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WP(MD)No.10956 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.10956 of 2024

Gurunathan

... Petitioner

Vs.

1. The Deputy Director,
Directorate of Public Health
and Preventive Medicine,
No.33, West Jones Road,
Sidhapet, Chennai – 600 015.
2. Chief Administrative Officer,
Tamil Nadu Institute of Mental Health,
Medavakkam Tank Road,
Kilpauk, Chennai – 600 023.
- 3.The Dean,
Tirunelveli Medical College & Hospital,
Tirunelveli.
- 4.The Secretary to Government,
The Department of Health and Family Welfare,
Government of Tamil Nadu,
Chennai.

... Respondents

(R4 suo motu impleaded vide order
dated 10.06.2024)

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to take the petitioner's son, namely, Lokesh aged about 20 years into the third



WP(MD)No.10956 of 202

respondent hospitality as an in-patient under his supervision for the speedy recovery and for the prospective health future of the petitioner's son on the account of his ill-health, or in any other similar recognized Government health care institutions by considering the petitioner's representation dated 27.03.2024 as expeditiously as possible.

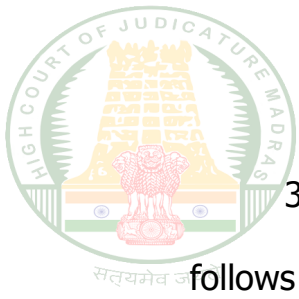
For Petitioner : Mr.N.Balasubramanian

For R-1 to R4 : Mr.P.Thambidurai, Government Advocate

ORDER

The 7th Chapter of Thirukkural is devoted to "The Boon of Children". Sage Thiruvalluvar has titled the Chapter as "Makkatperu". Having children is described as something fortunate. One can imagine the joy when Gangadevi, wife of the petitioner would have felt when the eldest child turned out to be a boy baby. Alas!, the son who is now twenty years of age is having serious mental issues. He is violent at times. He often beats the parents. The petitioner is not resourceful. He is a daily wager. He wants the State to take responsibility for the upbringing of his son. This writ petition has been filed to secure such a direction.

2.The moot question that arises for consideration is whether the State can be saddled with liability in such cases. My answer is "yes".



WP(MD)No.10956 of 202

3. In **Navtej Singh Johar v. UOI (2018) 10 SCC 1**, it was held as

follows :

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“.....In the evolution of its jurisprudence on the constitutional right to life under Article 21, this Court has consistently held that the right to life is meaningless unless accompanied by the guarantee of certain concomitant rights including, but not limited to, the right to health. [Dipika Jain and Kimberly Rhoten, “The Heteronormative State and the Right to Health in India”, NUJS Law Review, Vol. 6 (2013).] The right to health is understood to be indispensable to a life of dignity and well-being, and includes, for instance, the right to emergency medical care and the right to the maintenance and improvement of public health.”

The Rights of Persons with Disabilities Act, 2016 was passed to give effect to the U.N Convention on the Rights of Persons with Disabilities. The expression “person with disability” means a person with longterm physical, mental, intellectual or sensory impairment which, in inter-action with barriers, hinders his full and effective participation in society equally with others (Section 2(s) of Act). Section 3(1) of the Act mandates that the appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. Section 9(2) of the Act reads as follows :



WEB COPY



WP(MD)No.10956 of 202

"9.Home and family.—

....

(2) Where the parents are unable to take care of a child with disability, the competent court shall place such child with his or her near relations, and failing that within the community in a family setting or in exceptional cases in shelter home run by the appropriate Government or non-governmental organisation, as may be required."

Though a literal reading of the provision would make the aforesaid provision applicable only to a child with disability lacking family support, the same can be extended even to adults suffering from mental disability who lack family support. Section 25 of the Act mandates that there should be measures providing for healthcare for the persons with disabilities. Chapter VII of the Act contains special provisions for persons with disabilities with high support needs. Section 38 of the Act reads as follows :

"38.Special provisions for persons with disabilities with high support.—

(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

(2) On receipt of an application under sub-section (1), the authority shall refer it to an Assessment Board consisting of



WEB COPY



WP(MD)No.10956 of 202

such Members as may be prescribed by the Central Government.

3) The Assessment Board shall assess the case referred to it under sub-section (1) in such manner as may be prescribed by the Central Government, and shall send a report to the authority certifying the need of high support and its nature.

(4) On receipt of a report under sub-section (3), the authority shall take steps to provide support in accordance with the report and subject to relevant schemes and orders of the appropriate Government in this behalf.”

4.The Mental Healthcare Act, 2017 was brought in to provide for mental healthcare and services for persons with mental illness and to cater to their needs. Section 2(s) of the Act defines “mental illness” in the following terms :

“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;

Section 18 of the Act sets out the right to access mental healthcare. It reads as follows :

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WEB COPY



WP(MD)No.10956 of 202

18. Right to access mental healthcare.—

(1) Every person shall have a right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government.

(2) The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.

(3) The appropriate Government shall make sufficient provision as may be necessary, for a range of services required by persons with mental illness.

(4) Without prejudice to the generality of range of services under sub-section (3), such services shall include— (a) provision of acute mental healthcare services such as outpatient and inpatient services; (b) provision of half-way homes, sheltered accommodation, supported accommodation as may be prescribed; (c) provision for mental health services to support family of person with mental illness or home based rehabilitation; (d) hospital and community based rehabilitation establishments and services as may be prescribed; (e) provision for child mental health services and old age mental health services.

(5) The appropriate Government shall,— (a) integrate mental health services into general healthcare services at all levels of



WEB COPY



WP(MD)No.10956 of 202

healthcare including primary, secondary and tertiary healthcare and in all health programmes run by the appropriate Government; (b) provide treatment in a manner, which supports persons with mental illness to live in the community and with their families; (c) ensure that the long term care in a mental health establishment for treatment of mental illness shall be used only in exceptional circumstances, for as short a duration as possible, and only as a last resort when appropriate community based treatment has been tried and shown to have failed; (d) ensure that no person with mental illness (including children and older persons) shall be required to travel long distances to access mental health services and such services shall be available close to a place where a person with mental illness resides; (e) ensure that as a minimum, mental health services run or funded by Government shall be available in each district; (f) ensure, if minimum mental health services specified under sub-clause (e) of sub-section are not available in the district where a person with mental illness resides, that the person with mental illness is entitled to access any other mental health service in the district and the costs of treatment at such establishments in that district will be borne by the appropriate Government: Provided that till such time the services under this sub-section are made available in a health establishment run or funded by the appropriate Government, the appropriate Government shall make rules regarding reimbursement of costs of treatment at such mental health establishment.

(6) The appropriate Government shall make available a range



WEB COPY



WP(MD)No.10956 of 202

of appropriate mental health services specified under sub-section (4) of section 18 at all general hospitals run or funded by such Government and basic and emergency mental healthcare services shall be available at all community health centres and upwards in the public health system run or funded by such Government.

(7) Persons with mental illness living below the poverty line whether or not in possession of a below poverty line card, or who are destitute or homeless shall be entitled to mental health treatment and services free of any charge and at no financial cost at all mental health establishments run or funded by the appropriate Government and at other mental health establishments designated by it.

(8) The appropriate Government shall ensure that the mental health services shall be of equal quality to other general health services and no discrimination be made in quality of services provided to persons with mental illness.

(9) The minimum quality standards of mental health services shall be as specified by regulations made by the State Authority.

(10) Without prejudice to the generality of range of services under sub-section (3) of section 18, the appropriate Government shall notify Essential Drug List and all medicines on the Essential Drug List shall be made available free of cost to all persons with mental illness at all times at health establishments run or funded by the appropriate Government starting from Community Health Centres and upwards in the public health system: Provided that where the health



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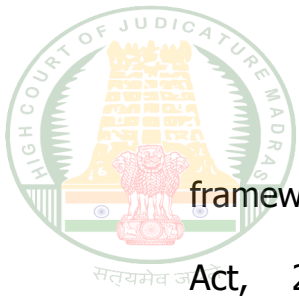


WP(MD)No.10956 of 202

professional of ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems recognised by the Central Government are available in any health establishment, the essential medicines from any similar list relating to the appropriate ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems shall also be made available free of cost to all persons with mental illness.

(11) The appropriate Government shall take measures to ensure that necessary budgetary provisions in terms of adequacy, priority, progress and equity are made for effective implementation of the provisions of this section. Explanation.—For the purposes of sub-section (11), the expressions— (i) “adequacy” means in terms of how much is enough to offset inflation; (ii) “priority” means in terms of compared to other budget heads; (iii) “equity” means in terms of fair allocation of resources taking into account the health, social and economic burden of mental illness on individuals, their families and caregivers; (iv) “progress” means in terms of indicating an improvement in the State's response.”

Case-laws, conventions as well as statutory provisions emphasize the rights of the mentally disabled. They are entitled to reasonable accommodation. They have a right to live in a community. They are entitled to support of the family. The Hon'ble Supreme Court of India in ***Ravinder Kumar Dhariwal v. UOI (2023) 2 SCC 209***, had pointed out that there has been a paradigm shift and now we have right based



WP(MD)No.10956 of 202

framework on mental healthcare. Section 18 (4) of the Mental Healthcare Act, 2017 envisages setting up of sheltered and supported accommodation. Section 18(7) of the Act envisages extending assistance to those below poverty line.

WEB COPY

5. Central Act 44 of 1999 (The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999) is another relevant legislation. It envisages constitution of a Trust at the national level for the welfare of the persons with mental disabilities. Section 10 speaks about the objects of the Trust. One of the objects of the Trust as per Section 10(d) is to deal with problems of persons with disability who do not have family support. The Trust Board shall receive a one time contribution of Rs.100 crores towards corpus. Its income is to be utilized to provide for adequate standard of living for persons with disability. The approved programmes of the Board shall include setting up of residential hostels and residential homes for persons with disability.

6. Dr. Upendra Baxi is a legendary jurist. At his instance, several proactive measures were taken by the Hon'ble Supreme Court of India during 1980s. One such decision is reported in (1983) 2 SCC 308. The horrible conditions of the inmates of Agra Protective Home were brought



WP(MD)No.10956 of 202

to the notice of the Judges. They intervened. It was found that quite a few among them were suffering from mental issues. They were promptly shifted to a Home specially meant for them.

WEB COPY

7. In *Dr. Vijay Varma v. UOI* (AIR OnLine 2018 UTR 184), it was held by the Hon'ble Division Bench of the Uttarkhand High Court that the mentally disturbed patients have a fundamental right to self-preservation, dignity, access to quality mental healthcare and substance. ***Kalyani Chattopadhyay v. Govt. Of NCT Delhi*** (WP(C) 4131 of 2021) is more apposite to the case on hand. After referring to Section 100 of the Mental Healthcare Act, 2017, direction was given for taking the patient concerned to an appropriate facility and placing him under their care.

8. From a reading of the above, one can come to a safe conclusion that the State has to exercise its *parens patriae* jurisdiction in the case of mentally disabled who are without family support. When the State fails to exercise its duty, the constitutional Court exercising jurisdiction under Article 226 of the Constitution of India will direct the authorities to discharge the aforesaid function. The State is obliged to set up residential homes for the mentally disabled in every District. This alone will reduce overcrowding. There are NGOs who have set up such shelter Homes. The State should liberally support them financially so that the inmates can survive decently and also have requisite medical care. It is open to such



WP(MD)No.10956 of 202

WEB COPY

NGOs to move the State for appropriate financial support and it is the duty of the State to provide the necessary budgetary allocation. The State must be thankful to the NGOs for relieving it of its primary burden. If the NGOs are not there, it is the duty of the State which will have to provide complete infrastructural support. The institutions must be fully manned. More than anything else, the inmates must be treated humanely. We hear several shocking stories. As directed by the Hon'ble Supreme Court in Dr.Upendra Baxi's case, every institution meant to house the mentally ill must have a board of visitors. The board must comprise not only bureaucrats of appropriate rank but also well known psychiatrists and social workers. The visitors must be entitled to conduct surprise inspections and interview the inmates. CCTV cameras must be installed. I can understand the need to impose appropriate restrictions to deal with those who are violent. But then, the means must be proportionate. Those in-charge of the institutions must ensure that the wardens and supervisors do not run amok. It is not possible to elaborate beyond a certain point. I would expect the Government to come out with appropriate policies and regulations. That is why, I suo motu impleaded the State Government. I realise that these matters have financial implications. That is why, I have not laid down any time frame. But then, it is the duty of the Central and State governments to ensure that the policies underlying the three major legislations (Central Act 10 Of 2017, 49



WP(MD)No.10956 of 202

of 2016, 44 of 1999) are implemented in letter and spirit. I am certain that the courts will be spared the need to issue further directions in this regard.

WEB COPY

9. Coming to the facts of the case, it is conceded that the petitioner's son was admitted in the psychiatry ward of the Tirunelveli Medical College and Hospital on 20.05.2022 and discharged on 06.06.2022. He has been diagnosed as suffering from bipolar affective disorder. He has current episodic mania with psychotic symptoms. The petitioner's family is unable to support the patient. I had an interaction with the patient's mother. It was heartbreaking. No mother would like to part with her son. But the patient's mother complained that she is unable to handle the violent behavior of her son.

10. I, therefore, direct the respondents 1 to 3 to take appropriate steps to take the petitioner's son in their custody and house him in an appropriate accommodation and also provide him with lifelong medicare. Of course, this arrangement will terminate the moment the patient is found fit to be discharged. This writ petition is allowed. No costs.

10.06.2024

Internet : Yes/No
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To

<https://www.mhc.tn.gov.in/judis>



WP(MD)No.10956 of 202

WEB COPY

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G.R.SWAMINATHAN, J.



WEB COPY



WP(MD)No.10956 of 202

SKM

W.P.(MD)No.10956 of 2024

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