

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 436 of 2019

Akhil Bandhu Saha

Vs.

The Member Secretary, State Legal Services Authority & Ors.

For the writ petitioner	:-	Mr. Pratyush Patwari, Adv. Mr. Suryasarathi Basu, Adv. Ms. Mita Ghosh (Das), Adv.
For the respondent no. 1	:-	Mr. Partha Sarathi Bhattacharya, Sr. Adv. Mr. A. Sen, Adv.
For the respondent no. 2	:-	Mr. Ashim Kumar Ganguly, Adv. Mr. Karabi Roy, Adv.
Heard on	:-	16.02.2023
Judgment on	:-	23.02.2023

Amrita Sinha, J.:-

The petitioner is aggrieved by the order dated 11th December, 2018 issued by the Member Secretary, State Legal Services Authority, West Bengal ('SLSA' for short) whereby the petitioner was referred for psychiatric treatment on the ground that he was found to be showing strong symptoms of mental illness.

The petitioner claims that he is entitled to free legal aid under Article 39A of the Constitution and according to the Legal Services Authorities Act, 1987.

Though initially free legal aid was provided to the petitioner by the State Legal Services Authority, but in November, 2018 the petitioner was communicated the show cause dated 11th November, 2015 passed by the Registrar cum Deputy Secretary, SLSA, West Bengal to as to why the legal aid rendered to him shall not be withdrawn.

The petitioner by a communication dated 15th November, 2018 submitted his reply to the show cause before SLSA. Upon consideration of his reply, the Member Secretary, SLSA passed the impugned order.

The petitioner submits that the order dated 11th December, 2018 is without jurisdiction. The Member Secretary, SLSA does not have the jurisdiction to come to any finding about the mental health of a person. The Member Secretary does not have any authority to opine that the petitioner shows strong symptoms of mental illness.

It has been contended that the order dated 11th December, 2018 has been passed as per direction of the Executive Chairman, SLSA and the Hon'ble Chief Justice of this Court who is the patron-in-Chief, SLSA. The said direction of the Hon'ble Chief Justice was never intimated to the petitioner. There has been violation of principle of natural justice.

The Executive Chairman or the Hon'ble Chief Justice does not have any jurisdiction to comment upon the mental health of any person. The order dated 11th December, 2018 is without jurisdiction, contrary to the provisions of the Mental Health Care Act, 2017 and has been passed without following the principles of natural justice.

The petitioner, through his learned advocate, submitted a letter before the Member Secretary, SLSA on 17th December, 2018 mentioning that he did not suffer from any mental illness, is mentally fit and do not require any psychiatric help.

Despite objection given by the petitioner to the order dated 11th December, 2018, the petitioner was forcefully arrested from the High Court compound and kept in custody for several hours and thereafter produced before Dr. Pradip Kumar Saha, Director, Institute of Psychiatry on 8th January, 2019.

It has been contended that there are several litigations filed by the petitioner against several authorities including the CBI, and if the petitioner is

alleged to be suffering from mental illness, then all the legal proceedings will be rendered infructuous.

It has been alleged that the respondent authorities misused their official position and have acted in violation of the fundamental right and the right to privacy and the right to live with dignity. The act of the Member Secretary, SLSA is contrary to the principle of natural justice as no opportunity was given to the petitioner to defend himself or to disprove the allegation made against him in the impugned order dated 11th December, 2018.

Learned advocate for the petitioner relies upon several sections of the Mental Health Care Act, 2017, especially Sections 2(s), 4(3), 5, 6(2), 7, 24 and 95(d).

Reference has been made to the patient information recorded by the doctor Department of Health and Family Welfare, Institute of Psychiatry when the petitioner was produced before the doctor on 8th January, 2019. The recording of the doctor does not mention that the petitioner is in need of psychiatric help. It has been submitted that the details of the personal statement of the petitioner as recorded by the doctor clearly suggests that the petitioner is in a fit state of mind, does not suffer from any mental illness and not in need of any psychiatric help.

Prayer has been made for setting aside the order dated 11th December, 2018 by the Member Secretary, SLSA and for payment of compensation on account of the harassment faced by the petitioner in the hands of the police while forcibly taking him to the Institute of Psychiatry.

Learned advocate representing the respondent no. 2 submits, upon instruction that, the Officer-in-Charge, Hare Street Police Station acted in accordance with the direction issued by the Member Secretary, SLSA. The allegation of harassment by the police has been denied.

Learned senior advocate representing the Member Secretary, SLSA produces series of communications made by the petitioner to different authorities including the Secretary, Government of India, Department of Finance; Secretary Department of Home Affairs, State of West Bengal; the Director, CBI; the Joint Director, CBI; the Chief Manager, State Bank of India; the Governor; State of West Bengal, etc.

It has been submitted that the statements and allegations in the communications made by the petitioner to the aforesaid authorities are absolutely false, imaginary and harassive. The contents of the letter written by the petitioner suggest that he is suffering from some type of mental disorder and, accordingly, for the benefit of the petitioner, he was referred for psychiatric help. It has been denied that there was any mala fide intention to harass or malign the petitioner in any manner. Free legal aid was duly provided to the petitioner but thereafter he abused the benefit and, as such, the Member Secretary, SLSA was compelled to issue show cause notice.

It has been contended that the petitioner is being provided legal aid till date. The present writ petition is also being conducted through the legal aid service. Prayer has been made for dismissal of the writ petition.

I have heard the rival submissions made on behalf of all the parties and have perused all the documents produced before this Court.

The Mental Health Care Act has been relied upon. Section 2(s) defines “mental illness” as a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize 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 characterized by subnormality of intelligence.

Section 4 of the aforesaid Act lays down the manner in which a person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental healthcare or treatment.

Section 95(1)(d) mentions that notwithstanding anything contained in the Act, no person with mental illness shall be chained in any manner or form whatsoever.

Section 5 lays down that every person, not a minor, shall have a right to make an advance directive in writing specifying the manner in which he wishes to be cared for and treated for mental illness.

Apart from the allegations leveled by the petitioner in his written communications against several high ranking officers including the Hon'ble Judges of this Court and the Member Secretary, SLISA, there is nothing on record which conclusively proves or even remotely suggests that the petitioner is suffering from mental illness and he requires psychiatric help.

A person cannot be said to be suffering from mental illness only upon judging his behaviour or after going through certain communications made by the said person. I have perused the communications made by the petitioner. It goes without saying that the contents of the letters are extremely disturbing, irresponsible, reckless and far from truth. There are certain limitations which every individual ought to follow.

If a litigant is aggrieved by any order passed by a judicial officer, it is always open for him to challenge the same before the superior forum. A litigant cannot and should not make wild and untrue allegations against the Hon'ble Judges of the Hon'ble Court who passed the order. The same is not permissible. The said action of the petitioner cannot be supported or tolerated at all and is required to be dealt with a firm hand, failing which the rule of law cannot be maintained.

On enquiry, the learned advocate appearing for the petitioner, engaged by SLISA, has submitted before this Court that the petitioner is presently working as a clerk of a learned advocate and he does not have any other regular source of income at present. The petitioner was a very good swimmer and was involved in business. He faced financial loss in his business and had to file several litigations before the Court. As there has been delay in disposal of his cases, he became a bit disoriented which resulted in writing the said communications.

It has been submitted that the petitioner does not have any intention to malign or disrepute any Hon'ble Judge or the judiciary as a whole. The petitioner is a law abiding citizen and has high faith in the judiciary.

From the submissions made on behalf of the parties and upon perusal of the documents placed before this Court it appears that the petitioner is passing through severe financial crunch. Out of despair and frustration on account of delayed disposal of his legal proceedings, the petitioner shot letters to the high ranking officials and also to the Hon'ble judges of this Court. The contents of the letters are undoubtedly derogatory, offensive, nasty, false and leaves a bad taste in the mouth but the same does not have anything to do with the mental health of the petitioner.

The petitioner either wrote the letters himself or may have got it drafted by someone else, but the said letters appear to have been written in perfect sound mind to obtain the desired result. It does not appear that the communications have been made by any person suffering from any form of mental illness requiring medical assistance. Possibly, it may be for this reason that the doctor who examined the petitioner on the first day failed to notice anything significant with regard to the mental ill health of the petitioner and advised routine tests to be done.

It seems that it was a dirty ploy to draw attention of the Court for early disposal of the pending legal proceedings. The judicial officer mistook the same

as sign of mental illness. Since it is not proper for a judicial officer to comment upon the mental illness of a litigant, accordingly, the litigant was referred to a psychiatric. For implementation of the order of SLSA, the police may have applied force to take the petitioner all the way from the High Court to the psychiatric institute, but the allegation of the petitioner that he was arrested and taken into custody cannot be substantiated.

In view of the discussions made hereinabove the writ petition is disposed of by setting aside the impugned order of the Member Secretary, SLSA. The petitioner's prayer for compensation is rejected. The petitioner is strictly warned and cautioned not to repeat such behaviour in future and he dare not point fingers at any judicial officer, far less; the Hon'ble judges of this Court, failing which serious consequences would follow.

The Court hopes and expects that the learned advocate representing the petitioner will advise and guide him properly in the right direction and make him understand the costs that he will have to pay if such incident recurs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)