

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III, ALAPPUZHA

Present : Sri. Roy Varghese, Additional District Judge – III

Thursday 01st day of June, 2023/ 11th Jyeshtham, 1945

O.P (G & W) 51/2022

(Filed on 06..10..2022)

Petitioners : Ashakumary. S, aged 50
D/o Late Sarojiniamma,
Mahalakshmy, Kaithavana,
Sanathanapuram P.O, Pazhaveedu village,
Ambalapuzha Taluk, Alappuzha – 688003 .

**(By Adv. T. N. Maurice Vincent, Adv.B. Subhash
and Adv. Jayachandran. N)**

Respondent : Nil

This petition having been finally heard on 27..05..2023 and
the court on 01..06..2023 passed the following.

ORDER

This is a petition filed by the sister of a mentally disabled person for appointing her as a guardian for him and seeking permission to represent him for receiving and managing the pensionary benefits of their mother, to avail the family pension in favour of this mentally disabled person, to operate his bank accounts, to open new accounts and

to manage his immovable properties.

2). Going by the petition averments, Manoj Kumar.P, the brother of the petitioner, aged 46 years, is suffering from schizophrenia, a psychotic mental illness. Their father and mother were employed in the Kerala State Electricity Board Ltd. and both are no more. After the demise of their mother, this mentally disabled person is entitled for pensionary benefits of his mother, for which his sister is sought to be appointed as a guardian for acting and to sign documents for and on behalf of him. Accordingly, the petitioner is approaching this Court by this petition.

3). The petitioner sworn an affidavit along with the petition. An enquiry was conducted by taking *voire dire* of the mentally disabled person. The evidence in this case consists of the documents produced by the petitioner, marked as Ext.A-1 to Ext. A-10.

4). Heard the counsel for the petitioner and perused the records. In the light of the above facts and circumstances, the points that arise for consideration of this Court are as follows:

1) Whether the petitioner can be appointed as a

guardian of the mentally disabled person?

ii) Whether permission has to be granted to the petitioner to represent the mentally disabled person for receiving and managing the pensionary benefits of their mother and to avail the family pension for and on behalf of the mentally disabled person?

iii) Whether permission has to be granted to the petitioner to represent the mentally disabled person for managing his properties?

iv) Reliefs and costs.

5). Points Nos.(i) to (iii) :- These points taken together for brevity of convenience as they are interconnected. The brother of the petitioner is alleged to be a mentally disabled person. The brother of the petitioner has already obtained the Ext.A-1 Medical Disability Certificate from the District Medical Board, Alappuzha evidencing that he is suffering from Chronic Schizophrenia and percentage of mental disability fixed @ 65%.

6). The Mental Health Act, 1987 repealed by the enactment of

the Mental Healthcare Act, 2017. There is no provision in this Mental Healthcare Act, 2017 for the appointment of a guardian for the property of mentally-ill-person. The Rights of Persons with Disabilities (Rpwd) Act, 2016 defines disability, which includes Mental Behaviour/Mental illness as a disability. As per S.2(s) of it “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.

7). By virtue of S.14 of the above Act, the District Court is empowered to appoint a guardian for Mentally disabled person, which is extracted hereunder:

“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.”

8). By this petition, the petitioner is seeking permission of this Court to appoint her as the guardian and to represent the mentally disabled person for receiving and managing the pensionary benefits of their mother and to avail the family pension. The brother of the petitioner examined in the Court and he deposed as undergoing psychiatric treatment in the Medical College Hospital, Alappuzha. Since the brother of the petitioner is a mentally disabled person, the above petition is filed by this petitioner for and on behalf of him.

9). The petitioner's father K.Prabhakaran Nair passed away on 27-09-2011 and their mother Sarojiniamma died on 06.10.2021 as could be seen evident from the Exts.A-2 & A-3 Death Certificates. After the death of their mother, the mentally disabled person is under the care and protection of the petitioner, with whom he resides, as there is no other person to look after and to take his care and custody. He is a bachelor and has no other siblings. The Ext.A-4 Family Membership Certificate

issued by the Pazhaveedu Village Officer and the Ext.A-5 Legal Heirship Certificate issued by the Ambalappuzha Tahsildar prove their relationship and that this petitioner and this mentally disabled person alone are the Legal Heirs of their parents.

10). The petitioner sworn an affidavit that she was intimated by the department and his bankers to apply for the family pension towards the mentally disabled person along with a guardianship certificate. Now, a sanction is also necessary to collect the family pension benefits for and on behalf of the mentally disabled person by a guardian to be appointed by this Court.

11). As Manoj Kumar is a mentally disabled person incapable of taking care of himself and to manage his affairs, it is highly necessary to appoint a guardian for him. For the compliance of official formalities and documentations, the guardian shall sign, execute, issue necessary receipts, acknowledgments and validly discharge for and on behalf of the mentally disabled person.

12). Necessary documents have been produced by the petitioner for the perusal of this Court. They have been perused and verified. The

mentally disabled person was questioned by the court as part of the inquisition and enquiry. He completed Matriculation and suffered the mental illness, thereafter. Though he answered all the questions clearly, the medical records showing that he is suffering mental disorder. The Government Department and the banks are insisting for the appointment of a guardian by a competent Court so as to execute and complete the documentations and procedures as per Rules.

13). This Court issued notice and was effected by affixture in the notice board of the concerned village office and also of this Court. The Ext. A-10 paper publication was effected intimating the public interested to appear, but no one appeared. The petitioner being the brother of the mentally disabled person, has got no adverse interests against him. She, being the sister, is the only suitable person to be appointed as the guardian in the absence of their parents. Apart from her, there is no other suitable person to be appointed as his guardian.

14). On considering the documents as Exts. A-1 to A-10 together with the affidavit sworn by the petitioner and the arguments put forward by the counsel for the petitioner, I am of the firm view that the

petitioner can be appointed as his guardian. The mentally disabled person's sister being a fit person to be appointed as the guardian of the 'person and property of the mentally disabled person' and she is willing to act as such, she can be appointed as his guardian. Accordingly, a declaration to that effect is to be passed.

15). The pension and all benefits thereon towards the mentally disabled person is to be deposited in his bank account, but the petitioner is to be permitted to operate the same for and on behalf of him. Such a direction is necessitated for the paramount welfare of this mentally disabled person.

16). As already stated above, the mentally disabled person is incapable of taking care of and managing his properties. The petition schedule properties inherited by him from his parents after their intestate death. It is in the joint ownership and possession of himself and the petitioner, which includes their residential building. For proper management and preservation of these properties, the petitioner is to be authorized on his behalf, by appointing her as his limited guardian as per S.14 of the Rpwd Act, 2016.

17). Point No.(iii):- Considering the nature and circumstances of the case, this petition is to be allowed.

In the result, this petition is allowed as follows:-

i) The petitioner Asha Kumary.S is declared as the limited guardian of the 'person and property' of the mentally disabled person *viz.* Manoj Kumar.P.

ii) The petitioner Asha Kumary.S is permitted to represent the mentally disabled person *viz.* Manoj Kumar.P in all offices in connection with and in the matter of allotment of the pensionary benefits of late.K.Prabhakaran Nair and L.Sarojiniamma and also to manage, sign, issue valid receipts and to acknowledge the discharge of any debt or liability towards the mentally disabled person *viz.* Manoj Kumar.P.

iii) The pensionary benefits entitled to the mentally disabled person *viz.* Manoj Kumar.P shall be deposited in the bank account maintained in his name with a

Nationalised Bank.

iv) The petitioner Asha Kumary.S is permitted to

receive and utilise the periodical interests of that

deposit for the mentally disabled person *viz.* Manoj

Kumar.P.

v). The petitioner Asha Kumary.S is hereby authorized

and permitted to manage, protect and preserve the

petition schedule properties for and on behalf of the

mentally disabled person *viz.* Manoj Kumar.P.

vi). Both the petitioner and the mentally disabled

person (Manojkumar.P) shall put their signatures in

all the transactions and documentations, considering

the limited guardianship as per S.14 of the RPwD Act,

2016.

*(Dictated to the C.A, transcribed by her, corrected and pronounced by me
in Open Court on this the 1st day of June, 2023)*

Sd/-

**ROY VARGHESE,
Addl. District Judge-III**

APPENDIX

A1	Copy of certificate of Medical board	10..04..2023
A2	Copy of death certificate (father)	19..10..2011
A3	Copy of death certificate (mother)	22..11..2021
A4	Copy of family membership certificate	20..12..2021
A5	Legal heirship certificate	23..04..2022
A6	Copy of bank a/c passbook	16..02..2021
A7	Copy of fixed deposit receipt	28..09..2018
A8	Land tax receipt	19..07..2021
A9	Building tax receipt	23..02..2019

Id/-

Addl. District Judge-III

//True copy//

By order

Sheristadar

Typed by : rp
compd by : Fr

Judgment in
OP(G&W) 51/2022
01..06..2023.