

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

PUBLIC INTEREST LITIGATION NO. 43 OF 2022

Dr.Harish Shetty. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Ms.Pranali Mehra for the Petitioner.
Mr.M.M.Pable, AGP for the Respondents.

CORAM : NITIN JAMDAR AND
GAURI GODSE, JJ.

DATE : 21 December 2022.

P.C. :

By order dated 2 December 2022, directions were issued to the Principal Secretary, Department of Health to file an affidavit placing on record the details as under:

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

By the same order, the Chief Executive Officer of the Authority was directed to place the following information on record:

“a) Place the details of the State Mental Health Authority Fund as to when it was created, what is the sum available in the Fund and whether it is adequate for its functioning and performance of the Act.

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

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

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

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

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

2. Reply affidavits have been filed by both, the Principal Secretary, Public Health Department and by Additional Director, Health Services on behalf of the Chief Executive Officer of the State Mental Health Authority. From these affidavits the following facts emerge.

3. The State Mental Health Authority (Authority) was established on 20 October 2018 as per section 46(1) of the Mental Healthcare Act, 2017. Thereafter members were nominated by

Government Resolution dated 23 October 2018. On 5 December 2018, the Authority held its first meeting. Thereafter next meetings were held on 9 January 2017, 17 October 2019, 3 August 2019, 5 September 2021 and 6 September 2022. Certain activities have been initiated to redress problems of the mental health care under National Health Mission. The affidavits indicate that the stand of the State is that the activities carried out under the National Health Mission should be construed as activities under the Act of 2017.

4. A tentative time-line for the activities for 2022-23 is appended to the affidavits. The tentative schedule refers to targeted intervention for the mental health taken by attending schools, colleges and other places to take workshops for mental well being. The time-line referred to is till February 2023. Then it is stated that Mega Camp for mental health and suicide prevention would be held with no specific time-line, day care centres would be set up and 13 such centres have been set up till February 2022. Clinical psychology equipments would be procured till February 2023. Medicines to hospitals of psychiatric patients, procurement of drugs till February 2023, training para-medical staff with batches of 300 till February 2023, clerical activities such as hiring of vehicles, office expenses, translation of material and distribution, survey register printing and creation of software. Targets are up to March 2023. This is the time-line submitted before us by the Principal Secretary for the obligations of the State under sections 29, 30, 31 and 32 of the Act.

5. The Chief Executive Officer has stated that the State Mental Health Authority Fund has been established on 16 September 2022 by opening a bank account and prior to that the Authority used to account its expenses and were to be sanctioned by National Health Mission and seeks to give details of the contribution by the State Government to the Authority as and when funds are transferred from the State Government. It is also placed on record that the Government Resolution is issued on 15 December 2022 appointing the Chief Executive Officer. This Government Resolution refers to the Government Resolution dated 6 September 2022 as one which has established the Authority.

6. We have heard the learned counsel for the Petitioner and the learned AGP for the State.

7. The learned AGP states that the statutory reports as referred to in the order dated 2 December 2022 have not been prepared since inception of the Authority. The Principal Secretary has accepted that no details as per Rule 10 of Mental Healthcare (State Mental Health Authority) Rules, 2018 have ever been called for from the Authority. It is quite clear to us that though the Authority has been established in 2018 it has remained non-functional. The meetings of the Authority have not been held as per section 56 of the Act which mandates that meetings not less than four times a year. The statutory fund, which is constituted from the

contribution made by the State Government, does not have any corpus. Nothing is placed on record as when the amount would be transferred to the fund. No commitment is given as to when the statutory reports will be prepared. No commitment is given by the State as to when report/details will be called for. Even the time-line given by the Principal Secretary is not satisfactory. It refers only to visits to schools and medical camps and rest of all clerical activities of hiring vehicles, office expenses, translation etc. There is no reference to obligations under sections 29, 30, 31 and 32 of the Act. It is not clarified as to why Government Resolution has been issued on 15 December 2022 for appointment of Chief Executive Officer of the State Mental Healthcare Authority, if the Authority was already established. If it was only a change of Chief Executive Officer, the Government Resolution would have been in a different manner. In the Government Resolution dated 15 December 2022, reference is to the constitution of Authority as per Government Resolution dated 6 September 2022. No clarity is emerging on this aspect as well.

8. In light of these facts, we direct that the State Mental Authority shall hold a meeting before 9 January 2023 wherein all the issues highlighted by us above would be discussed. Considering the fact that for last almost five years no progress at all has been achieved by the Authority, we request the Chief Secretary of the State of Maharashtra to attend the said meeting so that issues highlighted by

us can be addressed and resolved. The Chief Secretary will also look into the question of contributing funds of the State Mental Healthcare Authority as per section 52 of the Act.

9. The learned counsel for the Petitioner states that pursuant to the earlier order, the issue regarding the aspect of memorandum with the concerned organization was brought to the notice of the Chief Executive Officer, however, there is no response. This issue would be taken up in the next meeting to be held by the Authority.

10. Mr.J.P.Sen, learned Senior Advocate is appointed as Amicus Curiae. We request the learned Amicus Curiae to assist the Court along with the learned counsel for the Petitioner. The Registry shall furnish all the necessary papers to the learned Amicus.

11. In the order dated 2 December 2022, we had stated that all instructions should be given to the learned Advocate General and had expected that the Secretary and the Chief Executive Officer will avoid the situation that they will have to remain present in the Court to apprise us the situation. Even today, the learned AGP is handicapped for want of information. He is not furnished with the Government Resolution dated 20 October 2018, which has constituted the Authority by the officers present in the Court, who do not seem to have basic documents. At least copies should have been produced. The said Government Resolution would have

given indication as to what was the mandate for the Authority when it was constituted. Considering the lack of assistance that the learned AGP has received in spite of our orders, we are constrained to direct the Principal Secretary, Public Health Department and the Chief Executive Officer of the Authority to remain present in the Court on the next date so that the Court is apprised of the initiatives taken by the Authority.

12. Stand over to 12 January 2023, to be listed for 2.30 p.m.

(GAURI GODSE, J.)

(NITIN JAMDAR, J.)