'REPORTABLE'

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

MISCELLANEOUS APPLICATION NO. 1699 OF 2019 IN WRIT PETITION (CIVIL) NO. 215 OF 2005

COMMON CAUSE (A REGD. SOCIETY) Petitioner(s)

VERSUS

UNION OF INDIA

INDIAN SOCIETY OF CRITICAL CARE MEDICINE

Respondent(s)

Applicant

<u>O R D E R</u>

K. M. JOSEPH, J.

(1) This is an application filed by Indian Society of Critical Care Medicine seeking clarification of the judgment reported in *Common Cause (A Registered Society)* v. Union of India and Another (2018) 5 SCC 1.

(2) A Constitution Bench came to be constituted on the basis of a Reference made to it by a Bench of

three learned Judges. In the backdrop of certain earlier decisions of this Court, in particular, this Court was engaged with the question as to whether the Court should issue suitable directions or set in place norms to provide for what is described as Advance Directives. This Court also was concerned with the question as to whether even in the absence of Advance Directives, when a person is faced with a medical condition with no hope of recovery and is continued on life support system/medicines, life support system should be withdrawn. The Court went on to dwell on the right of a person to die with Thereafter, this Court has proceeded to dignity. lay down the directives as follows:

our considered opinion, Advance "198. In Medical Directive would serve as a fruitful means to facilitate the fructification of the sacrosanct right to life with dignity. The said directive, we think, will dispel many a doubt at the relevant time of need during the course of treatment of the patient. That apart, it will strengthen the mind of the treating doctors as they will be in a position to ensure, after being satisfied, that they are acting in a lawful manner. We may hasten to add that Advance Medical Directive cannot operate in abstraction. There has to be safequards. They need to be spelt out. We enumerate them as follows:

198.1. *Who can execute the Advance Directive and how*?

198.1.1. The Advance Directive can be executed only by an adult who is of a sound and healthy state of mind and in a position to communicate, relate and comprehend the purpose and consequences of executing the document.

198.1.2. It must be voluntarily executed and without any coercion or inducement or compulsion and after having full knowledge or information.

198.1.3. It should have characteristics of an informed consent given without any undue influence or constraint.

198.1.4. It shall be in writing clearly stating as to when medical treatment may be withdrawn or no specific medical treatment shall be given which will only have the effect of delaying the process of death that may otherwise cause him/her pain, anguish and suffering and further put him/her in a state of indignity.

198.2. What should it contain?

198.2.1. It should clearly indicate the decision relating to the circumstances in which withholding or withdrawal of medical treatment can be resorted to.

198.2.2. It should be in specific terms and the instructions must be absolutely clear and unambiguous.

198.2.3. It should mention that the executor may revoke the instructions/authority at any time.

198.2.4. It should disclose that the executor has understood the consequences of executing such a document.

198.2.5. It should specify the name of a guardian or close relative who, in the event of

the executor becoming incapable of taking relevant time, the will decision at be consent to refuse authorised to qive or treatment medical in withdraw a manner consistent with the Advance Directive.

198.2.6. In the event that there is more than one valid Advance Directive, none of which have been revoked, the most recently signed Advance Directive will be considered as the last expression of the patient's wishes and will be given effect to.

198.3. *How should it be recorded and preserved?*

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.

198.3.2. The witnesses and the jurisdictional 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.

198.3.3. The JMFC shall preserve one copy of the document in his office, in addition to keeping it in digital format.

198.3.4. The JMFC shall forward one copy of the document to the Registry of the jurisdictional District Court for being preserved. Additionally, the Registry of the District Judge shall retain the document in digital format.

198.3.5. The JMFC 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.

198.3.6. A copy shall be handed over to the competent officer of the local Government or the Municipal Corporation or Municipality or Panchayat, as the case may be. The aforesaid authorities shall nominate a competent official in that regard who shall be the custodian of the said document.

198.3.7. The JMFC shall cause to hand over copy of the Advance Directive to the family physician, if any.

198.4. When and by whom can it be given effect to?

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 genuineness and authenticity thereof from the jurisdictional JMFC before acting upon the same.

198.4.2. The instructions in the document must be given due weight by the doctors. However, it should be given effect to only after being fully satisfied that the executor is terminally ill and is undergoing prolonged treatment or is surviving on life support and that the illness of the executor is incurable or there is no hope of him/her being cured.

198.4.3. If the physician treating the patient (executor of the document) is satisfied that the instructions given in the document need to be acted upon, he shall inform the executor or his guardian/close relative, as the case may be, about the nature of illness, the availability of medical care and consequences of alternative forms of treatment and the consequences of remaining untreated. He must also ensure that he beliefs on reasonable grounds that the person in question understands the information provided, has cogitated over the options and has come to a firm view that the option of withdrawal or refusal of medical treatment is the best choice.

198.4.4. The physician/hospital where the admitted medical has been for executor treatment shall then constitute a Medical Board consisting of the Head of the treating department and at least 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 who, in turn, shall visit patient in the presence of his the quardian/close relative and form an opinion whether to certify or not to certify carrying out the instructions of withdrawal or refusal of further medical treatment. This decision shall be regarded as a preliminary opinion.

198.4.5. In the event the Hospital Medical Board certifies that the instructions contained in the Advance Directive ought to be carried out, the physician/hospital shall forthwith inform the jurisdictional Collector about the proposal. The jurisdictional Collector shall then immediately constitute a Medical Board comprising the Chief District Medical Officer of the district concerned as the Chairman and three expert 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 (who were not members of the previous Medical Board of the hospital). They shall jointly visit the hospital where the patient is

admitted and if they concur with the initial decision of the Medical Board of the hospital, they may endorse the certificate to carry out the instructions given in the Advance Directive.

198.4.6. The Board constituted by the Collector must beforehand ascertain the wishes of the executor if he is in a position to communicate and is capable of understanding the withdrawal of of medical consequences treatment. In the event the executor is incapable of taking decision or develops impaired decision-making capacity, then the consent of the quardian nominated bv the executor in the Advance Directive should be obtained regarding refusal or withdrawal of medical treatment to the executor to the extent of and consistent with the clear instructions given in the Advance Directive.

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 JMFC before giving effect to the decision to withdraw the medical treatment administered to the executor. The JMFC shall visit the patient at the earliest and, after examining all aspects, authorise the implementation of the decision of the Board.

198.4.8. It will be open to the executor to revoke the document at any stage before it is acted upon and implemented.

198.5. What if permission is refused by the Medical Board?

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 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 hear the application expeditiously after affording opportunity to the State counsel. It would be open to the High Court to constitute Medical 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".

198.6. *Revocation or inapplicability of Advance Directive*

198.6.1. An individual may withdraw or alter the Advance Directive at any time when he/she has the capacity to do so and by following the same procedure as provided for recording of Advance Directive. Withdrawal or revocation of an Advance Directive must be in writing.

198.6.2. An Advance Directive shall not be applicable to the treatment in question if

there are reasonable grounds for believing that circumstances exist which the person making the directive did not anticipate at the time of the Advance Directive and which would have affected his decision had he anticipated them.

198.6.3. If the Advance Directive is not clear and ambiguous, the Medical Boards concerned shall not give effect to the same and, in that event, the guidelines meant for patients without Advance Directive shall be made applicable.

198.6.4. Where the Hospital Medical Board takes a decision not to follow an Advance Directive while treating a person, then it shall make an application to the Medical Board constituted by the Collector for consideration and appropriate direction on the Advance Directive.

199. It is necessary to make it clear that there will be cases where there is no Advance Directive. The said class of persons cannot be alienated. In cases where there is no Advance Directive, the procedure and safeguards are to be same as applied to cases where Advance Directives are in existence and in addition there to, the following procedure shall be followed:

199.1. In cases where the patient is terminally ill and undergoing prolonged treatment in respect of ailment which is incurable or where there is no hope of being cured, the physician may inform the hospital which, in turn, shall constitute a Hospital Medical Board in the manner indicated earlier. The Hospital Medical Board shall discuss with the family physician and the family members and record the minutes of the discussion in writing. During the the family members discussion, shall be apprised of the pros and cons of withdrawal or refusal of further medical treatment to the

patient and if they give consent in writing, then the Hospital Medical Board may certify the course of action to be taken. Their decision will be regarded as a preliminary opinion.

199.2. In the event the 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 the hospital for physical shall visit 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 JMFC and the family members of the patient.

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 Collector nominated Medical Board to withdraw or refuse further medical treatment to the terminally-ill patient.

199.4. There may be cases 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 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 independent committee to depute an three doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care with overall standing in the medical and 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 digital format by the Registry of the High Court apart from keeping the hard copy which shall be destroyed after the expiry of three years from the death of the patient.

201. Our directions with regard to the Advance Directives and the safeguards as mentioned hereinabove shall remain in force till Parliament makes legislation on this subject."

(3) The applicant has approached this Court within a short period.

The reason for approaching this Court all over

again appears to be that in the actual working of the directions, insurmountable obstacles are being posed. For instance, it is pointed out that this Court has provided in paragraph 198.3 that in the case of an Advance Directive which is devised by a person, it should not only be in the presence of two attesting witnesses who are preferably independent witnesses, but also it should have countersigned by a Judicial First Class Magistrate. It is pointed out that this clause has led the very object of this Court issuing directions being impaired, if not completely defeated.

There are other aspects which have been highlighted in the application.

(4) The respondent, viz., the Union of India, has filed a counter affidavit. We find from the contents of the counter affidavit that the stand of the Union of India was that it opposed the application.

(5) As we have noticed, this is an application seeking clarification. Ordinarily, be it an

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application lodged in this Court blessed as it is with powers under Article 142 of the Constitution of India, we would have thought that the application should not receive further consideration. However, notice that there has been subsequent we a The development is in the form of development. orders evidencing an attempt being made by the respondent also to evolve/agree to certain changes. Several rounds of discussions, it would appear, have taken place between officers of the respondent-Union who not unnaturally includes medical experts.

According to the applicant, the difficulties which are being encountered have been voiced by a large number of Doctors and it becomes absolutely necessary for this Court to revisit the directions so that this Court puts in place a mechanism which effectively carries out the object of this Court laying down the principles in the paragraphs which have already been adverted to.

(6) Having heard Shri Arvind Datar, learned senior counsel, appearing for the applicant, assisted by Dr. Dhvani Mehta and Ms. Rashmi Nandakumar, learned

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counsel, Dr. R. R. Kishore, learned counsel, as also Mr. K. M. Nataraj, learned Additional Solicitor General appearing on behalf of respondent-Union of India, we are of the view that the directions contained in paragraphs 198 to 199 require to be modified/ deleted as hereinafter indicated:

Para	Existing	Modifications
	Guidelines	

Para 198.2.5	· · · ·	It should specify the
	guardian or close	name of a guardian <u>(s)</u> or
	relative who, in the event of the executor becoming	close relative <u>(s)</u> who, in
	incapable of	the event of the executor
	taking decision at the relevant time, will be authorised	becoming incapable of
	to give consent to refuse or withdraw	taking decision at the
	medical treatment	relevant time, will be
	consistent with the Advance	authorised to give
	Directive.	consent to refuse or
		withdraw medical
		treatment in a manner
		consistent with the
Para 198.3.1	The document should be signed	Advance Directive. The document should be

by the executor in the presence of attesting two witnesses, preferably independent, and countersigned bv the jurisdictional Judicial Magistrate of First Class (JMFC) designated S0 bv the District Judge concerned.

signed by the executor in the presence of two attesting witnesses, preferably independent, <u>and attested before a</u> <u>notary or Gazetted</u> <u>Officer</u>.

Para The witnesses and the jurisdictional 198.3.2 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 or Gazetted notary **Officer** 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.

Para The JMFC shall Deleted. 198.3.3 preserve one copy of the document in his office, in addition to keeping it in digital format.

JMFC Deleted. Para The shall 198.3.4 forward one copy of the document to the Registry of the jurisdictional District Court for being preserved. Additionally, the Registry of the District Judge shall retain the document in digital format.

JMFC Para The shall 198.3.5 to inform cause the immediate family members of the executor, if not present at the time of execution, make them and about aware the of execution the document.

Theexecutorshallinform, and hand over acopy oftheAdvanceDirective tothepersonsnamedorpersonsnamedinParagraph198.2.5, aswell astothefamilyphysician, if any.Acopyshallbehandedovertothecompetentofficerofthelocal

or

Government

Para	A cop	y sh	all	be
198.3.6	handed	over	to	the
	compet	ent	offi	cer
	of	the	10	ocal
	Govern	nent	or	the
	Munici	pal		
	Corpor	ation		or

the

Municipality or	Municipal Corporation or
Panchayat, as the case may be. The aforesaid	Municipality or
authorities shall	Panchayat, as the case
nominate a competent official in that regard who	may be. The aforesaid
shall be the	authorities shall
custodian of the said document.	nominate a competent
	official in that regard
	who shall be the
	custodian of the said

document.

The executor may also

choose to incorporate

their Advance Directive

as a part of the digital

health records, if any.

Deleted.

The JMFC shall Para 198.3.7 cause to hand over сору of the Advance Directive family to the physician, if any.

Para	In the event the	In the event the executor
198.4.1	executor becomes	
	terminally ill and	becomes terminally ill
	is undergoing	

must be given due weight by the

	1 5	and is undergoing
	treatment with no hope of recovery	prolonged medical
	-	treatment with no hope of
	treating physician, when made aware about	recovery and cure of the
	the Advance Directive, shall	ailment, <u>and does not</u>
	ascertain the	<u>have decision-making</u>
	genuineness and authenticity	<u>capacity,</u> the treating
	thereof from the jurisdictional JMFC before acting	physician, when made
	upon the same.	aware about the Advance
		Directive, shall
		ascertain the genuineness
		and authenticity thereof
		<u>with reference to the</u>
		<u>existing digital health</u>
		records of the patient,
		<u>if any or from the</u>
		<u>custodian of the document</u>
		<u>referred to in Paragraph</u>
		<u>198.3.6 of this</u>
		judgement.
Para 198.4.2	The instructions in the document	No change.

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doctors. However, it should be given effect to onlv after being fully satisfied that the executor is terminally ill and undergoing is prolonged treatment or is surviving on life support and that the illness of the executor is incurable or there is hope of no him/her being cured.

Para

If the physician 198.4.3 the treating patient (executor of the document) satisfied that is instructions the in the qiven document need to be acted upon, he inform shall the his executor or guardian/close relative, as the case may be, about nature the of illness, the availability of medical care and consequences of alternative forms of treatment and the consequences of remaining untreated. He must

If the physician treating the patient (executor of document) the is satisfied that the instructions given in the document need to be acted upon, he shall inform the person or persons named <u>in the Advance Directive,</u> as the case may be, about the nature of illness, the availability of

also ensure that	medical care and
he beliefs on	
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come to a firm view that the	untreated. He must also
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treatment is the	
best choice.	that the person in
	question understands the
	question understands the
	information provided, has
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	cogitated over the
	antions and has some to a
	options and has come to a
	firm view that the option
	of withdrawal or refusal
	of medical treatment is
	the best choice.
The	The beenitel where the

The hospital where Para The the physician/hospital 198.4.4 where the executor executor has been has been admitted admitted for medical for medical treatment shall then constitute a treatment shall then Medical Board

consisting of the Head of the	constitute a <u>Primary</u>
treating	Medical Board consisting
department and at least three experts from the	of the treating <u>physician</u>
fields of general	<u>and at least two subject</u>
medicine, cardiology,	<u>experts of the concerned</u>
neurology, nephrology,	<u>specialty with at least</u>
psychiatry or	
oncology with experience in	<u>five years' experience,</u>
critical care and with overall	who, in turn, shall visit
standing in the	the patient in the
medical profession of at least twenty	presence of his
years who, in turn, shall visit	guardian/close relative
the patient in the presence of his	and form an opinion
guardian/close	
relative and form an opinion whether	<u>preferably within 48</u>
to certify or not to certify	<u>hours of the case being</u>
carrying out the	<u>referred to it</u> whether to
instructions of withdrawal or	certify or not to certify
refusal of further medical treatment.	carrying out the
This decision shall be regarded	instructions of
as a preliminary	
opinion.	withdrawal or refusal of
	further medical
	treatment. This decision
	shall be regarded as a

preliminary opinion.

Para In the event the 198.4.5 Hospital Medical certifies Board that the instructions contained in the Directive Advance ought to be carried out, the physician/hospital shall forthwith inform the jurisdictional Collector about proposal. the The jurisdictional Collector shall then immediatelv constitute а Medical Board comprising the Chief District Medical Officer of the district concerned as the Chairman and three expert doctors from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing the in

In the event the *Primary* Medical Board certifies the instructions that contained in the Advance Directive ought to be carried out, the hospital shall then immediately constitute a <u>Secondary</u> Medical Board comprising one registered medical practitioner nominated by the Chief Medical Officer of the District and at <u>least two subject experts</u> with at least five years' experience of the concerned specialty who were not part of the Primary Medical Board.

medical profession of at least twenty (who were vears not members of the previous Medical Board of the hospital). Thev shall jointly visit the hospital where the patient is admitted and if they concur with the initial decision of the Medical Board of the hospital, they endorse the mav certificate to carry out the instructions given Advance in the Directive.

They shall visit the hospital where the patient is admitted and if they concur with the initial decision of the **Primary** Medical Board of hospital, they may the the certificate endorse carry the to out instructions given in the Advance Directive. The Secondary Medical Board shall provide its opinion preferably within 48 hours of the case being <u>referred to it.</u>

Para The Board 198.4.6 constituted by the Collector must beforehand ascertain the wishes of the executor if he is in a position to communicate and is capable of

The <u>secondary Board</u> must beforehand ascertain the wishes of the executor if he is in a position to communicate and is understanding the consequences of withdrawal of medical treatment. In the event the executor is incapable of taking decision or develops impaired decision-making capacity, then the consent of the quardian nominated by the executor in the Advance Directive should be obtained regarding refusal withdrawal of or medical treatment to the executor to the extent of and consistent with the clear instructions given the Advance in Directive.

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Para The Chairman of The <u>hospital</u> 198.4.7 the Medical Board

e <u>hospital where the</u>

convey the decision of the Board to the jurisdictional JMFC before giving effect to the decision to withdraw the medical treatment administered to the executor. The JMFC shall visit the patient at the earliest and, after examining	shall convey the decision of the <u>Primary and</u> <u>Secondary Medical</u> Boards <u>and the consent of the</u> <u>person or persons named</u> <u>in the Advance Directive</u> to the jurisdictional JMFC before giving effect to the decision to
after examining	withdraw the medical
authorise the	treatment administered to
It will be open to the executor to revoke the document at any stage before it is	No change.

ParaIt will be open to198.4.8the executor torevokethedocumentatanystagebeforebeforeitimplemented.

Para 198.5.1 If permission to If permission to withdraw withdraw medical treatment medical treatment is is refused by the Medical Board, refused by the <u>Secondary</u> it would be open to Medical Board, it would the executor of

the Advance be open to or his Directive family members or or persons named in the even the treating Advance Directive or even doctor or the hospital staff to approach the High the treating Court by way of writ petition hospital the under Article 226 of the approach the High Court Constitution. If by way of writ petition such application is filed before under Article 226 of the the High Court, the Chief Justice of the said High Constitution. Court shall constitute application а Division Bench to decide upon grant before the High of approval or to refuse the Chief Justice of the the same. The High Court will be free High Court to said constitute an independent constitute a committee consisting Bench decide of to three doctors from fields the of grant of approval or to general medicine, cardiology, refuse the same. The High neurology, nephrology, Court will be psychiatry or oncology constitute an independent with experience in critical care and committee consisting with overall three doctors standing in the medical profession of at least twenty fields of

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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.

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earliest the as such matters brook cannot anv delay and it shall ascribe reasons specifically keeping in mind the principles of "best interests of the patient".

Paras An individual may No change. 198.6.1 withdraw or alter the Advance Directive at any time when he/she has the capacity to do so and bv following the same procedure as provided for recording of Advance Directive. Withdrawal or revocation of an Advance Directive must be in writing.

Para An Advance No change. 198.6.2 Directive shall be applicable not to the treatment if in question there are reasonable grounds for believing that circumstances exist which the person making the directive did not anticipate at the

time of the Advance Directive and which would affected his have decision had he anticipated them.

Τf Para the Advance 198.6.3 Directive is not clear and ambiguous, the Medical Boards concerned shall not give effect to the same and, in event, that the guidelines meant for patients without Advance Directive shall be made applicable.

Para

Where the Primary Medical Where the Hospital Medical 198.6.4 Board decision takes a decision takes а Board follow not to an not to follow an Advance Advance Directive while treating а Directive while treating then it person, shall make an application to the a person, the person or Medical Board constituted by the persons named in the Collector for consideration and Advance Directive mav appropriate direction request the hospital to on the Advance Directive refer the case to the

No change.

<u>Secondary</u> Medical Board

for consideration and

appropriate direction on

the Advance Directive.

No change.

It is necessary to Para 199 make it clear that there will be cases where there is Advance no Directive. The said class of persons cannot be alienated. In cases where there is no Advance Directive, the procedure and safeguards are to be same as applied to cases where Advance Directives are in existence in addition and there to, the following procedure shall be followed:

<u>Cases where there is No Advance Directive</u>

Para 199.1	In cases where the patient is	In cases where the	
	1	patient is terminally ill	
	prolonged	and undergoing prolonged	
	•	treatment in respect of	
	which is incurable or where there is no hope of being	ailment which is	

of

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incurable or where there the cured, physician may inform hope of being the is no hospital which, in cured, the physician may turn, shall constitute а Hospital Medical inform the hospital, Board in the which, indicated in turn, shall manner earlier. The Hospital Medical constitute **Primary** a Board shall discuss Medical Board in the with the physician family manner indicated earlier. and the family members and record the minutes of the The Primary Medical Board discussion in writing. shall discuss with the During discussion, the the family members family physician, *if any*, shall be apprised and the *patient's next of* the pros and cons of withdrawal refusal of kin/next friend/quardian further medical treatment to and record the minutes of the patient and if they give consent the discussion in in writing, then Hospital the writing. During the Medical Board may discussion, the *patient's* certify the course of action to be taken. next of kin/next Their decision will be friend/guardian shall be regarded as а preliminary opinion. apprised of the pros and of withdrawal or cons refusal of further

medical treatment to the patient and if they give consent in writing, then the Primary Medical Board may certify the course of action to be taken <u>preferably</u> within 48 hours of the case being referred to it. decision will Their be

regarded as a preliminary opinion.

In the event the Para Hospital 199.2 Medical certifies Board 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

In the event the *Primary* Medical Board certifies the option of withdrawal refusal of further or medical treatment, the hospital shall then constitute Secondary a Medical Board comprising in the manner indicated

the Chairman and three experts from the fields of medicine, general cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession of at least twenty vears. The Medical Board constituted Collector by the shall visit the hospital for physical examination of the patient and, after studying the medical papers, concur with may the opinion of the Medical Hospital Board. In that intimation event, shall be given by the Chairman of the Collector Medical nominated Board to the JMFC familv and the members of the patient.

hereinbefore. The Secondary 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 Primary Medical Board. In that event, intimation be shall given bv the hospital to the JMFC and the of kin/next next friend/quardian of the patient preferably within 48 hours of the case being referred to it.

Para The JMFC shall Deleted
199.3 visit the patient
 at the earliest
 and verify the

medical reports, examine the condition of the patient, discuss the family with the members of patient and, if satisfied all in respects, may endorse the decision the of Collector nominated Medical Board to withdraw or refuse further medical treatment to the terminallyill patient.

Para There may be cases 199.4 where the Board may not take а decision to the effect of withdrawing medical treatment of the patient or the Collector Medical nominated Board may not concur with the opinion of the hospital Medical Board. In such а situation, the nominee of the patient the or family member or the treating doctor the or hospital staff can seek permission from the High

There may be cases where the Primary Medical Board may not take a decision effect to the of withdrawing medical treatment of the patient or the Secondary Medical Board may not concur with the opinion of the **Primary** Medical Board. In such situation, the a nominee of the patient or

to withdraw Court life support by of writ way petition under Article 226 of the Constitution in which case the Chief Justice of the said High Court shall constitute а Division Bench which shall decide grant approval to 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 after vears consulting the competent medical practitioners. Ιt shall also afford an opportunity to the State counsel. The High Court in shall such cases

the family member or the treating doctor the or hospital staff can seek permission from the High Court to withdraw life support by way of writ petition under Article Constitution 226 of the 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 render its with decision at the earliest since overall standing in the such matters medical profession of at cannot brook any delay. Needless to sav, the High least twenty years after Court shall reasons consulting the competent ascribe specifically keeping in mind medical practitioners. It the principle of "best interests of shall also afford an the patient". opportunity to the State counsel. The High Court such in shall cases 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 the principle mind of "best interests of the patient".

Para Having said this, No change.
200 we think it

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appropriate to cover vital а to aspect the effect the life support is withdrawn, the same shall also be intimated by the Magistrate to the Court. High It shall be kept in a digital format by Registry the of the High Court apart from keeping the hard сору shall which be after destroyed the expiry of three years from the death of the patient.

(7) Registry will communicate a copy of this Orderto Registrar Generals of all the High Courts.

The Registrar Generals of the High Courts will dispatch a copy of this Order to the Health in Secretaries the respective States/Union Territories for onward communication to all the Chief Medical **Officers** in the States/Union Territories.

The miscellaneous application will stand

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disposed of as above.

No orders as to costs.

[K.M. JOSEPH] [K.M. JOSEPH] [AJAY RASTOGI] [AJAY RASTOGI] J. [ANIRUDDHA BOSE] J. [HRISHIKESH ROY] J. [C.T. RAVIKUMAR]

New Delhi; January 24, 2023. ITEM NO.504

COURT NO.3

SECTION PIL-W

SUPREME COURT OF INDIA RECORD OF PROCEEDINGS

Miscellaneous Application No. 1699/2019 in W.P.(C) No. 215/2005

(Arising out of impugned final judgment and order dated 09-03-2018 in W.P.(C) No. 215/2005 passed by the Supreme Court of India)

COMMON CAUSE (A REGD. SOCIETY)

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

INDIAN SOCIETY OF CRITICAL CARE MEDICINE Applicant [AT 2.00 P.M.] [TO GO BEFORE FIVE HON'BLE JUDGES] (FOR ADMISSION and IA No.105815/2019-CLARIFICATION/DIRECTION)

Date : 24-01-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH HON'BLE MR. JUSTICE AJAY RASTOGI HON'BLE MR. JUSTICE ANIRUDDHA BOSE HON'BLE MR. JUSTICE HRISHIKESH ROY HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s)

Mr. Arvind P. Datar, Sr. Adv. Dr. Dhvani Mehta, Adv. Ms. Rashmi Nandakumar, AOR Ms. Shreya Shrivastava, Adv.

For Respondent(s)

Mr. K.M. Nataraj, A.S.G. Mr. Gurmeet Singh Makker, AOR Mr. Mohd. Akhil, Adv. Mr. Adit Khorana, Adv. Mr. Shailesh Madiyal, Adv. Mr. Udai Khanna, Adv. Mr. Vinayak Sharma, Adv. Mr. Anirudh Bhat, Adv. Mr. Sanjay M Nuli, Adv. Mr. Sanjay M Nuli, Adv. Mr. Nakul Chengappa K.K., Adv. Mr. Chitransh Sharma, Adv. Mr. Anuj S. Udupa, Adv.

Dr. R. R. Kishore, Adv.

UPON hearing the counsel the Court made the following O R D E R

The miscellaneous application will stand disposed of in terms of the signed reportable order.

(NIDHI AHUJA) AR-cum-PS

(RENU KAPOOR) ASSISTANT REGISTRAR

[Signed reportable order is placed on the file.]