can survive for many years with expert nursing care. Thereafter, various behavioral instances have been mentioned as being present in vegetative state.

17.2. In the facts of that case, the team of doctors found that almost all of these features consistent with the diagnosis of permanent vegetative

state were present during the medical examination of Aruna.

18. Therefore, when we say that a person is in coma or in a comatose condition or in a vegetative state, it cannot be construed that such a person is a physically challenged person or a mentally challenged person as is understood under the relevant statutes. Nor such a person can be construed to be a minor for the purpose of appointment of guardian. As such, it is quite evident that the relevant statutes relating to appointment of guardian, such as:-

1. The Guardian and Wards Act, 1980;
2. Mental Health Act, 1987 (repealed);
3. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;
4. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (repealed);
5. Mental Health Care Act, 2017; and
6. Rights of Persons with Disabilities Act, 2016

would not be applicable to persons lying in a comatose condition or in a vegetative state. Infact, there is consensus at the Bar that at present there is no legislation in India relating to appointment of guardians to patients lying in comatose or vegetative state.

19. Of course in Civil Procedure Code, 1908, there is Order XXXII-A dealing with suits relating to matters concerning the family. As per Rule 1(1), Order XXXII-A shall apply to suits or proceedings relating to matters concerning the family. As per Rule 1(2)(c), provisions of the said Order shall apply to a suit or proceeding in relation to guardianship of a person or the custody of any minor or other member of the family, under a disability. However, the word 'disability' has not been explained though the word "family" has been. As per Rule 6, for the purpose of Order XXXII-A, each of the instances mentioned therein shall be treated as constituting a family, such as, a man and his wife living together; any child or children being issue of theirs; or of such man or

such wife; and any child or children being maintained by such man and wife.

19.1. From a reading of Order XXXII-A, a view may be taken that for appointment of guardian of a person who is a member of the family and is under a disability, a suit or a proceeding may be filed in which event provisions of Order XXXII-A would be applicable.

20. However, instead of filing a suit under the Code of Civil Procedure, 1908, petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India.

21. Before moving to Article 226 of the Constitution of India, status of the petitioner who seeks to be the guardian of Mr. Hariom Sharma, her husband, needs to be elaborated upon and discussed a little more in detail. In the present case, evidently the parties are Hindus; parties not in any adversarial sense but in the context of petitioner's claim to represent her husband as his guardian, considering his medical condition. That brings us to the question of status of wife in the Indian social, philosophical, religious and legal context.

22. According to Hindu vedic philosophy, marriage is a *sanskar* or a sacrament. What is essentially contemplated is a union of two souls. The eternal being is composed of two halves i.e., the man and the woman. Both the halves are equal and one-half is incomplete without the other. As long as the wife survives, one half of the husband survives. Ancient Hindu tradition says that a man's life can never be complete without a wife i.e., his *Ardhangini* or his better half. They are considered to be equal partners. Wife is not only considered to be *Ardhangini* but is also referred to as '*Sahadharmini*'. Literal meaning of the concept of *Ardhangini* is that a Hindu woman is associated with her husband in the journey of life for fulfillment and for attainment of all goals. She is also referred to as *Sahayogini* co-operating with her husband in all his

activities as well as a *Sahakarmini* which means having an equal share in the actions of her husband. Together they are referred as *Dampati*. In *Manusmriti*, Manu had declared the wife as not just *Patni* but *Dharmapatni* meaning thereby that under *dharma* she is under obligation to discharge and perform all duties of her husband.

23. In *Kollam Chandra Sekhar Vs. Kollam Padma Latha*, (2014) 1 SCC 225, Supreme Court was deciding an appeal by the husband against the judgment of the High Court setting aside judgment and decree of divorce granted in favour of the appellant husband by the trial Court. High Court had not only set aside the judgment and decree of divorce but had also allowed the application of respondent wife against the appellant by granting restitution of conjugal rights. By the said decision, Supreme Court dismissed the appeal of the appellant husband and upheld the judgment of the High Court. In that context, Supreme Court observed that under Hindu Law, marriage is an institution and is highly revered in India. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. Partners in a marriage must weather these storms.

24. In such circumstances, there can be no manner of doubt that conceptually the wife can be said to be best-suited to be the guardian of her husband who is under a state of incapacity or disability on account of being in a comatose condition or vegetative state.

25. In so far the present case is concerned, petitioner had married Mr. Hariom Sharma on 20.02.1999 and a period of more than 20 years has gone by. They have two children born out of the wedlock. 20 years is a long enough period to judge stability of a relationship more so in the backdrop of petitioner coming forward to assume guardianship of her husband lying in a comatose state. Though in today's world a stray case of foul play cannot be ruled out, it will be wrong on our part to take such a jaundiced view of any claim made by a wife to guardianship of her

husband who is lying in a vegetative state. Therefore, we see no impediment in accepting the claim of the petitioner to be the guardian of her husband.

26. This brings us to the crucial issue of relief that may be granted to the petitioner by invoking our writ jurisdiction under Article 226 of the Constitution of India. As we have already discussed ideally a suit under Order XXXII-A of the Code of Civil Procedure, 1908 ought to have been filed though admittedly there is no statutory provision governing the field relating to appointment of guardian of a person lying in a comatose condition or in a vegetative state.

27. Reverting back to **Aruna Ramchandra Shanbaug** (*supra*), we find that Supreme Court also discussed about the doctrine of *parens patriae*. Supreme Court traced this doctrine to the British Law as early as in the 13th century, which implied 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. Explaining further, Supreme Court observed that the idea behind the doctrine of *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. Supreme Court referred to its Constitution Bench decision in *Charan Lal Sahu Vs. Union of India*, **(1990) 1 SCC 613** wherein it explained *parens patriae* jurisdiction as the right and duty of the sovereign in public interest to protect persons under disability who have no rightful protector. In **Charan Lal Sahu** (*supra*), it was explained that connotation of the term *parens patriae* differs from country to country. For example, in England it is the king and in America it is the people. Supreme Court emphasized that the duty of the king in feudal times to act as *parens patriae* has been taken over in modern times by the State. Proceeding further it was held that the Court is also a 'State' within the meaning of Article 12 of the Constitution. Therefore, in the case of an incompetent person, who is unable to take a

decision whether to withdraw life support or not, it is the Court alone as *parens patriae* which must take the ultimate decision though views of the near relatives, next friend and doctors must be given due weight.

28. A writ petition came to be filed before the Madras High Court by the wife of one Muhammad Rafi seeking a direction from the court to appoint her as guardian of her husband for the purpose of managing and selling the immovable properties as her husband was stated to be in a condition of coma. In *Sairabanu Muhammad Rafi Vs. State of Tamil Nadu*, **2016 SCC OnLine Madras 809**, a Single Bench of the Madras High Court appointed the petitioner as guardian of her husband for the purpose of dealing with his immovable properties and also for operating his bank accounts. While passing such order, it was observed that there was no dispute on facts; besides neither the Mental Health Act, 2017 nor the Guardian and Wards Act, 1890 provided for appointment of a guardian in such a situation. Further observing that petitioner could have approached the jurisdictional civil court by way of common law remedy, Madras High Court entertained the writ petition considering the peculiarity of the case and also in view of there being no dispute on facts. However, it was clarified that the aforesaid order would not come in the way of the legal heirs of the petitioner's husband questioning the transaction of the petitioner on behalf of her ailing husband.

29. In **Shobha Gopalakrishnan** (*supra*), Kerala High Court invoked its writ jurisdiction in a case of similar nature. Noticing that no remedy is provided under any statute to persons like patients in comatose state, it was held that in such a case, the High Court would invoke its jurisdiction under Article 226 of the Constitution of India, something like *parens patriae*. As the case of a patient lying in comatose state is not covered by any of the statutes for appointment of a guardian, it was held that petitioners in that case were justified in approaching the High Court seeking to invoke its jurisdiction under Article 226 of the Constitution of India. In the absence of any statutory provision, Kerala High Court

issued a set of guidelines as a temporary measure till the field is taken over by a proper legislation for appointment of a guardian to a person lying in a comatose state.

30. A similar issue had cropped up before a Single Bench of Delhi High Court in **Vandana Tyagi** (*supra*) where petitioners raised a grievance against the State Bank of India in not allowing them to have recourse to the Public Provident Fund account of their father. Be it stated that the father had expired whereafter the mother slipped into a comatose state. Petitioners were daughters of the said parents. Delhi High Court exhaustively considered the scope and ambit of Rights of Persons with Disabilities Act, 2016, Mental Health Act, 2017 and the Guardians and Wards Act, 1890 whereafter a conclusion was reached that none of these statutes dealt with or deals with or covers the case of a person who is in a comatose state. It was in that context that Delhi High Court referred to the decision of the Kerala High Court in **Shobha Gopalakrishnan** (*supra*) whereafter the prayer made by the petitioners was allowed, appointing them as guardians *qua* the Public Provident Fund account of their deceased father.

31. Again a writ petition came to be filed before the Allahabad High Court seeking a direction for appointing petitioner No.1 as the guardian of her husband to protect his business interest etc. as it was contended that the husband was in a comatose condition. In the said case i.e., *Uma Mittal Vs. Union of India*, **2020 SCC OnLine Allahabad 777**, Allahabad High Court referred to the judgment of the Kerala High Court in **Shobha Gopalakrishnan** (*supra*) which was followed by the Delhi High Court in **Vandana Tyagi** (*supra*). In that context, Allahabad High Court explored the concept of *parens patriae* holding that High Court under Article 226 of the Constitution of India can pass orders and give directions as are necessary for subserving the ends of justice when no remedy is provided in any statute in respect of persons lying in comatose condition. Reference was made to the decision of the Supreme Court in

Shafin Jahan Vs. Asokan KM, (2018) 16 SCC 368 wherein Supreme Court had further extended application of the doctrine of *parens patriae* and held that in an exceptional case, the constitutional courts may also act as *parens patriae* so as to meet the ends of justice. Allahabad High Court observed that the case before it pertained to protection of the rights of a human being lying in a comatose state under Article 21 of the Constitution of India. In such a situation, High Court under Article 226 of the Constitution of India can pass orders and give directions as are necessary for subserving the ends of justice or protecting the person who is lying in a vegetative state because in such circumstances, the constitutional court is the ultimate guardian of the person who is lying in a comatose / vegetative state and may provide adequate relief by appointment of a guardian. In the facts of that case, Allahabad High Court appointed petitioner No.1 Uma Mittal as the guardian of her husband with certain conditions.

32. Now coming to the decisions of our High Court, we find that in **Philomena Leo Lobo** (*supra*), a writ petition was filed by the petitioner seeking a direction in the nature of mandamus declaring her as guardian of her husband who was stated to be in a comatose condition. After considering various reports, this Court agreed with the prayer made by the petitioner and appointed her as guardian of her husband. Respondent authorities were directed to allow the petitioner to operate / deal with the financial affairs of the husband.

33. Coming to one more decision of this Court we find that in **Dr. Madhu Vijaykumar Gupta** (*supra*), petitioner sought for a direction from this Court to declare her as guardian of her husband who was in a state of coma. After traversing through various statutes, this Court observed that there was no statutory provision dealing with such a case. However, it was observed that petitioner could have approached the civil court for an appropriate declaration but in the facts of that case, this Court took the view that it would be unjust to direct the petitioner to take

recourse to a remedy before the civil court especially when the facts were not in dispute. In the facts and circumstances of the case, this Court held that it was a fit case to exercise extra-ordinary jurisdiction under Article 226 of the Constitution of India, and accordingly declared the petitioner to be the guardian of her husband who was in a state of coma, of course with certain conditions.

34. Recently, a civil suit was decreed by this Court declaring, recognizing and appointing plaintiff No.1, a senior advocate of this Court as the lawful guardian of Shri. Kirit N. Damania, an 87 year old solicitor and advocate who is completely bedridden and incapable of taking any decision for himself.

35. At this stage, we may remind ourselves of the width and plenitude of the power of the High Courts under Article 226 of the Constitution of India. Under clause (1) of Article 226, every High Court within its territorial jurisdiction has the power to issue directions, orders or writs to any person or authority including any government for the enforcement of fundamental rights and for any other purpose. Thus, a High Court while exercising writ jurisdiction under Article 226 of the Constitution of India may issue any direction or order in addition to a writ to any person besides an authority including any government not only for the enforcement of any fundamental right but for any other purpose.

36. In **Aruna Ramchandra Shanbaug** (*supra*), Supreme Court after examining and applying the doctrine of *parens patriae* also delved into the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India. After adverting to the said article, Supreme Court held that the High Court under Article 226 of the Constitution of India is not only entitled to issue writs but is also entitled to issue directions or orders. After referring to previous decisions of the Supreme Court dealing with the wide powers of the High Court, it was held that from the very language of Article 226, a petition can also be made to the High

Court under Article 226 praying for an order or a direction and not for any writ. In the context of that case, it was opined that Article 226 gives abundant power to the High Court to pass suitable orders on the application filed by the near relative or next friend or the attending doctors to withdraw life support to an incompetent person.

37. In fact in *T. K. Rangarajan Vs. Government of Tamil Nadu*, (2003) 6 SCC 581, which dealt with the unprecedented action of Tamil Nadu government terminating the services of all employees who had resorted to strike to press their demands, Supreme Court reiterated that under Article 226 of the Constitution of India, the High Court is empowered to exercise its extra-ordinary jurisdiction to meet unprecedented extra-ordinary situation having no parallel; though such a power is required to be used sparingly.

38. From the above, it is clearly deducible that when the High Court exercises jurisdiction under Article 226 of the Constitution of India, it does so to further the cause of justice. To provide justice or discharge *ex debito justitiae* is the *raison d' etre* of the courts. The Latin expression *ex debito justitiae* literally means a debt of justice; on account of justice; a claim, the refusal of which would involve an injustice, and therefore, one which justice owes it to the claimant to recognize and allow. The doctrine of *ex debito justitiae* is well established and requires no further elaboration. In addition to Article 226 of the Constitution, such power of the High Court is traceable to section 151 of the Civil Procedure Code, 1908 and section 482 of the Code of Criminal Procedure, 1973.

39. Referring to section 151 of the Code of Civil Procedure, 1908, Supreme Court in *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, AIR 1962 SC 527 held that the inherent power of the court is to make orders necessary for the ends of justice. Inherent power has not been conferred upon a court; it is a power inherent in the court by virtue of its duty to do justice between the parties before it.

40. In *Dinesh Dutt Joshi Vs. State of Rajasthan*, (2001) 8 SCC 570, Supreme Court reiterated the well established principle of law that every court has inherent power to act *ex debito justitiae* i.e., to do real and substantial justice for the administration of which alone it exists.

41. Thus, having regard to the discussions made above, we are of the view that reliefs sought for by the petitioner are reasonable and may be granted considering the peculiar facts and circumstances of the case. However, to ensure that order of this Court is followed in letter and spirit and there is no breach thereof, it is also essential that there should be some kind of monitoring of the functioning of the petitioner as guardian *albeit* for a limited duration to ensure that guardianship is being used for the benefit of the person who is in a vegetative state. Such monitoring may be carried out through the forum of Maharashtra State Legal Services Authority constituted under the Legal Services Authorities Act, 1987.

42. Accordingly and in the light of the above, the following directions are issued:-

1. Petitioner Mrs. Rajni Hariom Sharma shall be treated and accepted as the guardian of her husband Mr. Hariom Sharma who is in a vegetative state;
2. All authorities shall accept her status as such;
3. Member Secretary of Maharashtra State Legal Services Authority either through officials of the said authority or through a legal aid counsel or through a para legal volunteer shall monitor functioning of the petitioner as guardian of Mr. Hariom Sharma every three months and submit report to the Maharashtra State Legal Services Authority which shall be compiled for a period of two years. If it is found necessary for extension of the period of monitoring or in case of any exigency, Member Secretary of Maharashtra State Legal

Services Authority shall be at liberty to move the High Court.

43. With the above directions, the writ petition is disposed of. However, there shall be no order as to costs.

44. Registry to furnish a copy of this judgment to Member Secretary, Maharashtra State Legal Services Authority for doing the needful.

45. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

Minal Parab