IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19702 of 2021

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Akanksha Maviya

... ... Petitioner/s

Versus

The Union of India & Ors.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Ms. Akanksha Malviya (In Person)
Mr. Vishal Kumar Singh, Advocate
Mr. Akash Keshav, Advocate
Mr. Deepak Kumar Singh, Advocate

For the Respondent/s : Dr. K. N. Singh (ASG)
Mr. Kumar Priya Ranjan, Advocate

For the State : Mr. S.D. Yadav, AAG-9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

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7 01-04-2022 In our order dated 10.02.2022, we had broadly indicated the ambit and scope of the Mental Healthcare Act, 2017 (here-

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inafter referred to as the Act). We reiterate the importance and significance thereof. The Act is divided into XVI Chapters containing 126 Sections.

Chapter III deals with advance directive; Chapter V deals with rights of persons with mental illness; Chapter VI deals with duties of appropriate Government; Chapter VII deals with constitution of Central Mental Health Authority; Chapter IX deals with Finance, Accounts and Audit; Chapter X deals with establishment of Mental Health; Chapter XI deals with Mental Health Review Board; Chapter XII deals with admission, treatment and discharge; Chapter XIII deals with responsibilities of other agencies.

In terms of Section 5 of Chapter III, every person, who is 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 not to be cared for and treated for a mental illness.

Whether there is any mechanism in place dealing with mandatory requirement of the statute or directives whereby and whereunder the person has a right to specify in advance the manner in which he wishes to be cared for and not to be cared for and treated for a mental illness and whether an Online Register as mandated by Section 7 has been set up and is being duly

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maintained?

What are the steps undertaken to be made or already stand taken with respect to the right of community living for persons with mental illness under Section 19 where they have rights to not remain in Mental Health Establishments etc.?

The Act under Section 20 grants a right of protection from cruel inhuman and degrading treatment and Section 21 provides for a right to equality and non-discrimination.

Whether the staffs of already existing mental health institutions have been trained in accordance with these provisions to ensure the realization of these important basic rights?

What are the steps taken in fulfillment of the duties imposed on the appropriate Government in this case, the Government of Bihar, vide Chapter VI, in particular Sections 29 and 31 which deal with promotion of mental health and preventive programme and human resource development and training respectively?

The State to furnish detailed reasons as to why the time line provided under Section 45 of the Act for the establishment of the Mental Health Authority (nine months) has not been complied with, as noted in our order dated 10.02.2022. As also we note that the order dated 25.02.2022 directed the process to be

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expedited. What are the steps that have been taken in furtherance thereof.

Section 66 of the Act provides the procedure for inspection and enquiry of mental health establishments. Details of inspection and enquiry as also under Section 67, carried out be furnished by the relevant authority before the next date.

Section 100 of the Act details duties of Police Officers in respect of persons with mental illness. Whether any training, awareness or sensitization programme has been undertaken to ensure that police officers are able to carry out their duties towards this vulnerable group of people?

Section 103 is titled as ‘prisoners with mental illness’. The authorities to furnish particulars of such prisoners as also the steps taken to ensure preparedness of prisons for accepting such inmates?

Section 123 grants power to State Authority to make regulations with respect to minimum standard of quality etc. Whether the State has framed such Rules? If in the affirmative, a copy of the said Rules be supplied to the Court.

We may also note that the importance of this Act is reflected also in Section 125 where the Central Government has been bestowed with the power to remove any difficulty arising

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in giving effect to the provisions of the Act. Although there was a limitation to this section of two years from the date of commencement of the Act, the legislative intent is clearly that of furthering and improving the mental health institutions and their regulations. It is saddening to see that the State of Bihar even after the passing of more than four and half years has not taken adequate steps in line with the intention of the Parliament.

Even more so, in the light of the fact that the National Mental Health Programme (NMHP) was launched by the Central Government as far as back in 1982 with the following objectives:-

1. To ensure the availability and accessibility of minimum mental healthcare for all in the foreseeable future, particularly to the most vulnerable and underprivileged sections of the population;
2. To encourage the application of mental health knowledge in general healthcare and in social development; and
3. To promote community participation in the mental health service development and to stimulate efforts towards self-help in the community;

And yet the entire State of Bihar since after its bifurcation has only one functioning unit and even for that sufficient particulars have not been furnished. It is only after a public spirited person approaches this Court that action is initiated albeit

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with continued lethargy.

The State has not addressed any one of the issues in its affidavit dated 23rd March, 2022 filed by the Chief Secretary, Government of Bihar.

From the supplementary counter affidavit dated 23rd of March, 2022, filed by the Chief Secretary, Government of Bihar, it is not clear as to whether the provisions of Rule 6 of the Mental Healthcare (State Mental Health Authority) Rules, 2018 (hereinafter referred to as the "Rules") stands complied with or not? Also, it is not clear as to whether the provisions of Section 62 of the Mental Healthcare Act, 2017 stands complied with or not?

We are informed that there is only one mental health establishment registered within the State of Bihar. It is not clear as to whether such information is correct or not? Also, the Government has to specify as to whether there is any need for having more such establishments or not? We are saying so based on the population of Bihar. Almost 1/10th people of India live within the State of Bihar.

It is not clear, for the affidavit is silent on this aspect, as to whether any Central Mental Health Authority, as envisaged under Section 33 of the Act, stands established and is otherwise

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discharging its functions, vis-a-vis the State of Bihar, as stipulated under Section 43 of the Act. This we say so, for as is evident from Section 43(1)(d) of the Act, that it is the duty of the Central Authority to maintain a national register of certain persons/functionaries.

We direct Respondent No. 1, namely The Union of India through its Secretary, Ministry of Health and Family Welfare, New Delhi-110011 to file an affidavit dealing with each one of the averments made in the petition, also specifying as to whether each one of the statutory provisions and the rules framed thereunder stands complied with or not? This, the Union of India must do within next two working weeks.

It is also not clear, for the affidavit filed by the Chief Secretary, Government of Bihar is silent, as to whether each one of the provisions of the Act and the rules referred to supra stands complied with or not?

Before we express any opinion, we only afford one last opportunity to the State Government to respond to the averments made in the petition as also the rejoinder filed by the petitioner as well as the issues highlighted by us.

Needful be positively done within next four working days.

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We reiterate that the Act was notified on 7th of April, 2017 and the instant petition, highlighting the inaction on the part of the State Government, was filed on 20th of November, 2021, in which notice was issued on 6th of January, 2022.

Hence, sufficient time was afforded to the State to take appropriate action and deal with each one of the contentions raised by the petitioner, which at this point in time, we would not hesitate to record that State has miserably failed to do so.

We are putting the State to notice that in the event of non-compliance of our order, we would not hesitate to pass orders directing personal presence of the Chief Secretary, Government of Bihar as also the Principal Secretary (Health)/ Incharge of the Department.

Shri S.D. Yadav, learned Additional Advocate General No. 9 and Ms. Akanksha Malviya, appearing in person, to supply all the counter/rejoinder to Dr. K.N. Singh, learned Additional Solicitor General assisted by Shri Kumar Priya Ranjan, learned counsel, during the course of the day.

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Let needful be done through electronic mode.

List this case on 7th of April, 2022 as Item No. 1.

(Sanjay Karol, CJ)

(S. Kumar, J)

PKP/Amrendra

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