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RULING

English court: "Doctors and judges should not have let Sudiksha die"

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The parents of 19-year-old Sudiksha Thirumalesh who died during a legal battle with the NHS have won their appeal. The judges and doctors were wrong to provoke the death of their daughter against her wishes in Queen Elizabeth Hospital Birmingham last

September. This is the decision of three judges sitting at the Court of Appeal. Yesterday morning July 31, in a landmark ruling Lady Justice King, Lord Justice Singh and Lord Justice Baker overturned the decision of the Court of Protection declaring Sudiksha lacked mental capacity to make decisions about her medical treatment.

The important judgement affirms patients in the UK have the right to disagree with their doctors without risking being declared mentally incompetent and having their best interests assessed and enforced by UK courts. The ruling could affect thousands of patients and mark the beginning of a new chapter in the NHS bringing it closer in line to good medical practice in other European countries.

There's fresh hope now that the ruling will put an end to recent cases like that of Indi Gregory. Her family's desperate bid to escape "death row" by flying her to Italy for life saving medical treatments touched hearts around the world and raised questions about how to protect oneself from NHS practice. "Setting the law straight", "will now be part of Sudiksha's legacy", her parents said after the ruling.

The decision by the Court of Appeal to grant Sudiksha's parents' permission to pursue a posthumous appeal, for which her family will be eternally grateful, was a rare move for the UK courts because of the important legal principles in the case. The overwhelming desire to overturn the court decision on Sudiksha's mental capacity was the Thirumalesh family's last crusade for justice for their daughter. The family, like those before them in high profile end of life cases in the UK, had always insisted they never wanted a legal battle. They were forced into one by the NHS doctors who invariably turn to the courts if challenged where they can obtain the legal cover to apply their omnipotent medical power to make life and death decisions for sick patients.

Sudiksha was born with a rare mitochondrial disorder similar to Charlie Gard. She suffered from muscle weakness, loss of hearing, damage to her kidneys, making her dependent on regular dialysis and other medical treatments to continue living but notably it did not affect the functioning of her brain. Notes written by Sudiksha and published by the Daily Mail during her recovery in hospital in August 2022 after contracting Covid19, demonstrate Sudiksha's lucidity and tragically betray the anguish the young women suffered while in hospital care. Also two court appointed psychiatrists called to do an in-depth assessment of her mental health informed the courts that Sudiksha was sound of mind. But, inexplicably, Mrs Justice Roberts hearing the case, ignored the findings resulting in a travesty of justice and Sudiksha's untimely death on September 12, 2023.

The serious errors of judgement were identified by the Court of Appeal. Giving the judgment of the Court of Appeal, Lady Justice King said that "it is essential always for any person conducting a capacity assessment" to remember that, under the Mental Capacity Act, a "person is not to be treated as unable to make a decision merely because he makes an unwise decision." The Court has also ruled that Mrs Justice Roberts had made a further error in overruling the unanimous view of two psychiatrists who independently examined Sudiksha and concluded that she had full mental capacity.

A major mental health charity, MIND, was granted permission to intervene in the appeal hearing. MIND argued that Mrs Justice Roberts' judgment set a dangerous precedent by ruling that a patient who disagreed with their doctors had to be deemed on account of that disagreement to have a mental illness.

Sudiksha had told her doctors she knew her illness was serious but disagreed with their outlook that she was incurable. She told the court that if she were to die, she wanted to die trying to live. Her only chance of survival was to transfer to Canada to take part in a clinical trial of nucleoside therapy which is not available in the UK. But whenshe asked that her life saving treatments continue so she could make the move herdoctors told her she was “delusional”, incapable of making decisions and took her tocourt.

The gagging order imposed by the Court of Protection by request of the doctorsstopped her family from fundraising for her transfer, made her anonymous in newsreports forcing the use of the court imposed initials ST instead of her proper nameSudiksha Thirumalesh. On this point, Lady Justice King said, the Trust was trying “toshoehorn into the term “delusional” what in reality they regarded as a profoundlyunwise decision on Sudiksha’s part to refuse to move to palliative care”.

The protracted court cases have left the family devastated and bankrupt. To this day, no one knows if Sudiksha would still be alive or if the experimental treatment might have been successful. Denying Sudiksha a chance at life denied science and medicine a precious opportunity to advance. The only remaining satisfaction is knowing that Sudiksha was right and has obtained justice. As Lady Justice King told the court Ms Thirumalesh was "presumed to have had the capacity to give or withhold her agreement to medical treatment, including palliative treatment, at all times leading up to her death".

“My sister was not only able to make decisions about her health she was fully alert and conscious until her last breath”, her brother Varshan said in an interview with the Daily Compass the day before her funeral.

“Alas, the belated recognition of some of the errors made in her case cannot bring her back”, her parents have stated. But hopefully, her tragic case will prevent doctors making the same errors in future cases by permitting the death of vulnerable patients who want to live.