

**A.F.R.****IN THE HIGH COURT OF ORISSA AT CUTTACK****W.P.(C) No.24656 of 2024**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950)

.... *Petitioner*

-versus-

Ministry of Health and Family Welfare & Ors. *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Soumya Sekhar Parida, Adv.*

For Opposite Party (s) : *Ms. Sulochana Patra, CGC*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-19.03.2025

DATE OF JUDGMENT: -09.05.2025

Dr. S.K. Panigrahi, J.

1. The Petitioner, by way of the present Writ Petition, seeks a direction from this Court to appoint her as the legal guardian/representative of her husband, who is presently in a comatose or vegetative state.

I. FACTUAL MATRIX OF THE CASE:

2. The brief fact of the case is that:



- (i). The Petitioner's husband, Mr. Suresh Kumar Epari is currently in a comatose/vegetative state with no medical indication or reasonable prospect of revival. As a result of his sudden and severe medical condition, he is entirely physically incapacitated, incapable of communication, decision-making, or execution of documents.
- (ii). The Petitioner has been compelled to incur substantial and ongoing medical expenses while simultaneously managing household responsibilities and the educational needs of their dependent son, Mr. Sukrut Epari, who is presently pursuing a B.B.A. LL.B. degree.
- (iii). Mr. Suresh Kumar Epari is a businessman actively engaged in multiple enterprises. He is the sole proprietor of M/s. Kalinga Royale, a construction business, the managing partner of M/s. Epari Govindam & Sons, and the owner of a commercial property located at #78, Janpath, Kharvelnagar, Bhubaneswar, Odisha, which generates rental income. In all his business concerns, his shareholding is either full or joint (50%). Several immovable properties stand in his name, though their transfer and registration are pending. His business obligations require regular execution of sale deeds, payments to contractors, suppliers, employees, and the remittance of applicable taxes, particularly in relation to an ongoing apartment construction project. The Orissa Real Estate Regulatory Authority (ORERA) has mandated that the said construction be completed by 31.05.2025, with legal consequences in case of non-compliance.



- (iv). On 26.01.2024, Mr. Epari was admitted to Ashwini Hospital, C.D.A., Cuttack, after being diagnosed with pneumothorax (fluid accumulation in the lungs). During treatment, his condition worsened due to a rise in creatinine and urea levels, necessitating dialysis and intensive care owing to multiple organ failure. On medical advice, he was airlifted to Medanta Hospital, Gurugram, Haryana on 01.02.2024, where he suffered a cardiac arrest. Though successfully revived by a team led by Dr. Anand Jaiswal, Senior Consultant in Pulmonology, he remained unconscious and has since been in a vegetative state, requiring ventilator support and constant monitoring across various ICUs.
- (v). Despite extensive treatment at Medanta Hospital, including surgeries and continued care, Mr. Epari did not show neurological improvement. On 22.04.2024, he was discharged in a bedridden state with a tracheostomy in place and being fed via nasogastric tube. He was subsequently airlifted to Apollo Hospital, Arilova, Visakhapatnam, for further management under a team led by Dr. Atchyutha from the Pulmonology and Neurology departments. Upon discharge on 15.05.2024, home-based intensive medical care was recommended, involving installation of necessary equipment and medical personnel from Medanta Hospital's Home Care Department.
- (vi). From 15.05.2024 to 31.07.2024, the Petitioner and her husband resided at a rented apartment (Flat No. A1, Sagarika Apartments, Pandurangapuram, Visakhapatnam), where he remained under round-the-clock care provided by Dr. Anitha (General Physician), Dr. Vamshidhar (Nephrologist), and Dr. Shiva (Physiotherapist). On



31.07.2024, Mr. Epari was transported back to his residence in Cuttack, Odisha, accompanied by medical staff, and continues to be under the medical supervision of doctors from Apollo Hospital, Visakhapatnam and Medanta Hospital, Gurugram. Despite all treatment efforts, Mr. Epari has remained in a vegetative state since 02.02.2024.

- (vii). In view of his persistent incapacitation, the Petitioner is now compelled to take over his financial, legal, and business responsibilities, which include, inter alia, paying statutory dues, meeting operational expenses, executing legal documents, and ensuring compliance with obligations under ORERA and other regulatory bodies. These functions are critical for the sustenance of the family and the continuity of his business operations. The Petitioner's inability to act on his behalf, without legal authorization, poses a serious risk of financial loss and legal non-compliance.
- (viii). Accordingly, the Petitioner seeks to be appointed as the legal guardian/representative/attorney of her husband, Mr. Suresh Kumar Epari, to act on his behalf in all matters including legal, commercial, statutory, and financial transactions. The Petitioner further prays that this Court may be pleased to issue appropriate directions to the concerned authorities and institutions to recognize the Petitioner's legal authority to represent her husband in view of his medical incapacitation. The Petitioner submits that the present application arises from an unforeseen medical catastrophe, leaving the family without any other viable means of sustenance.



II. SUBMISSIONS OF THE RIVAL PARTIES:

3. The Counsel for the Petitioner submitted that the medical expenses incurred in looking after Suresh Kumar Epari, the husband of the petitioner, are quite substantial, and he continues to remain in a vegetative condition. As a result of his current state, he is unable to use his intellect, communicate, or execute documents. Accordingly, the petitioner is required to act as his guardian in order to safeguard his business interests, operate his bank accounts, make payments to discharge business liabilities, meet business requisitions, pay taxes, suppliers, employees, and attend to other financial responsibilities on his behalf, while also looking after the needs of the family. The petitioner must further attend to her husband's duties in running his business, specifically to comply with statutory conditions imposed by ORERA, which require completion of construction by 31.05.2025 and execution of sale deeds in favour of the buyers, along with post-legal and statutory compliances.
4. The sudden and unforeseen ailment of her husband, Mr. Suresh Kumar Epari, has rendered him to a vegetative state, a condition neither expected nor anticipated. The petitioner now faces an uncertain future, devoid of any source of income to meet the ongoing medical expenses of her husband, household needs, and the educational expenses of their son.
5. It is also submitted that the petitioner's son, having attained majority, has consented to the appointment of the petitioner as the guardian of Mr. Suresh Kumar Epari. Despite being in a vegetative state, Mr. Epari



retains his fundamental right to live with dignity. The petitioner, being his wife, bears legal, moral, familial, and societal obligations to care for him and the family. Without a stable income, the petitioner is unable to meet these essential expenses.

6. There being no specific statutory provision for the appointment of a guardian to care for individuals in a bedridden or vegetative condition, the petitioner has approached this Court under Article 226 of the Constitution of India, seeking recognition of her husband's right to live with dignity. In pursuit of this objective, she seeks to be appointed as his Guardian/Representative.
7. *Per contra*, the Opposite Parties have not filed any counter affidavit in the present proceeding. It is evident that the respondents have not controverted or challenged the foundational facts as pleaded by the petitioner. Their objection is confined solely to the maintainability of the relief(s) sought before this forum. In the absence of any rebuttal to the petitioner's factual assertions, the Court shall proceed on the presumption that the said facts are true and correct.

III. COURT'S REASONING AND ANALYSIS:

8. Heard Learned Counsel for the parties and perused the documents placed before this Court.
9. In the eyes of law, as in the deeper moral and cultural consciousness of society, a husband and wife are equal partners in the institution of marriage. This partnership is not merely contractual but spiritual, emotional, and existential. The wife is not only a companion but also, as ancient Indian philosophy describes, the *Ardhangini*, the other half of



the husband. The very word “*Ardhangini*” derives from the Sanskrit roots *ardha* (half) and *ang* (body), signifying that the wife is not a separate entity but one half of a composite whole. This concept finds powerful embodiment in the divine form of Ardhanarishvara, where Lord Shiva and Goddess Parvati unite as a single form representing the indivisible synthesis of the masculine and feminine energies: Shiva and Shakti.

10. Similarly, in biblical tradition, the Book of Genesis describes the creation of woman from the rib of man, signifying not subordination but intrinsic unity and equality: “*This is now bone of my bones and flesh of my flesh*”. The conception of marriage is that of a sacred covenant where “*the two shall become one flesh*”. In both these traditions, the wife is envisioned not merely as a dependent but as an indispensable and divinely sanctioned counterpart to the husband.
11. In this regard, the Bombay High Court in the case of ***Rajni Hariom Sharma v. Union of India***¹, had a similar view, and held as follows:

“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

¹ 2020 SCC OnLine Bom 880.



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."

12. The abovementioned precedent makes it clear that when a husband falls into a comatose or vegetative state, losing the ability to exercise reason, make decisions, or act on his own behalf, there can be no person more naturally, morally, or legally suited than the wife to act as his guardian. She has shared in his life, his burdens, his responsibilities, and his dreams. She is likely to understand his values, intentions, and wishes more than any other individual. Her appointment as guardian is not only an act of legal necessity but also one of moral imperative and social logic.
13. However, the guardianship of the husband cannot be granted to the wife solely on the basis of cultural or religious considerations. It is incumbent upon the Court to examine the matter within the framework of law and determine the question of guardianship in accordance with legal principles and statutory mandates.
14. From a lay perspective, there exists little distinction between a comatose condition and a vegetative state, as both reflect a state of profound unconsciousness and absence of cognitive function. While medical



science may differentiate the two based on clinical criteria, both conditions render the individual incapable of communication, decision-making, or meaningful interaction with the environment. In functional terms, they result in a complete loss of personal agency, necessitating the appointment of a substitute decision-maker. The petitioner, therefore, seeks to be appointed as the guardian and representative of her husband, who remains in a vegetative state and is medically incapacitated, analogous to a person in a coma.

15. Now, the factual position remains undisputed, as the opposite party has not attempted to controvert the same. The medical condition of the petitioner's husband, characterized by unresponsiveness and cognitive incapacity, has been clearly and authoritatively detailed in the medical certificate dated 19.07.2024, issued by Dr. Atchyuth R. Gongada (MD, FRCA), Senior Consultant and Head of the Department of Intensive Care and Anaesthesiology, Apollo Hospitals, Visakhapatnam. The relevant excerpt from the said certificate is reproduced hereinbelow for ready reference:

"This is to confirm that Mr. Suresh Kumar Epari M/53 yrs was admitted to Apollo Hospitals on 22/04/24 and he was treated on ICU and wards till 15/06/24. He was discharged home with nursing help at home. He was re-admitted to hospital on 16/06/24 till 20/06/24. He is now at home with 24 Hr nurses' help for his life activities.

*I saw this patient on 18/07/24 at in Apollo Hospital. He was brought by his wife, with the help of a male nurse and a male domestic help, on a wheel chair. **He is not able to communicate in writing or verbally. He is taking a***



long time to understand verbal input. He has shown significant improvement in his mental status since his discharge from the hospital.” (Emphasis supplied)

16. Now, in the absence of specific and comprehensive legislation governing the appointment of guardians or representatives for individuals in a comatose or vegetative state, the judiciary has frequently been confronted with complex situations concerning the management and administration of properties owned by such incapacitated persons. The legal vacuum in this area has resulted in a lack of uniformity and predictability, thereby compelling courts to adjudicate these sensitive matters on a case-by-case basis. In doing so, the courts have had to rely on constitutional principles, equitable considerations, and the broader intent of personal and proprietary rights to arrive at just and pragmatic solutions in the interest of the incapacitated individual.
17. In *Aruna Ramchandra Shanbaug v. Union of India & Ors.*², the Supreme Court addressed the legal vacuum surrounding the rights and care of individuals in a comatose state. Section 2(s) of the Rights of Persons with Disabilities Act, 2016 defines “persons with disabilities” as those who have long-term impairments which, in interaction with various barriers, may hinder their full and effective participation in society. However, this statutory definition presumes a degree of responsiveness or interaction, albeit limited. In contrast, individuals in a comatose or vegetative state are entirely unresponsive and incapable of

² 2011 INSC 187.



interaction or decision-making. Consequently, such persons fall outside the ambit of the said statutory framework, including the appointment of a guardian under Section 14 of the Act.

18. Given this legislative gap, and recognizing the urgent need for financial and medical decisions to be made in the best interest of the incapacitated individual, the Court has no alternative but to invoke its extraordinary jurisdiction under Article 226 of the Constitution of India.
19. The silence of the statute cannot become a justification for denial of relief when the life, dignity and welfare of an incapacitated person are at stake. In such exceptional situations, the Court must rise above procedural formalities and act in furtherance of justice by invoking its constitutional jurisdiction in a manner that safeguards the rights of the most vulnerable. This duty finds expression in the doctrine of *parens patriae* which allows Constitutional Courts to step in as the ultimate protector of those who cannot speak or act for themselves.
20. The Supreme Court in *Shafin Jahan v. Ashokan K.M. & Ors.*³, the Court has considered the scope of '*parens patriae*' jurisdiction and has observed as under:

"39. Constitutional Courts in this country exercise parens patriae jurisdiction in matters of child custody treating the welfare of the child as the paramount concern. There are situations when the Court can invoke the parens patriae principle and the same is required to be invoked only in exceptional situations. We may like to give some examples. For example, where a person is mentally ill and is produced before the court in a writ of habeas corpus, the court may

³ AIR 2018 SC 1933.



invoke the aforesaid doctrine. On certain other occasions, when a girl who is not a major has eloped with a person and she is produced at the behest of habeas corpus filed by her parents and she expresses fear of life in the custody of her parents, the court may exercise the jurisdiction to send her to an appropriate home meant to give shelter to women where her interest can be best taken care of till she becomes a major.

While the scope of the parens patriae jurisdiction is unlimited, the jurisdiction must nonetheless be exercised in accordance with its underlying principle. The discretion given under this jurisdiction is to be exercised for the benefit of the person in need of protection and not for the benefit of others. It must at all times be exercised with great caution, a caution that must increase with the seriousness of the matter. This is particularly so in cases where a court might be tempted to act because failure to act would risk imposing an obviously heavy burden on another person."

21. The Court further held that in order to invoke the *parens patriae* jurisdiction, exceptional circumstances have to exist. The scope of this jurisdiction has to be exercised with great caution and with enormous seriousness. The Supreme Court further recognises that Constitutional Courts, including High Courts, can also act under their *parens patriae* jurisdiction to "meet the ends of justice". Mental incompetency is listed as an exceptional circumstance which would justify the exercise of this jurisdiction. If the Court is satisfied that the person concerned is in a vegetative state, then surely "*parens patriae*" jurisdiction can be exercised.



22. Identical situations have arisen earlier also into various parts of the country. Different High Courts while dealing with such identical situations has passed the following orders.
23. In *Shobha Gopalakrishnan v. State of Kerala and Ors*⁴, the Kerala High Court considered the case of a patient in a comatose state, whose family was facing grave difficulties in arranging the necessary finances for his continued medical treatment and life support. The patient, being the sole breadwinner of the family, owned immovable properties; however, his family members were legally incapacitated from dealing with the said assets due to the absence of statutory authority or guardianship, thereby encountering insurmountable legal hurdles. The Court further observed the legal lacuna in India, highlighting the absence of any statutory provision or legislative framework enabling the appointment of a guardian for persons in a comatose or vegetative condition. The Kerala High Court invoked its *parens patriae* jurisdiction and framed detailed guidelines to address such exigencies in future cases:

“Coming to the incidental aspects; since no specific provision is available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in ‘comatose state’, it is necessary to stipulate some ‘Guidelines’, based on the inputs gathered by this Court from different corners, as suggested by the learned counsel for the petitioners, the learned Government Pleader and also by the learned Amicus Curiae, till the field is taken over by proper legislation in this regard. This Court finds it appropriate to fix the following norms/guidelines as a temporary measure:

⁴ AIRONLINE 2019 KER 992.



i) petitioner/s seeking for appointment of Guardian to a person lying in comatose state shall disclose the particulars of the property, both movable and immovable, owned and possessed by the patient lying in comatose state.

ii) The condition of the person lying in comatose state shall be got ascertained by causing him to be examined by a duly constituted Medical Board, of whom one shall definitely be a qualified Neurologist.

iii) A simultaneous visit of the person lying in comatose state, at his residence, shall be caused to be made through the Revenue authorities, not below the rank of a Tahsildar and a report shall be procured as to all the relevant facts and figures, including the particulars of the close relatives, their financial conditions and such other aspects.

iv) The person seeking appointment as Guardian of a person lying in comatose state shall be a close relative (spouse or children) and all the persons to be classified as legal heirs in the due course shall be in the party array. In the absence of the suitable close relative, a public official such as 'Social Welfare officer' can be sought to be appointed as a Guardian to the person lying in 'comatose state'.

v) The person applying for appointment as Guardian shall be one who is legally competent to be appointed as a Guardian

vi) The appointment of a Guardian as above shall only be in respect of the specific properties and bank accounts/such other properties of the person lying in comatose state; to be indicated in the order appointing the Guardian and the Guardian so appointed shall act always in the best interest of the person lying in 'comatose state'.

vii) The person appointed as Guardian shall file periodical reports in every six months before the Registrar General of this Court, which shall contain the particulars of all transactions taken by the Guardian in respect of the person and property of the patient in comatose state; besides



showing the utilization of the funds received and spent by him/her.

viii) The Registrar General shall cause to maintain a separate Register with regard to appointment of Guardian to persons lying in 'comatose state' and adequate provision to keep the Reports filed by the Guardian appointed by this Court.

ix) It is open for this Court to appoint a person as Guardian to the person lying in comatose state, either temporarily or for a specified period or permanently, as found to be appropriate.

x) If there is any misuse of power or misappropriation of funds or non-extension of requisite care and protection or support with regard to the treatment and other requirements of the person lying in comatose state, it is open to bring up the matter for further consideration of this Court to re-open and revoke the power, to take appropriate action against the person concerned, who was appointed as the Guardian and also to appoint another person/public authority/Social Welfare Officer (whose official status is equal to the post of District Probation Officer) as the Guardian.

xi) It shall be for the Guardian appointed by the Court to meet the obligations/duties similar to those as described under Section 15 of the National Trust Act and to maintain and submit the accounts similar to those contained in Section 16.

xii) The Guardian so appointed shall bring the appointment to the notice of the Social Welfare Officer having jurisdiction in the place of residence, along with a copy of the verdict appointing him as Guardian, enabling the Social Welfare Officer of the area to visit the person lying in 'comatose state' at random and to submit a report, if so necessitated, calling for further action/ interference of this Court .

xiii) The transactions in respect of the property of the person lying in 'comatose state', by the Guardian, shall be



strictly in accordance with the relevant provisions of law. If the Guardian appointed is found to be abusing the power or neglects or acts contrary to the best interest of the person lying in 'comatose state', any relative or next friend may apply to this Court for removal of such Guardian.

xiv) The Guardian appointed shall seek and obtain specific permission from this Court, if he/she intends to transfer the person lying in comatose state from the jurisdiction of this Court to another State or Country, whether it be for availing better treatment or otherwise."

24. In *Vandana Tyagi v. Government of National Capital Territory of Delhi*⁵, Delhi High Court in this case relied and reiterated the guidelines laid down by Kerala High Court in the case of *Shobha Gopalakrishnan* (supra), on how to deal with cases regarding the appointment of a legal guardian for comatose persons. These guidelines were issued by the Division Bench of Kerala High Court and followed by the Delhi High Court since no specific provision is available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in 'comatose state'. The Court also held that only the spouse or children can be appointed as a legal guardian of a person in coma and they will have to disclose the details of all tangible and intangible assets of the patient.
25. Then again, in *Rajni Hariom Sharma* (supra), the Bombay High Court affirmed the ratio decidendi laid down in the aforementioned two cases and invoked the principle of *ex debito justitiae*. The Court, while considering the submissions advanced by the appellants, noted that the

⁵ AIRONLINE 2020 DEL 5.



husband is in a comatose state and thereby rendered incapable of exercising his mental faculties, engaging in communication, or executing requisite documents. In view of these circumstances, it was contended that the appointment of a guardian is imperative to protect the business and proprietary interests of the patient and to ensure the welfare of the dependent family members. The relevant paragraphs of the judgment are extracted hereinbelow:

“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.

.....

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”

26. Therefore, recognizing the wife as the guardian of her husband in a comatose or vegetative condition is not only consistent with statutory principles and constitutional values, but also resonates deeply with cultural ethos and time-honoured traditions that venerate the marital bond as one of unity, duty, and mutual guardianship.
27. It is also worth emphasizing that in an era of evolving jurisprudence on personal liberty, bodily autonomy, and dignity, the law must not operate in a vacuum when faced with emerging social realities. With rapid medical advancements enabling prolonged survival even in vegetative states, the judiciary must proactively fill legislative voids by creating pragmatic frameworks that safeguard incapacitated individuals without undermining their human dignity. Where an individual is rendered silent by medical misfortune, the voice of the law must resonate through the person most intimately aware of his needs and values: his spouse. Any interpretation that obstructs her from assuming this role would not only be antithetical to compassion but would also amount to judicial abdication in the face of a moral and constitutional imperative.

IV. CONCLUSION:

28. In light of the foregoing analysis, this Court is of the considered view that the Petitioner is entitled to be appointed as the legal guardian and



representative of her husband, who is in a persistent vegetative state and incapable of managing his affairs.

29. Smt. Epari Sushma is hereby appointed as the legal guardian and representative of Mr. Suresh Kumar Epari, with full authority to manage all his personal, financial, legal, medical, and business matters, including compliance with statutory obligations.
30. All relevant authorities, banks, and regulatory bodies are directed to recognize the Petitioner's authority for all purposes. The Petitioner shall maintain accurate records of all transactions and actions taken on behalf of Mr. Epari and shall submit a detailed report to any regulatory authority as and when they demand for compliance.
31. The present Writ Petition is, accordingly, disposed of.
32. Interim order, if any, passed earlier stands vacated.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 9th May, 2025