"C.R"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 3RD DAY OF JUNE 2026 / 13TH JYAISHTA, 1948

WP(C) NO. 12482 OF 2025

PETITIONER/S:

BY ADV SRI.S.DILEEP (KALLAR)

RESPONDENT/S:

1 THE DISTRICT COLLECTOR
COLLECTORATE, KOTTAYAM DISTRICT, PIN - 686002

2 THE DISTRICT OFFICER
SOCIAL JUSTICE DEPARTMENT, DISTRICT OFFICE,
KOTTAYAM, PIN - 686002

3

D/O SATHEESH KUMAR, SANKARA NILAYAM, EDANAD P O, VALLICHIRA VILLAGE, KOTTAYAM, PIN - 686574

4

BY ADVS.
GOVERNMENT PLEADER
SHRI.JOSEPH CHANDY
SHRI.K.R.RANJITH, GOVERNMENT PLEADER WITH STATE ATTORNEY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.06.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

C.S.DIAS, J.

W.P.(C) No.12482 of 2025

Dated this the 3rd day of June, 2026

JUDGMENT

The petitioner is the husband of the 4th respondent and the father of the 3rd respondent. The 3rd respondent was born on 18.05.2004. Ext.P1 Standing Disability Assessment Board Certificate substantiates that the 3rd respondent is disabled with Down Syndrome and her disability is of a moderate category. Ext.P2 disability registration certificate issued by the Ministry of Social Justice and Empowerment evidences that the 3rd respondent is a person with intellectual disability of 55 per cent. The petitioner asserts that on 22.12.2024, the 4th respondent left the matrimonial home, along with the 3rd respondent, without any justifiable cause. It is his case

that the 4th respondent has no independent source of income. Despite lodging complaints with the Police, no effective action has been taken. As the 3rd respondent has Down Syndrome and requires continuous care and protection, the petitioner submitted Ext.P8 application before the 1st respondent to appoint him as the legal guardian of the 3rd respondent as per the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (for short, “the Act”). However, by Ext.P9 communication, the 1st respondent rejected the application on the premise that Down Syndrome does not fall within any of the categories of disability recognised under the Act. Aggrieved thereby, this writ petition is filed.

2. The respondents 3 and 4 have filed a counter-affidavit opposing the writ petition. They contend that the

petitioner has been maintaining an unnatural relationship with a 22-year-old male. The petitioner has also subjected the 4th respondent to matrimonial cruelty. It is further contended that, as the 3rd respondent has attained majority, she is entitled to decide with whom she wishes to live. It would neither be desirable nor conducive to the welfare of the 3rd respondent to compel her to live with the petitioner. Therefore, the writ petition may be dismissed.

3. In the reply affidavit, the petitioner has categorically denied the allegations levelled against him. He has reiterated that he has been denied access to his daughter. According to him, the 3rd respondent requires his care, affection and support. Her welfare would be secured by appointing him as her legal guardian.

4. I have heard Sri. Dileep S. Kallar, the learned counsel for the petitioner; Sri. Joseph Chandy, the

learned counsel appearing for respondents 3 and 4; Sri. K.R. Ranjith, the learned Government Pleader; and Smt. Sathyasree Priya Easwaran, the learned Amicus Curiae.

5. The point is whether the 1st respondent was justified in rejecting Ext.P8 application on the ground that Down Syndrome is not a disability falling within the purview of the Act.

6. In Ext.P8 application, the petitioner had specifically asserted that the 3rd respondent suffers from 55% disability on account of Down Syndrome and, therefore, the petitioner may be appointed as the guardian of his daughter to protect her welfare and best interest. In support of the application, the petitioner produced Exts.P1 and P2 certificates. Nevertheless, the 1st respondent summarily rejected the application on the ground that Down Syndrome is not a disability falling within the framework of the Act.

7. To appreciate the correctness of the above conclusion, it is necessary to advert to the relevant provisions of the Act, particularly the preamble of the Act, Sections 2(g), 2(h), 2(j), 2(o) and 14, together with Rule 16 of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules, 2000 and Regulations 11 to 13 of the Board of the Trust Regulations, 2001.

7.1. The Preamble of the Act reads thus:

> "An Act to provide for the constitution of a body at the National level for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities and for matters connected therewith or incidental thereto."

7.2. Section 2(g) reads thus:

> "(g) "mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterised by sub-normality of intelligence."

7.3. Section 2(h) reads as follows:

> "(h) "multiple disabilities" means a combination of two or more disabilities as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)."

7.4. Section 2(j) reads thus:

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

7.5. Section 2(o) reads as follows:

"(o) "severe disability" means disability with eighty per cent. or more of one or more multiple disabilities"

7.6. Section 14 reads thus:

"14. Appointment for guardianship.—(1) A parent of a person with disability or his relative may make an application to the local level committee for appointment of any person of his choice to act as a guardian of the persons with disability.
(2) Any registered organisation may make an application in the prescribed form to the local level committee for appointment of a guardian for a person with disability: Provided that no such application shall be entertained by the local level committee, unless the consent of the guardian of the disabled person is also obtained.
(3) While considering the application for appointment of a guardian, the local level committee shall consider—
(a) whether the person with disability needs a guardian;
(b) the purposes for which the guardianship is required for person with disability.
(4) The local level committee shall receive, process and decide applications received under subsections (1) and (2), in such manner as may be determined by regulations: Provided that while making recommendation for the appointment of a guardian, the local level committee shall provide for the obligations which are to be fulfilled by the guardian.
(5) The local level committee shall send to the Board the particulars of the applications received by it and orders passed thereon at such interval as may be determined by regulations."

7.7. Rule 16 of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation

and Multiple Disabilities Rules, 2000 (‘Rules’, for short) reads as follows:

> “14. Decision by majority - All questions considered at a meeting shall be decided by a majority of votes of the members present and voting and in the event of equality of votes, the Chairperson or in his absence, the member presiding at the meeting, as the case may be, shall have a second or casting vote.”

7.8. Regulations 11 to 13 of the Board of the Trust Regulations, 2001, read as follows:

> “11. Who may apply for guardianship:
> (1) Both the parents may jointly, or, in the event of the absence of one due to death, divorce, legal separation, desertion or conviction, may singly apply for guardianship of their or as the case may be his ward beyond the age of 18 years.
> (2) In the event of death, desertion, conviction of both the parents, the siblings (including half and step siblings) jointly or singly (reason of single application to be explained separately) may apply for guardianship of a disabled member of the family.
> (3) In the event of non-application of sub-registration (1) and (2) above, a relative may make an application for guardianship.
> (4) In the event of non-application of sub-regulation (1), (2) and (3), any registered organization may make an application for guardianship.
> (5) The Local Level Committee may direct a registered organization to make an application for guardianship in case of a destitute or abandoned person.
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> 12. Who may be indicated by applicant as guardian:
> (1) Both the parents jointly, or, singly in the event of the absence of one due to death, divorce, legal separation, desertion or conviction, being natural guardian of minor may apply to the Local Level Committee to get themselves or himself as the case may be, appointed as guardian of their or as the case may be his disabled ward beyond the age of 18, in which case the application shall be accepted unless the parent is disqualified on account of
> i. loss of citizenship;

ii. being of unsound mind;
iii. being convicted by a court of law; or
iv. being a destitute.

(2) The applicant may indicate siblings, or any member of the family or any other person or a registered institution for consideration as a guardian and in case of institutions, the conditions of eligibility of institutions shall be as stipulated in sub-regulations (3), (4) and (5).

(3) In the case of considering the institution as a guardian, the institution must be registered under a law and be capable of providing care of the person.

(4) In the event of institution ceasing to be registered under a law or stops functioning, or is found otherwise unsuitable, the Local Level Committee shall make alternative arrangements for the foster care of any such inmate or the ward, who is under the care of any such institute.

(5) The alternative care under sub-regulation (4) shall not be permanent in nature and shall be placed by permanent guardianship within a period of one year.

(6) The applicant must be living in the vicinity or close proximity to the place where the ward has been habitually living at the time of appointment of guardian.

(7) No single male shall be considered as a guardian for a female ward and in the case of female wards, the male person shall be given co-guardianship with his spouse, who shall be master co-guardian.

13. Guidelines for receiving, processing and confirmation of application for appointment of a guardian:

(1) The Local Level Committee shall receive applications for appointment of guardian in Form D or Form A under the rules.

(2) On receipt of the application for appointment of guardian, the Local Level Committee shall scrutinize the application and call for any supporting document or information that may be necessary for deciding the issue of guardianship.

(3) In case of application received from parents for guardian other than themselves, the Local Level Committee may decide to get parent's counselling in any manner, it may decide to determine the genuineness of having a guardian other than parents.

(4) If parents or relatives are not available for the person with disability who is in need of guardian, because of being a vagrant or destitute or found abandoned, member or members of the

Committee may ask for applications from a registered organization to initiate the process of guardianship for the person.
(5) The person with disability must be assessed by the Local Level Committee, to determine the genuineness of the need of guardianship and it shall be open to the Local Level Committee to seek the assistance of technical personnel or their services to determine the need.
(6) The local level committee shall satisfy itself about the capabilities and the suitability of the person on whom guardianship is being conferred.
(7) The application for guardianship for personal care and maintenance shall be accepted to cover the following areas, namely

a. Food, clothing and shelter needs;
b. Health care needs;
c. Religious needs;
d. Education, training and employment needs;
e. Leisure and nutrition needs;
f. Protection from exploitation and abuse;
g. Protection of constitutional and human rights; and
h. Medical and surgical needs

(8) The confirmation of appointment of the guardian on application made by (1) a registered organization; or (2) the parent or relative of a person with disability shall be made in Form E or Form B under the rules".

8. As extracted above, Section 2(g) of the Act defines 'mental retardation' as a condition of arrested or incomplete development of the mind of a person, which is specially characterised by sub-normality of intelligence. Likewise, Section 2(j) defines a 'person with disability' as a person suffering from any of the conditions relating to autism, cerebral palsy, intellectual disability or a

combination of any two or more of such conditions and includes a person suffering from severe multiple disabilities. Similarly, under Section 2(h), ‘multiple disabilities’ mean a combination of two or more disabilities as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955.

9. The materials placed establish that the 3rd respondent has Down Syndrome.

10. The Guidelines notified by the Government of India through S.O. 76(E) dated 04.01.2018, for assessment of specified disabilities under the Rights of Persons with Disabilities Act, 2016, recognise intellectual disability as a condition requiring evaluation and certification. Chapter IV of the Guidelines specifically deals with intellectual disabilities.

11. The IAP Handbook of Development and Behavioural Paediatrics describes Down Syndrome as a complex genetic condition resulting in lifelong health challenges, including varying degrees of intellectual disability and developmental delay affecting speech, learning and memory. The Handbook further notes that Down Syndrome constitutes the most common genetic cause of intellectual disability.

12. Likewise, the report titled '*Behavioural Problems in Children with Down Syndrome*', prepared by the Department of Paediatrics, All India Institute of Medical Sciences, New Delhi, and the Department of Psychiatry, University College of Medical Sciences and Guru Teg Bahadur Hospital, records a significantly higher prevalence of psychiatric disorders and developmental delays among children affected by Down Syndrome.

13. The learned Amicus Curiae has also placed on record authoritative literature to fortify her contention that Down Syndrome is an intellectual disability falling squarely within the ambit of “mental retardation” as defined under Section 2(g) of the Act.

14. Ext.P1 certificate issued by a duly constituted five-member Standing Disability Assessment Board attached to the Government District Hospital, Kottayam, unequivocally certifies that the 3rd respondent has intellectual disability attributable to Down Syndrome, with a permanent disability assessed at 55%. The certificate further states that a disability exceeding 40% is considered severe. Ext.P2 disability registration certificate similarly proves that the 3rd respondent has intellectual disability to the extent of 55%.

15. In the face of the above statutory provisions, medical literature and disability certificates issued by

competent authorities, the conclusion arrived at by the 1st respondent that Down Syndrome does not fall within the purview of the Act seems to be erroneous.

16. Equally significant is the fact that the 1st respondent has rejected Ext.P8 application without following the procedure envisaged under the Act, Rules or Regulations and without affording either the petitioner or respondents 3 and 4 an opportunity of being heard. The statutory scheme envisages scrutiny of the application, collection of relevant materials, assessment of the person with a disability, and ascertainment of whether the person in need of care requires a guardian. None of the above mandatory requirements contemplated under the Statute appears to have been complied with by the 1st respondent. Thus, Ext.P9 communication and process leading to the decision are manifestly arbitrary,

suffer from non-application of mind and are vitiated by errors of both law and fact.

In the above conspectus, Ext.P9 communication is quashed. The 1st respondent/competent authority is ordered to reconsider Ext.P8 complaint in accordance with the law, after affording the petitioner and the respondents 3 and 4 an opportunity of being heard. The above exercise shall be completed within three months from the date of production of a copy of this judgment, untrammelled by any observation made in this judgment. This Court places on record its appreciation for the valuable assistance rendered by the learned Amicus Curiae.

The writ petition is ordered accordingly.

Sd/-

C.S.DIAS, JUDGE

dkr

APPENDIX OF WP(C) NO. 12482 OF 2025

PETITIONER EXHIBITS

EXHIBIT P1	**THE TRUE COPY OF THE STANDING DISABILITY ASSESSMENT BOARD CERTIFICATE ISSUED BY THE MEDICAL BOARD MEMBERS OF GOVERNMENT DISTRICT HOSPITAL, KOTTAYAM DATED 18/04/2011 .**
EXHIBIT P2	**THE TRUE COPY OF THE CERTIFICATE BEARING NO. 32100000022052421386 DATED 30/05/2022 ISSUED BY THE DEPARTMENT OF EMPOWERMENT OF PERSONS WITH DISABILITIES, MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, GOVERNMENT OF INDIA.**
EXHIBIT P3	**THE TRUE COPY OF THE DECLARATION ISSUED FROM MAHATMA GANDHI UNIVERSITY SCHOOL OF BEHAVIOURAL SCIENCES, KOTTAYAM DATED 22/07/2024.**
EXHIBIT P4	**THE TRUE COPY OF THE COMPLAINT DATED 26/12/2024 SUBMITTED BY THE PETITIONER BEFORE THE KIDANGOOR POLICE.**
EXHIBIT P5	**THE TRUE COPY OF THE RECEIPT ISSUED BY THE KIDANGOOR POLICE DATED 26/12/2024.**
EXHIBIT P6	**THE TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE DYSP, PALA.**
EXHIBIT P7	**THE TRUE COPY OF THE ACKNOWLEDGEMENT DATED 10/01/2025 FOR THE RECEIPT OF THE EXHIBIT P6 .**
EXHIBIT P8	**THE TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 30/01/2025.**
EXHIBIT P9	**THE TRUE COPY OF THE LETTER BEARING NO. SJD/KTM/DSJO/54/2025-A4 DATED 24/02/2025.**

EXHIBIT P10	**THE TRUE COPY OF THE FRONT PAGE OF ROOPESH PASSPORT BEARING NO. R4138663 WHICH CONTAINS HIS ADDRESS**
EXHIBIT P11	**THE TRUE COPY OF THE DRIVING LICENSE IN THE NAME OF ROOPESH BEARING NO. KL35 20110001309**
EXHIBIT P12	**THE TRUE COPY OF THE TRUST DEED DATED 01/08/2022**