



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 & Ors. ... Respondents

Mr. J. P. Sen, Senior Advocate as Amicus Curiae is present.
Ms. Pranali Mehra for the Petitioner.
Mr. P. P. Kakade, GP a/w Mr. M. M. Pabale, AGP for Respondent
Nos.1 and 3.
Mr. Vishwajeet Sawant, Senior Advocate a/w Mr. Prabhakar Jadhav for
Respondent No.2.

CORAM : NITIN JAMDAR, ACJ. AND
ARIF S. DOCTOR, J.

DATED : 10 JULY 2023.

P.C. :

On 21 April 2023, we had passed a detailed order. For the purpose of today's hearing, paragraphs 8, 9 and 10 of the said order are necessary to be noted. They read as under :-

"8. The learned counsel for the Petitioner and the learned Amicus state that since the State Mental Health Authority has now been made operational and has started functioning, the core issue raised in

the petition regarding the plight of patients who are over-staying in the mental health institutions, in some cases for decades, need to be redressed. Under the statute, this task is entrusted to the State Mental Health Authority. NALSA has already framed a Scheme to identify such individuals. Their efforts need to be coordinated. We have already indicated above the manner in which the efforts can be coordinated.

9. *Therefore, we expect that on the next date, both the State Mental Health Authority and MSLSA will place before us cogent data regarding mental health patients, that is, the date of admission of the patient, length of stay, when the patient was last examined for fitness for discharge; opinion of the doctor in respect of discharge (positive or negative); status of the patient now discharged or not; and the number of discharged patients sent home by mental health institutes but not accepted by family or returned back.*

10. *The officials deputed by the State Mental Health Authority and the paralegal volunteers under the Scheme of 2015 would collect the data referred to above from the mental health institutions registered under the Mental Health Act, 2017. All registered mental health institutions will cooperate when such data is called for. If such cooperation is not extended and a complaint is made to the State Mental Health Authority, the State Mental Health Authority will take necessary steps to ensure compliance. We expect the data we have directed will be placed on record on the next date.”*

2. We had stated that both, the State Mental Health Authority and the Maharashtra Legal Services Authority, would place before us a data regarding mental health patients, that is, the date of admission of the patient, length of stay and when the patient was last examined for fitness for discharge, opinion of the doctor in respect of discharge, status of the patient and the number of discharged patients sent home, but not accepted by family or returned back. The officials deputed by the State Mental Health Authority and the paralegal volunteers were directed to collect the data. This was so because a scheme framed by the National Legal Services Authority also contemplates measures to be taken for the benefit of those who are suffering from mental health issues.

3. The Maharashtra Legal Services Authority has placed a report on record dated 14 June 2023. The report refers to a state of patients, i.e., stay of patients and period in the hospital before they were reunited. Most of the data is from private hospitals. As regards the State Mental Health Authority is concerned, the learned Counsel for the Authority states that the data is collected, however it has to be structured analytically and seeks some time for that purpose.

4. As we have indicated in the earlier order that the primary focus now would be on those patients who have been declared as fit by

the establishments, government and private, and fit to be discharged, however, they are continued in the establishments because their family members have not accepted them back at home.

5. Second would be that classes of the patients who are discharged from the hospitals and are in the halfway homes. Third, those patients even after sent back to the family, the family members have abandoned them. The present Public Interest Litigation proceeding is to concentrate on the first category of the cases. The data as regards these patients would require of from both, government and private hospitals.

6. In spite of the order dated 21 April 2023, we still do not have any credible data, so as to take further measures. We place the responsibility on the Deans of the Government Hospitals and the Directors of all the private hospitals, to whom this inquiry is made by the State Mental Health Authority, to furnish the data to the State Mental Health Authority without fail. The Secretary of the Public Health Department will issue a circular directing the Deans of the mental hospital establishments and the Directors of the private establishments to supply the necessary data as called for by the State Mental Health Authority for the purpose of taking measures contemplated under The Mental Healthcare Act, 2017.

7. The learned Government Pleader states that the order will be communicated to the Secretary. With these directions we do not see any impediment in the way of the State Mental Health Authority to place before us the credible data regarding the first category of the patients.

8. Another aspect highlighted in the present Public Interest Litigation is the cases pending before the Mental Health Review Boards. Section 73 of The Mental Healthcare Act, 2017 contemplates the constitution of the Mental Health Review Boards in each District or group of Districts in the State. We are informed that there are eight Mental Health Review Boards in the State as on date. The composition of the Board is provided under Section 74 of the Act. Section 77 contemplates applications to the Board by any person with mental illness or his nominated representative or a representative of a registered non-governmental organisation, with the consent of such a person. The said Section 77 reads thus :-

“77. Applications to Board.- (1) Any person with mental illness or his nominated representative or a representative of a registered non-governmental organisation, with the consent of such a person, being aggrieved by the decision of any of the mental health establishment or whose rights under this Act have been violated, may make an application to the Board seeking redressal or appropriate relief.

(2) There shall be no fee or charge levied for making such an application.

(3) Every application referred to in sub-section (1) shall contain the name of applicant, his contact details, the details of the violation of his rights, the mental health establishment or any other place where such violation took place and the redressal sought from the Board.

(4) In exceptional circumstances, the Board may accept an application made orally or over telephone from a person admitted to a mental health establishment.

9. Section 80 also contemplates time bound disposal of the applications and the category of the applications to be disposed of. Section 80 reads as follows :-

“80. Proceedings before Board.*-(1) The Board, on receipt of an application under sub-section (1) of section 77, shall, subject to the provisions of this section, endeavour to hear and dispose of the same within a period of ninety days.*

(2) The Board shall dispose of an application—

(a) for appointment of nominated representative under clause (d) of sub-section (4) of section 14;

(b) challenging admission of a minor under section 87;

(c) challenging supported admission under sub-section (10) or sub-section (11) of section 89,

within a period of seven days from the date of receipt of such applications.

(3) The Board shall dispose of an application challenging supported admission under section 90

within a period of twenty-one days from the date of receipt of the application.

(4) The Board shall dispose of an application, other than an application referred to in sub-section (3), within a period of ninety days from the date of filing of the application.

(5) The proceeding of the Board shall be held in camera.

(6) The Board shall not ordinarily grant an adjournment for the hearing.

(7) The parties to an application may appear in person or be represented by a counsel or a representative of their choice.

(8) In respect of any application concerning a person with mental illness, the Board shall hold the hearings and conduct the proceedings at the mental health establishment where such person is admitted.

(9) The Board may allow any persons other than those directly interested with the application, with the permission of the person with mental illness and the chairperson of the Board, to attend the hearing.

(10) The person with mental illness whose matter is being heard shall have the right to give oral evidence to the Board, if such person desires to do so.

(11) The Board shall have the power to require the attendance and testimony of such other witnesses as it deems appropriate.

(12) The parties to a matter shall have the right to inspect any document relied upon by any other party in its submissions to the Board and may obtain copies of the same.

(13) The Board shall, within five days of the completion of the hearing, communicate its decision to the parties in writing.

(14) Any member who is directly or indirectly

involved in a particular case, shall not sit on the Board during the hearings with respect to that case.”

10. Section 82 lays down the powers and functions of the Board. The said Section 82 of the Act reads thus :-

“82. Powers and functions of Board. - (1) Subject to the provisions of this Act, the powers and functions of the Board shall, include all or any of the following matters, namely:—

(a) to register, review, alter, modify or cancel an advance directive;

(b) to appoint a nominated representative;

(c) to receive and decide application from a person with mental illness or his nominated representative or any other interested person against the decision of medical officer or mental health professional in charge of mental health establishment or mental health establishment under section 87 or section 89 or section 90;

(d) to receive and decide applications in respect non-disclosure of information specified under sub-section (3) of section 25;

(e) to adjudicate complaints regarding deficiencies in care and services specified under section 28;

(f) to visit and inspect prison or jails and seek clarifications from the medical officer in-charge of health services in such prison or jail.

(2) Where it is brought to the notice of a Board or the Central Authority or State Authority, that a mental health establishment violates the rights of persons with mental illness, the Board or the Authority may conduct an inspection and inquiry and take action to

protect their rights.

(3) Notwithstanding anything contained in this Act, the Board, in consultation with the Authority, may take measures to protect the rights of persons with mental illness as it considers appropriate.

(4) If the mental health establishment does not comply with the orders or directions of the Authority or the Board or wilfully neglects such order or direction, the Authority or the Board, as the case may be, may impose penalty which may extend up to five lakh rupees on such mental health establishment and the Authority on its own or on the recommendations of the Board may also cancel the registration of such mental health establishment after giving an opportunity of being heard.”

11. Section 83 provides for an appeal to the High Court against the order of Authority or Board.

12. As per Section 82(c) of the Act, the applications from persons with mental illness or his nominated representative or any other interested person against the decision of medical officer or mental health professional in charge of mental health establishment or mental health establishment under Sections 87, 89 or 90 can be received by the Board. Section 87 deals with admission of minor to the mental health establishments after following the procedure laid down. Section 89 is regarding the admission and treatment of persons/patients with

mental illness, with high support needs, in mental health establishment, upto 30 days and Section 90 is for such persons beyond 30 days. The Board is also empowered to decide the applications in respect of non-disclosure under Section 25(3) of the Act. Section 25 confers the right on persons with mental illness to have access to their basic medical records and if the medical records are withheld, such person has right to apply to the Board. The Board is also authorised to adjudicate the complaints about the deficiency in the provisions of services made by any person or his nominated representative. Therefore, it is clear that The Mental Healthcare Act, 2017 confers wide and important powers to the Board. These provisions would show that the Board plays the crucial role as regards safeguarding the rights of the persons with mental illness.

13. The Reply Affidavit be filed on behalf of the State giving the particulars about functioning of the Board, as to how many matters are pending, how many applications as on date pending, how many applications were received in last five years, how many were disposed of, whether each of the Boards maintain the registers physically or electronically, whether the applications are given any number, etc.

14. The information be placed on record by way of the Reply Affidavit by the next date.

15. Stand over to 03 August 2023 at 2.30 p.m.

16. The representative of Maharashtra State Legal Services Authority is not present today. The Maharashtra State Legal Services Authority will consider to appoint an Advocate to represent it before the next date.

(ARIF S. DOCTOR, J.)

(ACTING CHIEF JUSTICE)