

YOGESH RAI GOKAL v MAGANLAL GOKAL (HBC0407J of 2004S)

HIGH COURT — CIVIL JURISDICTION

5 JITOKO J

3 November 2004

Mental health and intellectual disability — guardians — appointment — unsound mind — Mental Treatment Health (Cap 113) ss 39, 41(2), 42, 43, 45, Pt 6.

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Mr Maganlal Gokal (the patient) was 74 years old and suffered from Parkinson's disease. He was under the care and custody of his eldest son, Yogesh Rai (the Applicant) and had no other close relative except his brother Raj Sagar who resided in the United States, and their divorced mother who remarried and relocated to Australia.

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The Applicant made an order for inquiry into the mental state of the patient in order to determine whether he was a person of unsound mind, and incapable of managing his affairs. He also asked for the appointment of a committee if the patient was found to be of unsound mind and asked the court to be appointed as one. The court adjourned the inquiry and ordered the Department of Social Welfare to prepare a report on the patient.

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Held — (1) The Department of Social Welfare report agreed with the conclusions made by the consultant physicians. While the officials of the department do not have the expertise possessed by the consultants in the field of mental health, their observations were equally relevant for the court in its consideration. The Applicant presented three medical reports which were from a consultant physician, neurologist and a consultant psychiatrist and psychotherapist. Each physician examined the patient and made their own

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independent reports saying that the patient had Parkinson's disease and associated dementia, he was disoriented in time and place, was not able to tell the year, date and day of the week, and was unable to recollect the nature of his estates and was mentally incompetent. The patient was of unsound mind within the meaning of the Mental Treatment Health Act Cap 113 (the Act).

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(2) As to who was to be appointed as committee, the patient had no immediate relatives living in Fiji. While he had a brother, he was in the United States and took little interest with the state of his brother. Under the circumstances, it was appropriate to appoint the Applicant a committee for the person and estate of the patient as provided under s 45 of the Act.

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Application granted.

No cases referred to

R. Lal for the Applicant

J. J. Udit for the Respondent

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Jitoko J. This is an application made under ss 9, 41(2) and 45 of the Mental Treatment Health Act (Cap 113) (the Act).

The Applicant's originating summons prays as follows:

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(a) This Court Order an Inquiry into the mental state of Maganlal Gokal (f/n Lallu Gokal) so as to determine whether he is a person of unsound mind and incapable of managing his affairs; and

(b) If Maganlal Gokal (f/n Lallu Gokal) is found to be a person of unsound mind and incapable of managing his affairs a committee or committees be appointed of his person and estate such committee or committees to comprise of the applicant; and

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(c) Service of this application on Maganlal Gokal (f/n Lallu Gokal) be dispensed with.

Order for inquiry was made when the matter came before me on 12 October, 2004. The court in exercise of its discretion under s 41(2) of the Act also ordered the documents to be served on the Attorney-General's chambers and to appear as a friend of Maganlal Gokal and assist the court. The inquiry was adjourned to 5 19 October 2004. At the 19 October hearing, after hearing Mr Udit's submission on behalf of Mr Maganlal Gokal, the court ordered that the Department of Social Welfare prepare a report on Maganlal within 14 days. The report is now before the court.

10 **Background**

Mr Maganlal Gokal (f/n Lallu Gokal) (the patient) is 74 years old and suffers from Parkinson's disease, he having being first diagnosed with it in 1997. Since December 2003, the patient has been under the care and custody of his eldest son, Yogesh Rai (the Applicant), first at the patient's home at Nasese, Suva and 15 presently at Trendwest hotel, Nadi. According to the Applicant's affidavit, the patient has no other close relative except his brother Raj Sagar who now resides in the United States, and their divorced mother Sumitra, who has since remarried and relocated to Australia. She has had no contact whatsoever with the patient.

20 **Proceedings in inquiries into unsoundness of mind**

This proceedings are governed by Pt VI of the Act. First s 39 allows the setting-up of an inquiry to ascertain whether a person is of an unsound mind. It states:

25 39.(1) The Court may on such an application as hereinafter mentioned, make an order directing an inquiry whether any person subject to the jurisdiction of the Court who is alleged to be of unsound mind, is or is not of unsound mind and incapable of managing himself and his affairs.

30 (2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the person alleged to be of unsound mind, the persons who are his relatives of next of Kin, the time during which he has been of unsound mind or such other questions as to the Court shall seem proper.

However it is specifically in respect of s 39(1) that this inquiry was ordered although the issues such as the duration of the patient's mental state or condition and next of Kin will arise in the course of the inquiry.

35 Who can make the application? Section 40 of the Act states that:

40 40. Application for such inquiry may be made by any person related by blood or marriage to the person alleged to be of unsound mind, or by any officer in the public service of Fiji nominated by the Minister for the purpose of making the application.

Quite clearly, the Applicant, Yogesh Rai, being a son of the patient, can apply.

The fact that the notice of inquiry required under s 41 of the Act is to be served on the person alleged to be of unsound mind and to any other person related by blood or marriage, as well as the provisions granting the court general discretion 45 to order substituted service on behalf of the person alleged to be of unsound mind, ensures the protection of the interests of not only the person alleged to be of unsound mind, but equally of his relatives. The same theme on the protection of his interest is carried over to the provision of s 42 requiring, if the court deemed it necessary, the attendance before the court for the purpose of personal 50 examination, the person alleged to be of unsound mind. All of these provisions points to and reflects the belief that the state bears the ultimate responsibility in

not only providing for the reception and care of mental patients, but ensuring their interests including those of their families are secured and protected.

Section 43 sets out the questions to be decided by the court. In determining whether a person is of unsound mind and is incapable of managing himself and his affairs, the court shall take into account medical reports and other relevant information.

If the court is satisfied that the person is of unsound mind and is incapable of managing himself and his affairs, the court may appoint a committee or committees of persons, under s 45 of the Act, to look after the person's health as well as his estate. The Applicant in this instance, asks to be appointed as the committee for both the person and the estate.

Medical reports

There are three medical reports tendered by the Applicant in support of his application. The reports are from Dr Rao, consultant physician at the Colonial War Memorial Hospital, Dr Edmund Woo a neurologist from Hong Kong, and a Dr Ung Eng Khean, consultant psychiatrist and psychotherapist from Singapore. Each physician, had in turn examined the patient and made their own independent reports.

Dr Woo examined the patient on 23 February 2004. His prognosis is clear saying of the patient:

He has advanced Parkinson's disease with resting tremor cogwheel rigidity, and marked festinace (so severe as to result in a fixed kyphosis). He is also confused and disorientated recently, such persisting discontinuation of his usual anti-Parkinson medications.

Dr Rao's examinations of the patient was conducted at the CWM Hospital over a period since 1997. Dr Rao's report concluded as follows:

In short Mr Gokal suffers from long standing Parkinson's Disease and associated Dementia. From my observation in the past, he is incapable of making any rational decisions and looking after himself. He needs someone to help him with his daily activities living.

Finally Dr Khean examined the patient on 3 September 2004 in Singapore. According to Dr Khean a brain CT scan on the patient showed cortical atrophy. He then conducted a psychiatric evaluation on the patient. He reports:

Folstein's Mini Mental State Exam was conducted to evaluate his cognitive state. He was disorientated in time and place. He was not able to tell me year, date, day of the week, nor month. He identified that he was in Fiji. He was not able to identify that he was in a hotel room in Singapore.

Dr Khean, after conducting various other tests on the patient concluded that

Mr Gokal is suffering from dementia together with his Parkinson's Disease ... He is unable to recollect the nature of his estates and is mentally incompetent.

As a friend of the patient, Mr Udit of the Attorney-General's chambers, undertook to produce to the court an independent report. This he has done through the Office of the Director of the Department of Social Welfare. The report consists of visit to the patient and interviews by Senior Welfare Officer in Nadi supplemented by the Senior Welfare Officer Southern interviews and visit to the patient's residence at Nasese, Suva.

In summary, the Department of Social Welfare report generally agrees with the conclusions made by the consultant physicians. While the court appreciates that the officials of the department do not have the expertise possessed by the

consultants in the field of mental health, their observations are nevertheless equally relevant for this court in its consideration. I have also had the benefit of counsel's submissions.

5 In the end, I am satisfied that the patient Maganlal Gokal (f/n Lallu Gokal) is a person of unsound mind within the meaning of the Act.

There are no near relatives living in Fiji, and the Applicant's only brother, has emigrated to the United States and takes little interest in the state of health of his father. Under the circumstances, I appoint the Applicant to constitute a committee of the person and estate as provided under s 45 of the Act.

10 Finally, I am most grateful for the ready and valuable assistance rendered to the court in this proceedings by Mr Udit counsel from the Attorney-General's chambers.

Application granted.

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