

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 and Others)...Respondents

Ms. Pranali Mehra, Advocate for the Petitioner.

Dr. Birendra Saraf, Advocate General a/w. Mr. P.P.Kakade,
Govt. Pleader a/w. Mr. M.M.Pable, AGP, Advocate for the
Respondent-State.

Mr.Vishwajeet Sawant, Senior Advocate a/w. Mr. Prabhakar
Jadhav, Advocate for Respondent No.2.

Mr. J.P.Sen, Senior Advocate as Amicus Curiae, is present.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.**

DATE : 24 FEBRUARY 2023

P.C.

The learned Advocate General informs that on 4
February 2023 an amount of Rs.1 Crore is transferred under
Section 62 of the Mental Healthcare Act, 2017 (the “Act”) to

the State Mental Health Authority Fund as a loan as contemplated under Section 62(1)(i). The learned Amicus curiae points out that the budget head is yet to be created. As we have noted earlier, for the State Mental Health Authority to be fully operational to discharge its duties under the Act, funds under Section 62 will have to be credited with adequate corpus therein. We expect the State Government to take steps for creation of budget head in respect of Section 68 which is a statutory fund and budget head would therefore follow in view of the statutory mandate.

2 The learned Senior Advocate for the State Mental Health Authority states that information is received and the draft reply is ready and seeks some time to finalise the same. The learned Counsel for the State Authority states that the affidavit will be filed in advance.

3 The learned Counsel for the Petitioner and the learned Amicus curiae point to functions of the State Authority under Section 55 of the Act. These are registration of all Mental Health Establishments, their supervision, registration of clinical psychologists, mental health nurses and psychiatric social workers etc. is necessary, which will bring all the Mental

Health Establishments which are recognized, to work under the State Authority as registered mental health professionals.

4 The learned Counsel for the Authority states that the registration is in progress and the concerned establishments referred to in Section 55(1)(a) and the persons referred to in Section 55(1)(d) have been called upon to register themselves and submits that, in addition, wide publicity will be given through media and social media.

5 Rule 11 in Chapter III of the Mental Healthcare (State Mental Health Authority) Rules, 2018 provide for provisional registration of Mental Health Establishments. Rule 14 which has been introduced by way of an amendment dated 12 August 2021 states that the Authority shall also provide an online platform for digital submission of application for grant of provisional registration / renewal of provisional registration and for digital issuance of certificate. The learned Counsel for the Authority submits that currently the website of the State Health Department is being used and process is underway for creating a separate portal in line with the authority in the State of Karnataka.

We expect that this initiative shall be taken at the earliest as it will enable the State Authority to register all establishments and persons effectively to discharge its functions under Section 55 of the Act. Creation of portal, according to us, should not take much time and we expect the authorities to take urgent steps in that regard.

6 As regards the persons in need of assistance for which the Act has been formulated, the learned Counsel for the Authority states that various steps are being taken. The learned Counsel for the Petitioner and the learned Amicus curiae have drawn the attention of the Court to the issue of persons who are ready to be discharged from Mental Health Establishments, however, they are unable to come back into the society or to their families. Our attention is drawn to the Memorandum of Understanding (the “MOU”) executed between the Authority and one Shraddha Rehabilitation Foundation, non-governmental organization (NGO). The MOU deals with the persons who have been placed in a position which is between the Mental Health Establishments and their families. The learned Counsel for the Petitioner informs that this organization has been able to reunite nine persons from registered hospital Thane and seventeen from registered

hospital Ratnagiri. The learned Counsel for the Petitioner states that one patient from registered hospital Thane was reunited after 27 years.

7 The learned Counsel have also brought to our attention that merely reunion i.e. taking the patients from the hospital to the families cannot be considered as the end of the problem and it has to be also seen whether they are properly assimilated. The MOU does not refer to monitoring after the patients are reunited with their families. The learned Counsel for the Authority states that this aspect will be looked into on the next date, when a representation is made on behalf of the foundation. This issue can also be put to the Foundation.

8 Section 19(2) of the Act obliges the State Government to provide support as appropriate including legal aid in respect of a patient who has been abandoned by his family and relatives. Under Section 19(3) of the Act, the State Government has to establish community based establishments including half-way homes and group homes etc. We are informed that one such half-way home at Karjat is recognized by the Social Welfare Department of the State. Since such half-way homes under Section 19(3) of the Act would be critical component in the

process of ultimate rehabilitation of the patients, this is one aspect that needs to be taken up on priority basis, apart from registration of Mental Health Establishments and professionals.

9 Since the Mental Health Authority also is expected to receive complaints about deficiencies in provision of services of Mental Health Establishment, effective redressal forum needs to be created. The learned Counsel for the State Authority states that the option of creating a grievance portal apart from the toll free number will also be considered. The learned Advocate General suggests that Authority should have internal Regulations for processing such complaints which can ultimately lead to de-registration of the Mental Health Establishment.

10 These are some of the aspects that we have highlighted which the State Authority should take up on priority basis and it is ultimately the task of the State Authority under the Act to ensure that these initiatives are undertaken and completed. Now, that the State Authority is represented through its own Counsel who assures us that necessary steps would be taken and reply affidavit would be filed, we expect that by the next date, there would be progress to report.

11 It would be fruitful if the learned Counsel for the parties with concerned officers and the learned Amicus curiae have a joint meeting in the office of the learned Advocate General prior to the next date of hearing.

12 Leave is granted to add Shraddha Rehabilitation Foundation as party Respondent to the Petition. Amendment to be carried out before the next date. Petitioner will give notice to the added Respondent. Stand over to 9 March 2023, at 4.00 p.m.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)