
(2009) 12 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition (C) (PIL) No. 1 of 2009

Chitta Ranjan Bhattacharjee	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Mental Health Act, 1987 — Section 23, 23(1), 24, 25
State Mental Health Rules, 2006 — Rule 3

Citation : (2010) 3 GLR 812 : (2010) 2 GLT 514

Hon'ble Judges : U.B. Saha, J; C.R. Sharma, J

Bench : Division Bench

Advocate : D. Sarma, for the Appellant; N.C. Paul, for the Respondent

Judgement

U.B. Saha, J.—The petitioner, a retired Superintending Engineer, Department of Power, Government of Tripura being a public spirited person raised a serious question regarding the public demand, particularly the issue of non-compliance of the provisions of the Mental Health Act, 1987 ("the-Act, 1987") and the rules made thereunder in 2006 in the State of Tripura with regard to the mentally ill persons, especially those who are found wandering at large in the public places in this writ petition with a prayer for a direction to the State respondents to perform their duties cast upon them under the provisions of the Act, 1987 and the rules made thereunder with regard to the mentally ill persons.

2. The petitioner in the writ petition stated that few mentally ill persons move at large in the public streets/places at Agartala and other places in Tripura mostly in urban areas and he has found such persons generally of ill health with dirty scanty ragged cloths or some even without clothes either sitting and muttering to themselves or moving with stick/object in the hand or muttering and making different postures such as fighting, controlling traffic, etc. Sometimes they make such postures at women passers-by who out of fear try to run away and occasionally meet with accident by falling down. It is also contended in the writ petition that sometimes young children are found pelting stones at mentally ill

persons and causing bleeding injuries to the body of such persons and not only that sometimes such mentally ill persons pick up and eat left over rotten food staff from the dustbin. After witnessing all the aforesaid incidents, the petitioner considered to raise the issue by filing the instant writ petition before this Court as this Court is the custodian of the fundamental rights of the citizens even if the citizen is mentally ill, particularly when those citizens are protected by the provisions of the Act, 1987. In the writ petition he made certain allegations against the activities of the police personnel who are supposed to discharge their duties as per the provisions of Sections 23 and 24 of the Act, 1987.

3. The State respondents by way of filing a counter-affidavit partly admitted the facts stated in the writ petition stating, inter alia, that sometimes few mentally ill persons are found moving in the streets/ places in the State, but violent and other misconduct are still not reported. In their counter-affidavit, the State respondents also contended that the personnel of Tripura Police are fully aware of the contents of the Act, 1987, particularly Section 23(1) and their duties towards mentally ill persons. According to the State respondents, no direction is required to be issued from this Court since the Director General of Police, respondent No. 2 herein issued a memorandum on 17.3.2009 (Annexure R/I to the counter-affidavit) wherein the respondent No. 2 instructed the concerned police officials to take necessary steps regarding the mental patient/ill person reported or noticed within their jurisdiction as per the provisions of the Act, 1987.

4. We have heard Mr. D. Sarma, learned Counsel for the petitioner and Mr. N.C. Paul, learned Government Advocate appearing for the respondents.

5. Mr. Sarma, learned Counsel for the petitioner while addressing this Court in support of the case of the petitioner would contend that mere issuance of circular to the police personnel by the respondent No. 2 would not meet the problem and the issue raised by the petitioner in the writ petition. He also contended that mentally ill people have also the fundamental rights like other citizens and the right to health is also included in the fundamental rights and, therefore, it is the duty of the State to protect the life of those mentally ill persons, who are loitering/wandering in the public places being not looked after by their family members. He further contended that even there are some mentally ill persons who are either sitting in the veranda of Government offices or in abandoned places and it is duty of the State to protect their livelihood to give full effect to the provisions of the Act, 1987.

6. Per contra, Mr. Paul, learned Government Advocate submitted that though some of the facts stated in the writ petition have been admitted by the State respondents, but fact remains that in the writ petition the petitioner nowhere stated any specific incident either wandering/ loitering of any mentally ill person in the road or any incident where the police failed to discharge their duties. Therefore, it is difficult on the part of the State respondents to reply the allegations made by the petitioner. He submitted that the State respondents considering the gravity of the allegations of the petitioner took all steps for

protection of mentally ill persons either who are loitering in the street or who are staying in any public places. He assures this Court that the State will take all steps for protection of mentally ill persons as per the provisions of the Act, 1987 and the rules made thereunder.

7. After hearing the learned Counsel for the parties, we are of respectful consideration that though there is no specific allegation of any particular incident, but the issue is a very serious one as by this time attitude of the society towards the persons afflicted with the mental illness has changed considerably and by this time it is also realized by the people that no stigma should be attached to such illness as it is curable and the Apex Court has also held in so many cases that right to health of a citizen is a fundamental right and it is the duty of the State to protect the fundamental right of a citizen. Therefore, according to us, the mentally ill persons are to be treated like any other sick persons and as far as possible the environment around them should be made as normal as possible utilizing the advantage of medical science. We are also of the opinion that it would not be proper on the part of any authority to ignore the valuable right of those mentally ill persons either who are wandering/loitering in the street or taking shelter in any other place.

8. We have gone through the memorandum dated 17.3.2009 issued by the Director General of Police, Tripura, respondent No. 2 herein (Annexure R/1 to the writ petition) wherein it is stated that it has come to the notice that a number of mental patients/ill persons are found moving at large in the public places in Tripura mostly in urban areas. Such persons are generally of ill health with dirty scanty ragged clothes and some even without clothes and found muttering to themselves or moving with stick/objects and different posture and accordingly, the respondent No. 2 instructed his subordinates to deal with the mental patients/ill persons as per the provisions of the Act, 1987. It is curious to note that the said memorandum was issued in fact after the filing of the writ petition. Therefore, it can be presumed that the respondent authorities before filing of the writ petition did not take any action so far Sections 23 and 25 of the Act, 1987 is concerned. We are of the view that the submission of Mr. Sarma, learned Counsel for the petitioner so far it relates to the issuance of the notification/memorandum has some force. According to us, mere issuance of notification/memorandum would not help the people for their awareness regarding the duty entrusted upon by the Legislature in the Act, 1987.

9. In the case of Suk Das and Anr. v. Union Territory of Arunachal Pradesh AIR 1986 SC 997 while the Apex Court was considering the entitlement to free legal aid to a person accused stated, inter alia, that now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the

poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advise in time and their poverty magnifies the impact of the legal troubles and difficulties when they come.

10. In D.K. Basu Vs. State of West Bengal, while discussing the custodial violence including torture and death in the lockups, their lordships of the Apex Court had given certain directions and directed for forwarding those directions to the Director General of Police and Home Secretary of States/Union Territories for circulating the same to every police station under their charge and get the same notified at every police station at a conspicuous place and also to broadcast the same through All India Radio besides being shown on the National Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. The Apex Court also stated therein that creating awareness about the rights of the arrestee would be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability.

11. Though the instant case is not relating to either violation of right of an arrestee or relating to custodial death of torture in the lock-up, but obviously to avoid failure to discharge the duties properly by the State authority to the mentally ill persons, who are either loitering or wandering in the street or staying in other places for such a disease, which is not within their control and also unable to take care of themselves, the Legislature enacted the law for protecting their rights by the Act, 1987 and it is the admitted position that the State has not yet taken any step for awareness of the people regarding their duties as entrusted on them by the Act, 1987 as well as to the mentally ill persons who are part and parcel of the society and whose fundamental rights are being affected due to non-action of the statutory authority except issuance of the memorandum dated 17.3.2009, which is also only for the concerned police officials and not for the awareness of the people at large.

12. Under the above facts and circumstances, we propose to dispose of the instant writ petition with a simple direction to the State respondents, particularly the respondent Nos. 2 and 3 to take necessary steps for creating awareness among the people regarding the implementation of the Act, 1987 as well as the scheme made thereunder for rehabilitation of the mentally ill persons who are not in a position to take care of themselves and their family members are not looking after them and either loitering in the street or staying in any other public place without any care and protection and as and when it would come within the notice of the State authority, they should provide them necessary medical help through the mental/ psychiatric hospital or psychiatric nursing home and also provide them other help which are necessary for their proper thriving. The State respondents are also directed to take all steps for awareness of the people regarding the rights of the mentally ill persons by way of prominently notifying the guidelines in every police station and also at conspicuous places and through

the All India Radio and other electronic medias enabling the people to aware of their duties towards the mentally ill persons and the places where they can inform regarding the mentally ill persons who are loitering in the street or staying in any other places for not being looked after by their family members. We also direct the State respondents to constitute the authority as provided under Rule 3 of the State Mental Health Rules 2006, if not by this time constituted, within a period of three months from today and the State respondents should ask the District Magistrate of the respective Districts in the State for monitoring the steps taken by the authority as constituted under Rule 3 of the Rules of 2006.

13. With the above directions, this writ petition stands disposed of.