

High Court of Judicature at Allahabad
(Lucknow)

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 571 of 2024

Petitioner :- Jyoti Rajpoot

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Social Welfare Deptt. Lko. And Others

Counsel for Petitioner :- In Person

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(1) Heard Ms. Jyoti Rajpoot (In person), Ms. Isha Mitta and Sri Nishant Shukla, learned Addl. C.S.C. for the State.

(2) Let the petitioner implead Director General of Medical & Health Services (Uttar Pradesh), Lucknow, Director General of Police, U.P, Lucknow and Commissioner of Police, Lucknow as opposite parties in the writ petition during course of the day.

(3) By means of this petition filed in public interest, a practicing lawyer of this Court has brought to the notice of the Court important facts and has raised important issues regarding 'able homeless persons' 'mentally ill homeless persons', 'mentally retarded homeless persons' and 'differently abled homeless persons' (other than those included in the aforesaid categories) who are lying on the streets, footpaths, especially in Lucknow, unattended, without being taken care of inspite of there being at least two statutes, namely, Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act, 2016') and Mental Healthcare Act, 2017 (hereinafter referred to as 'the

Act, 2017') apart from a scheme of Central Government of Shelters for Urban Homeless (National Urban Livelihood Mission, Government of India, Ministry of Housing and Urban Poverty Alleviation).

(4) The petitioner has mentioned certain facts in the writ petition about such persons and has also annexed photographs. Of course, so far as the photographs are concerned, confidentiality has to be maintained so far as the persons figuring therein but it was necessary to bring them on record as otherwise the impact of the malady prevailing could not have been conveyed to the court in the manner effectively.

(5) Article 21 of the Constitution of India entitles persons including those referred hereinabove to live a life with dignity. It is the State's duty to create requisite conditions for proper exercise of the right to have access to proper public health care and access to hospitals is part of such conditions.

(6) The long title of 'the Mental Healthcare Act, 2017' says that it is an Act 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.

(7) The term 'mental illness' has been defined in Section 2(s) and the same reads as under:-

" '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"

(8) It does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence. Mental retardation, however, possibly, would be covered by the Rights of Persons with Disabilities Act, 2016, therefore, in there case, the said Act would come into picture but returning to the Act, 2017, we find that “medical officer in charge” has been defined in Section 2(m) which means in relation to any mental health establishment, the psychiatrist or medical practitioner who, for the time being, is in charge of that mental health establishment. Sri Hari Prasad Gupta, a practicing Advocate of this Court has pointed out that as per his information availability of such psychiatrist in mental health establishment at least in Lucknow, is negligible. Learned counsel for the State says that they will have to seek instructions in this regard.

(9) Chapter X of the Act, 2017 deals with Mental Health Establishments. We would also like to know as to how many mental health establishments are registered under the Act, 2017 as referred in Section 100 (5) for the purposes of implementation of provisions of the Act, 2017 district-wise in the State of U.P.

(10) Chapter VI of the Act, 2017 deals with duties of appropriate government. As per Section 29, the appropriate Government shall have a duty to plan, design and implement programmes for the promotion of mental health and prevention

of mental illness in the country. State counsel should seek instructions in this regard.

(11) Section 18 deals with right to access mental healthcare. Section 19 deals with right to community living of a person with mental illness. Section 20 deals with right of such mentally ill persons to protection from cruel, inhuman and degrading treatment.

(12) Sub-section (1) of Section 20 says that every person with mental illness shall have a right to live with dignity. Even otherwise, Article 21 of the Constitution of India would also come into play in this context. Section 20 of the Act, 2017 reads as under:-

"20. Right to protection from cruel, inhuman and degrading treatment.—(1) Every person with mental illness shall have a right to live with dignity.

(2) Every person with mental illness shall be protected from cruel, inhuman or degrading treatment in any mental health establishment and shall have the following rights, namely:—

(a) to live in safe and hygienic environment;

(b) to have adequate sanitary conditions;

(c) to have reasonable facilities for leisure, recreation, education and religious practices;

(d) to privacy;

(e) for proper clothing so as to protect such person from exposure of his body to maintain his dignity;

(f) to not be forced to undertake work in a mental health establishment and to receive appropriate remuneration for work when undertaken;

(g) to have adequate provision for preparing for living in the community;

(h) to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women's personal hygiene be adequately addressed by providing access to items that may be required during menstruation;

(i) to not be subject to compulsory tonsuring (shaving of head hair);

(j) to wear own personal clothes if so wished and to not be forced to wear uniforms provided by the establishment; and

(k) to be protected from all forms of physical, verbal, emotional and sexual abuse."

(13) Section 21 deals with right to equality and non-discrimination and it reads as under:-

"21. Right to equality and non-discrimination.—(1) Every person with mental illness shall be treated as equal to persons with physical illness in the provision of all healthcare which shall include the following, namely:—

(a) there shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability;

(b) emergency facilities and emergency services for mental illness shall be of the same quality and availability as those provided to persons with physical illness;

(c) persons with mental illness shall be entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness;

(d) living conditions in health establishments shall be of the same manner, extent and quality as provided to persons with physical illness; and

(e) any other health services provided to persons with physical illness shall be provided in same manner, extent and quality to persons with mental illness.

(2) A child under the age of three years of a woman receiving care, treatment or rehabilitation at a mental health establishment shall ordinarily not be separated from her during her stay in such establishment:

Provided that where the treating Psychiatrist, based on his examination of the woman, and if appropriate, on information provided by others, is of the opinion that there is risk of harm to the child from the woman due to her mental illness or it is in the interest and safety of the child, the child shall be temporarily separated from the woman during her stay at the mental health establishment:

Provided further that the woman shall continue to have access to the child under such supervision of the staff of the

establishment or her family, as may be appropriate, during the period of separation.

(3) The decision to separate the woman from her child shall be reviewed every fifteen days during the woman's stay in the mental health establishment and separation shall be terminated as soon as conditions which required the separation no longer exist:

Provided that any separation permitted as per the assessment of a mental health professional, if it exceeds thirty days at a stretch, shall be required to be approved by the respective Authority.

(4) Every insurer shall make provision for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness."

(14) Clause (c) of Section 21 of the Act provides that persons with mental illness shall be entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness.

(15) Section 23 of the Act, 2017 speaks of right to confidentiality of such mentally ill persons.

(16) Section 45 of the Act, 2017 speaks about establishment of State mental health authority which according to the State Counsel has been constituted and she says that it has been constituted in 58 districts. Let details in this regard be brought on record by the State. Requisite orders / notification in this regard shall be brought on record by the State.

(17) Section 53 deals with functions of Chief Executive Officer of State Authority. The affidavit to be filed by the State authorities shall throw light on the activities of the mental health authority in the State of U.P. keeping in mind Section 53 of the Act and Section 55 dealing with functions of State authority along with supporting proof.

(18) Chapter XI of the Act, 2017 deals with 'Mental Health Review Boards'. The state mental health authority is required to constitute mental health review boards for the purposes of the Act in the districts. Powers and functions of such Boards has been defined in Section 82 of Act, 2017. Whether this has been done in the State?

(19) Under Chapter XIII of the Act, 2017 under the heading 'Responsibilities of Other Agencies', Section 100 prescribes duties of police officers in respect of persons with mental illness. The officer-in-charge of a police station has been assigned certain duties such as to take under protection any person found wandering at large within the limits of the police station whom the officer has reason to believe has mental illness and is incapable of taking care of himself; to take under protection any person within the limits of the police station whom the officer has reason to believe to be a risk to himself or others by reason of mental illness. Sub-section (3) of Section 100 of the Act further provides that every person taken into protection under sub-section (1) shall be taken to the nearest public health establishment as soon as possible but not later than twenty-four hours from the time of being taken into protection, for assessment of the person's healthcare needs. Sub-section (4) prohibits such persons being detained in the police lock up or prison in any circumstances. Sub-section (5) provides that the medical officer in-charge of the public health establishment shall be responsible for arranging the assessment of the person and the needs of the person with mental illness will be addressed as per other provisions of the Act as applicable in the particular circumstances. Sub-section (6) of

Section 100 further provides that in case of examination, the medical officer or mental health professional in-charge of the public mental health establishment finds that the person does not suffer from any mental illness, he shall inform his assessment to the police officer aforesaid and the said police officer shall take the person to the person's residence or in case of homeless persons, to a Government establishment for homeless persons. Sub-section (7) of Section 100 of the Act further provides in case of a person with mental illness who is homeless or found wandering in the community, a First Information Report of a missing person shall be lodged at the concerned police station and the station house officer shall have a duty to trace the family of such person and inform the family about the whereabouts of the person.

(20) The Rights of Persons with Disabilities Act, 2016 as amended from time to time is an Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith and incidental thereto. A person with disability has been defined in Section 2(s) to mean a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others. Chapter VIII of the Act, 2016 deals with duties and responsibilities of appropriate government in this regard. Section 79 deals with appointment of State Commissioner in States for persons with disabilities for the purposes of the Act, 2016. Section 80 deals with functions of State Commissioner. Clause (b) thereof empowers him to inquire, suo motu or otherwise deprivation of rights of persons

with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action. It is also entrusted with the function of monitoring implementation of the Act and schemes, programmes meant for persons with disabilities as also monitoring utilization of funds disbursed by the State Government and for benefit of persons with disabilities. Section 86 mentions about national fund for persons with disabilities. State Counsel should seek instructions in this regard.

(21) We are informed that there is a National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 which is an Act to provide for the constitution of a body at the national level for the welfare of such persons and for matters connected therewith or incidental thereto.

(22) There is also an Act known as the Uttar Pradesh Prohibition of Beggary Act, 1975 (in short 'the Act, 1975'). Its application would also be considered on the next date. Chapter II thereof refers to administrative machinery including State Destitutes Relief Committee. Section 5 thereof refers to power and functions of such Committee.

(23) We have also been informed about a Scheme of Shelters for Urban Homeless under the National Urban Livelihoods Mission and certain operational guidelines prepared by the Ministry of Housing and Urban Poverty Alleviation, copy of which has been provided to us which we keep on record.

(24) Having gone through the contents of the writ petition, although, it is the case of Ms. Isha Mittal, learned Addl. C.S.C. and Sri Nishant Shukla, learned Addl. C.S.C. appearing for the State that there are certain mechanisms in place under the Act, 2016 and there is a separate department of Empowerment of Persons with Disabilities with a district level officer in each district to take care of disabled persons and that there is some mechanism under the Act, 2017 also but so far as the able homeless persons are concerned there appears to be no statutory provision though there is a scheme of the Central Government which they accept has to be implemented by the State authorities and that there are certain shelter homes where such persons can be kept.

(25) Having heard learned counsel for the parties and having perused the records and having gone thorough the aforesaid statutes/ scheme, we are of the opinion that a Statewide exercise should be conducted, at least, within the municipal areas of a district to ascertain and identify the aforesaid four category of persons i.e. able homeless, mentally ill homeless persons, mentally retarded homeless persons and differently abled homeless persons (other than those included in the aforesaid categories) who may be found on the streets, footpaths or elsewhere i.e. not in any home or shelter and who are not being taken care of.

(26) Let the opposite parties file a response to the writ petition.

(27) Leaving all the issues open for consideration after getting a response from the State authorities, for the moment, we provide as under:-

(a) The Chief Medical Officer shall identify the aforesaid four category of homeless persons within the municipal limits of his district in cooperation with the local police. The Superintendent of Police/ Commissioner of Police shall ensure adequate co-operation by the local police in this regard. After identification of such persons, they shall be provided necessary relief whether it be of health or shelter under the relevant statutes or schemes as the case may be. The District Magistrate of the district shall oversee this entire exercise and shall co-ordinate with various authorities having a role to play under various enactments or schemes referred hereinabove and who may otherwise have a role to play in this regard. District-wise data collected in this regard shall be transmitted to the Director General of Medical & Health Services (U.P.) which shall include the number of such persons identified, their details and also the succour provided to them.

(b) The police of the local police station in whose area such persons are found shall, while dealing with these homeless persons in terms of Section 100 of the Act, 2017, treat them humanely and the Superintendent of Police of the district/ Commissioner of Police shall ensure this.

(c) A report shall be prepared in this regard and placed before this Court on the next date through the Director General of Medical & Health Services (U.P.), Lucknow and the Director General of Police, U.P., Lucknow.

(28) A copy of this order shall specially be sent to the Commissioner of Police, Lucknow, the District Magistrate, Lucknow and the Chief Medical Officer, Lucknow as specific instances have been mentioned relating to their area, in the writ petition, who shall file a separate response to the writ petition keeping in mind the aforesaid.

(29) Let an affidavit be filed in response to the petition and what has been stated hereinabove by the State authorities before the next date.

(30) List this case on **12.08.2024** amongst first ten cases of the day.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 11.7.2024

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