

Supreme Court of India

Reena Banerjee & Anr vs Govt. Of Nct Of Delhi & Ors on 8 December, 2016

Author: A.M.Khanwilkar

Bench: T.S. Thakur, A.M. Khanwilkar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11938/2016
(Arising out of S.L.P.(Civil) No.39321/2012)

Reena Banerjee & Anr.

.Appellants

Vs.

Govt. of NCT of Delhi & Ors.
.Respondents

J U D G M E N T

A.M.KHANWILKAR,J.

Leave granted.

2. This appeal arises from the judgment of the High Court of Delhi at New Delhi in W.P.(c) No.8229/2011 dated 7th September 2012.

3. The appellants filed an intervention application in the High Court, in a disposed of suo moto Writ Petition (Civil) No. 5621/2012. The reliefs claimed in the application read thus:

a. For an order calling for the records of the deaths that have taken place in such homes and also for information pertaining to the intake of juveniles and those released since 2004-08.

b. For an order directing the authorities to conduct an impartial inquiry by constituting an independent committee as per the provisions of the Acts regarding the deaths that have taken place in observation homes and submitting findings to this Honble Court.

c. For an order directing strong action against the duty bearers, the concerned minister and the agencies working in the area of child rights who have failed to discharge their duties towards the children and prosecute the officials who are responsible for the deaths in various children homes.

- d. For an order issuing directions to the authorities to ensure all necessary infrastructure and legal entitlements are provided in the homes under the Juvenile Justice regarding the requirements for appropriate staffing, food, medical care and hygiene.
- e. For an order directing the Respondents to ward compensation to the parents/guardians of those juveniles who have died in various Children Homes due to lapse or negligence of Home Authorities.
- f. For an order constituting permanent committee consisting of representatives of persons working on child rights and institutional care to supervise and monitor the functioning of the child-care institutions within juvenile justice administration system and to make periodic reports.
- g. For an order requiring the Delhi Commission for Protection of Child Rights to produce all inquiry reports and findings with respect to Asha Kiran.
- h. For an order directing the C.B.I. to take over the investigation and prosecution with respect to the allegations as set out in this petition.
- i. Pass such other order or orders as this Honble Court may deem fit in the facts and circumstances of the case.

4. This intervention application, however, was directed to be delinked from the disposed of suo moto Writ Petition and to be registered as a fresh Writ Petition. Accordingly, the application was registered as W.P.(Civil) No.8229/2011. The principal issue argued before the High Court was about the pitiable and pathetic condition of Asha Kiran Home (the sole Delhi Government run Home) for differently abled men, women and children. Asha Kiran Home comprises of six institutions within a complex of four buildings for mentally retarded children and adults. The appellants highlighted the issues such as inadequate medical treatment, medical services and access to Doctors, skewed ratio of staff to look after the inmates, overcrowding, poor distribution and consumption of dietary, clothing, bedding and other items and also about the abuses of various kinds to the mentally challenged persons residing in the said Home, in particular the female residents. The appellants essentially relied on the media reports to buttress their plea about the pathetic condition and the cruel treatment meted out at the hands of staff members in Asha Kiran. When the matter progressed before the High Court, the management of Asha Kiran agreed to consider the suggestions given by the appellants and also to chalk out a holistic action plea to remedy the deficiencies. They said that they were not treating the proceedings as an adversarial litigation. The High Court, therefore, directed the parties to convene a joint meeting and submit a proposal about the reforms required in Asha Kiran, if any. The Government of Delhi, accordingly, submitted a report about the action already taken and proposed to be taken thereat. The High Court in the impugned decision adverted to the contents of the said report, which reads thus:

6. Mr. S.D. Salwan, learned Standing Counsel appearing for the Govt. of NCT of Delhi, has placed on record the Report on action taken/proposed to be taken, which are as under:

The existing Administrator has been phased out and the process of appointment of a new Administrator has been initiated. The Government is appointing Dr. V.N. Agarwal, former Medical Superintendent of Dr. Ambedkar Hospital. He is MBBS, M.B.B.A, M.B.A, Health Care Administration from FMS, Delhi University and has done a post graduate Certificate course in Hospital Administration. Dr. Agarwal, himself being a medical doctor and having held administrative position of one of the largest Government hospitals would be totally competent to work on improvement of essential services, plight of inmates, and maintenance of infrastructure and day to day administrative work of Asha Kiran Home. The Administrator with a background of a medico shall be dedicated to reduce vulnerability of inmates; prevention of untimely deaths; and running of an effective medical team at the institution and organize value added medical services from the competent government hospitals. One of the key purpose is to reduce deaths and increase life span of the existing inmates of Asha Kiran.

The Government has approved formation of a strong Governing Council comprising of eminent citizens and experts (with core competencies in techniques of holistic shelter and rehabilitation, gender, Human Rights and Socio-Economic Empowerment of the most marginalized sections) for the holistic and integrated development and improvement of management and monitoring of the Asha Kiran institution, as well as prompt and expeditious implementation of all policies and recommendations of Government appointed Committee and various other statutory institutions, such as NHRC, NCPCR, DCPCR etc. The process of setting up of the said Governing Council will take at least 2 weeks.

Ms. Sreerupa Mitra Chaudhury, a prominent rehabilitation social worker; a Member, Central Social Welfare Board; Chairperson, Committee for Review of National Policy for Empowerment of Women; Chairperson, Institute for Gender Justice, Ex-National Advisor, National Legal Services Authority; Ex-Member, Delhi Legal Services Authority; Ex-Chief Coordinator, Rape Crisis Intervention Centre of Delhi Police, Founder of Sudinalay Shelter Homes for Homeless and Destitute Citizens Living with Mental Disabilities and HIV/AIDS is being nominated as the Chairperson of the said Governing Council. She is a senior and respected representative of the civil society who has dedicated her life for the rescue, rehabilitation, shelter and welfare of homeless citizens, particularly, living with acute forms of mental disabilities. While selecting the Chairperson of the Governing Council, adequate care has been taken to choose a person of subject knowledge, integrity, dedication, commitment and selfless humanitarian approach whose exposure of work has ranged from Civil Society to State and Central Government in various acclaimed capacity. The person who has direct, hands-on experience of rescue, shelter and rehabilitation of abandoned/most marginalised, poorest of the poor sections of citizens living with various forms of mental disabilities as well as vast experience of formulation of policy initiatives at the highest level. In several related matters, the Honble Supreme Court and High Courts have appointed her as advisor and member of monitoring committees, technical committees, steering committees and empowered committees to monitor government policies and programs.

The Governing Council will be fully empowered to take decisions for improvement of the Asha Kiran Home in every manner and taking all issues pertaining to the welfare and upkeep of residents; their protection against any forms of assault/or any coercion while they are at this home, their health,

habitat, education, living conditions, medical care and treatment and personal grooming and hygiene will be given maximum consideration.

The Governing Council under the Chairperson, will take utmost care to de- congest the home; to rehabilitate and restore the residents to their homes of families, or create opportunities of foster care and mainstreaming in the society or communities; will uphold the national and international policies and UN covenants pertaining the status of persons living with all forms of mental disabilities; to nurture the environment of love, care and affection for this section; and to re-affirm the concepts of dignity and human rights; to initiate all such measures which will ameliorate the existing pain and congestion; the typical sense alienation and the symptoms of marginalization; the said Governing Council will gather fresh energies, resources and friends and volunteers from the civil society and try to amalgamate all those to achieve a vision of an integrated and holistic rehabilitation shelter home for the most needy and marginalized. It will also initiate policy level dialogues and interdepartmental cooperation modules to converge benefits of various schemes of government and non- governmental organizations; re-write the policy documents, rule books and manuals to cope up with the challenges of a modern and contemporary world class institution. Efforts will be made to prepare individual care and support sheet with micro level interventions, to acquire dignity for each one of the resident. The Governing Council will review the Budget and analyze the present-day requirements and accordingly place before the government for the rationalization. It will explore setting up of a Resident Welfare Fund to augment and take care of the employment opportunities for the residents.

The Governing Council shall be a decision-making body and its decisions shall be considered the ultimate and binding by the government for improvement of the essential services as well as the plight of the inmates. The Chairperson shall be competent to direct/guide/control the implementation of policies and proposals and shall be a face and a voice of the so far neglected institution. The Administrator and the Superintendents shall be responsible to assist the Governing Council and the Chairperson to spearhead the proposed developmental activities.

The Government has approved proposed development of a Terms of Reference for the functioning of the Governing Council, which shall be read with a mandate and a vision document.

The department had already proposed appointment of 94 House Aunties and appointments shall be made at the earliest. After the appointments, proper training will be imparted through the Panel of Experts whereby the newly inducted House Aunties shall be sensitized on issues pertaining to health, hygiene and medical care. The Governing Council will promptly act to train the staff members with the help of existing governmental and non- governmental training institutions. Special attention will be given to integrate the voluntary groups in training programs.

The government has already commissioned the activity of a new Asha Kiran Building and the DSIIDC empanelled Architect, Mr. Prabhat, involved in Half Way Home construction have been taken on board to assist in formulation of a scientific construction plan, with national and international rehabilitative standards. With regard to infrastructural development, it is proposed to shift 100 residents to a new location, i.e. Nirmal Chaya. The complex of Asha Kiran will undergo

radical changes. Four new multistory cottages, having 3 floors, will be constructed. Each cottage will house 100 residents thereby catering to 400 residents. Mr. Prabath, is very well versed and acquainted with the requirement of the residents of Asha Kiran will design the new cottages, in consultation with the Governing Council as well as the government appointed committee to ensure all necessary inputs are made available for the benefits of the home. It would be pertinent to state that earlier sanction has been given to more than 15 times of Civil and other Works. The sanctioned amount is about Rs. 5,50,00,000/-. This would need further revision as additional floors are being added in the four new cottages. Several rounds of presentations and meetings have already taken place in the last one year, to create an integrated and holistic space for cluster homes and apartments for the beneficiaries of Asha Kiran.

The list submitted by Applicants contains names of private psychiatrists. Since, Dr. Nimesh Desai (Director, IHBAS, the statutory regulatory institution for all forms of mental disabilities) and Ms. Sreerupa Mitra Chaudhury (a mental health activist and expert) are already part of the Government appointed committee, some more psychiatrists on board, is unnecessary inclusion.

The women and child health specialists from nearby Government hospitals are visiting the institution on regular basis; therefore, adding names of some more is not required.

The government has instructed the Governing Council to constitute an Advisory Expert Group Panel for regular advice, academic assistance, technical and knowledge support and for creation of voluntary training opportunities at the institution and to make them part of a new action plan that shall be formulated soon by the Governing Council. The matter will be referred to the Advisory panel of experts, which would also include the first four persons suggested by the petitioners, viz. Ms. Radhika Alkazi, Merry Barua, G. Shyamala and Shanti Aulak. The Advisory panel of experts will provide technical advice and shall be knowledge partners of the Governing Council. The Governing Council shall be authorized to expand or empanel more and more experts of proven expertise from various fields to add value.

Segregation of border line and mild cases from moderate severe and profound category cases shall be done on war footing. Efforts will be made to absorb the Border and Mild category cases in the main stream by sending them to regular schools, NGO Institutions and incase of adults, they will be employed as peer mentor to work upon the other residents. Remuneration would be given to such peer mentors at par with the policy under NREGA or any such scheme. Bank accounts of such mild to moderate residents will be opened wherein their salary shall be deposited, for their use and benefit.

The Government is strengthening staff members by providing special training, workshops and sensitizing them with all issues pertaining to the different categories of residents (4 categories).

The Government will prepare a curriculum or co-opt an already existing curriculum to train the House Aunties and Staff of Asha Kiran and for this, the Advisory Panels advise and technical input, in-house training and also developing administrative acumen shall be taken. With is exercise, the house aunties as well as the other staff will get sensitized to every aspect of care to be provided to the

residents. The advisory Panel will develop the curriculum/content for the technical course proposed for professional qualification of all house aunts and other staff of Asha Kiran home. The Sahyogi program of the National Trust, suitably modified by the Advisory Panel, will be implemented for the new as well as existing house aunts.

The department is contemplating a revised salary structure with guarantee of minimum wages to the personnels employed at Asha Kiran the unpaid dues of the Staff shall be settled within 4-6 weeks.

The neighbouring government hospitals are being attached to Asha Kiran for providing ongoing medical care in case the medical care centre situated within the complex is unable to cater to the ailment. The team of psychiatrists, pediatricians, gynecologists and general physicians from these hospitals will pay regular and routine duties for the care of the residents. The entire health record will be digitalized for easy reference in case of any emergency.

The Department is contemplating engagement of special educators for occasional training and consultation.

With regard to inspection/supervision, an inspection committee constituted under the Section 35 of the J.J. Act as well as the committee under the DCPCR and NCPCR are at liberty to perform the statutory obligations and their reports shall be taken by the department of social welfare as well as the staff of Asha Kiran in the right direction. The Government has also requested the Govt. appointed Committee and will call upon the Governing Council to undertake/conduct surprise visits to the institution on odd hours and record the activities and statements of inmates.

For proper surveillance and prevention of any untoward incident, CCTV system is being installed at important places.

26 new toilets are under construction in the home and they shall be made functional by 30.08.2012. The requirement of the additional toilets was considered by the department in June-July 2011 and the same have been duly implemented. In so far as renovation of existing infrastructure is concerned, including toilets, the process was initiated in December 2010 and an amount of Rs. 2.50 crores has been spent.

The government is contemplating to make Asha Kiran Home an autonomous body with a highly effective Governing Council. The appointment of the governing council at this stage by the government with Ms. Sreerupa Mitra Chaudhury as the Chairperson is a step in the right direction.

The chairperson, backed by the Governing Council and the Advisory Groups shall take decisions related to amendments in policy of admission of new cases; and re-location of the existing or new residents depending on their merit, criterion, requirements etc.; as well as restoration, re-integration, mainstreaming and rehabilitation. A policy will be developed to assist the homeless, people of the street and the poorest of the poor who have no income. Consultative meetings and inter-departmental dialogues shall be held to make space for the poor and the most deserving.

Maximum focus will be laid on the access to the most marginalized. In this connection, fresh intake modalities and rule books shall be amended.

5. After advertent to the commitment made by the State Government in the aforesaid report, the High Court opined that the proposed action would go a long way in improving the condition of Asha Kiran Home. On that basis, the High Court disposed of the matter by expressing a hope that the Authorities concerned will implement the proposed action within assured time frame. As regards the suggestions given by the appellants in respect of the proposed action, the High Court clarified that the Government Authorities may consider the same.

6. The appellants, however, have approached this Court by way of present appeal under Article 136 of the Constitution of India. The principal grievance of the appellants is that the High Court ought not to have mechanically accepted the suggestions given by the State Government in toto; and more particularly because the past experience shows that the Authorities had never fulfilled their commitments made before the High Court in previous Writ Petitions. Further, there was an imminent need to drastically improve the condition of Asha Kiran for mentally challenged persons, keeping in mind the suggestions given by the appellants before the High Court. The High Court ought to have examined the suggestions presented in writing by the appellants. Besides the appellants, by way of rejoinder affidavit filed in this Court, have disputed the correctness of the factual position about the condition of Asha Kiran Home.

7. The respondents 1 to 7 (State Government) have filed affidavit in this Court on 19th April, 2014, disclosing the factual information about the action taken in furtherance of the proposal submitted to the Delhi High Court and assured to take measures to provide better facilities to the inmates and of improving the condition of Asha Kiran Home. The respondents 1 to 7 then filed additional affidavit sworn in August 2015, giving information about the action taken for improving the conditions in Asha Kiran Home and also having provided better facilities to the inmates. The said affidavit also explains the aspects noted in the report submitted by the Senior Advocate on 26th August 2015, regarding the present status in Asha Kiran Home for mentally challenged persons. The additional affidavit, inter alia highlights the extent of improvisation of infrastructure, the living conditions of the inmates in the Home including about the programmes undertaken for providing social security to the inmates. It is stated that the new activities introduced by the Management have expanded the opportunities and exposure to the inmates in relation to new trades and training programmes. The affidavit also deals with the issues noted by this Court in its order dated 10th February 2015 and 26th March 2015, in particular. The thrust of the latest affidavit of the respondents is that the living conditions of the inmates in the Home has considerably improved including of providing new facilities and opportunities to them. Similarly, the medical care and health structure as well as exposure to games and sports has been strengthened. It is stated that the activities undertaken by the Home under the guidance and supervision of the Governing Council has been acclaimed even by the media. Further more, Asha Kiran has become the first Government Institution in the welfare sector in Delhi, to be awarded ISO 9001: 2008 for Quality Management in September 2014. The new initiatives taken by the Governing Council have been appreciated by one and all. Significantly, the factual position stated in this affidavit has not been countered.

8. Considering the factual position stated in this latest additional affidavit and which has not been controverted, it must follow that the issues agitated by the appellants before the Delhi High Court have been substantially redressed. In case there is still any subsisting deficiency or shortcoming or a possibility of further improvisation, it is always open to the appellants to give their suggestions to the Governing Council. The appellants are free to do so. There is no reason why the Governing Council will not consider those suggestions and act upon the same in right earnest, if the same are reasonable and achievable. This proceeding should come to an end on this note.

9. However, this Court vide order dated 26th March 2015 had observed that the pitiable condition as obtained in Asha Kiran, in relation to which the matter had travelled to the Delhi High Court may be true in respect of Homes in other parts of the country. The Court, therefore, issued notice to all the State Governments and Union Territories and directed them to file their response about the ground reality prevailing in their respective State with particular reference to the State obligations enunciated in The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the 1995 Act). In response to the notice, in all 18 affidavits have been filed by different States/Union Territories giving particulars about the prevailing position in their respective State/Union Territory.

10. Having given our anxious consideration to those affidavits, we are of the view that analyzing the affidavit of each State/Union Territory would be a cumbersome exercise, if not entail in entering upon a roving enquiry. Be that as it may, we are of the view that a comprehensive mechanism and dispensation is predicated in the 1995 Act and the Rules framed thereunder. Besides the 1995 Act, even the Mental Health Act, 1987 (hereinafter referred to as the 1987 Act) postulates a dispensation mandating the appropriate Government to establish institutions for the care of mentally challenged persons and maintenance and management thereof with a view to create an equal opportunity and social security to them. For that, an organizational structure has been provided for the Central Government and Union Territories on the one hand and the respective State Governments on the other. The Authorities so created have been fastened with a duty to ensure that the Homes are maintained properly; and the inmates as well as outdoor patients are looked after properly and also to create equal opportunity and social security in the matter of education and employment of such persons. To wit, Section 3 of the 1995 Act mandates that the Central Government shall constitute a body to be known as Central Coordination Committee to exercise the powers conferred on it and to perform the functions assigned to it under the Act. The functions of the said Committee are delineated in Section 8 of the Act, which not only require it to develop a national policy to address issues faced by the persons with disabilities but also to review and coordinate the activities of all the Departments of Government and other Governmental and non- Governmental Organisations which are dealing with matters relating to persons with disabilities. The Central Coordination Committee is made responsible to oversee and monitor the functioning of the Central Executive Committee constituted by the Central Government under Section 9 and to perform the functions assigned to it under the Act. On similar pattern, under Chapter III, the State Coordination Committee is constituted by the State Government to exercise the powers conferred on it and to perform the functions assigned to it under the Act. The functions of the State Coordination Committee are more or less identical to the functions of the Central Coordination Committee which, however is confined to review and monitoring the situation within the State. Section 19 of the Act mandates that the

State Government shall constitute a committee to be known as the State Executive Committee to perform the functions assigned to it under the Act. The functions of the State Executive Committee are similar to that of the Central Executive Committee but operate only within that State and in respect of Homes established by the State Government or permitted by the State Government for the benefit of persons with disabilities. Besides creating the vertical organizational structure at the Centre and State level respectively, the 1995 Act also delineates the functions of the respective Authority. As regards the Apex Coordination Committee - be it at the Central or State level - the Committee is expected to serve as the focal point on disability matters and facilitate the continuous evaluation of a comprehensive policy towards solving the problems faced by persons with disabilities. Besides this general obligation, the specific functions of the Central Coordination Committee are as follows:

8. Functions of the Central Co-ordination Committee:-

(1)

(2) In particular and without prejudice to the generality of the foregoing, the Central Co-ordination Committee may perform all or any of the following functions, namely:-

(a) review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organizations which are dealing with matters relating to persons with disabilities;

(b) develop a national policy to address issues faced by persons with disabilities;

(c) advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to disability;

(d) take up the cause of persons with disabilities with the concerned authorities and the international organizations with a view to provide for schemes and projects for the disabled in the national plans and other programmes and policies evolved by the international agencies;

(e) review in consultation with the donor agencies their funding policies from the perspective of their impact on persons with disabilities;

(f) take such other steps ensure barrier-free environment in public places, work-places, public utilities, schools and other institutions;

(g) monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities;

(h) to perform such other functions as may be prescribed by the Central Government.

11. The functions of the State Coordination Committee are also to serve as the State focal point on disability matters and to facilitate the continuous evaluation of a comprehensive policy towards solving the problems faced by persons with disabilities. Besides this general obligation, the State Coordination Committee is expected to discharge the following functions :

18. Functions of the State Co-ordination Committee

(2) In particular and without prejudice to the generality of the foregoing function the State Co-ordination Committee may, within the State perform all or any of the following functions, namely:-

(a) review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organizations which are dealing with matters relating to persons with disabilities;

(b) develop a State policy to address issues faced by persons with disabilities;

(c) advise the State Government on the formulation of policies, programmes, legislation and projects with respect to disability;

(d) review in consultation with the donor agencies, their funding policies from the perspective of their impact on persons with disabilities;

(e) take such other steps to ensure barrier-free environment in public places, work places, public utilities, schools and other institutions;

(f) monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities;

(g) to perform such other functions as may be prescribed by the State Government.

12. The functions of the Central Executive Committee in terms of Section 10 of 1995 Act, is to carry out the decisions of the Central Coordination Committee as its Executive Body; and also to perform such other functions as may be delegated to it by the Central Coordination Committee. Section 12 of the Act enables the Central Executive Committee to associate with itself any person in such manner for such purposes as may be prescribed by the Central Government, whose assistance or advice it may desire to obtain in performing any of its functions under the Act. A person associated with the Central Executive Committee shall have the right to take part in the discussions of the Central Executive Committee relevant to that purpose, but shall not have a right to vote at a meeting of the said committee, and shall not be a member for any other purpose. Similar dispensation is predicated in respect of State Executive Committee, which has to function as the Executive Body of the State Coordination Committee and is responsible to carry out the decisions of the State Coordination Committee and to perform such other functions as may be delegated to it by the State Coordination Committee. Even the State Executive Committee can associate any person whose assistance or

advice may be required in performing any of the functions of the State Executive Committee, in terms of Section 22 of the 1995 Act.

13. Besides the dispensation provided in the 1995 Act for the implementation of the avowed objectives of the said Act, we find that the 1987 Act also provides for a comprehensive dispensation to fulfill the objectives of that Act. Under the latter Act, the Central Authority for Mental Health Services is established by the Central Government and the State Authority for Mental Health Services is established by the concerned State Government. The expression Mental Health Services has been defined in the Explanation to Section 3 of 1987 Act. The functions of this Authority have been delineated in Sub-section (3) of Section 3 of the Act reads thus:-

3. Central Authority For Mental Health Services. (1)..

(2)..

(3) The Authority established under sub-section (1) shall

(a) be in charge of regulation, development, direction and co-ordination with respect to Mental Health Services under the Central Government and all other matters which, under this Act, are the concern of the Central Government or any officer or authority subordinate to the Central Government.

(b) supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies (including places in which mentally ill persons may be kept or detained) under the control of the Central Government;

(c) advise the Central Government on all matters relating to mental health; and

(d) discharge such other functions with respect to matters relating to mental health as the Central Government may require.

Explanation.- For the purposes of this section and section 4, "Mental Health Services" include, in addition to psychiatric hospitals and psychiatric nursing homes, observation wards, day-care centers, in patient treatment in general hospitals, ambulatory treatment facilities and other facilities, convalescent homes and half-way-homes for mentally ill persons. As regards the State Authority, Section 4 of the 1987 Act reads thus:

4. State Authority For Mental Health Services. (1)

(2)

(3) The Authority established under sub-section (1) shall -

(a) be in charge of regulation, development and co-ordination with respect to Mental Health Services under the State Government and all other matters which, under this Act, the concern of the state Government or any officer or authority subordinate to the State Government;

(b) supervise the psychiatric hospitals and psychiatric nursing homes and other Mental health Service Agencies (including places in which mentally ill persons may be kept or detained under the control of the State Government :

(c) advise the State Government on all matters relating to mental health ; and

(d) discharge such other functions with respect to matters relating to mental health as the State Government may require.

14. Section 5 of the 1987 Act obligates the Central Government or the State Government as the case may be, to establish or maintain psychiatric hospitals and psychiatric nursing homes for the admission, treatment and care of mentally ill persons at such places as it thinks fit within the limits of its jurisdiction. Section 5 reads thus:

5. Establishment or maintenance of psychiatric hospitals and psychiatric nursing homes. (1) The Central Government may, in any part of India, or the state government may, within the limits of its jurisdiction, established or maintain psychiatric hospitals or psychiatric nursing homes for the admission, treatment and care of mentally ill persons at such places as it thinks fit; and separate psychiatric hospitals and psychiatric nursing homes may be established or maintained for, -

(a) those who are under the age of sixteen years;

(b) those who are addicted to alcohol or other drugs which lead to behavioural changes in a persons ;

(c) those who have been convicted of any offence; and

(d) those belonging to such other class or category of persons as may be prescribed .

(2) Where a psychiatric hospital or psychiatric nursing home is established or maintained by the Central Government, any reference in this Act to the State Government shall, in relation to such hospital or nursing home, be construed as a reference to the Central Government.

15. Section 10 of the 1987 Act postulates that every psychiatric hospital and psychiatric nursing home shall be maintained in such manner and subject to such conditions as may be prescribed. The manner and conditions of maintaining psychiatric hospital and psychiatric nursing home has been spelt out in Rule 20 framed under the said Act. The same reads thus:

20. Manner and conditions of maintaining psychiatric hospital or psychiatric nursing homes.- Every psychiatric hospital or nursing home shall be maintained subject to the condition that,-

- (A) such hospital or nursing home is located only in an area approved by the local authority;
- (B) such hospital or nursing home is located in a building constructed with the approval of the local authority;
- (C) the building, where such hospital or nursing home is situated, has sufficient ventilation and is free from any pollution which may be detrimental to the patients admitted in such hospital or nursing home;
- (D) such hospital or nursing home has enough beds to accommodate the patients;
- (E) the nurses and other staff employed in such hospital or nursing home are duly qualified and competent to handle the work assigned to them;
- (F) the supervising officer-in-charge of such hospital or nursing home is a person duly qualified having a post-graduate qualification in psychiatry recognized by the Medical Council of India.

16. Section 13 of the 1987 Act envisages that an Inspecting Officer may, at any time, enter and inspect any psychiatric hospital or psychiatric nursing home and require the production of any records, which are required to be kept in accordance with the Rules made in this behalf, for inspection.

17. Suffice it to observe that the 1995 Act as well as 1987 Act make ample provision for not only establishment of Homes for the admission, treatment and care of mentally ill persons but also about the maintenance and conditions and facilities to be provided to the inmates, to ensure that the Homes are properly equipped and are being run in accordance with the statutory scheme. Authorities for monitoring and supervision are also in place (Central Coordination Committee at the top of the pyramid in so far as Homes established by the Central Government or permitted to be established by it). Similarly, for the Homes established by the State Government or permitted to be established by it, the State Coordination Committee is at the top of the pyramid of the organizational structure within the State. The provisions in the 1987 or 1995 Act and Rules framed thereunder, clearly articulate the manner of providing proper conditions in Hospitals/Homes established under the concerned enactment and also for its maintenance.

18. In that, Chapter V of 1987 Act provides for inspection, discharge, leave of absence and removal of mentally ill persons. Chapter VII stipulates the liability to meet the cost of maintenance of mentally ill persons detained in psychiatric hospital or psychiatric nursing home. Chapter VIII mandates that mentally ill persons to be treated with dignity and protection of their human rights. Chapter IX of 1987 Act provides for penalties and procedure. Section 82 provides for penalty for establishment or maintenance of psychiatric hospital or psychiatric nursing home in contravention of Chapter III. Section 85 is a general provision for punishment of other offences. Section 94 is a Rule making power of the Central Government and State Government. Amongst others, it is open to make Rules with regard to the following matters:

94. Power of Central Government and State Government to make rules. (1) The Central Government may, by notification, make rules providing for the qualifications of persons who may be appointed as Mental Health Authority under section 3 and the terms and conditions subject to which they may be appointed under that section and all other matters relating to such authority.

(2) Subject to the provisions of sub-section (1), the State Government, with the previous approval of the Central Government may, by notification, make rules for carrying out the provisions of this Act:

Provided that the first rules shall be made by the Central Government by notification.

(3) In particular, and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may provide for all or any of the following matters, namely:-

(a) the qualifications of persons who may be appointed as Mental Health Authority and the terms and conditions subject to which they may be appointed under section 4 and all other matters relating to such authority;

(b) the class or category of persons for whom separate psychiatric hospitals and psychiatric nursing homes may be established and maintained under clause (d) of sub-section (1) of section 5;

(c)

(d)

(e)

(f) the minimum facilities referred to in the proviso to sub-section (5) of section 9 including,

(i) psychiatrist-patient ratio;

(ii) other medical or para-medical staff;

(iii) space requirement;

(iv) treatment facilities; and

(iv). equipment:

(g) the manner in which and the conditions subject to which a psychiatric hospital or psychiatric nursing home shall be maintained under section 10;

(h)

(i) the manner in which records shall be maintained under sub-section (1) of section 13.

(j) the facilities to be provided under section 14 of the treatment of a mentally ill person as an out-patient;

(k)

(l) the qualification of persons who may be appointed as Visitors and the terms and conditions on which they may be appointed, under section 37 and their functions;

(m)

(n) any other matter which is required to be, or may be, prescribed.

19. We have already adverted to Rule 20 of the Rules of 1990 providing for the manner of maintenance of psychiatric hospital and psychiatric nursing home. Besides that provision, it may be useful to refer to Chapter V of the same Rules of 1990, providing for minimum facilities for treatment of patients in the psychiatric hospital and psychiatric nursing home.

20. Reverting to the 1995 Act, there are ample provisions in this Act to ensure proper functioning of the Homes accommodating mentally challenged persons. This Act, no doubt, deals with the aspirations of persons inflicted with disability generally. The expression disability is defined in Section 2(i) which includes mental retardation and mental illness. The regime for proper maintenance and upkeep of the Homes established under this Act for mentally challenged persons, would apply proprio vigore. The appropriate Government is not only required to establish such Homes but also to create an environment to impart education to the inmates as predicated in Chapter V of the said Act and also opportunities of employment for the inmates in terms of Chapter VI. Chapter VII of the 1995 Act deals with affirmative action and Chapter VIII stipulates measures for non-discrimination. Chapter IX of the Act obligates the appropriate Government and Local Authorities to promote and sponsor research on matters referred to therein. Chapter XI provides for establishment of an institution for persons with severe disabilities by the appropriate Government. The Chief Commissioner and the Commissioners For Persons with Disabilities are required to be appointed for overseeing the stated matters including regarding the conditions of nursing Homes for mentally ill persons.

21. As the attention of this Court was invited to issues concerning institutions established under the 1995 Act in different states, we would first deal with such institutions. The concerned States/Union Territories have filed affidavit disclosing the conditions prevailing in the Homes established under the 1995 Act within their jurisdiction. All those affidavits be placed before the Central Coordination Committee established under the 1995 Act. Similarly, the affidavit of the State concerned be placed before the State Coordination Committee of the concerned State. The said Authorities have ample power to monitor and evaluate the implementation of the programmes including to review and coordinate with the appropriate Government on matters relevant for improvisation of the conditions of the Home within the State or for introducing welfare measures for the inmates therein. Section 8 of 1995 Act obligates the Central Coordination Committee to review and coordinate the activities of all the Departments of the Government and other Governmental and non-Governmental

Organizations which are dealing with matters relating to persons with disabilities. The Central Coordination Committee also discharges an advisory role including to develop a national policy to address issues faced by persons with disabilities. It has to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to disability. As the factual position stated in the affidavits filed by the respective State/Union Territory before this Court will become available to the Central Coordination Committee, it will be in a better position to formulate a comprehensive national policy on matters relevant to address the issues. It may develop a national policy or modify the existing national policy, programmes or schemes, as may be required. That in turn can be implemented at the micro level. The recommendations to be made by the Central Coordination Committee at the micro level must ideally focus on zone wise necessity of the four regions of the country and in particular State wise requirements. Further, on identifying issues about non-implementation or non-compliance, the concerned State Coordination Committee can be directed by the Central Coordination Committee in exercise of its power under Section 23 of the 1995 Act. Section 23 of the 1995 Act reads thus:

23. Power to give directions. In the performance of its functions under this Act,-

(a) the Central Co-ordination Committee shall be bound by such directions in writing, as the Central Government may give to it; and (b) the State Co- ordination Committee shall be bound by such directions in writing, as the Central Co-ordination Committee or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with any direction given by the Central Co-ordination Committee, the matter shall be referred to the Central Government for its decision.

Thus, direction issued by the Central Coordination Committee would be binding on the concerned State Coordination Committee. In case, direction given by the State Government to the concerned State Coordination Committee is in any manner inconsistent with the direction given by the Central Coordination Committee, that matter must be referred to the Central Government for its decision, as mandated by the proviso to Clause (b) of Section 23 of the 1995 Act. This exercise be completed within a reasonable time but not later than six months.

22. In addition, the Secretary of the concerned Department of the respective State/Union Territory must place the affidavit filed in this Court before the State Coordination Committee of the concerned State, who in turn must undertake similar exercise of evaluation of the conditions of the local Homes and take remedial measures within a reasonable time but not later than six months. The direction so issued by the State Coordination Committee to the local institution/Home established under the 1995 Act must be forwarded contemporaneously to the Central Coordination Committee for information so that even the Central Coordination Committee would be abreast of that development, which can be reckoned by it while issuing direction to the concerned State Coordination Committee.

23. From the legislative scheme of 1995 Act, it is amply clear that the State Coordination Committee is primarily responsible for ensuring compliance of the mandate regarding the infrastructure and other facilities to be provided in the Homes established under the 1995 Act and also for overseeing that the same are properly maintained from time to time and comply with the policies and programmes designed for achieving equality and full participation of persons with disabilities. The provisions of the 1995 Act provide for checks and balances for which hierarchy of Authorities have been created to ensure that persons with disabilities are provided with opportunity of full participation and equality in the region. That being the obligation of the State, must be implemented through these Authorities.

24. Besides the State Coordination Committee in the concerned State is made primarily responsible for ensuring that institutions which fulfill all the criteria alone are established and properly maintained as per the specified norms, the Central Coordination Committee is also equally responsible to ensure that the policies and programmes designed for achieving full participation of persons with disabilities is taken to its logical end by all the duty holders without any exception. It is for that reason, the Central Coordination Committee is fastened with the function of review and coordination of activities of all the Departments of the Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to persons with disabilities; and including bestowed with the power to issue directions in terms of Section 23 of the Act - which are binding on the State Coordination Committee. Failure to comply with such directions must be taken serious note of by the concerned State Government.

25. Further, the Secretary of the Union of India, Ministry of Health and Social Welfare shall be personally responsible for monitoring and overseeing the progress and action taken by the Central Coordination Committee in respect of establishments registered under the 1995 Act and under the control of the Central Government.

26. The Authorities may explore the possibility of using IT Technology for capturing and retrieving real time information about the conditions of concerned institution, which will facilitate the Authority to closely monitor the conditions of the concerned hospital/Home and the facilities made available to the inmates.

27. In our opinion, six months time frame given to the Central Coordination Committee and the concerned State Coordination Committee is sufficient to enable them to take necessary remedial measures and ensure that deficiencies in the respective institutions established under the 1995 Act are cured within such period. In addition to the issues that have come on record in the form of affidavit of the concerned State and also other material which has come on record in the present proceedings or any further inputs to be received by the Committee(s) and including after conducting inspection of the institution(s), the concerned Committee/Authority must take sufficient measures to remedy the deficiencies within the time frame of not later than six months.

28. The Chairperson of the State Coordination Committee shall submit compliance report not later than eight months from today in the Registry of this Court after providing advance copy thereof to the Central Coordination Committee. The Central Coordination Committee shall then submit

State/Union Territory wise report with its comments, if any, within ten months in the Registry of this Court.

29. In so far as hospitals and nursing homes established under the 1987 Act, similar procedure can be followed. All the affidavits/materials filed in this proceedings be made available to the Central Authority for Mental Health Services. The affidavit of the concerned State be additionally forwarded to the respective State Authority for Mental Health Services. The Central Authority for Mental Health Services shall cause to inspect and evaluate the conditions of the psychiatric hospital and psychiatric nursing home and other Mental Health Service Agencies under the control of the Central Government. Similarly, the concerned State Authority for Mental Health Services shall cause to inspect and evaluate the conditions of the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies under the control of the State Government. The respective Authorities shall issue necessary directions to the institution(s) under its jurisdiction and ensure its implementation not later than six months from today. A compliance report in this behalf be filed by the Central Authority for Mental Health Service and the State Authority for Mental Health Service of the concerned State, as the case may be, in the Registry of this Court not later than eight months from today.

30. We make it clear that the Secretary of the concerned Department of the respective State/Union Territory shall be personally responsible for monitoring and overseeing the progress and action taken by the State Authority for Mental Health Service within its State. Similarly, the Secretary of the Union of India of Health and Social Welfare shall be personally responsible for monitoring and overseeing the progress made by the Central Authority for Mental Health Services and compliance of the directions in relation to the establishments under the control of the Central Government.

31. The Appeal is disposed of in the above terms with no order as to costs.

CJI.

(T.S. Thakur) J.

(A.M. Khanwilkar) New Delhi, Dated: December 08, 2016