

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 8TH DAY OF JANUARY 2025 / 18TH POUSHA, 1946

WP(C) NO.25127 OF 2024

PETITIONERS:

1 BINDUMOL A T

AGED 49 YEARS

W/O ASHOK KUMAR KALATHIL HOUSE, THRIKODITHANAM PO,
CHANGANACHERRY, KOTTAYAM DISTRICT, PIN - 686105.

2 ASHOK KUMAR

AGED 55 YEARS, S/O SARANGAPANI, KALATHIL HOUSE,
THRIKODITHANAM PO, CHANGANACHERRY, KOTTAYAM DISTRICT,
REPRESENTED BY HIS WIFE, NEXT FRIEND AND GUARDIAN,
BINDUMOL A T, PIN - 686105

BY ADVS. SRI.ANANTHAKRISHNAN A. KARTHA

SRI.ANIL D.KARTHA

SRI.MATHEW DEVASSI

SRI.ANANTHASANKAR A. KARTHA

RESPONDENTS:

1 UNION OF INDIA

REPRESENTED BY ITS SECRETARY TO MINISTRY OF LAW AND
JUSTICE, 4TH FLOOR, A-WING, SHASTRI BHAWAN,
NEW DELHI, PIN - 110001.

2 UNION OF INDIA

REPRESENTED BY ITS SECRETARY TO MINISTRY OF HEALTH AND
FAMILY WELFARE, NIRMAN BHAWAN, RAJPATH AREA,
NEW DELHI, PIN - 110001

3 UNION OF INDIA

REPRESENTED BY ITS SECRETARY TO DEPARTMENT OF EX-
SERVICEMEN WELFARE, MINISTRY OF DEFENCE, 105, SOUTH
BLOCK, NEW DELHI, PIN - 110011.

4 STATE OF KERALA

REPRESENTED BY SECRETARY TO MINISTRY OF LAW AND JUSTICE,
SECRETARIATE, THIRUVANANTHAPURAM,
PIN - 695001.

5 STATE OF KERALA

REPRESENTED BY ITS SECRETARY TO DEPARTMENT OF ZILA SAINIK
WELFARE, ROOM NO. 264, 2ND FLOOR, SOUTH BLOCK,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.

6 ZILA SAINIK WELFARE OFFICE

MANARCADU, KOTTAYAM, REPRESENTED BY ITS AUTHORISED
OFFICER, PIN - 686019.



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7 RECORD OFFICER

EME RECORDS FOR OIC RECORDS, OFFICE OF THE CDA, NO.1,
STAFF ROAD, SECUNDERABAD, PIN - 900453.

8 SUB DIVISIONAL MAGISTRATE

MINI CIVIL STATION, KOTTAYAM, PIN - 686002.

9 THRIKODITHANAM GRAMA PANCHAYATH

THRICKODITHANAM PO, THRICKODITHANAM, CHANGANACHERRY,
KOTTAYAM, REPRESENTED BY ITS SECRETARY, PIN - 686105

10 S.S ASHALATHA

AGED 64 YEARS, W/O S PURUSHOTHAMAN, THIRUVATHIRA HOUSE,
VALIYAKUZHY, MUTTOM P.O, KARTHIKAPPALLY, ALAPPUZHA, PIN
- 689501

11 ASWATHI RANI S,

AGED 56 YEARS, W/O P V SUDEYAN, SOPANAM HOUSE,
VALIYAKUZHY, MUTTOM PO, KARTHIKAPPALLY, ALAPPUZHA, PIN -
689501

BY ADVS.SRI.K.MOHANAKANNAN

SMT.ARYA A.R.

SRI.V. RAMKUMAR NAMBIAR

SMT.SATHYASREEPRIYA EASWARAN

SRI.K.R.RANJITH, GOVERNMENT PLEADER WITH STATE ATTORNEY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 08.01.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT****Dated this the 08th day of January, 2025**

The 1st petitioner is the wife of the 2nd petitioner. The 2nd petitioner is suffering from 45% permanent disability due to bipolar affective disorder. The 2nd petitioner's father, M.G.Sarangapani, worked as a Subedar with the Corps of EME in the Indian Army. M.G.Sarangapani received pension till his death on 15.01.2020. The 2nd petitioner's mother had pre-deceased his father. After the death of the 2nd petitioner's father, he applied for family pension. By Ext.P8 letter, the 7th respondent directed the 2nd petitioner to submit certain documents, including a legal guardianship certificate. Consequently, by Exts.P14 and P15 orders, the 1st petitioner was appointed as the limited guardian of the 2nd petitioner. After the expiry of the period in Ext.P15 order, the



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petitioners filed an application before the Local Level Committee constituted under the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 ('National Trust Act', in short), to appoint the 1st petitioner as the legal guardian of the 2nd petitioner. However, the Committee rejected the application on the finding that there is no provision under the National Trust Act to appoint a legal guardian for a person with a disability. There is no enactment in the country that enables the appointment of a permanent legal guardian for a person with mental disability. Hence, this Court may declare the 1st petitioner as the permanent legal guardian of the 2nd petitioner and direct the respondents 5 to 7 to disburse the family pension.

2. Heard: the learned counsel for the petitioners, the learned Deputy Solicitor General of India, the learned Government Pleader, the learned Standing Counsel for the 9th respondent and the learned



Amicus Curiae.

3. Exts.P2, P4, and P5 medical certificates prove that the 2nd petitioner is suffering from 45% permanent disability due to bipolar affective disorder.

4. By Ext.P14 order, the 1st petitioner was appointed as the limited guardian of the 2nd petitioner for three months from 26.05.2023 under the Rights of Persons with Disabilities Act, 2016 ('Disabilities Act', for brevity) by the designated Authority. Subsequently, by Ext.P15 order, the 1st petitioner was re-appointed as the limited guardian of the 2nd petitioner for nine months from 06.04.2024 by the same Authority.

5. After the expiry of the period in the Ext.P15 order, the petitioners applied to the Local Level Committee to appoint the 1st petitioner as the guardian of the 2nd petitioner under the National Trust Act, which was rejected by the impugned Ext.P16 order.

6. The bone of contention of the learned Counsel for the petitioner is that there is no law which



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enables the appointment of a permanent legal guardian for a person with a mental disability.

7. In the above context, it is pertinent to refer to Section 2(s) of the Right of Persons with Disabilities Act, 2016, which reads as follows:

“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;”

(highlighted)

8. It is also relevant to refer to Section 14 of the Disabilities Act, which reads as follows;

“14. Provision for guardianship.—

(1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:

PROVIDED that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided.

Explanation.—For the purposes of this sub-section, “limited



guardianship” means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.

(2) On and from the date of commencement of this Act, every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian.

(3) Any person with disability aggrieved by the decision of the designated authority appointing a legal guardian may prefer an appeal to such appellate authority, as may be notified by the State Government for the purpose.”

(emphasised)

9. A co-joint reading of the above-extracted provisions substantiates that the District Court or the designated Authority are empowered to appoint a limited guardian for a person who is suffering from a disability as defined under Section 2(s) of the Disabilities Act, which includes mental disability.

10. It is as per the provisions of the Disabilities Act that the designated authority had passed Exts.P14 and P15 orders.

11. On an analysis of the scheme of the Disabilities Act, a person can only be appointed as a



limited guardian because the office of guardianship operates on a mutual understanding and trust between the guardian and the person with a disability for a specific purpose or situation or to take a particular decision in accordance to the will of the person with a disability. Presumably, it is in the above context that the Parliament, in its wisdom, has only permitted limited guardianship and not permanent guardianship. Therefore, the concept of permanent guardianship is alien to the Disabilities Act. Similarly, there is no provision under the National Trust Act to appoint a guardian for a person with mental illness. (Read the decision of this Court in **Latha T.B @ Latha Ravi and others v. Union of India** [2021(3) KHC 304].

12. In the above background, the petitioners' prayer to appoint the 1st petitioner as the permanent legal guardian of the 2nd petitioner is untenable.

13. In **Abooty K A v. Kolangottil Pathumma**



[2023 (6) KLT 368], this Court has held that the District Court and the competent Authority have concurrent jurisdiction to appoint a guardian for a person with a disability.

14. The Local Level Committee has rightly rejected the petitioners' application for guardianship under the National Trust Act. I find no error in Ext.P16 order warranting interference by this Court. In view of the alternative statutory remedy available to the petitioners under the Disabilities Act, I am not inclined to exercise the plenary powers of this Court to declare the 1st petitioner as the permanent legal guardian of the 2nd petitioner. It would be up to the petitioners to either seek an extension of the limited guardianship order passed by the designated authority or to approach the District Court for a similar relief under Section 14 of the Disabilities Act. On the petitioners producing an order of limited guardianship before respondents 5 to 7, they are directed to take a decision



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on the 2nd petitioner's application for family pension.

The assistance rendered by the learned Amicus Curiae is appreciated.

The writ petition is ordered accordingly.

Sd/-C.S.DIAS, JUDGE

NAB



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APPENDIX OF WP(C) 25127/2024

PETITIONER EXHIBITS

EXHIBIT A TRUE COPY OF THE CERTIFICATE OF MARRIAGE ISSUED
P1 UNDER THE KERALA REGISTRATION OF MARRIAGES (COMMON)
RULES, 2008 ISSUED BY THE KOTTAYAM MUNICIPALITY
BEARING NO. C4 M. 1849/11 DATED 31-03-2011

EXHIBIT A TRUE COPY OF THE CERTIFICATE OF DISABILITY ISSUED BY
P2 THE GOVERNMENT MEDICAL COLLEGE HOSPITAL, KOTTAYAM
BEARING NO. G1-1470/2022/MCHKTM DATED 14-07-2022

EXHIBIT A TRUE COPY OF THE UNIQUE DISABILITY ID ISSUED ON 14-
P3 11-2020 BY THE GOVERNMENT OF INDIA

EXHIBIT A TRUE COPY OF THE DISABILITY CERTIFICATE ISSUED BY
P4 MEDICAL AUTHORITY, KOTTAYAM KERALA BEARING NO.
KL1010819680088516 DATED 03-12-2016

EXHIBIT A TRUE COPY OF THE MEDICAL REPORT ISSUED BY PUSHPAGIRI
P5 MEDICAL COLLEGE VIDE LETTER NO. JC21491P/PCDA OBSN/T-
3/FP DATED 18-01-2024

EXHIBIT A TRUE COPY OF THE DEATH CERTIFICATE BEARING NO.
P6 D0020559-2001221 WITH REGISTRATION NO. 12/2020 DATED
24-01-2020

EXHIBIT A TRUE COPY OF THE DEATH CERTIFICATE BEARING NO. A1-
P7 1/2006 DATED 01-03-2006

EXHIBIT A TRUE COPY OF THE LETTER BARING NO. JC21491/TM-
P8 3/OBSN/FP DATED 25-01-2023

EXHIBIT A TRUE COPY OF THE REPRESENTATION DATED 27-05-2023
P9

EXHIBIT A TRUE COPY OF THE ABOVE LETTER BEARING NO.
P10 DBK/A2/FP/7570/2021 DATED 06-06-2023

EXHIBIT A TRUE COPY OF THE AFFIDAVIT/LETTER OF CONSENT DATED
P11 29-01-2020 EXECUTED BY THE 10TH AND 11TH RESPONDENTS
JOINTLY

EXHIBIT A TRUE COPY OF THE AFFIDAVIT DATED 04-04-2023 EXECUTED
P12 BY THE 10TH RESPONDENT



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EXHIBIT A TRUE COPY OF THE AFFIDAVIT DATED 04-04-2023 EXECUTED
P13 BY THE 11TH RESPONDENT

EXHIBIT A TRUE COPY OF THE PROCEEDINGS BEARING NO.
P14 RDOKTM/1265/2023-G1 DATED 26-05-2023 ALONG WITH TYPED
READABLE COPY

EXHIBIT A TRUE COPY OF THE PROCEEDINGS BEARING NO. G1-
P15 1265/2023 DATED 06-04-2024 ALONG WITH TYPED READABLE
COPY

EXHIBIT A TRUE COPY OF THE PROCEEDINGS OF THE NATIONAL TRUST
P16 LOCAL LEVEL COMMITTEE BEARING NO. NTK/LLC/01/2023
DATED 24-02-2023

EXHIBIT A TRUE COPY OF THE LETTER BEARING NO. JC21491/TM-
P17 3/OBSN/FP DATED 04-06-2024