



2024:DHC:8790-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 8th November, 2024

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W.P.(CRL) 2132/2024

DR RICH DHAMIJA

.....Petitioner

Through: Mr. Akshay Makhija Sr. Advocate
(*Amicus Curiae*). (M: 9810079901)
Mr. Mohit Mathur, Sr. Advocate with
Mr. Anupam S Sharma along with
Mr. Anurag Andley, Mr. Aditya
Andley, Mr. Tanmay Gupta and Mr.
Sahil Nagar, Advocates for family
members of Dr. Rattan.
(M:9810009734).

versus

STATE NCT DELHI

.....Respondent

Through: Mr. Sanjay Lao, Standing Counsel
(Criminal) with Ms. Priyam Agarwal &
Mr. Abinav Kumar Arya, Advs. for
State with Insp. Aditya and SI Sachin
Panwar PS Fatehpur Beri.
Mr. Anurag Ahluwalia CGSC With Mr
Shivam Sachdeva GP Ms. Hridyanshi
Sharma (Adv) for UOI. (M:
9971358035)
Mr. Mayank Bhargava, Mr. Rajdeep
Saraf, Advs. with Mr. Tola Kant Pandey
in person. (M: 9891467867)
Mr. M.K. Thakur, Adv. for Respondent
- Mr. Vishal Sood.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.

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2. The present petition initially was filed by the Petitioner- Dr. Rich Dhamija under Article 226 of the Constitution of India r/w Section 528 of the Bharatiya Nagrik Suraksha Sanhita ('BNSS') seeking a writ in the nature of *habeas corpus* for production of a family friend of the Petitioner *i.e.*, Dr. Kamal Kumar Rattan.

3. The Petitioner had alleged that Dr. Rattan is in illegal confinement and is being physically and mentally abused by his family members. The prayer in this writ petition was for physical production of Dr. Rattan before this Court.

4. When the matter was initially listed on 18th July, 2024, the Court had issued notice and had observed that though Dr. Rattan had joined virtually, he was unable to answer any query put up by the Court. On the said date, Mr. Sanjay Lao, Id. Standing Counsel had placed some preliminary submissions on record alleging that there were various persons, who were involved in using the movable and immovable assets of Dr. Rattan. Certain individuals namely Mr. Vishal Sood, Mr. Tola Kant Pandey and Mr. Satish Kumar had taken away substantial amounts of money from Dr. Rattan. Considering the submissions made on the said date, the Court directed the production of Dr. Rattan in Court on the next date of hearing.

5. On 23rd July, 2024, Dr. Rattan was produced before the Court and he was accompanied by three of his family members *i.e.*, two nieces and a nephew (Ms. Taruna Singh, Ms. Neena Bhattacharjee and Mr. Bhraman Rattan). Dr. Rattan himself does not have any spouse or children. After interaction on the said date, the Court had observed as under:

“3. Dr. Kamal Kumar Rattan has been produced before this Court physically pursuant to the direction given on



the last date of hearing. He is approximately 82 years of age and has come to the Court on a wheelchair. There are various relatives who have come along with him including Ms. Taruna Singh, Ms. Neena Bhattacharjee and Mr. Bhraman Rattan, who are stated to be his nieces and nephews respectively.

4. This Court has tried to interact with Dr. Rattan. However, apart from a few words and gestures, he is unable to respond to any of the queries being put by this Court. This Court has been informed by Ms. Taruna Singh (niece of Dr. Rattan) that he has been diagnosed with Vascular Cognitive Impairment and some medical records have been produced.

5. In addition the Court has been informed that Dr. Rattan stays alone with a caretaker and his family in his farmhouse. The family members state that they visit him regularly. He is also owning substantial moveable and immovable assets as per the submissions made in this case on the last date and even today. There are allegations of certain persons having taken away substantial sums of money from him running into crores of rupees. In his interactions today, he is trying to communicate with the Court but is unable to do so.”

6. As can be seen from the above, the Court could hardly have any interaction with Dr. Rattan due to his medical condition.

7. Certain allegations were made by his family members that Mr. Tola Kant Pandey, who was Dr. Rattan’s domestic help had siphoned off sums of money by taking advantage of Dr. Rattan’s medical condition.

8. Dr. Rattan was living in his own residential house and had immediate family to take care of him. However, considering the fact that the medical condition of Dr. Rattan was unknown and not satisfactory, on the said date i.e., 23rd July, 2024, the Court directed the All India Institute of Medical



Science, Delhi ('AIIMS') to constitute a Medical Board including at least one Professor from the Neurology Department/ Neurosciences Centre for submitting a report with regard to his medical condition and the medicines being administered to him.

9. On the said date, the Court had further directed the family members of Dr. Rattan to file an affidavit listing all the movable and immovable properties of Dr. Rattan. Further the Court had also directed Mr. Tola Kant Pandey and his family members to file an affidavit disclosing the total number of assets and money, which they had received from Dr. Rattan and the amount that has been paid back by them. *Vide* the said order dated 23rd July, 2024, it was directed by the Court that until further orders, except for day-to-day expenses which would be required for Dr. Rattan's well-being and his everyday living, no withdrawals shall be made from his bank accounts and *status quo* shall be maintained in respect of all moveable and immoveable assets.

10. On 07th August, 2024, the Medical Board submitted an interim report dated 31st July, 2024 stating that the Medical Board was constituted. The report further stated that the upon Dr. Rattan's clinical evaluation, the Medical Board was of the opinion that a neuro-psychological evaluation of Dr. Rattan would be required. Further on the said date, a report was also filed by Registrar (Medical) dated 6th August, 2024 authored by Sh. Surinder Jeet Singh, Registrar (Medical) stating that Dr. Rattan is living alone in his farm house along with two personal attendants and one nursing attendant who were looking after him and administering the medicines as prescribed by doctors. The list of medicines being administered to Dr. Rattan were also obtained by the Registrar (Medical).

11. *Vide* order dated 07th August, 2024, taking into consideration the assets



of Dr Rattan, his medical condition and the allegations levelled by his family members, this Court appointed Mr. Akshay Makhija, Id. Senior Counsel as *Amicus Curiae* to assist the Court.

12. Over the next few hearings, the Court received a number of affidavits from the parties including the family members, Mr. Tola Kant Pandey and his family. The affidavits placed on record provided a list of movable and immovable assets owned by Dr. Rattan – which were known to the parties.

13. In view of the disclosures made in the said affidavits, one Mr. Vishal Sood, who was allegedly filling the income tax returns for Dr. Rattan was also directed to appear before the Court *vide* order dated 27th August, 2024.

14. Further, the said order also directed the Medical Board, AIIMS submit the latest status report in respect of the medical condition of Dr. Rattan pursuant to the Neuro-Psychological Evaluation which was scheduled on 20th August, 2022 in terms of letter dated 16th August, 2024 issued by AIIMS.

15. In the meantime, the Id. *Amicus Curiae* was requested to go through all the records of Dr. Rattan with the help of his family members and file a report regarding the movable and immovable assets of Dr. Rattan and the summary of the amounts/properties, which have been given to Mr. Tola Kant Pandey or any other third party.

16. On 12th September, 2024 the final report dated 11th September, 2024 was received from AIIMS which recorded the various medicines that had been administered to Dr. Rattan and also added a particular medicine to be further administered and added. The said report also recorded that Dr. Rattan is suffering from dementia of a mixed type. The Court directed the family members of Dr. Rattan to follow the prescriptions and suggestions prescribed in the said report.



17. On the said date, an interim report dated 12th September, 2024 was handed over by the Id. *Amicus Curiae*, who stated that voluminous documents were handed over by Dr. Rattan's family members. Dr. Rattan's family was also represented before the Court. Id. Counsels representing Dr. Rattan's family submitted that they would also be handing over copies of the Wills or testamentary documents, if any, along with other relevant documents, including the bank statements of Dr. Rattan, in particular of the account stated to be with Axis Bank.

18. Further on the said date, i.e., 12th September, 2024, Mr. Vishal Sood appeared before the Court and submitted that he is not a Chartered Accountant but an advocate enrolled with the Bar Council of Delhi. He also stated that he has been filing income tax returns for Dr. Rattan since 2017, including for Assessment Years 2020-21 and 2021-2022. Further, *vide* order dated 12th September, 2024, this Court directed Mr. Tola Kant Pandey and his family, not to leave the country without the prior permission of this Court.

19. The Id. *Amicus Curiae* filed a further second report dated 03rd October, 2024, which was also termed as an interim report pursuant to order dated 12th September, 2024.

20. A perusal of the two reports dated 12th September, 2024 and 03rd October, 2024 reveals information/data regarding the movable and immovable properties of Dr. Rattan as per the *Amicus Curiae*'s enquiries.

21. Dr. Rattan had seven immovable properties, details of which are as under:



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S. No.	Property	Family Members(Affidavit dated 07.08.2024 and Reply dated 25.09.2024)	Tola Kant Pandey's Affidavit dated 27.08.2024
1.	12/1, Kamal Kunj Farm House, Jonapur Gaon, Mehrauli, South Delhi, New Delhi-110047 (Plot size measuring 16 bighas including a built-up farm house of roughly 3 acres)	Owned by Dr. Rattan	Not mentioned
2.	Apartment 1701, 17 th Floor, Block Iconic Tower (Marvella), 'Mahagun Moderne', Plot No. GH-02, Sector 78, Noida, Uttar Pradesh (Super area 5600 sq. ft. approx., Built-up area 4700 sq. ft. approx..)	Owned by Dr. Rattan vide Allotment Letter in favour of Dr. Rattan (Allotment Letter dated 07.01.2012@ page 807 Second interim Report)	Purchased in 2011 in Joint ownership of Dr. Rattan and Tola Kant Pandey



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3.	Agricultural Land in the Revenue Estate of Village Gwal Pahadi at Waka Siwana, Gwal Pahadi, Tehsil Sohna, District Gurgaon, Haryana (Three adjacent plots measuring 17+10+10 = 37 Kanal 0 marla)	Owned by Dr. Rattan	Not mentioned
4.	A-34, UGF, Shanti Kunj, Vasant Kunj, New Delhi-110070	Within 25 days of purchase Dr. Rattan relinquished his 50% share in favour of Manisha Pandey <i>@ page 651 of Second Interim Report, Release Deed @ page 858 of Second Interim Report)</i>	Purchased in 2017 in Joint ownership of Dr. Rattan and Manisha Pandey (Dr. Rattan executed registered Release Deed dated 25.08.2017 releasing his 50% share in favour of Manisha Pandey) (Registered Release Deed @ pag3 416 of Tola Kant's Affidavit)



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5.	D-564, Church Road, Spring lane, Vasant Kunj, New Delhi-110070	Purchased under suspicious circumstances by Tola Kant @ page 653 of Second Interim Report; GPA, unregistered Agreement to Sell, Stay Order by SDM @ page 866 of Second Interim Report)	To be transferred to Dr. Rattan as per Addendum dated 28.12.2022 to Settlement Agreement dated 28.09.2022 but the same could not be done because of failure to obtain NOC (Settlement Agreement @ page 150 of Second Interim Report, Addendum @ page 164 of Second Interim Report) However, Tola Kant claims to be the purchaser and owner
6.	A-165, Sushant Lok Phase-I, Gurgaon	Sold on 09.09.2020 at a throw away price (Registered Sale Deed @ page 822 of Second Interim Report)	Not mentioned
7.	Property at Khasra No. 65/1, Ambedkar Colony, Chhatarpur (Admeasuring 400 sq. yds.)	Illegally transferred to “Vaibhav Laxmi Foundation Trust” vide Unregistered Gift Deed/Agreement to Sell without consideration, GPA etc. (Unregistered Gift Deed @ page 833 of Second Interim Report)	Not mentioned



22. Insofar as the immovable assets are concerned, the properties at S. Nos. 1, 2 and 3 in the aforementioned table are currently in Dr. Rattan's name and in his possession. Insofar as the property at S. No. 4 is concerned, the same is stated to have been transferred to the wife of Mr. Tola Kant Pandey, namely, Ms. Manisha Pandey.

23. The present status of the property at S. No. 5 is in doubt. The said property was to be transferred to Dr. Rattan in terms of the Settlement Agreement dated 28th September, 2022 read with addendum dated 28th December, 2022 entered into by Mr. Tola Kant Pandey. However, admittedly the same has not been transferred till date. Presently, Mr. Vishal Sood is laying claim to this property stating that he had bought it from one Mr. Gurmeet Singh Grover. Mr. Vishal Sood was also a party to the settlement recorded above. Thus, this property deserves to be secured. Mr. Vishal Sood, who posed as a Chartered Accountant/ or as Accountant Consultant, is clearly a lawyer who also claims right to an immovable property and has received substantial sums of money from Dr. Rattan.

24. Insofar as the property at S. No. 6 is concerned the same is stated to have been transferred through a registered document dated 9th September to one Mr. Karampal Singh. Property at S. No. 7 is stated to have been transferred through unregistered documents to one M/s Vaibhav Laxmi Foundation Trust. Thus, as of today, insofar as the properties at S. Nos. 5 and 7 seven are concerned, they are in an indeterminate state, though, they appear to have been purchased by utilising funds belonging to Dr. Rattan.

25. A perusal of the said interim reports also shows that Dr. Rattan had substantial movable assets including (i) active bank accounts in various banks,



(ii) fixed deposits, and (iii) mutual funds.

26. In addition, *Id. Amicus Curiae* has also made a chart of the amounts transferred from Dr. Rattan's bank account to Mr. Tola Kant Pandey as also to his close family members and Mr. Vishal Sood. Insofar as the movable assets are concerned presently, there are fixed deposits and bank balance of more than Rs. 20.05 crores and the operational bank accounts have a balance of more than Rs. 78 lacs. The fixed deposits also are to the tune of approximately Rs.13 crores. All these amounts are in the accounts of Dr. Rattan. The same are presently being operated through family members of Dr. Rattan.

27. Insofar as mutual funds are concerned, the value of the same is approximately Rs.5.3 crores, which is part of the live assets of approximately Rs.20 crores. These mutual funds are also currently being operated and held by Dr. Rattan and immediate relatives.

28. The transfers made to Mr. Tola Kant Pandey and Mr. Vishal Sood were to the tune of approximately Rs. 32.62 crores earlier and now after examination of records it is alleged that the transfers are to the tune of approximately Rs.63 crores. Out of this, in terms of the Settlement Agreement dated 28th September, 2022 read with addendum dated 28th December, 2022, a sum of approximately Rs.19.65 crores is stated to have been received back. However, the present status of the remaining amounts is not clear.

29. Insofar as the family members of Dr. Rattan are concerned, they have received more than Rs. 31 crores from 01st April, 2022 to 31st March, 2023.

30. The medical condition of Dr. Rattan as of date, as is clear from the report of AIIMS and from the various prescriptions, which are on record, shows that he is unable to take any decision on his own in respect of any of



his movable or immovable assets. The time period since when Dr. Rattan's has been in this medical condition is presently not clear to the Court.

31. There are allegations and counter-allegations by the parties in the present matter. A list of complaints filed by the family members of Dr. Rattan and Mr. Tola Kant Pandey/his family making various allegations against each other has been placed on record. The same would show that Mr. Tola Kant Pandey himself, who has studied till Class IV, has received substantial sums of money as well as properties from Dr. Rattan.

32. The Economic Offences Wing ('EOW') complaint, which was filed by the family members of Dr. Rattan against Mr. Tola Kant Pandey, Mr. Vishal Sood and Mr. Satish Kumar was initially registered and the settlement dated 28th September, 2022, which was entered into by Mr. Tola Kant Pandey and Mr. Vishal Sood, is being disputed.

33. The amount received by Mr. Tola Kant Pandey and his family is to the tune of approximately Rs.18.67 crores, even as per the report of the Id. *Amicus Curiae*. According to Mr. Tola Kant Pandey, the same was gifted to him and his family members by Dr. Rattan. In addition, diamonds worth approximately Rs.8.96 crores are stated to have been purchased by Dr. Rattan for Mr. Tola Kant Pandey and his family members as mentioned in the report. The amount, which has been transferred to Mr. Satish Kumar, is to the tune of approximately Rs.75 lacs, and to Mr. Vishal Sood is to the tune of approximately Rs.9.94 crores along with a cheque of Rs. 25 lacs.

34. The report of the Id. *Amicus Curiae* clearly shows that persons, who are not family members, may have unlawfully and illegitimately obtained benefits due to Dr. Rattan's medical condition.

35. Dr. Rattan is clearly a person, who is unable to even express his wishes



and take decisions in his own interest. Under such circumstances, the present petition being one in the nature of *habeas corpus* and keeping in mind the provisions of the Medical Healthcare Act, 2017 ('MHA') and the Rights for Persons with Disabilities Act, 2016 ('RPWD, 2016') this Court exercises its *parens patriae* jurisdiction.

36. In a similar case titled ***S.D. v. Govt. of NCT of Delhi & Ors. (2021:DHC:3463)***, this Court had considered the provisions of MHA and the RPWD in the context of international conventions and guidelines and it noted that there was a clear vacuum in terms of guardians to be appointed for the purpose of dealing with assets of persons with disabilities including mental disabilities. The relevant portions of the said judgment are set out below:

“186. In so far as the question concerning appointment of guardian or support arrangements under the RPWD-2016 is concerned, Section 14 of the RPWD-2016 becomes relevant, in addition to Section 13. While a nominated representative is contemplated under the MHA-2017 for healthcare and treatment decisions, under the RPWD-2016, Section 14 stipulates the manner in which limited guardians can be appointed, to take legally binding decisions on behalf of the PwD – only in consultation with the PwD. If the PwD is unable to do so, despite the support already provided, the power to appoint a guardian, vests with the District Court or any designated authority. This provision has been considerably debated during the course of arguments in the present case. The submission on behalf of the Respondent Nos. 5 and 6 as also the Intervenor, is that only a limited guardian can be appointed, as the RPWD-2016 has limited the scope of all guardianship under law. There cannot be a plenary guardian unlike the MHA-1987, as per Respondents 5 & 6. It is this submission that needs to be tested while interpreting Section 14 of the RPWD-2016.



187. Section 14 contemplates provision of support by appointing a guardian. Such a guardian is termed as a limited guardian, as it is presumed under this provision that a PwD would have expressed or would be able to express his or her desires to such a limited guardian. This is evident from both from the language of Section 14 and from the definition and categorization of disabilities under the RPWD-2016. There are certain features of the guardianship contemplated under this provision.

188. First, the Explanation to Section 14(1) deals with limited guardianship as having the following elements:-

- a) It is a system of joint decision.
- b) It operates on mutual understanding and trust between the guardian and the PWD.
- c) It is for a specific period.
- d) It is for specific decisions.
- e) It is for specific situations.
- f) It should operate as per the will of the person with disability.

189. All the above elements contemplate an inherent capacity in the person with disability to express his or her will, which is the basis for operating on “mutual understanding and trust”. If such will of the person is not capable of being expressed or if a person is suffering from a mental condition which can grossly impair his or her judgment, behaviour or capacity to even understand the ordinary demands of life, such a person cannot be assisted by a limited guardian. Consequently, Section 14 envisages limited guardianship in the case of such PwDs, who have expressed their desires in the past or are able to express their desires, going forward.

190. Second, the RPWD-2016 applies to persons with varying degrees of disabilities, as the definition of disabilities is extremely wide. A person who has low vision and hearing impairment or a physical disability is a PwD as much as a person with a mental disability or blood disorder. The gamut of disabilities thus



covered under Section 2(s) of the RPWD-2016 is any longterm physical, mental, intellectual or sensory impairment. Notably, while specified disabilities are set out in the Schedule to the MHA-2017, general disabilities are not. Thus, the kind of disabilities which a person can be afflicted with in terms of Section 2(s) is broad, elastic and ever-changing. It is not restricted to a disability that is currently known. As scientific advances are made in the medical field, there could be disabilities which are unknown today which may be identified in the future. Section 2(s) would then have to cover disabilities which are even yet to be identified.

191. A perusal of the definitions shows that the categories of PwD are broadly – simple PwD and persons with benchmark disabilities. In order to determine who are the ‘persons with benchmark disabilities’, the statute gives guidance through the Schedule, pursuant to Section 2(zc) of the RPWD-2016. It includes persons with physical disability including visual impairment, intellectual disability, mental behaviour disability, disability due to chronic neurological conditions or blood disorders, or a combination of the above disabilities, and any other categories notified as specified disabilities by the Central Government. Section 2(r) of the RPWD-2016 further deals with a further sub-category that if a person has such specified disability which is 40% or higher, it would be a person with ‘benchmark disability’. Within persons with benchmark disabilities, a further sub-set, namely, ‘persons with disability having high support needs’. Such persons could be persons with mental illness whose judgment, behaviour and capacity are grossly impaired or persons who have chronic neurological conditions such as multiple sclerosis, Parkinson’s disease, blood disorders, etc.

192. Keeping this scope of the RPWD-2016 in mind, it is clear that Section 14 could not restrict support to only appointment of a limited guardian, which would cater



merely to PwDs who would be able to participate in a limited guardianship arrangement. This becomes clearer in view of the proviso to Section 14(1) which recognizes the grant of 'total support' under two conditions:-

- a) In respect of PwDs requiring such support; or
- b) If the limited guardianship is to be granted repeatedly.

193. Since the RPWD-2016 deals with an extremely wide range of disabilities, Section 14 is suitably crafted to take into consideration those persons who are unable to express their will to the limited guardian. A PwD having high support needs or a PwD requiring such support due to any other factors, would be squarely covered as a PwD requiring total support under Section 14.

194. It is interesting to note that the word used in the Proviso to Section 14 is 'total support' and not 'plenary guardian', as was contained in the RPWD Bill, in the spirit of the UNCRPD which gives primacy to the PwD and to his or her will, preference or consent. 'Total support' is also a terminology which is used in contrast with 'plenary guardian', as it recognizes the possibility of the PwD being treated or cured in a manner which would enable him or her to take decisions in the future in which case, the nature and manner of support could also be decreased. This is clear from a reading of a proviso which contemplates that the provision of total support shall be reviewed i.e., if the person with disability is treated, cared for and cured or empowered to take decision, then the nature and manner of support could also be decreased.

195. This is also confirmed by a perusal of the drafting history of the UNCRPD, where during the discussion on Article 12 of the UNCRPD when asked how supported decision making would be implemented in a situation where the PwD was incapable of decision making. The relevant excerpt reads as under:



“The Chair believed that paradigm shift of operating on an assumption of competence rather than incompetence exists already in Article 12, via the progression that states begin with a premise of legal capacity, proceed to supported decision making when required and move to substitute decision making only as a matter of last resort. Nonetheless, a number of states have asserted that, because there will be cases that require substitute decision making, or guardianship, it is better to provide safeguards in these extreme cases rather than leaving it open. The IDC’s position opposes mentioning guardianship at all in the text. The Chair asked for clarification regarding whether the IDC does accept that there will be circumstances in which there will be a need for substitute decision making. The IDC stated that it expects the notion of guardianship to be phased out. The difference between supported and substitute decision making is that, in a supported situation, the person with a disability is at the center of the discourse. The premise of supported decision making is that it ranges from zero to 100% and is a dynamic concept. As capacity increases, support decreases – a concept that is not allowed in guardianship. The Chair responded by referring to the IDC’s assertion that the need for support ranges from zero to 100%, and asked if 100% support is not the same as substitute decision making. While he understood the support paradigm, he asserted that, whether it is referred to as “100% support “substitute decision making” or “guardianship”, the result is the same if the subject of the decision does not participate in the decision. When this does occur, states are arguing that it is better to specify safeguards rather than leaving it open. The IDC responded that the point regarding abuse and the need to regulate are



addressed by text proposed by Canada and can also be taken care of in other articles. The IDC goal is to not legitimize guardianship. The point is that a need for 100% support percent will become 99% and then 98% percent if we are talking about supported decision making and this would not be possible in a guardianship situation. Xxx The Chair concluded the discussion of Article 12, with the following summary: Xxx There may be a way to frame the idea of substitution within the context of support with some creative thinking about the idea of the scale of support ranging from zero to 100%.

196. Based on this analysis, this Court is of the opinion that the intention of the RPWD-2016, is to first, examine if the PwD is capable of expressing his or her will or preferences, and second, under exceptional circumstances, where consultation is not possible, enable the provision of total support.

37. The Court had also in the said case also considered the manner in which jurisdiction would have to be exercised bearing in mind the latest legal position and the RPWD, 2016.

38. The Court had then come to the conclusion in the said decision that while exercising *parens patriae* jurisdiction, the Court can, in fact, provide total support if the *wills and preferences* of the individual are not ascertainable. The relevant portions of the decision concerning this power is set out below.

“217. While exercising parens patriae jurisdiction, Courts used to apply the principle of “best interest of the individual”. However, with the introduction of the UNCRPD, “best interest” of the individual has to be in the light of the “wills and preferences” of the individual. The same could be determined by means of advance



directives and in the absence of advance directives, facts and circumstances which point towards the wishes/intent of the concerned person. Thus, the “wills and preferences” of the mentally ill person have to be considered by the Court in deciding the manner in which care is to be given.

218. As noted in the concerns raised during the Parliamentary debates concerning the MHA-2017 and also from the lack of designated authorities explained above, there are gaps unaddressed by the legislations. The social fabric of family structures in India ought to be considered. In the same vein, the Court notes that the MHA-1987 had laid down certain standards and factors to be considered while determining the “best interest” of the mentally ill person. However, under RPWD-2016 and the MHA-2017, no guidance exists as to what would constitute the “wills and preferences” of the person. Under Section 14 of RPWD-2016, limited guardianship is for a specific period, a specific decision and a specific situation, in accordance with the will of the PwD. Even in the proviso to Section 14(1), the factors to be considered for providing total support are conspicuously absent. The MHA-2017 has no provision in respect of management of financial affairs, appointment of guardians or the manner in which the moveable/immovable property of the mentally ill person is to be taken care of. Thus, there is a clear statutory vacuum.

219. On the issue of Maintainability therefore the following factors are noted:

- (i) The RPWD-2016, the MHA-2017 or the RPWD (Delhi) Rules- 2018 do not create any embargo on the exercise of parens patriae jurisdiction.
- (ii) Providing ‘total support’ is contemplated under Section 14 of the RPWD-2016.
- (iii) However, the power under Section 14 of RPWD-2016 is to be exercised by the District Court or the Designated Authority. Currently, under the RPWD



(Delhi) Rules-2018, no Designated Authority has been appointed under Section 14.

(iv) Under the proviso to Section 14(1) of RPWD, 2016, there is no guidance as to the factors to be considered for providing total support.

(v) The various institutions and establishments contemplated under RPWD-2016 do not appear to be fully operational.

(vi) There is a clear legal vacuum in respect of providing total support to a person with disability who requires such support. No precedent has been cited either under the RPWD-2016 or MHA-2017 in this regard.

(vii) There are several gaps and concerns in the two legislations, i.e., RPWD-2016 and MHA-2017. All the required institutions under these statutes are not fully set up and functional.

(viii) In the present case, the condition of Mr. DMP is such that the Court has to take a comprehensive view under both legislations on two aspects:

(a) In respect of his medical care and treatment; and

(b) For management of his financial affairs, both movable and immovable assets which are valued at more than Rs. 3000 crores.

(ix) Above all, this Court is exercising jurisdiction under Article 226/227 of the Constitution of India, which is a jurisdiction conferred by the Constitution of India and in various judgments of the Id. Supreme Court, the parents patriae jurisdiction is clearly vested in Constitutional Courts. The present case falls in the category of exceptional circumstances, as held in *Shafin Jahan* (supra).

220. In any event, this Court is of the opinion that the solemn nature of the said jurisdiction having been repeatedly recognised by the Supreme Court, the question as to which Court has to exercise it and in what manner is one of mere procedure. So long as the “wills and preferences” of the mentally ill person and the other factors set out in the rules are borne in mind by the



Court exercising parens patriae jurisdiction, it cannot be held that the High Court exercising power under Article 226 is denuded of power in view of the provisions of the RPWD-2016 Act or the Rules thereunder.

221. Thus, both, while exercising jurisdiction under Article 226 and even in terms of the proviso to Section 14(1) of the RPWD-2016 and under the MHA-2017, this Court has the power to entertain the present petition seeking appointment of a guardian”

39. The present case would clearly fall within the legal mandate wherein a proper Committee for taking care of the physical, mental condition, medical condition, and movable assets and immovable assets, of Dr. Rattan and for safeguarding his overall well-being, deserves to be appointed.

40. The Court is also of the opinion after having seen the interim reports filed by the Id. *Amicus Curiae*, that in the present case, the need for a Committee, is not merely for safeguarding of assets of Dr. Rattan but there may be a requirement for taking civil/criminal action in order to ensure that any illegalities, which may have been committed, are reversed.

41. Under such circumstances, the Court is of the opinion that a Committee deserves to be formed to fully safeguard the needs of Dr. Rattan as held in **S.D. (supra)** and it is also observed that the guardian need not be a single individual. Considering the nature and extent of his assets, the Court holds that a Guardianship Committee deserves to be appointed in the present case. Accordingly, the following Guardianship Committee is appointed:

- (1) Mr. Akshay Makhija, Senior Advocate- Supervising Guardian;
- (2) Mr. Lalit Grover, Chartered Accountant;
- (3) Ms. Taruna Singh, the niece of Dr. Rattan.

42. The above Guardianship Committee may, in the interest of Dr. Rattan,



consult any doctor including Dr. Padma, if required, or any of her nominees and any other person merely for the purpose of obtaining advice for taking care of Dr. Rattan and his assets. The ultimate decision making shall vest with the Supervisory Guardian, who shall be Mr. Akshya Makhija.

43. The mandate of the Guardianship Committee shall also include:

- (i) Taking necessary steps as may be required to safeguard, protect and ensure the physical, mental and medical well-being of Dr. Rattan.
- (ii) To take all steps necessary to safeguard and protect movable and immovable assets of Dr. Rattan. In the said process, the nominated Guardianship Committee is free to take any civil or criminal action, as may be required, in respect of any alleged illegalities, which may have taken place including siphoning of funds, transfer of immovable properties, etc. For the said purpose, if any professional help is required, the Committee shall engage such professionals, as may be necessary.
- (iii) The Committee shall also ensure that the signatories in all the bank accounts, mutual funds, demat accounts, any other movable assets, fixed deposits, etc., shall be substituted/changed. All the said movable assets shall be under the control and supervision of the Guardianship Committee.
- (iv) The day-to-day expenses of Dr. Rattan shall be borne from the active bank accounts, which are currently mentioned in the interim reports of the *Id. Amicus Curiae*. The banks and all other authorities shall render complete co-operation to the Guardianship Committee.



- (v) The Court is informed that in several bank accounts Mr. Pandey and his mobile number was mentioned as the operating person. Henceforth, all the banks, institutions and authorities shall ensure that no messages or information about Dr. Rattan's accounts or financial dealings from his accounts are intimated to Mr. Pandey in any manner. The newly substituted signatories under the supervision of the Supervising Guardian shall be the persons who shall be entitled to operate the bank accounts/other accounts or deal with the other moveable assets of Dr. Rattan henceforth.
- (vi) *Status quo* shall be maintained in respect to the property being D-564, Church Road, Spring lane, Vasant Kunj, New Delhi-110070 over which Mr. Vishal Sood has raised claims. The said property shall not be tenanted/leased or used in any manner without the permission of the Guardianship Committee. The Committee is free to take action in accordance with law to safeguard this property.
- (vii) Insofar as the property at S. Nos. 7 is concerned, the Committee is free to take action in accordance with law, if there is any transfer, which is perceived to be illegal or unlawful.
- (viii) Insofar as the allegations relating to transfer of amounts and properties to Mr. Tola Kant Pandey and his family members *i.e.* Ms. Manisha Pandey, Ms. Karishma Isha Pandey are concerned, the Committee is free to approach the concerned authorities for initiation of action in accordance with law. The same would also apply in respect of Mr. Satish Kumar and Mr. Vishal Sood.
- (ix) Dr. Rattan shall continue to remain in his residence at the Mehrauli Farm House. During the course of proceedings, it has been



revealed to the Court that various staff members and other service providers in the Farm House seem to be giving information to third parties, as one of the vendors has given audio conversations to Mr. Pandey which was also relied upon before the Court. The Committee is free to change the staff members in the said Farm House, if so, if in the overall well-being of Dr. Rattan. The discretion for change of staff members shall lie with the Supervising Guardian.

- (x) If at any point, the Supervising Guardian requires any direction from this Court, he is free to approach the Court by way of an application.
- (xi) The Committee shall continue to obtain medical advice, as may be required from time to time from Dr. Padma or her team or any other doctors, for taking care of the medical needs of Dr. Rattan.
- (xii) Insofar as the Committee is concerned, the fee of the Supervising Guardian- Mr. Akshay Makhija, Senior Advocate is fixed for Rs. 2 lakhs per month and Rs. 1 lakh for the Chartered Accountant- Mr. Lalit Grover, Chartered Accountant, which shall be paid from the running accounts of Dr. Rattan. If the Guardianship Committee needs to bear any expenses, the same shall be borne from the accounts of Dr. Rattan.

44. Various affidavits and documents have been filed by the parties. The same are taken on record. Let the same be scanned along with the electronic records of the present petition. A sealed cover was placed with the Court, which purportedly contains the original Will of Dr. Rattan. The same has not



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been opened. The sealed cover be handed over to the Supervising Guardian Mr. Akshay Makhija, Senior Advocate, by the Court Master.

45. The petition is disposed of in the above terms. Pending applications, if any, shall also be disposed of accordingly.

PRATHIBA M. SINGH, J

AMIT SHARMA, J

NOVEMBER 08, 2024/dk/gs/bh/pr
(corrected & released on 14th November, 2024)