Yumkham Rother
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Item No. 2
Video Conferencing

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

PIL No. 12 of 2018

Shri Maibam Jatiswor Singh, aged about 81years, S/o. (L) M. Gouro Singh of Wangkhei Ningthem Pukhri Mapal, P.O. Imphal & P.S. Porompat, Imphal East District, Manipur.

……. Petitioner

- Versus –

1. The State of Manipur represented by the Principal Secretary /Commissioner/Secretary, Health and Family Welfare, Government of Manipur.
2. The Director, Department of Health and Family Welfare, Government of Manipur.
3. The Director, State Mental Health Authority, JN Hospital Complex, Imphal, Manipur.
4. The State Nodal Officer, JN Hospital Complex, Imphal, Manipur.
5. The Secretary to the Government of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi – 110011.
6. The Ministry of Development of North Eastern Region (MDoNER), Vigyan Bhawan Annexe, Maulana Azad Road, New Delhi – 110011.
7. The State of Manipur through the Chief Secretary, Old Secretariat Building, Imphal West-795001, Manipur.
8. The Principal Secretary/Commissioner/Secretary (Social Welfare), Government of Manipur, Old Secretariat Building, Imphal West – 795001, Manipur.
9. The Director (Health Services), Government of Manipur, Lamphel, Opposite RIMS Hospital, Imphal West-795004, Manipur.
10. The Director (Social Welfare), Government of Manipur, Social Welfare Department, A.T. Line, 2nd MR Gate, Imphal East-795001, Manipur.
11. The Secretary, Department of Empowerment of Persons with Disabilities Ministry of Social Justice & Empowerment Pt. Deendayal Antyoda Bhawan, CGO Complex, Lodhi Road, New Delhi-110003.
12. The Chief Commissioner for Persons with Disabilities Sorojini House, 6 Bhagwan Dass Road, New Delhi-110001.

…. *Respondents*

For the Petitioner	:	Mr. Juno Rahman, Advocate
For the Respondents	:	Mr. M. Rarry, Addl. Advocate General.
Date of Order	**:**	**01.09.2020**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE KH. NOBIN SINGH

ORDER (ORAL)

Ramalingam Sudhakar, CJ

[1] The prayers in the PIL are as follows :-

> *"i) To admit the present Public Interest Litigation and issue Rule nisi calling upon the respondents to show cause as to why a writ in the nature of mandamus/certiorari or any other appropriate Writ/ order/ direction directing the respondents for complete implementation of the provisions of the Mental Health Act, 1987, the Mental Healthcare Act, 2017 and the Convention on Rights of Persons with Disabilities and its Optional Protocol, 2006 for proper treatment and care of mentally challenged persons in the interest of justice.*
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> *ii) To issue a writ in the nature of mandamus/ certiorari or any other writ/ order/ direction directing the respondents to establish a psychiatric hospital or psychiatric nursing home as provided under the relevant provisions of the Mental Health Act, 1987, the Mental Healthcare Act, 2017 and the Convention on Rights of Persons with Disabilities and its Optional Protocol, 2006 without any undue delay."*

[2] A senior citizen has filed this PIL pleading that non implementation of the Mental Health Act, 1987 and the Mental Healthcare Act, 2017 is causing hardship to the mentally challenged persons of the State of Manipur. The Mental Health Act, 1987 was enacted and thereafter, it was repealed by Mental Healthcare Act, 2017. It came into force on 07.04.2017.

The object and reasons of the Mental Healthcare Act, 2017 is to provide for mental healthcare and services for persons with mental illness and to

protect, promote and fulfill the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.

Whereas the Convention on Rights of Persons with Disabilities and its Optional Protocol was adopted on the 13th December, 2006 at United Nations Headquarters in New York and came into force on the 3rd May, 2008;

'Mental illness' is defined in Section 2(s) of the Mental Healthcare Act, 2017 as follows :-

> *(s) "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;*

'Mental Healthcare' is explained in Section 2(o) as follows :-

> *(o) "Mental healthcare" includes analysis and diagnosis of a person's mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness;*

'Mental health establishment' is defined in Section 2(p) as follows :-

> *(p) "mental health establishment" means any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness, established, owned, controlled or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person; but does not include a family residential place where a person with mental illness resides with his relatives or friends;*

Chapter V provides various rights to persons with mental illness. Section 18 provides for access to mental health care and treatment through the Government. Section 19 deals with right to life of mentally ill persons. Section 20 provides that every person with mental illness shall have a right to live with dignity. Section 21 provides that every person with mental illness should be treated equal to persons with physical illness under regular health care programme without discrimination. Section 22 provides for right to information to persons with mental illness. Section 23 deals with confidentiality in respect of mental health and healthcare treatment given to mentally ill persons. Section 24 deals provides for privacy. Section 25 provides for access to basic medical records. Section 26 prescribes right to personal contacts and communications. Section 27 deals with right to legal aid. Section 28 provides for right to make complaint about deficiencies in services.

Chapter VI deals with the duties of appropriate Government. Chapter VIII deals with State Mental Health Authority and their role in implementation of the provisions of the Mental Healthcare Act, 2017. Chapter X deals with registration of Mental Health Establishments.

Mental Healthcare Act, 2017 provides for treatment, health care and services for persons with mental illness and to protect, promote and fulfill the rights of mentally ill persons. It is pleaded in para 9, 10,11 and 12 as follows :-

> *9. That under Section 33 of the Mental Healthcare Act, 2017 provides that the Central Government shall, within a period of nine months from the date on which the Act receives assent of the President, establish and Authority known as the Central Mental Health Authority. The relevant portion of Section 33 of the Mental Healthcare Act, 2017 reads as under :*
>
> ***33. Establishment of Central Authority**: The Central Government shall, within a period of nine months from the date on*

which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the Central Mental Health Authority.

10. That likewise, Section 45 of the Mental Healthcare Act, 2017 provides that the State Government shall establish State Mental Health Authority within nine months from the date of receiving assent of the President. The relevant portion of Section 45 reads as under :

45. Establishment of State Authority: *Every State Government shall, within a period of nine months from the date on which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the State Mental Health Authority.*

11. That further Section 65 of the Mental Healthcare Act, 2017 provides that all mental health establishments in the State shall be registered with the State Authority.

12. That Section 73 of the Mental Healthcare Act, 2017 provides for constitution of Mental Health Review Boards whereby the constitution of the Boards by the State Authority for a district or group of districts in a State under section 73 of the Mental Healthcare Act,2017 shall be such as may be prescribed by the Central Government.

[3] It is a specific plea of the petitioner that provisions of Mental Healthcare Act, 2017 have not been implemented in letter and spirit. Further, the non-establishment of the psychiatric hospital and nursing home in the State of Manipur has put the mentally ill persons to great hardship and their fundamental rights are violated. The district authorities have a major role to monitor the mental health of mentally affected persons within the district. Since the Mental Healthcare Act, 2017 specifically enjoins the Central Government and the State Government to provide mental health care by establishing mental health establishments, the present PIL has been filed.

[4] On 07.05.2018, the following order was passed by this Court:

"Considering the acute problem faced by the mentally challenged persons in the State, where there is no proper institution/hospital available, the matter would require urgent consideration by the authorities for making some alternative/temporary arrangement for which, learned AG prays for three weeks' time to respond.

Accordingly, list the matter on 4th June, 2018.

A copy of this order may be furnished to the learned counsel for all the parties."

[5] Thereafter, the State Government filed reply affidavit dated 21.06.2018 giving details of steps taken and another additional reply affidavit dated 24.09.2018 with detailed project report for establishment of a 60 bedded State Mental Hospital besides steps taken to comply with the provisions of the Mental Healthcare Act, 2017.

Three Advocate Commissioners, pursuant to order of the Court dated 26.11.2018, filed inspection report on 27.02.2019 giving details of the measures to be taken by the State Government to rectify the defects and shortcomings in the present mental health establishments in the State of Manipur.

[6] In this case, respondent No. 6 has been added as party respondent by order dated 29.05.2019. An affidavit dated 13.01.2020 has been filed by respondent No. 6 seeking to delete himself from the litigation stating that he is not a necessary party. Having perused the affidavit, we hold that respondent No. 6 is not a necessary party and we are inclined to delete the name of respondent No. 6 from the array of respondents.

[7] In this regard, we notice that the Hon'ble Supreme Court in the case of of **Death of 25 Chained Inmates in Asylum Fire in Tamil Nadu, In Re Vs. Union of India and Others**: reported in **(2002) 3 SCC 31** discussed the scope of Mental Health Act 1987 as it was in enforced then and gave certain directions to the Central Government and the State Government and in the subsequent order dated 12.04.2002, the Hon'ble Supreme Court issued directions in para 4 and 5 in the following manner :-

"4. Further Union of India is directed –

a) To frame a Policy and initiate steps for establishment of at least one Central Government run Mental Health Hospital in each State (As provided under Section 5 of the Act).

b) To examine the feasibility of formulating uniform rules regarding standard of services for both public and private sector Mental Institutes;

c) To constitute a committee to give recommendations on the issue of care of mentally challenged persons who have no immediate relatives or who have been abandoned by relatives.

d) To frame norms for Non-Government Organisations working in the field of Mental health and to ensure that services rendered by them are supervised by qualified/ trained persons.

5. All State Governments are also directed to frame Policy and initiate steps for establishment of at least one State Government run Mental Health Hospital in each State. It is clarified that a Mental Health Hospital as stated above means a full-fledged Hospital catering only to mentally challenged persons and does not include a separate psychiatric ward in a Medical College or Government Hospital.

[8] The Direction of the Hon'ble Supreme Court will be applicable in so far as implementation of the present Mental Healthcare Act, 2017 with such further modification as specified in the new Act. All the provisions of the new Act have to be strictly implemented by the State Government. It is for the State Government to work out the modality for financing the establishment of the psychiatric hospitals and nursing homes (i.e) mental health establishments.

In the light of the project report already prepared by the State Government, we direct the State Government to implement the provisions of Mental Healthcare Act, 2017 and establish the necessary infrastructures expeditiously. We direct the State Government to implement the provisions of the Mental Healthcare Act, 2017 in letter and spirit preferably within a period of six months from the date of receipt of a copy of this order.

With the above direction, PIL stands disposed of.

JUDGE **CHIEF JUSTICE**

FR/NFR

Sandeep