

HIGH COURT FOR THE STATE OF TELANGANA :: HYDERABAD

ROC No. 303/SO/2023

Date:14.02.2024

CIRCULAR No. 1/2024

Sub: High Court for the State of Telangana – Judgement and Orders of Hon'ble Supreme Court of India in WP(Civil) No.215 of 2005 and Miscellaneous Application No.1699 of 2019 – Passive Euthanasia – Certain directions issued – Instructions for implementation of the directions- Reg.

Ref: 1. Judgement dt. 9-3-2018 in WP(Civil) No.215/2005 of the Hon'ble Supreme Court of India.
2. Order dated 24-01-2023 in Miscellaneous Application No.1699 of 2019 in W.P(Civil) No.215 of 2005 of the Hon'ble Supreme Court of India.

You are aware that the Hon'ble Supreme Court of India in its Judgment 1st cited, has dealt with Passive Euthanasia and formulated procedure for effectuating voluntary and non-voluntary Passive Euthanasia and laid down safeguards and guidelines. The Hon'ble Supreme Court has also enumerated Advance Medical Directive like the persons who can execute the same, what it should contain, how it should be recorded and preserved, when and by whom it can be given effect to, remedies available in case the Medical Board refuses permission to give effect to Advance Medical Directive, Revocation and inapplicability of Advance Directive etc.,. The Judgment was reported in AIR 2018 SC 1665 and 2018(5) Scc.1

It is further to inform that the Hon'ble Supreme Court in its Order dated 24-01-2023 in reference 2nd cited, has modified/deleted/no change the directions contained in paragraph 198 to 199, the earlier Judgement

of the Hon'ble Supreme Court. The main features of the modified directions in relation to Judiciary are as under:

| Para Nos. | Old Directions | Modified/Deleted/no Change Directions. |
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| 198.3.1 | The document should be signed by the executor in the presence of two attesting witnesses, preferably independent, and countersigned by the Jurisdictional Judicial Magistrate of First Class (JMFC) so designated by the District Judge concerned | It should specify the name of a guardian(s) or close relative(s) who, in the event of the executor becoming incapable of taking decision at the relevant time, will be authorised to give consent to refuse or withdraw medical treatment in a manner consistent with the Advance Directive. |
| 198.3.2 | The witnesses and the Jurisdictional Judicial Magistrate of First Class (JMFC) shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences | The witnesses and the <i>notary or Gazetted Officer</i> shall record their satisfaction that the document has been executed voluntarily and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences. |
| 198.3.3 | The JMFC shall preserve one copy of the document in his office, in addition to keeping it in digital format. | Deleted |
| 198.3.5 | The Judicial Magistrate of First Class shall cause to inform the immediate family members of the executor, if not present at the time of execution, and make them aware about the execution of the document. | The executor shall inform, and hand over a copy of the Advance Directive to the person or persons named in Paragraph 198.2.5, as well as to the family physician, if any |
| 198.3.7 | The JMFC shall cause to hand over copy of the Advance Directive to the family physician, if any. | Deleted |
| 198.4.1 | In the event the executor becomes terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure of the ailment, the treating physician when made aware about the Advance Directive, shall ascertain the | In the event the executor becomes terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure of the ailment, <i>and does not have decision-making capacity</i> , the treating physician, when made aware about the Advance Directive, shall ascertain the genuineness and authenticity thereof <i>with</i> |

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| | genuineness and authenticity thereof from the jurisdictional Judicial Magistrate of First Class before acting upon the same. | <i>reference to the <u>existing digital health records of the patient</u>, if any or from the <u>custodian of the document referred to in Paragraph 198.3.6 of this judgement.</u></i> |
| 198.4.7 | The Chairman of the Medical Board nominated by the Collector, that is, the Chief District Medical Officer, shall convey the decision of the Board to the jurisdictional Judicial Magistrate of First Class before giving effect to the decision to withdraw the medical treatment administered to the executor. The Judicial Magistrate of First Class shall visit the patient at the earliest and, after examining all aspects, authorise the implementation of the decision of the Board. | The <i>hospital where the patient is admitted</i> , shall convey the decision of the <i>Primary and Secondary Medical Boards and the consent of the person or persons named in the Advance Directive</i> to the jurisdictional JMFC before giving effect to the decision to withdraw the medical treatment administered to the executor. |
| 198.5.1 | If permission to withdraw medical treatment is refused by the Medical Board, it would be open to the executor of the Advance Directive or his family members or even the treating doctor or the hospital staff approach the High Court by way of writ petition under Article 226 of the Constitution. If such application is filed before the High Court, the Chief Justice of the said High Court shall constitute a Division Bench to decide upon grant of approval or to refuse the same. The High Court will be free to constitute an independent committee consisting of three doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years. | If permission to withdraw <u>medical treatment</u> is refused by the <i>Secondary Medical Board</i> , it would be open to <i>the person or persons named in the Advance Directive</i> or even the treating doctor or the hospital staff to approach the High Court by way of writ petition under Article 226 of the Constitution. If such application is filed before the High Court, the Chief Justice of the said High Court shall constitute a Division Bench to decide upon grant of approval or to refuse the same. The High Court will be free to constitute an independent committee consisting of three doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years. |
| 198.5.2 | The High Court shall here the application expeditiously after affording opportunity to the State counsel. It would be open to the High Court to constitute Medical | No Change |

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| | Board in terms of its order to examine the patient and submit report about the feasibility of acting upon the instructions contained in the Advance Directive. | | |
| 198.5.3 | Needless to say that the High Court shall render its decision at the earliest as such matters cannot brook any delay and it shall ascribe reasons specifically keeping in mind the principles of "best interests of the patient". | | No Change |
| 199.2 | In the event of Hospital Medical Board certifies the option of withdrawal or refusal of further medical treatment, the hospital shall immediately inform the jurisdictional collector. The jurisdictional Collector shall then constitute a Medical Board comprising the Chief District Medical Officer as the Chairman and three experts from the fields of general, medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years. The Medical Board constituted by the collector shall visit the hospital for physical examination of the patient and, after studying the medical papers, may concur with the opinion of the Hospital Medical Board. In that event, intimation shall be given by the Chairman of the collector nominated Medical Board to the Judicial Magistrate of First Class and the family members of the patient. | In the event the <u>Primary</u> Medical Board certifies the option of withdrawal or refusal of further medical treatment, the hospital shall then constitute a <u>Secondary</u> Medical Board comprising <u>in the manner indicated hereinbefore</u> . The <u>Secondary</u> Medical Board shall visit the hospital for physical examination of the patient and, after studying the medical papers, may concur with the opinion of the <u>Primary</u> Medical Board. In that event, intimation shall be given by the <u>hospital</u> to the JMFC and the next of kin/next friend/guardian of the patient preferably within 48 hours of the case being referred to it. | Their decision will be regarded as a preliminary opinion |
| 199.3 | The JMFC shall visit the patient at the earliest and verify the medical reports, examine the condition of the patient, discuss with the family members of the patient and, if satisfied in all respects, may endorse the decision of the | | Deleted |

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| | Collector nominated Medical Board to withdraw or refuse further medical treatment to the terminally-ill patient. | |
| 199.4 | There may be cause where the Board may not take a decision to the effect of withdrawing medical treatment of the patient or the collector nominated Medical Board may not concur with the opinion of the hospital Medical Board. In such a situation, the nominee of the patient or the family member or the treating doctor or the hospital staff can seek permission from the High Courts to withdraw life support by way of Writ petition under Article 226 of the Constitution in which case the Chief Justice of the said High Court shall constitute a Division Bench with shall constitute a Division Bench which shall decide to grant approval or not. The High Courts may constitute an independent committee to depute three doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years after consulting the competent medical practitioners. It shall also afford an opportunity to the state counsel. The High Courts in such cases shall render its decision at the earliest since such matters cannot brook any delay. Needless to say, the High Courts shall ascribe reasons specifically keeping in mind the principle of "best interests of the patient" | There may be cases where the <u>Primary Medical</u> Board may not take a decision to the effect of withdrawing medical treatment of the patient or the <u>Secondary</u> Medical Board may not concur with the opinion of the <u>Primary</u> Medical Board. In such a situation, the nominee of the patient or the family member or the treating doctor or the hospital staff can seek permission from the High Court to withdraw life support by way of writ petition under Article 226 of the Constitution in which case the Chief Justice of the said High Court shall constitute a Division Bench which shall decide to grant approval or not. The High Court may constitute an independent committee to depute three doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty years after consulting the competent medical practitioners. It shall also afford an opportunity to the State counsel. The High Court in such cases shall render its decision at the earliest since such matters cannot brook any delay. Needless to say, the High Court shall ascribe reasons specifically keeping in mind the principle of "best interests of the patient". |
| 200 | Having said this, we think it appropriate to cover a vital aspect to the effect the life support is withdrawn, the same shall also be intimated by the Magistrate to the High Court. It shall be kept in a | No Change |

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| digital format by the Registry of the High Courts apart from keeping the hard copy which shall be destroyed after the expiry of three years from the death of the patient | |
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The High Courts having considered the order dt.24-01-2023, of the Hon'ble Supreme Court has directed the Jurisdictional Magistrate to follow the directions of the Hon'ble Supreme Court.

Therefore, as directed a copy of the Order dt.24-01-2023, in Miscellaneous Application No. 1699 of 2019 in W.P.(Civil) No.215 of 2005 is enclosed herewith and all the Jurisdictional Magistrate are directed to follow the directions of the Hon'ble Supreme Court of India scrupulously.


REGISTRAR GENERAL

To

1. All the Unit Heads in the State (with a request to communicate the same to Judicial Officers under their control).

Copy to:

1. The Prl. Secretary to the Hon'ble the Chief Justice, High Court for the State of Telangana.(for placing the same before the Hon'ble Chief Justice for kind perusal)
2. All PSs to the Hon'ble Judges, High Court for the State of Telangana. (for placing the same before Your Lordship for kind perusal)
3. All the Registrars, High Court for the State of Telangana.
4. The Director, Telangana State Judicial Academy, Secunderabad. (for information and necessary action).
5. The Section Officer, 'E' Section, O.P.Cell, New Filing Section (Writ), Posting Section High Court for the State of Telangana.