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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.05.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P No.12540 of 2022

T.R.Ramanathan

...Petitioner

Vs.

1.Tamil Nadu State Mental Health Authority
Rep. by its Chief Executive Officer,
Medavakkam Tank Road, Kilpauk,
Chennai- 600 010.

2.Institute of Mental Health,
Rep. by its Dean,
Medavakkam Tank Road,
Kilpauk, Chennai - 600 010.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Mandamus to direct the respondents to issue the Mental Health Disability Certificate to the petitioner's son Mr.R.Saikumar, aged 61 years and residing at Flat D, Block C, Malar Flats, Door No.13, Babu Rajendra Prasad 1st Street, West Mambalam, Chennai-600033, certifying his mental disability, based on the assessment dated 26.04.2022 within a time frame as may be fixed by this Court.

For Petitioner : Mr.Abhinav Parthasarathy

For Respondents : Mr.C.Jaya Prakash

Government Advocate

ORDER

Prefatory anecdote:

A lawyer practicing in the Madras High Court has a child with special needs. He sought to avail some facility which his child was entitled to. Armed with a certificate of permanent disability, he approached the concerned authority. The papers were returned and what was demanded was one more certificate certifying that the permanent disability still continued. Nani Palkhivala would have certified such official conduct as "wooden-headed". Probably, the officer believed in Humpty Dumpty's linguistic philosophy "When I use a word... it means just what I choose it to mean... neither more nor less" and "permanent" meant "temporary" also.



Facts of this case:-

2.The case on hand is no different. The writ petitioner is on the verge of becoming a nonagenarian. His 61 years old son Shri.R.Saikumar is mentally retarded. The writ petitioner himself became a widower a couple of months back. His son-in-law died a few years ago. He is a pensioner since November 1992. His son would be entitled to receive the family pension benefits after his death. To avail the said benefit, an entry will have to be made in the petitioner's pension book. For that, a disability certificate must be obtained. The petitioner's daughter approached the Institute of Mental Health at Kilpauk for obtaining such certificate. The Institute insisted that Saikumar must be brought for assessment. Saikumar can neither speak nor express himself. He cannot move about freely. He also has severe anxiety disorder. The certificate issued by one Dr.Shanthi Chandramohan, Assistant Physician Government General Hospital, Madras Medical College dated 29.02.1992 certifying that Saikumar is permanently mentally disordered was not taken note of by the Institute of Mental Health, Kilpauk.

3.Left with no other option, Saikumar was taken to the Institute of Mental Health, Kilpauk in an ambulance on 26.04.2022. A group of paramedical staff literally bundled him into the vehicle. He was assessed and it was noted that he was mentally retarded. But this was deemed insufficient for issuance of certificate. It was insisted that Saikumar should be once again brought to the premises of the second respondent for conducting few more tests. Since Saikumar was traumatized by what happened on 26.04.2022, he developed severe anxiety and became paranoid and whenever anybody entered his home, he held on to the bars of the window. Even though the petitioner's daughter informed the concerned officials that it was not possible to bring Saikumar for further assessment, the personnel attached to the second respondent Institute declined to pay heed to the same. That led to filing of the present writ petition.

4.I must appreciate the fair conduct and approach displayed by the law officers appearing for the respondents. They did not approach the matter from an adversarial perspective at all. They left it to the Court to pass an appropriate order.

Question for consideration:

5.The question that arises for consideration is whether the certifying authority can insist that the person for whom the certificate of disability is sought should come to the premises of the institution for the purpose of assessment even though he or she is unable to come.

Reasoning with applicable provisions and precedents:

6.There has been a paradigm shift in disability



jurisprudence. Some thirty years ago, Joseph P Shapiro came out with "No Pity : People with Disabilities, Forging a New Civil Rights Movement". It is no longer a case of welfarism. The discourse is now entirely rights based. Theresia Degener, a noted jurist and professor writes :

"Human dignity is the anchor norm of human rights. Each individual is deemed to be of inestimable value and nobody is insignificant. People are to be valued not just because they are economically or otherwise useful but because of their inherent self-worth."

Article 41 of the Constitution of India mandates that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to public assistance in cases of sickness and disablement and in other cases of undeserved want. In Jacob M.Puthuparambil and Ors.Vs. Kerala Water Authority (1991) 1 SCC 28, the Hon'ble Supreme Court held that the Court should interpret a given statute so as to advance Article 41. In Sambhavana Vs. University of Delhi (2013) 14 SCC 781, the Hon'ble Supreme Court in a case dealing with the right to education of visually impaired students held as follows:-

"13....When the University has thought of imparting education in a different way, it has to bear in mind the need of sensitivity and expected societal responsiveness. A visually impaired student is entitled to receive special treatment. Under the constitutional frame the State has to have policies for such categories of people. Article 41 of the Constitution of India casts a duty on the State to make effective provisions for securing, inter alia, the rights of the disabled and those suffering from other infirmities within the limits of economic capacity and development. It is imperative that the authorities look into the real grievances of the visually impaired people as that is the constitutional and statutory policy. The University has to live the role of loco parentis and show its concern to redress the grievances in proper perspective. Not for nothing Ralph Waldo Emerson had said "the secret of education lies in respecting the pupil" [Ed.: Emerson on Education, The Complete Works of Ralph Waldo Emerson, Centenary Edn.] . Thus, the necessity of the visually impaired students should have primacy in the mind of the Empowered Committee of the University.

14.Education for visually impaired students is a great hope for them and such a hope is the brightest bliss in their lives. History has recorded with pride that some men with visual impairment have shown high



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intellectual prowess. The anguish and despondency in the life of Milton, the famous English poet, did not deter him to carry out the mission of his life. Lack of vision could not destroy his will power. Needless to say that he had the support of the society. The ancient sage "Ashtavakra" while laying down the traffic rules had categorically stated that the blind man has the first right on the road. Thus, emphasis has always been laid on the visually impaired persons for many a reason. When we say so, we may not be understood to have said that otherwise impaired or disabled people are to be treated differently in the constitutional and statutory scheme. We have only laid emphasis on the visually impaired students for the purpose of present case."

One can easily discern from the above decision that the State has the obligation to design a special approach depending upon the special needs of the concerned category of disabled.

7. Justice M. Rama Jois in his "Legal and Constitutional History of India" quotes the following verse from the Mahabharatha :

"The king should look after the welfare (Yogakshema) of the helpless, the aged, the blind, the cripple, lunatics, widows, orphans, those suffering from diseases and calamities, pregnant women, by giving them food, lodging, clothing and medicines according to their needs."

(We must remind ourselves that some of the expressions used in the above verse have ceased to be politically correct).

8. Justice S.B. Sinha while delivering Justice J.K. Mathur Memorial Lecture on Disability Law vis-a-vis Human Rights referred to the ancient Vedic understanding that the basic human right is the right to happiness - Let all people be happy. PWDs (Persons with Disabilities) have as much right to happiness and to lead a happy life as the so-called "able bodied". He referred to a catena of decisions including Javed Abidi v. UOI (1999) 1 SCC 467 wherein the Supreme Court directed Indian Airlines to provide concessions for passengers suffering from locomotor disability. The overall aim was to create a barrier-free environment for PWDs and to make special provisions for their integration into the social mainstream. The learned Judge also stressed that time is right for "social innovation".

9. Chapter V of the Mental Healthcare Act, 2017 sets out rights of persons with mental illness. Section 18(5)(d) of the Act states that the appropriate Government shall ensure that no person with mental illness (including children and older persons) shall be required to travel long distances to access mental



health services and such services shall be available close to a place where a person with mental illness resides. Section 10 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 states that one of the objects of the Trust shall be to facilitate the realization of equal opportunities, protection of rights and full participation of persons with disability and to do any other act which is incidental to the aforesaid object. Section 3(1) of the Rights of Persons with Disabilities Act, 2016 states that the appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

10. Section 58 of the Rights of Persons with Disabilities Act, 2016 sets out the procedure for certification as follows:-

"58. Procedure for certification.-(1) Any person with specified disability, may apply, in such manner as may be prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability.

(2) On receipt of an application under sub-section (1), the certifying authority shall assess the disability of the concerned person in accordance with relevant guidelines notified under section 56, and shall, after such assessment, as the case may be,- (a) issue a certificate of disability to such person, in such form as may be prescribed by the Central Government; (b) inform him in writing that he has no specified disability.

(3) The certificate of disability issued under this section shall be valid across the country.

11. Article 14 of the Constitution of India guarantees that the State shall not deny to any person equality before the law or the equal protection of laws. But unequals cannot be treated equally. Persons with severe disabilities will have to be treated on a different footing altogether. The question before me is whether the applicant has to physically go to the institute for obtaining the certificate or whether the institute can depute its staff for conducting the assessment at home. The Government of Tamil Nadu has introduced a laudable scheme "Illam Thedi Kalvi" (Education at doorsteps). This model can very well be applied to the case on hand. Rajaji, the great statesman, mooted the idea of mobile election booths. Inverting the old phrase, I must observe that if Mohammed will not come to the mountain, the mountain must go to Mohammed.

12. India is a party to the Convention on the Rights of Persons with Disabilities, 2006. Article 18 of the said Convention expects the States parties to ensure that the persons with disabilities are not deprived on the basis of disability of



their ability to obtain, possess and utilize documentation of identification. Declaration on the Rights of Mentally Retarded Persons, 1971 proclaims the necessity of protecting the rights and welfare of the physically and mentally disadvantaged. Declaration on the Rights of Disabled Persons, 1975 also affirms the rights of disabled persons to services which enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.

Outcome : -

13.The need of a disabled individual to obtain identification paper and certificate of disability hardly requires special emphasis. I am personally aware of the challenges faced by caregivers in cremating their disabled wards and children during the peak of Covid-19 because of absence of identification papers such as Aadhaar. Article 21 of the Constitution of India enshrines the fundamental right to life and liberty. The disabled persons who are obviously entitled to rights guaranteed under Article 21 of the Constitution of India are entitled to obtain a certificate under Section 58 of the Rights of Persons with Disabilities Act, 2016 without any hassle or difficulty. The international conventions as well as the statutes governing their rights speak of barrier free access to rights and services. Without obtaining the certificate mentioned above, the disabled will be denied access to certain fundamental rights and facilities. Consequently, they cannot lead a quality life.

14.The assessment process must be as simple as possible. It must not cause any difficulty or trauma or even the least burden to the individual concerned. I take judicial notice of the fact that bringing such persons to a congested place like the Government Hospital would trigger considerable stress and anxiety to them. One does not know what can trigger panic and anxiety. There are children who seeing an ordinary balloon will go berserk. It is clinically appropriate that assessment for issuing such certificates is done at their homes. I therefore hold that persons suffering from mental retardation or mental illness are entitled to have the assessment done at the place where they reside. In this case, the assessment of the petitioner's son was already done in the premises of the second respondent Institute. The entries enclosed in the typed set of papers indicate that the petitioner's son had already been noted as suffering from mental retardation. Insisting that he should be produced again reeks of arbitrariness. I therefore direct the second respondent to issue a certificate certifying that the petitioner's son is suffering from permanent disability ie., mental retardation. The Writ Petition stands allowed. No costs.

A gentle nudge:-



15. Any Court is expected to confine the scope of discussion as well as direction to what the facts of the particular case demand. One is not supposed to paint on a canvass larger than what is required. I had therefore consciously restrained myself to holding that the authorities shall not insist that a person suffering from mental retardation/ mental illness should be physically present in the premises of the certifying institution. But this need not stop the Government from going into the issue and issuing a standard protocol to cover cases of those who are suffering from other disabilities, particularly, motor related physical disabilities. Tamil Nadu can boast of possessing one of the best health infrastructure in the country. It is being helmed by persons of competence. When community certificates are received at doorstep, can the State not apply the same model in the case of persons with disability also?. The bureaucracy of the Indian State is described as its steel frame. It must be malleable enough to reach out and address the needs of the last person.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Chief Executive Officer,
Tamil Nadu State Mental Health Authority
Medavakkam Tank Road, Kilpauk,
Chennai- 600 010.

2. The Dean, Institute of Mental Health,
Medavakkam Tank Road,
Kilpauk, Chennai-600 010.

+1cc to Mr. Abhinav Parthasarathy, Advocate, S.R.No.31444 [10/06/2022]
+1cc to the Government Pleader, S.R.No.31540 [10/06/2022]

W.P.No.12540 of 2022

NRJK (CO)
SP (06/06/2022)