IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

208 **CWP-10727-2017**
DECIDED ON: 21.03.2023

Samir Asija and another .....Petitioners

VERSUS

Union of India and others ....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr.R.D.Gupta, Advocate, for the petitioners.

Mr. Lokesh Narang, Senior Panel Counsel for UOI – respondents no.1 and 2.

Mr. Pankaj Mulwani, DAG, Haryana.
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VINOD S.BHARDWAJ, J (ORAL)

The present writ petition has been filed seeking quashing of the letter dated 01.03.2017 (Annexure P-9), passed by respondent no.4 – (Commissioner for Persons with Disabilities, Haryana) as well as for seeking enforcement of the order dated 24.03.2009 (Annexure P-6), passed by respondent no.2 – (Chief Commissioner for Persons with Disabilities, New Delhi), whereby respondent no.5 i.e Thakur Hari Prasad Institute of Research and Rehabilitation for Mentally Handicapped, Vivekanandnagar, Dilsukhnagar, Hyderabad, had been directed to refund a sum of Rs.10,00,000/- or to take back the petitioner no.1 with an undertaking to ensure his lifetime care in terms of the original Memorandum of Undertaking (hereinafter referred to as 'MoU') dated 30.03.2001.

Learned counsel for the petitioners contends that he is confining his relief for seeking enforcement of the order dated 24.03.2009, passed in case No.10714036, by the Chief Commissioner for Persons with Disabilities to the extent of refund of the money or to get petitioner no.1 admitted to any other similar Institute on same conditions.

Briefly summarized the facts of the case are that the petitioner no.1 is a person with permanent disability of mind rendering him unfit to earn livelihood for himself. The extent of mental disability has been assessed at 50% mental disability and an intelligence Quotient of only 69. A certificate in this regard was duly issued by the Government Institute for Mentally Retarded Children, Sector 32, Chandigarh and attached as Annexure P-1. The petitioner no.2, (aged about 85 years), is father of petitioner no.1 and is a retired Naval Officer. His wife passed away on 30.03.2011 due to cancer. The concern and well being of petitioner no.1 thus became the prime concern of the petitioner. There is no other person to take care of petitioner no.1 in the event of occurrence of the inevitable to petitioner no.2, who (petitioner no.2) was finding it difficult to take care of his son i.e petitioner no.1 due to his own failing health and also because his wife was also ailing from cancer during her lifetime and was not keeping well. The petitioner no.1 had thus been admitted to respondent no.5 i.e Thakur Hari Prasad Institute of Research and Rehabilitation for Mentally Handicapped, Vivekanandnagar, Dilsukhnagar, Hyderabad on 01.12.1997. Prior to admission of petitioner no.1, the respondent no.5 which claim to be a Voluntary Service Organization for the cause of mentally retarded person for their all round development conducted an all round assessment of petitioner no.1 and agreed to maintain his permanent custody, care and rehabilitation under its guardianship. He remained admitted there for two and half years from 01.12.1997 to 16.06.2000 on an yearly payment basis. An amount of Rs.1,45,000/- had been paid by the petitioner no.2 against boarding and lodging charges.

On 16.06.2000, a proposal to place petitioner no.1 under permanent lifetime care was mooted by the Institute on a lump-sum payment of Rs.10,00,000/- under the Institute's Special Scheme for Permanent Guardianship. This offer of respondent no.5 was accepted by petitioner no.2 who immediately deposited a sum of Rs.2,50,000/-. A receipt bearing No.1577 in this regard was then issued by respondent no.5. The balance payment was also made by the petitioner no.2 to respondent no.5 by 30.03.2001. A MoU dated 30.03.2001 was signed and attested on 23.08.2001 between petitioner no.2 and the respondent no.5-Institute with effect from 16.06.2000. The above amount of Rs.10,00,000/- was received by respondent no.5 with unqualified obligation of maintaining, caring, rehabilitating and securing the custody of petitioner no.1, for the remainder of his life. However, the said respondent no.5 returned the petitioner no.1 to his parental home on 05.03.2007 i.e after a period of about five years notwithstanding a legally binding MoU which does not contain any clause empowering the respondent no.5 to do so.

Aggrieved of the aforesaid act on the part of respondent no.5, the petitioner submitted an application to the respondent no.2 i.e the Court of Chief Commissioner for Persons with Disabilities bearing case no.10714036. The respondent no.5 was duly represented in the aforesaid case before the respondent no.2. After affording an opportunity to the respective parties including the respondent no.5 and upon consideration of the essential terms and conditions of the MoU, the respondent no.2, passed the following order:-

> "10. *Having entered into the MoU, backing out from the agreement can neither be legally sustainable nor can it be morally right. Violence or misbehavior by the inmate cannot be a ground for the respondent to abdicate from their responsibility. The parents of Master Sameer Asija apparently deposited the sum to ensure proper care of their son because of his inability to do so during their life time and beyond. Infact, it is with this noble objective that the Institute must have made provision for Special Scheme for Gurdianship of children like Master Sameer Asija. Being a specialized Institute, the respondent must have been aware about Master Sameer Asija's mental disability at the time of signing the MoU. If their claim of being unaware about the condition of the child is accepted, then they would be held guilty of misleading innocent parents of children with mental disabilities. The respondent who claims to be in rehabilitation field for a long time cannot escape by saying that they could not ascertain behavioral problems of Master Asija of whom they agreed to take charge for lifetime care. The respondent*

Institute is expected to build proper infrastructure and support systems to take care of various needs of persons with disabilities of whom they have taken the responsibility for lifetime care.

11. In light of the above, it establishes that the respondent Institute has breached the terms of contact and is liable to compensate the complainant in accordance with relevant provisions of Law of Contract and other such laws. This Court is of the opinion that ends of justice will be met if the respondent Institute refunds the entire amount of Rs.10 lakhs to the complainant or takes back Master Sameer Asija with a fresh undertaking to ensure his lifetime care in terms of original agreement/MoU. As this Court has no mandate to direct payment of compensation, the complainants may approach appropriate Court of law, if the respondent Institute does not refund a mutually agreed amount between the parties or take back the child with promise to arrange for his proper care."

A specific finding was thus recorded by Chief Commissioner that the respondent no.5 could not have backed out from the agreement and that such an action on the part of respondent no.5 was neither legally sustainable nor morally upright. It was thus, directed that either the respondent no.5 refund the entire amount of Rs.10,00,000/- to the petitioner no.2 - complainant or undertake to ensure lifetime care of petitioner no.1 in terms of the original agreement/MoU. The said order has not been set aside by any Court of competent jurisdiction and has attained finality among the parties.

Surprisingly, the respondent authorities failed to implement their own order dated 24.03.2009. The petitioner no.2 thereafter preferred to seek information under the Right to Information Act for the mechanism to seek implementation of the aforesaid order. During the appellate proceedings under the Right to Information Act, the petitioner no.2 was informed that there is no mechanism available under the Persons with Disability Act, 1995 for enforcement of the order of the Chief Commissioner and that the petitioner may, if so advised, approach the High Court.

It is also submitted that the petitioner also sought enforcement of the aforesaid order also from the office of respondent no.4 - The Commissioner for Persons with Disabilities, Haryana and that even the respondent no.4 also conveyed vide letter dated 01.03.2017 (Annexure P-9) that the petitioner may, if so advised, approach the High Court. Hence, the present petition.

No one chose to enter appearance on behalf of respondent no.5 despite notice. He was accordingly ordered to be proceeded exparte vide order dated 24.04.2018. The matter, however, remained pending to enable respondent no.1 to file reply. Respondent no.5 was, however, represented by an Advocate on the date of hearing fixed for 22.11.2022 and he sought time to complete instructions. However, he again absented himself and there is no representation on behalf of said respondent even today as well. Hence, the matter is heard on merits as matter has remained pending for nearly six years.

No separate written statement has been filed on behalf of respondents no.1 and 2 either. A short reply by way of an affidavit of Dinesh, Commissioner for Persons with Disabilities, Social Justice & Empowerment Department, Haryana, has been filed on behalf of respondents no.3 and 4, wherein, they have reiterated the stand reflected in the Communication dated 01.03.2017.

Counsel representing the Union of India i.e respondents no.1 and 2, as well as respondents no.3 and 4 contend that the provisions of the person with Disabilities Act, 1995 do not contemplate any execution mechanism and as such the petitioner is required to seek enforcement through an appropriate proceedings before the High Court. It is not disputed by the counsel appearing on behalf of respondents no.1 and 2 that the aforesaid order dated 24.03.2009 creates an indefatigable right in favour of the petitioner no.1 to seek refund of the amount deposited by petitioner no.2 i.e Rs.10,00,000/-/or alternatively the respondent no.5 is forced to re-admit the petitioner no.1 and to discharge its obligation in terms of the original MoU executed between the parties on 30.03.2001.

Considering the condition of petitioner no.1 and the nature of sour relationship that has now been created amongst the parties, it may not be appropriate to enforce performance of the MoU. The concern of petitioner no.2 about the nature of care extended to petitioner no.1 after his demise, may very well be prime and not ill conceived. It would thus not be feasible or practical to force re-admission of the petitioner no.1 to the facility of respondent no.5.

Counsel appearing on behalf of petitioners pointed out that respondent no.5 is granted aid by the respondents no.1 and 2 for the activities undertaken. The aforesaid aspect is not disputed by the counsel for respondents no.1 and 2.

I fail to see as to why the respondents no.1 and 2 could not have ensured implementation of the order and ensured recovery of the amount as ordered by the Chief Commissioner for the grant sanctioned for the respondent no.5. A communication for seeking refund had been sent by the petitioner to respondent no.2 way-back on 24.07.2013.

Surprisingly, the respondents have adopted a stand which is *sans* rationality. It is ir-reconcilable that the respondent authorities continue to release the grant in favour of respondent no.5 despite having passed an order mandating respondent no.5 to refund the amount of Rs.10,00,000/-. Such display of inability and helplessness on the part of the State agencies and instrumentality reflects lack of steely intent to implement their own orders.

Considering that the petitioner no.1 is mentally challenged and petitioner no.2 is apparently in his late 80's and the respondent no.5 has chosen not to contest the present petition or to dispute the averments contained thereunder, this Court has no option but to accept the uncontroverted averments contained therein.

Accordingly, the present petition is allowed and it is directed as under:-

i) The respondents no.1 and 2 shall inform the petitioner no.2, within a period of one month from today, the details of all such institutions which provide similar lifetime rehabilitation and care as respondent no.5 and which such institutes receive grants-in-aid from Government of India;

ii) Upon furnishing a list of such Institutes to the petitioner no.2 within the period as aforesaid, he may, if he so chooses, inform the respondent no.2, within one month thereafter about the place where he intends to house petitioner no.1 for lifetime rehabilitation and care;

iii) In the event of the petitioner no.2 opting to get petitioner no.1 re-admitted to any other Institute providing such similar facilities as respondent no.5 for the remainder of his lifetime, the respondent no.2 shall make adequate arrangements for admission of petitioner no.1 to such institute;

iv) The amount of Rs.10,00,000/- as directed to be refunded by respondent no.2 vide order dated 24.03.2009 shall be deducted from the grants-in-aid assigned for respondent no.5 and shall be released in favour of the Institute for which the petitioner no.2 has exercised the option for seeking the re-admission of the petitioner no.1 for the remainder of his lifetime and to his account. The petitioner would be entitled to the amount of Rs.10,00,000/- along with interest @ 6% p.a from the date of passing of the order dated 24.03.2009 till its actual disbursement on account of undue retention of such money by the respondent no.5 Institute.

v) In event, the petitioner no.2 does not exercise the option to seek re-admission of petitioner no.1 to any other Institute, the amount of Rs.10,00,000/- along with interest as aforesaid shall be refunded to the petitioner within a period of six weeks' of exercise of such option;

vi) In case the grant in aid assigned to respondent no.5 is less than the amount so assessed along with interest, the amount shall be deducted in installments spanning over next years, however, the interest for the unpaid amount shall also be calculated;

vii) The respondent no.5 is not being extended any amount for the period when petitioner no.1 stayed there since the expenses were to be met from the corpus deposited. The Institute thus recovered its expenses from interest/income earned and by retaining the money till refund was ordered by respondent no.2.

The petition stands disposed of in the aforesaid terms.

(VINOD S. BHARDWAJ)
JUDGE

21.03.2023
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No