

(2019) 02 SC CK 0412

In the Supreme Court Of India

Case No : Contempt Petition (Civil) No. 1653 Of 2018, Miscellaneous Application
No. 2352 Of 2018 In Writ Petition (Civil) No. 412 Of 2016

Gaurav Kumar Bansal

APPELLANT

Vs

Dinesh Kumar & Ors

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Citation : (2019) 02 SC CK 0412

Hon'ble Judges : Dr. Dhananjaya Y. Chandrachud, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Madhavi Divan, Binu Tamta, Sunita Sharma, G.S. Makker, Raj Bahadur Yadav, Guntur Prabhakar, Prerna Singh, A. Tewari, Eliza Bar, Shree Pal Singh, Diksha Rai, Palak Mahajan, Ishan Bisht, Abhinav Mukerji

Judgement

By its order dated 10 July 2017, in Gaurav Kumar Bansal Vs. State of Uttar Pradesh Writ Petition (C) No.412 of 2016, this Court dealt with the need for setting up rehabilitation homes for persons

(i) living with mental illnesses who have been cured;

(ii) who do not need further hospitalization; (iii) who are homeless; and (iv) who are not accepted by their families. The Ministry of Social Justice and Empowerment, Government of India placed certain guidelines on the record. They were directed to be circulated to the State Governments and to the Union Territories for implementation within one year.

After the expiration of a period of one year, the present contempt proceedings were initiated on the ground that there was non-compliance by the State Governments and the Union Territories or, at any rate, by a number of them.

During the pendency of these proceedings, status reports have been filed on affidavit by all the State Governments and the Union Territories. A tabulated statement of the present status of the facilities available for such persons who have been treated for mental illness, but do not require institutional treatment as

such, has been placed on the record.

During the course of the hearing, Ms. Madhavi Divan, learned Additional Solicitor General has placed a note on behalf of the Union of India. It is necessary to incorporate the note in extenso, as a part of this order, since it reflects the considered position of the Union of India on the way forward:

" 1.Pursuant to its proposal made before this Hon'ble Court and recorded in the order dated 22.02.2017, the Union of India has framed two different sets of guidelines for persons who have received treatment for mental illness but who were compelled to overstay in mental hospitals/asylums/nursing homes even after successful treatment. Both these guidelines operate simultaneously but have a different scope:

(i) The first is titled "Guidelines for discharge of 'mentally cured' or 'fit for discharge' patients from Mental Health institutions", framed by the Ministry of Health and Family Welfare based on a report by a committee comprising of experts in the field of mental healthcare. These guidelines are a framework for States and stakeholders to follow when a person is required to be de-institutionalized. The guidelines help identify such 'mentally cured' or 'fit for discharge' patients, formulate a model that should be followed when the process of de-institutionalization needs to be initiated and implemented, and lay down the after-care procedure that de-institutionalized persons necessarily require. These guidelines were duly circulated to the relevant departments of all State Governments and Union Territories and directions were passed for expeditious implementation of the said guidelines as also the provisions of the Mental Healthcare Act, 2017 vide the order dated 10.07.2017.

(ii) The second set of guidelines is titled, "Guidelines for the State Government for setting up of Rehabilitation homes for persons living with mental illness (who have been cured, do not need further hospitalization, are homeless or are not accepted by their families)". These guidelines too were formulated based on the recommendations of a committee of experts by the Department of Empowerment of Persons with Disabilities. The guidelines lay down the model and procedure to be followed by State Governments in the setting up of 'Halfway Homes' and 'Long Stay Homes' for de-institutionalized persons. It specifies the norms of physical infrastructure, human resources, and other norms for cultural activities, counseling, hygiene etc. that should be followed in the establishment of such Rehabilitation Homes. The Guidelines specify that the Central Government shall provide necessary technical guidance for setting up such homes if the State Government so requires.

2. It appears that status reports as directed by this Hon'ble Court vide the order dated 10.07.2017 have been received from several States regarding the implementation of the above guidelines but the same is yet not complete.

3. Mental illness is treated as a disability under the 'Rights of Persons with Disabilities Act, 2016'. It is submitted that 'disability' is a State subject under

Entry 9 of List II, Schedule VII of the Constitution. Therefore, the primary responsibility of setting up Rehabilitation Homes is entrusted to the State Government. However, since 'mental deficiencies' is a subject under List III, Schedule VII, the efforts of the State Government are supplemented by the Central Government wherever requested and required by the States.

4. Subsequent to the framing of the aforesaid guidelines, the Government of India has framed the 'Deendayal Disabled Rehabilitation Scheme, Revised Guidelines' w.e.f. 1.04.2018. A copy of the relevant extracts of the Deendayal scheme are annexed as Annexure I to this Note.

5. The Deendayal Scheme covers a range of disabilities including mental illness and makes provisions for the facilitation of 'HALFWAY HOMES FOR PSYCHO-SOCIAL REHABILITATION OF TREATED AND CONTROLLED MENTALLY ILL PERSONS'. This scheme specifically makes provision for persons who have been successfully treated for mental illness. The project for 'Halfway Homes' which is financed by the Government of India is aimed at:

- (i) Providing necessary alternatives for persons who have received treatment for mental illness but do not require hospitalization/ institutionalization.
- (ii) Filling in the vacuums where families/ communities at large are still hesitant in accepting such persons into their fold.
- (iii) Providing vocational training so that such persons can fend for themselves and are otherwise constructively occupied.
- (iv) Ensuring continued access for healthcare facilities if required.
- (v) Reintegration of such persons with their families and communities at large for providing counseling for them and their families.

The implementation of the said project will also free up valuable space in mental institutions.

6. Under the Deendayal Scheme, costs for various infrastructural, medical and other facilities are provided to facilitate the setting up of halfway homes by the State Governments in consonance with the aforementioned 'Rehabilitation Homes Guidelines'. The Union of India is monitoring the funding availed of by various States under this Scheme. A copy of a chart depicting the funding availed of from the Central Government in this regard is annexed as Annexure II to this Note. The aforesaid model needs to be effectively implemented.

7. For ensuring availability of rehabilitation halfway homes in the districts:

- (i) State Governments must either expand their existing homes or construct new homes at their own cost and provide facilities as per the 'Rehabilitation Homes' Guidelines approved by the Supreme Court.
- (ii) Another way out is for the States/UTs to encourage NGOs in their States to set up rehabilitation homes or even expand the existing homes run by NGOs. The

State Governments may provide financial assistance to the NGOs towards this objective or seek the assistance of the Central Government for the same. The Central Government already has a scheme to fund such NGOs on the recommendation of State Government (Project Halfway Homes). The State Governments may give wide publicity to this Central scheme.

8. In certain States, some NGOs/community-based organizations have been providing remarkable services in the area of rehabilitation of mentally ill persons. The State Governments may involve them to supplement their own efforts.

9. Assistance is required to be elicited from police departments of various States, in order to register FIRs and make efforts to trace the families of de-institutionalized persons, and to include the details of such persons in national missing persons databases.

10. A summary of practices and procedures adopted internationally with regard to de-institutionalization is annexed as Annexure III."

The annexures to the note are self-explanatory.

The note submitted on behalf of the Union of India indicates that two sets of guidelines have been prepared under the auspices of the Ministry of Health and Family Welfare and the Ministry of Social Justice and Empowerment (Department of Empowerment of Persons with Disabilities), Government of India. The guidelines contain an enabling framework for State Governments and Union Territories in ensuring the setting up of 'Halfway Homes' and 'Long Stay Homes' for de-institutionalized persons. The Union Government has also framed revised guidelines with effect from 1 April 2018 so as to facilitate the setting up of 'Halfway Homes' for the rehabilitation of "treated and controlled" mentally ill persons. Under the guidelines, it has been envisaged that the State Governments and the Union Territories must either expand their existing Homes or construct new Homes at their own cost. Alternatively, the State Governments and the Union Territories can engage NGOs within their jurisdiction to set up rehabilitation Homes or expand existing Homes.

In our view, both approaches can be complementary. Besides the State Governments setting up their own Homes, their efforts can be supplemented by ensuring that accredited NGOs with a proven track record are encouraged to take the benefit of the Centrally Sponsored Scheme by seeking financial assistance, as envisaged.

At the present stage, it is not necessary for this Court to deal with the measures taken by each State and Union Territory and to discuss the shortfalls in compliance. A better course of action would be to direct that the Union of India through the two concerned Ministries (Ministry of Health and Family Welfare and Ministry of Social Justice and Empowerment) should take up the issue with all the State Governments and the Union Territories. Accordingly, in the first instance, the Union of India shall proceed to verify the status of compliance from each of

the State Governments and the Union Territories and require each of them to lay down a road map to ensure that necessary infrastructure is set up in the form of 'Halfway Homes' or, as the case may be, institutional arrangements for rehabilitation of long stay patients for whom institutionalized stay in a hospital environment is no longer necessary. A time schedule for implementation should be chalked out.

We accordingly issue the following directions:

- (1) All the State Governments and the Union Territories shall submit full data to the Secretary, Ministry of Health and Family Welfare, Government of India, within a period of one month from today on the status of compliance and on the facilities for rehabilitation of de-institutionalized persons who have been treated for mental illnesses;
- (2) The data shall specifically incorporate a road map by each State Government and the Union Territory for setting up 'Halfway Homes' within their respective territories and for ensuring that due publicity is given to the guidelines issued by the Union of India to facilitate accredited NGOs taking the benefit of the Scheme;
- (3) On the basis of the data which is furnished by the State Governments and the Union Territories, the Union of India shall submit a further report to this Court in regard to the steps necessary to be taken by each State and Union Territory for due compliance with the earlier directions issued by this Court and with the present directions;
- (4) The Union of India should suggest a road map with regard to each State Government and Union Territory. The report shall be circulated to all the States and the Union Territories which would be heard by this Court when final directions are issued for compliance.
- (5) When a meeting is convened by the Secretary in the Ministry of Health and Family Welfare, Government of India, it shall be attended by all the Secretaries of the corresponding departments of the State Governments/Union Territories. The meeting may be chaired by the senior amongst the Secretaries in the Ministry of Health and Family Welfare and the Ministry of Social Justice and Empowerment;
- (6) Any default on the part of the State Governments and the Union Territories to cooperate with the Union of India and to submit a road map and data in terms of the present order shall invite serious consequences leading to invocation of the contempt jurisdiction.

List the matters on 1 May 2019.