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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 43 OF 2022

Dr. Harish Shetty

....Petitioner

V/s.

The State of Maharashtra through
the Secretary/Principal Secretary
Department of Public Health And Ors

.....Respondents

Ms. Pranati Mehra Advocate for the Petitioner.
Mr. M. M. Pabale, AGP for the State.

**CORAM : NITIN JAMDAR &
GAURI GODSE, JJ.**

DATE : 2 DECEMBER 2022.

P.C.

The Public Interest Litigation, which arises from an individual's case but highlights serious issues of the non-implementation of the Mental Healthcare Act, 2017, in the State of Maharashtra.

2. When the Petition came up on board on 23 August 2022, it

transpired that the State Mental Health Authority under section 45 of the Act itself was not functioning. Therefore the State was directed to make the Authority functional. After that, the Petition was adjourned to enable the Authority to hold a meeting. Then we were informed by the learned Advocate General on 25 November 2022 that though the Authority held a meeting on 16 September 2022, minutes were not ready till that date (for two months). Thereafter we adjourned the Petition at the request of the Learned Advocate General directing that the copy of the minutes be filed in advance. The learned Advocate General is not present, and the learned AGP has tendered minutes of the meeting held by the State Mental Health Authority on 16 September 2022, along with a summary, in the Court today.

3. Before we deal with to what is discussed in the meeting, it is required to highlight the functions and obligations under the Act of 2017 and the Rules framed thereunder to emphasise what should have been reviewed and decided, and what is not done.

4. The State Mental Health Authority is constituted under section 45 of the Mental Healthcare Act, 2017. Section 52 deals with Officers and other employees of State Authority. Under Section 53 of the Act, the Chief Executive Officer is entrusted with the following tasks:

“53. Functions of chief executive officer of State Authority.

(1) The chief executive officer shall be the legal representative of the State Authority and shall be responsible for—

(a) the day-to-day administration of the State Authority;

(b) implementing the work programmes and decisions adopted by the State Authority;

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(c) drawing up of proposal for the State Authority's work programmes;

(d) the preparation of the statement of revenue and expenditure and the execution of the budget of the State Authority.

(2) Every year, the chief executive officer shall submit to the State Authority for approval—

(a) a general report covering all the activities of the Authority in the previous year;

(b) programmes of work;

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(c) the annual accounts for the previous year; and

(d) the budget for the coming year."

5. Under Section 55 of the Act, the State Authority has to carry out following functions:

“55. Functions of State Authority.—(1) The State Authority shall-

a) register all mental health establishments in the State except those referred to in section 43 and maintain and publish (including online on the internet) a register of such establishments;

(b) develop quality and service provision norms for different types of mental health establishments in the State;

(c) supervise all mental health establishments in the State and receive complaints about deficiencies in provision of services;

(d) register clinical psychologists, mental health nurses and psychiatric social workers in the State to work as mental health professionals, and publish the list of such registered mental health professionals in such manner as may be specified by regulations by the State Authority;

(e) train all relevant persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of this Act;

(f) discharge such other functions with respect to matters relating to mental health as the State Government may decide."

6. Under Section 62 of the Act, the State Mental Health Authority Fund is to be constituted and grants and loans made to the Authority by the State Government, all fees and charges and all sums received by the

State Authority from other sources as decided, are credited to it. The Fund is to be used for expenses incurred for functions and performance of the Act.

7. In the exercise of the powers conferred by the proviso to sub-section (2), read with sub-sections (1) and (4) of section 121 of the Mental Healthcare Act, 2017 (10 of 2017), the Central Government has framed Rules titled Mental Healthcare (State Mental Health Authority) Rules, 2018. Rule 10 empowers the State Government to call for information from the Authority. The Rule reads thus:

“10. Furnishing of information.

The State Government may call for information concerning the activities of the State Authority or the Board periodically or as and when required by it, and the State Authority or the Board, as the case may be, shall furnish such information in Form-A.

Form A appended to the Rules, gives the heads of the information to be furnished by the Authority. Form A is as follows.

Form-A

[See rule 10]

***INFORMATION ON THE ACTIVITIES OF THE
STATE AUTHORITY/ BOARD***

- 1. New Regulations notified:*
- 2. Number of orders passed during the year:*
- 3. Meetings held during the year:*
- 4. Number and details of mental health establishments under the control of the State Government:*
- 5. Number and details of mental health establishments in the State or Union Territory:*
- 6. Registration of mental health professionals by the State Authority:*
- 7. Statement on references received from the Central Government and the State Government and action taken thereon:*
- 8. Quality and service provision norms for different types of mental health establishments under the State Government:*
- 9. Training imparted to persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of the Mental Healthcare Act, 2017:*
- 10. Applications for registration of mental health establishments received, accepted and rejected along with reasons for such rejection:*
- 11. Audit of Mental Health Establishments along*

with audit reports:

12. Complaints received regarding violation of rights of Mentally ill persons and action taken thereon

13. Details regarding guidance document for medical practitioners and mental health professionals

14. Number of cases registered regarding Sexual Harassment of Women at Workplace under section 22 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and details thereof:

15. Details of inspection and inquiry of Mental Health Establishments:

16. Number of appeals to High Court against order of Authority and status thereof:

17. Complaints received regarding deficiencies in provision of services and action taken thereon:

18. Stakeholders Consultations:

19. Inquiry initiated by the Authority/Board:

20. Administration and establishment matters:

21. Budget and Accounts with details including balance sheet, income and expenditure account, etc.:

22. Any other matter which may be relevant:

8. Rules 15 and 16 of the Rules of 2018 mandate the Authority to

prepare and submit financial statements and Annual Reports within the stipulated time. These Rules read thus:

“15. Accounts and audit of State Authority.—

(1) The State Authority shall maintain accounts of its income and expenditure relating to each year and prepare an annual statement of accounts consisting of income and expenditure account and the balance sheet.

(2) Annual statement of accounts shall be submitted for audit not later than 30th June each year in the common accounting format prescribed from time to time by the Ministry of Finance for the central autonomous bodies or as nearer thereto as the circumstances admit.

(3) The annual statement of accounts prepared under sub-rule (1) shall be signed on behalf of the State Authority by the officer in-charge of accounts and the Chief Executive Officer and shall be approved by the State Authority.

16. Annual report of the State Authority. –

(1) The State Authority shall prepare its annual report in Form-E and forward it to the State Government within nine months of the end of the financial year for being laid before each House of State Legislature.

(2) The annual report shall give a full account of the activities of the State Authority during the previous year and shall include the audited accounts of the year and

the report of the Comptroller and Auditor General of India thereon.”

(emphasis supplied)

A mere perusal of the statutory provisions above would indicate that obligations placed upon State Authority are important and are to be monitored by the Government.

9. Turning now to the functioning of the Respondent Authority as is placed before us. We have perused the minutes of the meeting dated 16 September 2022. The minutes are one and a half pages. Minutes referring to five agenda points. Confirmation of the compliance report of the fifth meeting held on 2 September 2021. Welcoming newly selected Non-Ex-Officio members with flowers. In the context of the present Public Interest Litigation, there is a reference to the Additional Chief Secretary giving directions to set up a proposal to the Social Justice Department for the discharge of indoor patients who are eligible for discharge out of the total admitted patients in the hospitals (unfortunately mentioned as ‘Mental Hospitals’). A discussion regarding two foreign patients admitted to a hospital in Mumbai. Nothing is stated about the case which gave rise to this Public Interest Litigation. Then a reference to arranging a meeting with the Petitioners and others regarding patients’ issues. The last item is

a decision to open a bank account in the name of Maharashtra State Mental Health Authority. That is all the discussion. Except for these one-and-a-half pages and one-page summary, nothing is placed before us.

10. Under Section 56 of the Mental Healthcare Act, 2017, the State Mental Health Authority has to meet no less than four times a year. Considering that till August 2022, the Authority itself was not functional and that it was the Authority's first meeting this year, we had expected the Authority to deal with wider issues emerging from enforcing the Act of 2017. There is no reference to the same. There is no reference to the tasks of the Chief Executive Officer, such as drawing up the proposal for the State Authority's work programmes, whether the Officer has prepared the statement of revenue and expenditure and the execution of the budget of the State Authority. There is no reference to the Chief Executive Officer submitting a general report covering all the activities of the Authority in the previous year, programmes of work, the annual accounts for the previous year, and the budget for the coming year. Nothing is placed before, and it is not discussed whether the State Authority has submitted any Annual statement of accounts. Nor is there any reference to the preparation of any Annual report of the State Authority. It is not even stated that these reports are under preparation. The Learned AGP is given no instructions. Since this was the only meeting to be held this year after a

long time, the manner in which the meeting was conducted, to use the mildest expression, is superficial. Further, the minutes dated 16 September 2022 refer to a decision to open a bank account in the name of the Authority. It could be concerning the Fund under Section 62 of the Act. It is not explained how this Authority works without a bank account or statutory Fund required for its functioning.

11. Turning now to the duties of the appropriate Government, these duties are dealt with under Chapter VI of the Act. Appropriate Government, in this case, the State Government, has the following duties:

“29. Promotion of mental health and preventive programmes.

(1) 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.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the appropriate Government shall, in particular, plan, design and implement public health programmes to reduce suicides and attempted suicides in the country.

30. Creating awareness about mental health and illness and reducing stigma associated with mental illness.—

The appropriate Government shall take all measures to

ensure that,—

(a) the provisions of this Act are given wide publicity through public media, including television, radio, print and online media at regular intervals;

(b) the programmes to reduce stigma associated with mental illness are planned, designed, funded and implemented in an effective manner;

(c) the appropriate Government officials including police officers and other officers of the appropriate Government are given periodic sensitisation and awareness training on the issues under this Act.

31. Appropriate Government to take measures as regard to human resource development and training, etc.—

(1) The appropriate Government shall take measures to address the human resource requirements of mental health services in the country by planning, developing and implementing educational and training programmes in collaboration with institutions of higher education and training, to increase the human resources available to deliver mental health interventions and to improve the skills of the available human resources to better address the needs of persons with mental illness.

(2) The appropriate Government shall, at the minimum, train all medical officers in public healthcare establishments and all medical officers in the prisons or jails to provide basic and emergency mental healthcare.

(3) The appropriate Government shall make efforts to meet internationally accepted guidelines for number of mental health professionals on the basis of population, within ten years from the commencement of this Act.

32. Co-ordination within appropriate Government.—

The appropriate Government shall take all measures to ensure effective co-ordination between services provided by concerned Ministries and Departments such as those dealing with health, law, home affairs, human resources, social justice, employment, education, women and child development, medical education to address issues of mental healthcare.

(emphasis supplied)

We are not informed anything about these duties, the status and stages of the initiatives undertaken, if any.

12. In this regrettable state of affairs, it has become necessary for us to issue directions to the Authority and the State, highlighting the gravity of the duties imposed upon them under the Act and to inculcate a sense of urgency for the tasks ahead.

13. We direct the Chief Executive Officer of the Respondent State Authority to:

(a) Place the details of the State Mental Health Authority Fund as to when it was created, what is

the sum available in the Fund and whether it is adequate for its functioning and performance of the Act.

(b) To prepare a proposal for a work programme as per Section 53(1)(c) of the Act.

(c) To prepare a statement of revenue and expenditure and the budget of the Authority as per Section 53 of the Act.

(d) To prepare a general report covering all activities of the Authorities in the previous year per Section 53 of the Act.

(e) To prepare the schedule of programmes of work and budget for the coming year for approval of the Authority per Section 53 of the Act.

(f) To prepare a report in terms of Rule 10 of the Rules of 2018 as per Form A appended.

These reports shall be prepared by the Chief Executive Officer, and copies of which shall be placed on record of the Petition along with an affidavit of the Chief Executive Officer to be sworn personally.

14. The Chief Executive Officer shall, on affidavit shall also state whether the above-mentioned statutory Reports were prepared and submitted as per the Act and Rules since the constitution of the Authority and whether accounts were submitted, and the copies thereof be annexed.

15. The Secretary, Department of Public Health, State of Maharashtra, will also place on record details of tasks so performed by the appropriate Government as per the above-mentioned enactment since 2017. The Secretary will also place on record a proposal giving details of what steps the State Government intended to take in respect of the duties mentioned above with a timeline thereto. The Secretary will also place on record whether the State Government has called for a report from the Authority under Rule 10 of the Rules and details of the reports so submitted since the inception of the Authority. These details be placed on record by way of an affidavit sworn by the Secretary. If no statutory reports are submitted nor called for, an explanation thereto be given.

16. The affidavits of the Secretary, the Department of Public Health,

and the Chief Executive Officer shall be filed by 19 December 2022. If we find that the timelines given by the Chief Executive Officer and the Secretary are unclear, the Court may consider specifying the timeline. The learned Assistant Government Pleader seeks a longer time to file a reply affidavit and report. We would have ordinarily considered this request, however, considering what is directed are statutory requirements, we are not inclined to grant a longer time. If the Statutory Reports are already prepared and submitted, they have to be only annexed. We observe that if the statutory reports are not prepared at all so far, they be placed on record in the provisional form. The information, however, shall be placed on record by the date assigned.

17. Both State Government and Authority will ensure that responsible officers remain present in the Court to instruct the learned Advocate General on the next with relevant files as to all the above queries. We trust that the Secretary and others would respond with seriousness and not bring about a situation to secure their presence in the Court.

18. As regards suggestions made by the learned counsel for the Petitioner in respect of the draft memorandum of understanding, the learned counsel for the Petitioner would indicate the same to the Chief Executive Officer of the Authority, who will deal with this issue on the

next date. The Chief Executive Officer will deal with the grievance that the case which gave rise to this Public Interest Litigation finds no reference in the minutes.

19. Stand over to 21 December 2022 at 2.30 p.m.

[GAURI GODSE, J.]

[NITIN JAMDAR, J.]