

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 2ND DAY OF NOVEMBER 2017/ 11TH KARTHIKA,  
1939

WP(C).No. 21082 of 2017 (S)  
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PETITIONER :  
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ROSAMMA,  
W/O ULAHANNAN, AGED 47 YEARS, MUTTATHU HOUSE,  
SEETHAMOUNT P.O. PADICHIRA VILLAGE, PULPALLY,  
WAYANAD DIST- 673 579

BY ADVS.SMT.K.V.BHADRA KUMARI  
SMT.FERHA AZEEZ

RESPONDENTS :  
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1. DISTRICT COLLECTOR,  
WAYANAD COLLECTORATE, KALPETTA, WAYANAD
2. STATE COMMISSIONERATE FOR PERSONS WITH  
DISABILITIES  
REP. BY ITS SECRETARY SOCIAL WELFARE  
INSTITUTION COMPLEX, POOJAPPURA,  
THIRUVANANTHAPURAM- 695 012
3. STATE OF KERALA  
REP. BY ITS SECRETARY TO GOVERNMENT,  
SOCIAL WELFARE DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM
- \* ADDITIONAL RESPONDENTS 4 TO 6 IMPLEADED
4. THE DISTRICT MEDICAL OFFICER,  
KALPETTA, WAYANAD DISTRICT

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5. THE MINISTRY OF HEALTH AND FAMILY WELFARE,  
REPRESENTED BY PRINCIPAL SECRETARY,  
MENTAL HEALTH DIVISION, NIRMAN BHAVAN,  
MOULANA AZAD ROAD, RAJPATH AREA,  
CENTRAL SECRETARIAT, NEW DELHI - 110 011

6. MINISTRY OF SCIAL JUSTICE AND EMPOWERMENT,  
202, "C WING", SHASTRI BHAVAN,  
NEW DELHI - 110 115.

\*\* ADDITIONAL 7TH RESPONDENT IS IMPLEADED

7. THE K.R. HOSPITAL,  
REPRESENTED BY THE MEDICAL SUPERINTENDENT,  
MYSORE

\*\*\* ADDITIONAL 8TH RESPONDENT IMPLEADED

8. LOCAL LEVEL COMMITTEE  
CONSTITUTED UNDER THE NATIONAL TRUST  
FOR WELFARE OF PERSONS WITH AUTISM,  
CEREBRAL PALCY, MENTAL RETARDATION AND  
MULTIPLE DISABILITIES ACT, 1999,  
REPRESENTED BY ITS CHAIRMAN,  
THE DISTRICT COLLECTOR, WAYANAD DISTRICT

R1 TO R4 & R8 BY SPL. GOVERNMENT PLEADER  
SRI.N. MANOJ KUMAR

ADDL.R5 & R6 BY SMT.O.M.SHALINA, CGC

BY SRI. RAMKUMAR NAMBIAR (AMICUS CURIAE)

\* ADDL. RESPONDENTS 4 TO 6 ARE SUO MOTU  
IMPLEADED AS ADDITIONAL RESPONDENT NOS.1, 5  
AND 6 AS PER ORDER DATED 11. 08.2017.

\*\* ADDL.R7 IS SUO MOTU IMPLEADED AS PER THE  
ORDER DATED 22.09.2017 IN I.A.NO.14887/2017

\*\*\* ADDL. R8 IS SUO MOTU IMPLEADED AS PER THE  
ORDER IN JUDGMENT DATED 02.11.2017.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY  
HEARD ON 02-11-2017, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

RKM

APPENDIX

PETITIONERS' EXHIBITS

- EXHIBIT P1 COPY OF THE MEDICAL CERTIFICATE  
ISSUED BY THE MEDICAL BOARD K.R. HOSPITAL,  
MYSORE
- EXHIBIT P2 COPY OF THE COVERING LETTER ISSUE DBY THE  
SUPERINTENDENT, K.R. HOSPITAL MUYSORE TO  
THE MACT, KALPETA DATED 5-7-2014
- EXHIBIT P3 COPY OF THE MEDICAL CERTIFICATE ISSUED BY  
THE MEDICAL BOARD, K.R. HOSPITAL, MYSORE  
DATED 12-07-2016
- EXHIBIT P4 PHOTOGRAPHS SHOWING THE CONDITION OF THE  
PETITIONER'S HUSBAND (2 NOS)
- EXHIBIT P5 COPY OF THE REQUEST SUBMITTED BY THE  
PETITIONER BEFORE THE DISTRICT COLLECTOR,  
WAYANAD DATED 14-06-2016
- EXHIBIT P6 COPY OF THE PROPERTY OF THE PETITIONER'S  
HUSBAND AS PER DOCUMENT NO.4368/1986 OF  
S.R.O. SULTHAN BATHERY DATED 24-09-20186
- EXHIBIT P7 COPY OF THE COMMUNICATION ISSUED FROM THE  
OFFICE OF THE 2ND RESPONDENT DATED  
15-12-2016
- EXHIBITP8 COPY OF THE COMMUNICATION DATED  
13-03-2017 ISSUED FROM THE OFFICE OF THE  
2ND RESPONDENT
- EXHIBIT P9 COPY OF THE RODER ISSUED BY THE S.H.R.C  
HRMP NO.9993/16 DATED 20-03-2017
- EXHIBIT P10- COPY OF THE APPLICATION SUBMITTED BY THE  
PETITIONER UNDER THE R.T.I ACT

WP(C) .No. 21082 of 2017 (S)

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EXHIBIT P11      COPY OF THE INFORMATION RECEIVED UNDER THE  
R.T.I ACT DATED 6-6-2017 FROM PUBLIC  
INFORMATION OFFICER

RESPONDENTS' EXHIBITS : NIL

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TRUE COPY

PA TO JUDGE

RKM

**K. VINOD CHANDRAN, J.**

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W.P.(C) No. 21082 of 2017 (S)  
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Dated: 02<sup>nd</sup> November, 2017

**J U D G M E N T**

The petitioner has approached this Court for reason of a communication issued by the State Public Information Officer, at Ext.P11, in response to a query as to the fate of the application filed by the petitioner before the Local Level Committee (LLC), as constituted under Section 13 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 ('National Trust Act' for short). By Ext.P11, it was informed to the petitioner that the LLC is labouring under an apprehension as to whether the petitioner's husband could be treated as a person with multiple disability.

2. The facts leading to the apprehension so expressed is that the petitioner's husband, one Ulahannan, by reason of a motor accident dated 11.04.2013, was rendered comatose. The petitioner's husband has 100% locomotive disability and the life is sustained through nasal feeding. The subject does not respond to anything and is totally bed ridden. The subject is also, now, housed at Mysuru along with his daughter.

3. The application made before the LLC was for appointing the petitioner as guardian under the National Trust Act for the purpose of constructing a house in the 15 cents of landed property, owned exclusively by the petitioner's husband; the title deed of which is produced at Ext.P6. The petitioner's husband, being housed in Mysuru, was examined by a Medical Board constituted at K.R. Hospital, Mysuru, the

certificate of which is produced at Ext.P1. The conclusion of the Board is extracted hereunder:

“Now he is suffering from “**POST HEAD INJURY SEQUELEC**” (Bedridden). At present the disability 100%”

4. The Board has hence reported 100% disability on 05.07.2014, when the certificate was issued. A further certificate was issued by Ext.P3 dated 12.07.2016, wherein also the petitioner's husband was declared as 100% disabled and completely bed ridden. The petitioner, hence, filed an application at Ext.P5 before the LLC and despite repeated reminders, nothing was done on the application by the LLC. The LLC having expressed an apprehension, as revealed from Ext.P11, whether the petitioner's husband would come within the definition of 'person with disability', is before this Court.

5. I have heard the learned Counsel for the petitioner, learned Amicus Curiae Sri. V.Ramkumar, the learned Special Government Pleader Sri.N.Manoj Kumar and the learned Central Government Counsel. Considering the fact that the LLC has not been impleaded, the Local Level Committee, constituted under Section 13 of the National Trust Act for the District of Wayanad, with the Chairman as the District Collector is impleaded herein suo motu as the additional 8<sup>th</sup> respondent. The learned Special Government Pleader is directed to take notice for the additional respondent. The Chairman of the LLC, who is the District Collector was already impleaded and hence the writ petition itself can be disposed of.

6. This Court had, by Order dated 22.09.2017, impleaded the K.R. Hospital, Mysuru, represented by the Medical Superintendent as the additional 7<sup>th</sup>



respondent, so as to conduct an examination of the petitioner's husband's present condition. This Court had also by the very same order directed the Secretary, Kerala Legal Services Authority to contact the District Legal Services Authority, Mysuru, who, on an earlier query made by this Court, had confirmed that the said hospital is a Government Hospital. The Medical Superintendent of K.R. Hospital was directed to constitute a Medical Board and examine the petitioner's husband, now housed at Mysuru in his daughter's apartment and the District Legal Services Authority (DLSA) was asked to accompany the Medical Board at the time of examination. The DLSA was directed to submit the report of the Medical Board to this Court through the Kerala Legal Services Authority; together with an independent report of the proceedings.

7. The report of the DLSA, Mysuru, dated 19.10.2017, along with the Medical Certificate issued

by the Medical Board constituted by the Superintendent of K.R. Hospital, Mysuru, dated 16.10.2017 is produced before this Court by the Secretary of the DLSA. A reading of the report of the proceedings of medical examination, by the DLSA would indicate that the Superintendent of K.R. Hospital had constituted a Medical Board with himself as the Chairman and three members; one Neuro Physician, one Physician from the Department of ENT and one from the Department of Ophthalmology, which Board had examined Sri.Ulahannan; who was brought to the Hospital on 13.10.2017 in a stretcher. The Medical Certificate issued by the Board is as follows:

“Shri.Ulahannan M.J., 58 years, F/o.Shimy M.Ulahannan, No.1073/74, First Floor, 10<sup>th</sup> Cross, Sunnadakeri, K.R. Mohalla, Mysuru has attended Medical Examination on 13.10.2017 for the

purpose of his Multiple Disability.

As per the Specialist opinion this person is suffering from persistent Vegetative State with Spastic Quadriparesis with complete physical to Cognitive Disability leading to total dependent state. Hence, Neurological deficit in the sphere of higher mental functions and locomotion amount to nearly total deficit of 100%.”

In the circumstance of the Medical Board having found the petitioner's husband to be 100% disabled, what remains is the consideration of whether the petitioner's husband would be covered under the National Trust Act.

8. Section 14 of the National Trust Act speaks of appointment for guardianship and enables a parent of a person with disability or his relative to make an application to the LLC for appointment of any person of his choice to act as a guardian of the person with

disability. 'Person with disability' is defined under Section 2(j) of the National Trust Act, which reads as under:

“(j) 'person with disability' means a person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability;”

Section 2(o) of the National Trust Act is also relevant, which is extracted hereunder:

“(o) 'severe disability' means disability with eighty per cent or more of one or more multiple disabilities;”

9. A reading of the definition at Section 2(j) would indicate that a person suffering from severe multiple disability would be included in the definition of 'person with disability'. 'Severe disability' is also

separately defined as a disability with eighty per cent or more of one or more of multiple disabilities. In the present case, the petitioner's husband has been declared by the Medical Board to be 100% disabled. In such circumstance, this Court is of the opinion that the petitioner's husband would be covered under the National Trust Act and would be a 'person with disability', as spoken of in Section 14 of the National Trust Act, enabling the appointment of a guardian by the LLC, constituted under Section 13 of the National Trust Act. The petitioner, the wife of the subject, is also a relative as provided for in Section 14 of the National Trust Act. The petitioner's husband having been found to be covered under the National Trust Act; definitely, the LLC has to consider the application, that too, expeditiously. The petitioner shall obtain a certified copy of the report of the DLSA, Mysuru and the Medical

Certificate of the Medical Board, respectively dated 19.10.2017 and 16.10.2017, and produce the same before the LLC. The LLC shall pass orders expeditiously in the matter.

10. Before leaving the matter, it has to be noticed that the learned Special Government Pleader and the learned Central Government Counsel had raised apprehensions on the decision applying across the board to all persons who have incurred such disability by reason of a motor accident. It is made clear that the declaration made herein is only with respect to the subject and the facts of the instant case. Individual cases would have to be considered on the facts arising in each of them.

11. It is also to be noticed that the National Trust Act provides for sufficient safeguards by Sections 15, 16 and 17. Section 15 speaks of duties of guardian and

Section 16 obligates a guardian appointed to furnish inventory and annual accounts, which the petitioner would be obliged to comply with. Section 17 also speaks of removal of guardian in the event of any abuse, neglect or misappropriation.

The writ petition is hence allowed with the above observations and directions; the latter of which will be complied with within two weeks on the petitioner producing the certified copy of this judgment and the Medical Board's report. No Costs.

Sd/-  
K.VINOD CHANDRAN,  
JUDGE