IN RE: DEATH OF 25 CHAINED INMATES IN ASYLUM FIRE IN TAMIL NADU

FEBRUARY 5, 2002

[M.B. SHAH, B.N. AGRAWAL AND ARIJIT PASAYAT, JJ.]

Mental Health Act, 1987:

*Ss. 2(1), 2(q) 3,4, and 5—Mentally ill persons—Treatment and care—Fire in a mental asylum—25 mentally ill persons housed in the said mental asylum and chained to poles/beds charred to death—***Suo motu** *action by Supreme Court—It was noticed that provisions of the Act were not being implemented by authorities concerned—Also failure on part of the Central/State Governments/Union Territories to implement the Act and other laws—Directions given by Supreme Court to State Governments/Union Territories,* **inter alia,** *to undertake district wise survey of registered/unregistered institutions providing mental health services—Observations of norms for granting/refusing licences—Governments to establish, if not already established, State Mental Health Authority and to supervise through nodal agencies regulation, development and co-ordination of all activities with respect to mental health services and implement the Act and other laws—Directions to Union of India/State Governments/Union territories to take steps to set up one Central Government run mental hospital in each State/Union Territory and to take steps to set up full fledged State run mental hospitals in respective States/Union Territories—Compliance report to be submitted to the Court—Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995—National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.*

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 334 of 2001.

(Under Article 32 of the Constitution of India.)

Dr. A.M. Singhvi (A.C) and K. Ramamurthy Pranab Kumar Mullick (A.C.), Revathy Raghavan, Krishan Mahajan, Ms. Sunita Sharma, for Ms. Sushma Suri, Ranji Thomas, for Javed Mahmood Rao, Sanjay R. Hegde, V.G. Pragasam, Sanjay K. Shandilya for V.D. Khanna, A. Mariarputham, Prakash Shrivastava, Anil Shrivastav, T.V. Ratnam, K. Subba Rao, Kh. Nobin Singh,

A Ms. Rachna Srivastava, Ms. A. Subhashini, C. Siddhartha, K.L. Janjani, Y.P. Singh for Ajay K. Agrawal, Gopal Singh, Ms. Asha, G. Nair for Corporate Law Group, Tara Chandra Sharma, K.R. Sasiprabhu, Ranjan Mukherjee, Ms. Hemantika Wahi, Ms. Anu Sawhney, Jayshree Anand, AAG. Punjab, Rajeev Sharma, Ms. Kamini Jaiswal, J.P. Dhanda, Geetanjali Mohan for B.S. Banthia, S.V. Deshpande and Arup Banerjee for Ashok Mathur for the appearing B parties.

The following Order of the Court was delivered

On the basis of submission note of the Registrar (Judicial) to a news item published in all leading national dailies about a gruesome tragedy in C which more than 25 mentally challenged patients housed in a mental asylum at Ervadi in Ramanathapuram district were charred to death, the patients could not escape the blaze as they had been chained to poles or beds, this Court took *suo motu* action.

D After considering the factual report, Dr. Abhishek Manu Singhvi, learned senior counsel was appointed as *Amicus Curiae* to assist the Court and notice was also issued to the Union of India.

Thereafter, by order dated 15.10.2001 this Court called for the report of the State of Tamil Nadu on the subject and also sought information on the E topics which are mentioned, from the State Governments and Union Government on an affidavit of competent authority.

Thereafter, when the matter was placed before this Court on 21.1.2002, most of the States sought extension of time for compliance with the order passed by this Court. The matter was adjourned for 29.1.2002. On that day F also, some of the State Governments again sought extension of time for compliance with the directions issued by this Court. Further, learned Amicus Curiae submitted that the Mental Health Act, 1987 (for short "the 1987 Act") is not at all implemented by the concerned authorities and there is failure on the part of Central/State Governments to implement the 1987 Act.

G Mr. Soli J. Sorabjee, learned Attorney General appearing on behalf of the Union Government submitted that the 1987 Act is for the benefit of mentally ill persons and is required to be implemented right earnestly. He submitted that the Centre would take appropriate action for implementation of the 1987 Act as early as possible.

H In our view, it appears that there is slackness on the part of the

concerned authorities to implement the laws enacted by the Parliament. This is one such instance. A

One of the objects of the 1987 Act is to provide a law relating to the treatment and care of the mentally ill persons. Notification for implementing the Act was published in the Gazette of India on 11.1.1993. B

For the time being we would refer to the definition clause 2(1) which provides 'mentally ill person' to mean a person who is in need of treatment by reason of any mental disorder other than mental retardation. Further, clause 2(q) *inter alia* provides 'psychiatric hospital and 'psychiatric nursing home' to mean a nursing home established by any other person for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by any other person for such mentally ill persons. The said section reads thus:- C

> "2(q) "psychiatric hospital" or "psychiatric nursing home" means a hospital or, as the case may be, a nursing home established or maintained by the Government or any other person for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by the Government or any other person for such mentally ill persons, but does not include any general hospital or general nursing home established or maintained by the Government and which provides also for psychiatric services." D E

Further, Section 3 provides that—

(1) The Central Government shall establish an Authority for mental health with such designation as it may deem fit.

(2) The Authority established under sub-section (1) shall be subject to the superintendence, direction and control of the Central Government. F

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

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

(b) supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies (including places in H

A which mentally ill persons may be kept or detained) under the control of the Central Government.

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

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

Similar provision is made under Section 4 for the establishment of such authority by the State Government. Thereafter, Section 5 provides that Central Government may, in any part of India, or the State Government may, within C the limits of its jurisdiction, establish or maintain psychiatric hospitals or psychiatric nursing homes for the admission, treatment and care or mentally ill persons at such places as it thinks fit. Other important section is Section 6 which provides that on and after the commencement of this Act, no person shall establish or maintain a psychiatric hospital or psychiatric nursing home D unless he holds a valid licence granted to him under this Act. Section 8 further provides—when licence to continue or establish psychiatric hospital or psychiatric nursing home should be refused. Prayer is for implementation of these provisions. It appears that the aforesaid provisions are not implemented. Therefore, learned *Amicus Curiae* sought for issuance of following directions:-

E

(i) Every State and Union Territory must undertake a district-wise survey of all registered/unregistered bodies, by whatever name called, purporting to offer psychiatric/mental health care. All such bodies should be granted or refused license depending upon whether minimum prescribed standards are fulfilled or not. In F case license is rejected, it shall be the responsibility of the SHO of the concerned police station to ensure that the body stops functioning and patients are shifted to Government Mental Hospitals. The process of survey and licensing must be completed within 2 months and the Chief Secretary of each State must file G a comprehensive compliance report within 3 months from date of this order. The compliance report must further state that no mentally challenged person is chained in any part of the State.

(ii) The Chief Secretary or Additional Chief Secretary designated by him shall be the nodal agency to coordinate all activities involved H in implementation of the Mental Health Act, 1987, The Persons

with Disabilities (Equal Opportunities. Protection of Rights and Full Participation) Act. 1995 and The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act. 1999. He Shall ensure that there are no jurisdictional problems or impediments to the effective implementation of the three Acts between different ministries or departments. At the Central level, the Cabinet Secretary, Government of India or any Secretary designated by him shall be the nodal agency for the same purpose.

(iii) The Cabinet Secretary, Union of India shall file an affidavit in this Court within one month from date of this order indicating:-

(a) the contribution that has been made and that proposed to be made under Section 21 of the 1999 Act which would constitute corpus of the National Trust.

(b) Policy of the Central Government towards setting up at least one Central Government run mental hospital in each State and Union Territory and definite time schedule for achieving the said objective.

(c) National Policy, if any, framed u/s 8(2)(b) of the 1995 Act.

(iv) In respect of States/Union Territories that do not have even on full-fledged State Government run mental hospital, the Chief Secretary of the State/Union Territory must file an Affidavit within one month from date of this order indicating steps being taken to establish such full-fledged State Government run mental hospital in the State Union Territory and a definite time schedule for establishment of the same.

(v) Both the Central and State Governments shall undertake a comprehensive awareness campaign with a special rural focus to educate people as to provisions of law relating to mental health, rights of mentally challenged persons, the fact that chaining of mentally challenged persons is illegal and that mental patients should be sent to doctors and not to religious places such as Temples or Dargahs.

(vi) Every State shall file an affidavit stating clearly:

(a) whether the State Mental Health Authority under Section 3

A of the 1987 Act exists in the State and if so when it was set up.

(b) If it does not so exist, the reasons therefore and when such an Authority is expected to be established and operationalised.

(c) The dates of meetings of those Authorities, which already exist from the date of inception till date and a short summary of the B decisions taken.

(d) A statement that the State shall ensure that meetings of the Authority take place in future at least once in every four months or at more frequent intervals depending on exigency and that all the statutory functions and duties of such Authority are duly discharged. C

(e) The number of prosecutions, penalties or other punitive/coercive measures taken, if any by each State under the 1987 Act."

At this stage, we have again heard learned counsel for the parties and learned Attorney General submitted that as a first step the aforesaid directions D as suggested by the *Amicus Curiae* be issued and information as sought for be called for.

We direct accordingly. The State Governments as well as Central Government shall file affidavits complying the directions mentioned in the aforesaid paragraph nos. (i) to (vi). It is further directed that the necessary E affidavit as per order dated 15.10.2001 be also submitted, if not already tendered.

Stand over for 9.4.2002.

R.P. Writ Petition disposed of.