IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No. of 2020

In the Matter of:

Tushar Singh son of Sh. Randip Singh Parmar
Resident of Monastery Above IGMC,
Shimla, Tehsil & District Shimla, H.P.

...Petitioner

Versus

1. State of H.P. through Chief Secretary
to the Government of Himachal Pradesh

2. State of H.P. through Principal Secretary (Home)
to the Government of Himachal Pradesh

3. State of H.P. through Principal Secretary (Health)
to the Government of Himachal Pradesh

4. Himachal Pradesh State Mental Health Authority
Through its Chairperson
Boileauganj, Shimla-171005.

.....Respondents

Civil Writ Petition under Article 226 of the Constitution of India praying for appropriate Writ, Order or Direction in the peculiar facts and circumstances of the case.

Shimla Petitioner

Dated: 26.08.2020 Through Counsel

Sunil Mohan Goel & Paras Dhaulta

May It Please Your Lordships:

1. That the petitioner is citizen of India and on the basis of the averments made hereinafter, the petitioner is entitled to file and maintain the present writ petition.

2. That the issue which the petitioner is raising by way of present writ petition is being raised in larger public interest and he has no personal interest in the matter. The petitioner is a law student who is pursuing his five year B.A., LL.B. course from New Law College, Bharati Vidyapeeth University, Pune. The petitioner is permanent resident of Shimla and was born and bought up in Shimla and has done his initial studies from St. Edward School, Shimla. The petitioner again humbly submits that the petitioner is filing the present petition in larger public interest and he has no personal interest in the matter at all.

3. That with the globalization within the entire globe the generations now days are running fast to catch up with the pace of developed nations and in this regard are generation is also trying to keep pace with the other developed countries. It is now known and a proven fact to the entire world that the Indians on the basis of their capabilities are heading all the fields in the global world and have shown their worth to the entire world. With the passages of time the interest of the youth is more towards private sector because of lucrative jobs offers they offer and the youth also wants to run towards metros from the rural area. The reasons may be many for vacating the rural areas and trying to find jobs and better quality of life in urban and metro cities. All this competition of having a better

life in urban and metro cities though is leading are generation towards better future but with the rider that it also leads to a situation where there are mental health problems.

4. That it was almost after a century that the entire world saw a pandemic disease which was termed / named as CORONAVIRUS (COVID 19) which is an infectious disease, and one person who is infected by this coronavirus disease infects almost 300-400 persons if not isolated and treated in time. The COVID 19 disease basically started from the city named as Wuhan in China in the month of December, 2019. The patient zero in India was detected in the last week of January, 2020. Looking at the gravity in which the infection was spreading a complete lockdown was declared by the Hon'ble Prime Minister of India from 25th March, 2020 for a period of three weeks and which was ultimately extended thrice from time to time. The result of the lockdown was that there was lot of unemployment which led to the exodus of migrant labour. There was lot of hue and cry initially but with the passage of time the things were controlled by the Union Government as well as respective State Governments. The entire population of the world saw such a lockdown for the first time in their life and the things have now changed.

5. That a change which has been noticed in our country an especially in our State i.e. State of Himachal Pradesh which is having a population approximately 75 lac is that of because of this COVID-19 Pandemic and the unemployment generated lot of people are undergoing depression or other sought of mental illness which is leading to suicides day in and day out and young people who are the

most cherished assets of the nation are losing their life untimely. The petitioner being a law student had an anxiety in his mind that as to what is the role of the State in such a situation where unemployment and a sought of drowsiness in the atmosphere was leading to suicides and untimely demise of young generation as well as of middle aged person who were living behind their families in lurch and who were the only earning hand in the family. The petitioner in this background started his research and came across certain reports of Bhore Committee, Mudaliar Committee, The Health Survey and Planning Committee 1962, Jungian Committee 1967 and thereafter the Mental Health Act, 1987 and The Mental Healthcare Act, 2017 whereby the Mental Health Act, 1987 was repealed. After going through the Mental Healthcare Act, 2017 the petitioner discovered that the legislature almost after 70 years of its independence had tried something to help the persons who undergo mental depression and mental illness. While going through the various Sections of the Mental Healthcare Act, 2017 the petitioner found that it is the duty of the appropriate Government in particular to plan, design and implement public health programme to reduce suicide and attempted suicides in the country. After going through the Act the petitioner further started his research as to how and in what manner in the State of Himachal Pradesh i.e. the home State of the petitioner is implementing The Mental Healthcare Act, 2017.

6. That taking lead from the fact that the legislature has enacted The Mental Healthcare Act, 2017 and Right of Persons with Disabilities Act, 2016 whereby the intention of the legislature is to

promote awareness and health amongst the mentally ill person and person with disabilities which the respondent State has failed to do so, the petitioner in the larger public interest is filing the present writ petition.

7. That it is not an unrecognized fact that mental health care of a human being was under consideration even before the independent India came into existence. In this regard Bhore Committee was formed in the year 1943 to look into the aspect of health care which also included mental healthcare and the reason for formation of the committee and the observation of the committee report submitted in the year 1946 was that, *"the majority of the mental hospitals in India are quite out of date, and are designed for detention and safe custody without regard to curative treatment."* It was further observed by the committee in its report submitted in the year 1946 that, *"Savour of the work house and the prison and would be rebuilt"*. The Mudaliar Committee which was formed in the year 1959 was formed basically with the aim and object to keep check and balances and to propagate the observations of Bhore Committee 1946, and to see what is to be done in next 10 years. The Mudaliar committee further made its recommendations with regard to the establishment of mental healthcare centres and mental hospitals, it was further observed that Mental Hospital at Banglore for cure and research may also be established. The copy of the reports could not be appended with the petition for the reason that though the same are available on internet and could be downloaded but print is prohibited. However, it took around about 40 years thereafter for our nation to pass and enact

The Mental Health Act, 1987. However, due to certain limitations in the Mental Health Act, 1987 whereby there was no provision to protect the right of persons with mental illness and further the Mental Health Act, 1987 did not promote access to mental health care in the country, therefore to ensure healthcare, treatment and rehabilitation of person with mental illness as well as to protect and promote the rights of persons with mental illness during the delivery of health care, the mental health bill was introduced in Rajya Sabha in the year 2013. The basic object and reasons for bringing the new legislation by repealing the Mental Health Act, 1987 was:

(a) Recognizing that:

(i) Persons with mental illness constitute a vulnerable section of society and are subject to discrimination in our society;

(ii) Families bear financial hardship, emotional and social burden of providing treatment and care for their relatives with mental illness;

(iii) Persons with mental illness should be treated like other persons with health problems and the environment around them should be made conducive to facilitate recovery, rehabilitation and full participation in society;

(iv) The Mental Health Act, 1987 was insufficient to protect the rights of persons with mental illness and promote their access to mental healthcare in the country;

(b) And in order to:

(i) Protect and promote the rights of persons with mental illness during the delivery of healthcare in institutions and in the community;

(ii) Ensure healthcare, treatment and rehabilitation of persons with mental illness, is provided in the least restrictive environment possible, and in a manner that does not intrude on their rights and dignity. Community-based solutions, in the vicinity of the person's usual place of residence, are preferred to institutional solutions;

(iii) Provide treatment, care and rehabilitation to improve the capacity of the person to develop his or her full potential and to facilitate his or her integration into community life;

(iv) Fulfill the obligations under the Constitution and the obligations under various International Conventions ratified by India;

(v) Regulate the public and private mental health sectors within a rights framework to achieve the greatest public health good;

(vi) Improve accessibility to mental healthcare by mandating sufficient provision of quality public mental health service and non-discrimination in health insurance;

(vii) Establish a mental health system integrated into all levels of general health case; and

(viii) Promote principles of equity, efficiency and active participation of all stakeholders in decision making.

The Mental Healthcare Act, 2017 came into force on 29.5.2018 by notification in the official gazette. Section -2 of the Act deals with the definitions. Few definitions which may be necessary for just and proper adjudication of the issue being raised by the present petitioner are being reproduced herein below:

(b) "appropriate Government" means –

(i) in relation to a mental health establishment established, owned or controlled by the Central government or the Administrator of a Union territory having no legislature, the Central government;

(ii) in relation to a mental health establishment, other than an establishment referred to in sub-clause (i), established, owned or controlled within the territory of –

(A) a State, the State Government ;

(B) a Union territory having legislature, the Government of that Union territory;

(c) "Authority" means the Central Mental Health Authority or the State Mental Health Authority, as the case may be;

(d) "Board" means the Mental Health Review Board constituted by the State Authority under (sub-section (1) of Section 73) in such manner as may be prescribed;

(f) "Central Authority" means the Central Mental Health Authority constituted under section 33;

(g) "Clinical psychologist" means a person –

(i) having a recognized qualification in Clinical Psychology from an institution approved and recognized, by the Rehabilitation Council of India, constituted under Section 3 of the Rehabilitation Council of India Act, 1992 (34 of 1992); or

(ii) having a Post-Graduate degree in Psychology or Clinical Psychology or Applied Psychology and a Master of Philosophy in Clinical Psychology or Medical and Social Psychology obtained after completion of a full time course of two years which includes supervised clinical training from any University recognized by the University Grants Commission established under the University Grants

commission Act, 1956 (3 of 1956) and approved and recognized by the Rehabilitation Council of India Act, 1992 (34 of 1992) or such recognized qualifications as may be prescribed;

(k) "local authority" means a Municipal corporation or Municipal Council, or Zilla Parishad, or Nagar Panchayat, or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the mental health establishment or empowered under any law for the time being in force, to function as a local authority in any city or town or village;

(m) "medical officer incharge" in relation to any mental health establishment means the psychiatrist or medical practitioner who, for the time being, is incharge of that mental health establishment;

(o) "Mental healthcare" includes analysis and diagnosis of a person's mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness;

(p) "mental health establishment" means any health establishment, including Ayurveda, Yoga and naturopathy, Unani, Siddha and Homoeopathy establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness, established, owned, controlled or maintained by the appropriate government, local authority, trust, whether private or public, corporation, co-operative society, organization or any other entity or person, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or

maintained by the appropriate government, local authority, trust, whether private or public, corporation, co-operative society, organization or any other entity or person; but does not include a family residential place where a person with mental illness resides with his relatives or friends;

(q) "mental health nurse" means a person with a diploma or degree in general nursing or diploma or degree in psychiatric nursing recognized by the Nursing Council of India established under the Nursing council of India Act, 1947 (38 of 1947) and registered as such with the relevant nursing council in the State;

(r) "mental health professional" means-

(i) a psychiatrist as defined in (clause (y) ; or

(ii) a professional registered with the concerned State Authority under Section 55; or

(iii) a professional having a post graduate degree (Ayurveda) in Mano Vigyan Avum Manas Roga or a post graduate degree (Homoeopathy) in Psychiatry or a post graduate degree (Unani) in Moalijat (Nafasiyatt) or a post graduate degree (Siddha) in Sirappu Maruthuvam;

(s) "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize 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 characterized by sub-normality of intelligence;

(t) "minor" means a person who has not completed the age of eighteen years;

(u) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(v) "prescribed" means prescribed by rules made under this Act;

(x) "psychiatric social worker" means a person having a post-graduate degree in Social Work and a Master of Philosophy in Psychiatric Social work obtained after completion of a full time course of two years which includes supervised clinical training from any University recognized by the University Grants Commission established under the University Grants Commission Act, 1956 (3 of 1956) or such recognized qualifications, as may be prescribed;

(y) "psychiatrist" means a medical practitioner possessing a post graduate degree or diploma in psychiatry awarded by an university recognized by the University Grants Commission established under the University Grants Commission Act, 1956 (3 of 1956), or awarded or recognized by the National Board of Examinations and included in the First Schedule of Indian Medical council Act, 1956 (102 of 1956), or recognized by the Medical council of India, constituted under the Indian Medical Council Act, 1956 (102 of 1956), and includes, in relation to any State, any medical officer who having regard to his knowledge and experience in psychiatry, has been declared by the Government of that State to be a psychiatrist for the purposes of this Act;

(zb) "State Authority" means the State Mental Health Authority established under Section-45.

Chapter-V of the Mental Healthcare Act, 2017 deals with rights of person with mental illness, Section 18 talks about Right to access

mental health care, Section 19 is Right to community living, Section 20 deals with Right to protection from cruel, inhuman and degrading treatment, Section 21 is with regard to Right to equality and non-discrimination and Section 22 deals with Right to information, Section 23 Right to confidentiality, Section 24 Restriction on release of information in respect of mental illness, Section 25 Right to access medical records, Section 26 Right to personal contacts and communications, Section 27 talks about Right to legal aid and Section 28 Right to make complaints about deficiencies in provision of services. Section 18 being important and since the same deals with the Right of a mentally ill person to access the mental health care is being reproduced herein below:

> "18. Right to access mental healthcare- (1) Every person shall have a right to access mental health care 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 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 (clause (e) of this 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 of appropriate mental health services specified under sub-section (4) of section 18 at all general hospital 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 property 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 qualify 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 professional of ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems recognized 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 care-givers;

(iv) "progress" means in terms of indicating an improvement in the State's response.

Chapter-VI deals with Duties of Appropriate Government. Section 29 to 32 burdens the appropriate Government with the duties to be performed by them by promoting the mental health and preventive programmes, creating awareness about mental health and illness and reducing stigma associated with mental illness. Section 29 sub section 2 specifically speaks that it shall be the duty of the appropriate Government that it shall in particular, plan, design, and implement public health programmes to reduce suicides and attempted suicides in the country. The legislature while framing the Mental Healthcare Act, 2017 was well aware of the fact that mental illness may lead to tendency towards suicide or attempt to suicide.

Chapter-VII deals with establishment of Central Mental Health Authority and Section 34 talks about the composition of the Central Authority.

In similar fashion Chapter-VIII talks about State Mental Health Authority, Section 45 talks about establishment of State Authority and Section 46 with regard to the composition of State Authority. The

composition of the State Authority being important is being reproduced herein below because it is the State mental Health Authority established under Section 45 who has to perform the duties as provided under Chapter-VI of the appropriate Government. Section 46 composition of State Authority states as under:

> 46. Composition of State Authority –(1) The State Authority shall consist of the following chairperson and members:-
>
> (a) Secretary or Principal Secretary in the Department of Health of State Government-chairperson ex-officio;
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> (b) Joint Secretary in the Department of Health of the State government incharge of mental health-member ex-officio;
>
> (c) director of Health Services or Medical Education-member ex-officio;
>
> (d) Joint Secretary in the Department of Social Welfare of the State Government –member ex officio;
>
> (e) such other ex officio representatives from the relevant State Government Ministries or Departments;
>
> (f) Head of any of the Mental Hospitals in the State or Head of Department of Psychiatry at any Government Medical College, to be nominated by the State Government-member;
>
> (g) one eminent psychiatrist from the State not in Government service to be nominated by the State Government-member;
>
> (h) one mental health professional as defined in item (iii) of (clause (r) of sub –section (1) of section (2) having of least fifteen years experience in the field, to be nominated by the State Government-member;

(i) one psychiatric social worker having at least fifteen years experience in the field, to be nominated by the State Government-member;

(j) one clinical psychologist having at least fifteen years experience in the field, to be nominated by the State Government-member

(k) one mental health nurse having at least fifteen years experience in the field of mental health , to be nominated by the State Government-member;

(l) two persons representing persons who have or have had mental illness, to be nominated by the State Government-member;

(m) two persons representing care-givers of persons with mental illness or organizations representing care-givers, to be nominated by the State Government-members;

(n) two persons representing non-governmental organizations which provide services to persons with mental illness, to be nominated by the State Government –members.

(2) The members referred to in clauses (e) to (n) of sub-section (1), shall be nominated by the State Government in such manner as may be prescribed.

Section 55 deals with function of State Authority.

Chapter XII deals with admission, treatment and discharge, Chapter –XIII deals with responsibilities of other agencies, Section 121 deals with powers of the Central Government and State Government to make rules, Section 123 deals with State Authority to make regulations. Basically the aims and object of the 2017 the Mental Healthcare Act is to protect the persons with mental illness

and to provide those remedial measures and effort has been made by the legislature to give best of the facilities and protection to a mentally ill person and have tried to discourage them from committing suicide.

8. That before proceedings further the petitioner submits that there is another act known as The Right of Persons with Disabilities Act, 2016. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted to give effect to Proclamation on Full Participation and Equality of the People with Disabilities in Asian and Pacific Region. Convention on Rights of Persons with Disabilities and Optional Protocol was convened by the United Nation and certain principles to be followed by the signatory States for empowerment of persons with disabilities was also signed. India also signed and rectified the said convention on 1st day of October, 2007 and it was in this background necessity was felt to line and harmonize the existing laws with the said convention. In 2014, the Rights of Person with Disabilities bill was introduced and the Standing Committee submitted its report in the year 2015. The bill replaced the persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 and thereafter The Right of Persons with Disabilities Act, 2016 came into force w.e.f. 19.4.2017. It was in this background also that the Mental Healthcare Act, 2017 was enacted by the legislature. Section 2 of The Right of Persons with Disabilities Act, 2016 deals with the definitions and (zc) defines specified disabilities which means the disabilities as specified in the schedule. The schedule provides

specific disability and clause-3 defines the mental behavior disability which reads as under:

> 3. Mental behavior-
>
> "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by subnormality of intelligence.

9. That it is in this background that the petitioner is approaching this Hon'ble Court with the request that the respondent State may kindly be directed to implement The Mental Healthcare Act, 2017 and The Right of Persons with Disabilities Act, 2016 in its proper perspective and as required under the Act so that the situation which we are facing today whereby number of people committing suicides have increased immensely just for the reason that the disease they are going through could not be recognized as there are no proper mental healthcare clinics as required under The Mental Healthcare Act, 2017. The right to life is a recognized fundamental right of each and every citizen of this country and to live with dignity is also one of the most important aspects which are to be taken into consideration by a welfare State. This averment is being made for the reason that there has been rise in number of suicides in the State of Himachal Pradesh especially in the year 2020 where entire nation is facing COVID-19 pandemic the increase of number of suicides is for number of reasons some people have lost their jobs, some people have lost their businesses and some people have lost their loved ones due to

COVID-19 pandemic. The petitioner is further placing on record copy of online articles of the newspaper Hindustan Times dated 20.6.2020, 5.8.2020 and 12.8.2020 which talks about jump in suicide cases in Himachal Pradesh during the lockdown and further reads that rise in suicides underscore need for better mental healthcare in Himachal. The copy of the online articles of the Hindustan Times are appended as **Annexure P-1 (Colly).** The study made by organizations with regard to the increase in number of suicides points out that the same is because the person who loses his job or his business and is not able to earn his bread and butter gets into some type of depression which leads him to negative thoughts and further puts in such a situation where he or she takes an extreme steps of committing suicide.

10. That the humble submission of the petitioner is that these increased number of suicides could have been brought down had the respondent State tried to follow what was envisaged in the Mental Health Act, 1987 and Mental Healthcare Act, 2017. The petitioner in this regard would point out that what is required to be done under the Mental Healthcare Act, 2017 by the respondent State and what has been done in terms of the Act by the State of Himachal Pradesh.

A) Chapter-VIII Section 45 of the Act provides for Establishment for State Authority to be precisely known as State Mental Health Authority within a period of nine months from the date on which the Act receives the assent of the President by notification. The assent to the Mental Healthcare Act, 2017 dated 29.5.2018. Composition of the State Authority is also

provided and it is thereafter that the State Mental Health Authority has to make rules. Similarly before the Mental Health Act, 1987 was repealed by 2017 Act, it was provided in the earlier Act also that each and every State Government has to establish an authority for mental health which such designation as it may deem fit. It has been further provided in the Mental Health Act, 1987 that rules are to be framed, however as per the research done by the petitioner no rules were ever framed by the State of Himachal Pradesh as envisaged under the Mental Health Act, 1987. As far as the requirement of Section 45 of the Mental Healthcare Act, 2017 is concerned now the respondent State has formed State Mental Health Authority of which the Secretary (Health) to the Government of Himachal Pradesh is the Chairperson. The Senior Medical Superintendent Himachal Hospital for Mental Health and Rehabilitation was nominated as CEO in terms of the Section 52 (1) of the Mental Healthcare Act, 2017. The Mental Healthcare Act, 2017 Section 121 specifically states with regard to the power of the Central Government and State Government to make rules. Sub-Section 2 of Section 121 reads as under:

> "(2) Subjects to the provisions of Sub-Section (1), the State Government may with the previous approval of the Central Government, by notification, make rules for carrying out the provisions of this Act."

The rules in terms of Section 121 Sub-Section 2 of the Mental Healthcare Act, 2017 have not been framed till date by the

State of Himachal Pradesh and the authority established by it under Section 45 i.e. State Mental Health Authority. The rules are mandatory to be framed so that the provisions which have been envisaged for healthcare of mentally ill person under the Mental Healthcare Act, 2017 are implemented in letter and spirit. As submitted above the Mental Health Act, 1987 was already in place, however, the legislature felt necessary to amend and repeal the same for the reason that the Mental Health Act, 1987 had its limitation and it did not have any provision to protect the right of person with mental illness and further it did not promote assess to mental healthcare in the country, it was only for this reason that the Mental health Act, 1987 when it was repealed in the year 2017 it was renamed as Mental Healthcare Act, 2017 the word used was “care”. This word “care” was used in the 2017 Act for the reason that this word “care” carries great significance. The significance of the word is that the State Government is not only to provide hospitals or rehabilitation centers to a mentally retarded or mentally ill person, but it would be the duty of the appropriate Government to plan, design and implement programmes for promotion of mental health and prevention of mental illness in the country, here lies the catch as to why the word “care” was used. It was felt by the legislature that it is the responsibility of the welfare State to provide to its citizen such an environment that nobody fells mentally ill, since the Constitution envisage that in a welfare State the primary duty of the Government is to secure welfare of the people. Providing adequate medical

facilities for the people is an essential part of the obligation undertaken by the Government in a welfare State because preservation of human life is of paramount importance. For providing such an environment there were duties as envisaged under Chapter-VI of the Mental Healthcare Act, 2017 which are called Duties of Appropriate Government, Section 29 to 32 of the Mental Healthcare Act, 2017 deals with duties of the appropriate Government and briefly Section 29 talks about Promotion of Mental Health and Preventive Programmes, Section -30 Creating Awareness about Mental Health and Illness and Reducing Stigma Associated with Mental Illness, Section 31 Appropriate Government to take Measures as regard to Human Resource Development & Training and Section-32 Coordination with the Appropriate Government. By promoting what has been envisaged under Section 29 to 32 of the Mental Healthcare Act, 2017 one can understand as to why the word "care" was used by the legislature. However to implement whatever is envisaged under the Mental Healthcare Act, 2017 it has been further provided under Section 121 of the Act that the State Government has to frame rules. While going through the website of Himachal Pradesh State Mental Health Authority which has been established as per Mental Healthcare Act, 2017 the petitioner came through the catchwords which described the Envisaged Role and Functions, however despite the fact that the State is aware as to what is to be done under the Mental Healthcare Act, 2017 and what is its role has failed to do even move an inch in that direction. The

petitioner is reproducing as to how the State Mental Health Authority understands with regard to its role and functions as has been envisaged herein below:

In light of the Mental Healthcare Act, 2017, SMHA role and functions have increased beyond the routine work of licensing as well as inspection of psychiatric hospitals / nursing homes. Following are the envisaged roles and functions of SMHA: –

a) Regulatory Role

- Making guidelines for ensuring minimum standard of quality for Mental Health facilities providing mental health services like Long Stay Home (LSH) and Half Way Homes (HWH), General Hospital Psychiatric Unit (GHPU) and De Addiction centers which are under the regulatory framework of SMHA.
- Initiate setting of accreditation standards and processes for capacity building and training of mental health professionals of different competencies, such as counselors, general practitioners etc. Facilitate and encourage the delivery of mental health training by the NGO sector.
- Set in place human rights watch processes, review tribunals and ombudsperson to ensure rights assurance by all service providers and all duty bearers to people with mental illness.
- Ensure that there is a functional board of visitors in every mental hospital / nursing home.

b) Development of Services

- Large scale awareness drive and sensitization about mental health problems and remedial measures; public awareness about issues like legal rights, mental health and illness and other related subjects in the HP.

- Strengthening role in bringing about an attitudinal change among various stakeholders on the subject and treatment of mental health problem.
- Focusing on the role of NGOs in addressing homelessness problem of mentally ill with support from government bodies, legal authorities and police agencies. NGOs must be given the charge to run and maintain mental health homes.
- Engaging CSOs/NGOs who can provide assured rehabilitation of mentally ill patients. Identify NGOs which can run and manage half way homes and long staying residential care homes.
- Strengthening role of NGOs as nodal agencies in monitoring, evaluation and continuous updated surveys of mental health issues.
- Legal facilitation/assistance for involuntary treatment at the Outreach services for the mentally ill homeless.
- Special Assistance Schemes for NGOs providing street based outreach services to help patients recover and/or be able to reach a status stable enough for their rehabilitation.
- Sensitization/orientation drive for police and judicial officers and other regarding mental health legislation & Mental Healthcare Act of 2017.
- State Mental Health Rules has to be formulated by SMHA.
- Formulate a mechanism of ongoing analysis of Mental Health needs and services in HP with or without the support of other agencies from public/ private sector.
- Developing key output indicators of services related to Mental Health like service utilization pattern, reduction of stigma, quality of life of families or persons with mental illness and assessing reduction in treatment gap.
- Put in place continuing professionals development programs for mental health in coordination with HP government.

- Increase awareness and support advocacy for civil and political participation of people with mental illness in every day process of the society; for this purpose conduct training of all bureaucrats in HP.
- Help the State Government draft the comprehensive HP State Mental Health Plan including mental health services, human resource development and long term system of ongoing analysis and monitoring of mental health needs and services in the HP.

c) Coordination Role

- Inter-sectoral coordination for implementation of the mental health programmes which should include addressing needs in all life domains not just health
- Inter-sectoral coordination beyond health Department as wide ranging developments and regulation of mental health services across different sectors and populations will involve multiple agencies across public/ private sector e.g. GOI, Labour Department, Department of Social Welfare, Women and Child development, land owning agencies, HP Police, Judiciary, and NGO's working in the field of Mental Health.

Despite the fact that the State is aware as to what is to be done nothing has been done and as submitted above had the State tried to do something for the welfare of its citizen and especially for the welfare of the mentally ill persons as envisaged under the Mental Healthcare Act, 2017, we could have definitely saved some lives and number of suicides could have definitely been reduced during COVID-19 pandemic. The petitioner further submits that until and unless rules as envisaged under the Mental Healthcare Act, 2017 Section 121 (2) are framed by the State of Himachal Pradesh, it is impossible to perform the

duties which are to be performed and which as per the State Government are also their responsibility in terms of the Mental Healthcare Act, 2017, as they themselves admits that the roles and functions of State Mental health Authority have increased beyond the routine work of licensing and inspection of psychiatry hospital and nursing home. Therefore the humble submission of the petitioner before this Hon'ble Court is that the respondent State may kindly be directed to do the needful as envisaged under Section 121 (2) of the Mental Healthcare Act, 2017 within a time bound period.

B) That the petitioner further submits that World Bank Report issued in the year 1993 revealed that the disability adjusted life year loss due to neuro-psychiatric disorder is much higher than diarrhea, malaria, warm infections and tuberculosis if taken individually. The study further pointed out that the disorder accounts for 12% of the global burden of the disease and the analysis or trends indicated that the same will increase to 15% by 2020. It further stated that one in four families is likely to have at least one member with a behavioral or mental disorder. The relevant part of the United Nation Report is appended as **Annexure P-2.** A report issued by the United Nation Health Agency in the year 2010 also called upon the Governments, Civil Societies and Aid Agencies to confront the "enormous challenge" of helping the millions of peoples in developing countries with mental and psychological disabilities, among the world's most vulnerable groups. It was further

observed in the report that almost one million people commit suicides every year which is the third leading cause of death among the people and the depression is the leading cause of years lost due to disability worldwide. It was further observed that mental and psychological disability are associated with rates of unemployment as far as 90%, further people are not provided with education and vocational opportunity to meet their full potential and majority of development and poverty alleviation programme do not reach persons with mental or psychological disability and between 75% to 85 % do not have access to any form of mental health treatment. The Assistant Director General for Non-Communicable Diseases and Mental Health Ala Alwan had said, "the lack of visibility, voice and power of people with mental and psychological disability means that an extra effort needs to be made to reach out and involve them more directly in development programmes". It was further noted in the report that Depression will be the second highest cause of disease burden in middle income countries and third highest in low income countries by 2020. The report further states that the group is subjected to high levels of stigma and discrimination, due to widely held misconceptions about the cause and nature of mental health conditions; experiences high level of physical and sexual abuse, including in prisons and hospitals; and often encounters restrictions in the exercises of their political and civil rights. The report further stated that majority of people with mental health condition in low and middle income countries are not able to assess essential health

and social care. The exclusion of children with mental and psychological disabilities from education causes further marginalization. It has further been observed in the report that mental health priority conditions depression, psychoses, suicide, epilepsy, dementia conditions due to use of alcohol and drug and mental health conditions in children. The relevant extract of the United Nation Health Agency is appended as **Annexure P-3.**

The Ministry of Health & Family Welfare, Government of India had also launched the National Mental Health Programme (NMHP) in 1982, with the following objectives:

i) To ensure the availability and accessibility of minimum mental healthcare for all in the foreseeable future, particularly to the most vulnerable and underprivileged sections of the population;

ii) To encourage the application of mental health knowledge in general healthcare and in social development; and

iii) To promote community participation in the mental health service development and to stimulate efforts towards self-help in the community.

The District Mental Health Programme (DMHP) was launched under NMHP in the year 1996 and the same was based upon "Bellary Model" with the following components:

i) Early detection & treatment.

ii) Training: imparting short term training to general physicians for diagnosis and treatment of common mental illnesses with limited number of drugs under

guidance of specialist. The Health workers are being trained in identifying mentally ill persons.

iii) IEC: Public awareness generation.

iv) Monitoring: the purpose is for simple Record Keeping.

Starting with 4 districts in 1996, the program was expanded to 27 districts by the end of the IX plan.

The NMHP was re-strategized in the year 2003 (in X Five Year Plan) with the following components:

i) Extension of DMHP to 100 districts

ii) Up gradation of Psychiatry wings of Government Medical Colleges /General Hospitals.

iii) Modernization of State Mental Hospitals.

iv) IEC- (Information, Education and Communication)

v) Monitoring & Evaluation

Up gradation of Psychiatry wings of Government Medical Colleges / General Hospitals and Modernization of State Mental hospitals were the new schemes / components. In the XI Five Year Plan, the NMHP has the following components / schemes:

i) District Mental Health Programme (DMHP)

ii) Manpower Development Schemes-Centers of Excellence and Setting Up / Strengthening PG Training Departments of Mental Health Specialties.

iii) Modernization of State Run Mental Hospitals

iv) Up gradation of Psychiatric Wings of Medical Colleges / General Hospitals

v) IEC (Information, Education and Communication)

vi) Training & Research

vii) Monitoring & Evaluation

Manpower Development Schemes – Centers of Excellence and Setting UP / Strengthening PG Training Departments of Mental Health Specialties are the new schemes / components.

The main objective of DMHP is to provide Community Mental Health Services and integration of mental health and general health services through decentralization of treatment from specialized mental hospitals based care to primary healthcare services. The DMHP envisages a community based approached to the problem which includes:

- Training of mental health team at identified nodal institutions.
- Increase awareness & reduce stigma related to mental Health problems.
- Provide service for early detection & treatment of mental illness in the community (OPD/ Indoor & follow up).
- Provide valuable data & experience at the level of community at the State & Centre for future planning &improvement in service & research.

Further based upon the evaluation conducted by an independent agency in 2008 and feedback received from series of consultations, it was decided by the Government of India that DMHP should be revised and consolidated assistance on new pattern with added component of life skill education and counseling in schools, college counseling services, work stress management and suicides prevention services should be

provided. These components were in addition to the existing components of clinical service, training of general healthcare functionaries and IEC activities in DMHP. The team of workers at the district under the program consists of Psychiatrist, a Clinical Psychologist, a Psychiatric Social Worker, Psychiatry / Community Nurse, a Program Manager, a Program /Case Registry Assistant and a Record Keeper. Under the National Mental Health Programme it provides Scheme-A which means Center of Excellence in Mental Health are to be established and Scheme-B : Setting Up / Strengthening PG Training Departments of Mental Health Specialties. Under Scheme-A The Center of Excellence in Mental Health are to be established by upgrading existing mental health institutions / hospitals and under the Scheme –A the Center of Excellence upto Rs. 30.00 crores for each center of excellence. Under Scheme B the same is to provide further impetus to manpower development in Mental Health, Government Medical Colleges/ Hospitals are to be supported to start PG course in Mental Health or to increase the intake capacity of PG training in mental health. The copy of the National Mental Health Programme launched by the Government of India as downloaded from the site by the petitioner alongwith the copy of grant in aid released to the State where DMHP is being implemented is appended as **Annexure P-4.**

In this background the humble submission of the petitioner would be that the respondent State may kindly be called upon

by this Hon'ble Court to State as to what steps has been taken by them under the National Mental Health Programme and how many DMHP programmes has been launched in the State of Himachal Pradesh under the NMHP Scheme and if Scheme-A & B are being implemented then in what manner the same are being implemented. The petitioner tried his level best to get the information but nothing could be achieved by him and the only documents on which he was able to lay in his hands was the history of State Mental Health Authority of Himachal Pradesh in which there is no clarity with regard to DMH Programme and its implementation at various levels. The statistics provides by the State Government in their website are not clear and do not lead us to any conclusion except the fact they accept that there is a prevalence of severe psychiatric disorder in around about 1,48,000 people and prevalence of psychiatric disorder in around about 7,40,000 people and Neurosis and Psychosomatic disorder in around about 14 to 22 lac people and mental retardation of children raised upto 6 months to the extent of 7120 children. One cannot find as to the programmes which are to be carried out in terms of National Mental Health Programme are being carried out by the State Government nor is one able to trace / make out as to whether what has been provided under Mental Healthcare Act, 2017 by implementation of its provision to avoid mental illness leading to suicides, is anything being done or not. Section 29 of the Mental Healthcare Act, 2017 specifically envisages with regard to the promotion of mental health and preventive programmes

and cast duty upon the Government to plan, design, and implement programmes for the promotion of mental health and prevention of mental illness to reduce suicides and attempted suicides in the country. As to what steps in this regard has been taken by the respondent State may kindly be called upon by this Hon'ble court to be furnished before this Hon'ble Court, because the State being a welfare State and custodian / guardian of each and every citizen of the country is to help its citizen to live happy and prosperous life in a healthy environment. It is further the duty of the State Government that the provisions of the Act are given a wide publicity through public media, television, radio, print and online media at regular intervals and appropriate Government officials including police officers and other officers of the Government are given periodic sensitization and awareness training on the issues under this Act. All these are to be implemented by the State but what steps have been taken by the State of Himachal Pradesh in this regard are not clear. Moreover the humble submission of the petitioner before this Hon'ble Court is that the Mental Healthcare Act, 2017 and the Healthcare Programmes envisaged under the Act could be brought to logical conclusion only after rules are framed as envisaged under Section 121 (2) of the Act and since the respondent State till date has not framed any rules as such it seems the provisions of the Act are also not being implemented in its letter and spirit. At the cost of repetition the petitioner submits that the end result of the same is that whatever studies are

being conducted with regard to mental illness and depression and steps to be taken by the Government to reduce mental illness / depression are not being taken by the State Government leading to suicides of our younger as well as middle aged generation. The State Government is not trying to understand that in today's time a suicide by a youth aged between 15-25 years of age means that he is living his parents who are in mid forties without any child to lookafter them, because now days there are only one or two child and a suicide by a person aged between 25 to 45 years of age leads to a situation where he is leaving his old parents and family in a state of shock and in a situation where they may have starve because he / she may be the sole bread earner of the family. The copy of the Our History as uploaded by the Himachal Pradesh State Mental Authority in their website and the Mental Health Facilities being provided is appended as **Annexure P-5.** The reading of the same itself shows that the State Government is also not clear that what is being provided by them, the reason why the petitioners says so is that in one breath the respondent No. 4 in its website states that DMHP are running in all the Districts in H.P. and in the same breath they say that because of shortage of mental health professional the patients are being referred to appropriate mental health facility. It is for this reason that the petitioner is submitting before this Hon'ble Court that what is required under the Mental Healthcare Act, 2017 and various programmes by the Government of India are not being implemented by the State of Himachal Pradesh.

C) That the petitioner further submits that a bare minimum requirement as required under the Act is that there should be an Suicide Prevention Helpline Number, which number also as of date has not been made available by the State of Himachal Pradesh what to talk of other facilities to be provided and envisaged under the Act. It is the duty of the State to appoint psychiatrist and psychologist also there is difference between a psychiatrist and a psychologist, the difference is well defined and once the State appoint a psychiatric and psychologist and the ancillary staff as per the requirement then only it will be in a position to treat its patients having mental illness and depression. As submitted above and what has been reported in the studies / reports made by the United Nation it has categorically come that it would be an enormous challenge of helping millions of people in developing countries with mental and psychological disabilities. It has been further reported in these studies that between 75 to 80% people do not have any access to any form of mental health treatment. It is in this background the petitioner submits that it is incumbent upon the respondent State to implement the provisions of the Mental Healthcare Act, 2017 so that the people are made aware of the mental illness and depression they suffer and go through at their doorsteps. It would be possible to do so only if the respondent State is able to frame the rules and is further able to appoint the staff as required under the Act. The manner in which the people are to made aware about the mental illness and depression should be in such a way that it should not look

like stigmatic to them and should be in such a manner that the persons suffering with such a disease should feel like that he suffering a normal disease which can be easily cured. The petitioner further submits that even otherwise the latest studies suggests that mental illness or depression is not a stigmatic disease but a disease which in now days is being suffered by one of every 4th or 6th persons as per the studies carried out. The same can be easily cured even by adopting the old tradition Indian Ayurveda and Yoga. Even the Mental Healthcare Act, 2017 provides / defines Mental Health Establishments which means as under:

"Mental Health Establishment" means any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy establishment, by whatever named called, either wholly or partly, meant for the care of persons with mental illness, establishment, owned, controlled or maintained by the appropriate government, local authority, trust, whether private or public, corporation, co-operative society, organization or any other entity or person, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organization or any other entity or person; but does not include a family

residential place where a person with mental illness resides with his relatives or friends."

In this behalf also the State Government, has failed, as the mental health establishment required to be established have not been established nor till date any steps have been taken to introduce the same in its ayurvedic dispensaries by imparting training to the ayurvedic doctors to profess with regard to the treatment of mental illness and depression by way of ayurveda nor any steps have been taken by the respondent State to give publicity through public media, including television, print and online media with regard to the cure of mental illness and depression by ayurveda.

D) That the petitioner further submits that the number of suicides which has increased to a very large scale in this COVID-19 pandemic could have been easily curbed by the respondent State had the provisions under the Mental Healthcare Act, 2017 have been implemented in its letter and spirit and the provisions of The Rights of the Persons with Disabilities Act, 2016 had been implemented in letter and spirit. As provided under the Act had the State Government put in place the provisions of the Act and had implemented the National Health Mission Programme and DMH Programme then definitely the number of suicides and the patients with mental illness / depression could have been reduced. It is an accepted fact that suicide and tendency to suicide is directly linked with the mental illness and depression. The Government has failed to

conduct encourage, support or promote awareness campaigns and sensitization programmes with regard to the mentally ill / depressed persons which is also the requirement of the Mental Healthcare Act, 2017. Regular counseling of the parents and the children should be provided at the initial level of the education as well as colleges and Universities and endeavor should be made by the teachers and parents also to gather the potential and the interest of their child so that the child is not burdened or over burdened at any stage and is left free to choose his career in life. Sometimes the desire of the parents of making their child to run fast in this competitive world also leads to a situation where a child is not able to cope up and leads to a situation where he gets depressed and even tendency of committing suicide gets evolved in the child. The atmosphere should always be healthy in schools as well as at homes so that a child is able to live in a health environment. Yoga should be made a part of life as is being professed by our Government also and is being universally accepted by the world also. The culture of India is well recognized and is now also been recognized in this COVID- 19 pandemic because the same old tradition of NAMSKAR is now being followed worldwide.

11. That the petitioner in this background in the larger public interest requests before this Hon'ble Court that the respondent State may kindly be directed to implement the Mental Healthcare Act, 2017 and provisions thereof as well as The Right of Persons with Disabilities Act, 2016 and its provisions so that the duties which are

enshrined under Part-IV of the Constitution of India that is Directive Principles of State Policy Article 38 State to Secure a Social Order for Promotion of Welfare of the People is achieved. The petitioner further submits that even otherwise in the present case the State Government under the garb of implementation of the Mental Healthcare Act, 2017 which is an Act framed by the legislature within intention, aim and object to provide mental health care and services for persons with mental illness and to protect, promote and fulfill the rights of such persons, is to perform its duties in terms of doctrine of PARENS PATRIAE meaning thereby that the State in its capacity as provider of protection to those unable to care for themselves.

12. That the petitioner has not filed any other petition on same or similarly grounds before this Hon'ble Court including Hon'ble Supreme Court of India.

13. That the petitioner further submits that there is no other speedy and efficacious remedy except by way of filing present writ petition.

It is therefore most respectfully prayed that in view of the averments made hereinabove the writ petition may kindly be allowed and following writ, order or direction may kindly be passed in favour of the petitioner and against the respondents:

i) That the respondents may kindly be directed by issuance of writ of mandamus to frame rules in terms of Section 121 Sub-Section 2 of the Mental Healthcare Act, 2017 and perform its duties as envisaged under the Mental Healthcare Act, 2017.

ii) That this Hon'ble Court may further be pleased to issue writ of mandamus directing the respondent State to place on record the number of psychiatrist posted in the State of Himachal Pradesh, the number of psychologists and the number of mental health nurse posted in the State of Himachal Pradesh in its medical colleges and hospitals, district hospitals, CHCs etc. alongwith number of nurses and ancillary staff as required under DMHP (District Mental Health Programme) and in case there is deficiency then the respondent State may kindly be directed to fill up the same within time bound period.

iii) That the respondent State may kindly be directed by issuance of writ of mandamus to ensure that counseling of parents and students is started from Class-8 onwards and endeavor be made by the teachers and the parents to further make study their child in the field in which the child is having interest by appointing specialist counselors for this purpose.

iv) That the respondents may kindly be directed by issuance of writ of mandamus to place the entire records concerning to the case and the steps taken by them with regard to the framing of rules as envisaged under the Mental Healthcare Act, 2017.

v) That the respondents may kindly be directed that immediately Suicide Prevention Helpline Number may be brought to effect and NGOs may be associated for efficiently running the same 24x7 and proper and efficient staff having adequate knowledge may kindly be posted and if required they may be supported by the psychiatric and psychologist and other ancillary staff.

vi) That the petitioner further prays that respondent State may kindly be directed by issuance of writ of mandamus to spread awareness about mental health and its all spheres through Government Organization and NGOs.

vii) Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case may kindly be granted in favour of the petitioner.

Shimla Petitioner

Dated: 26.08.2020 Through Counsel

Sunil Mohan Goel & Paras Dhaulta