

HIGH COURT OF CHHATTISGARH : BILASPUR

---

Division Bench : Hon'ble Shri Satish K. Agnihotri &  
Hon'ble Shri P. Sam Koshy, JJ.

---

Writ Petition (PIL) No.39 of 2012

PETITIONERS

Smt. Mamta Sharma & Others

Versus

RESPONDENTS

State of Chhattisgarh & Others

(Writ Petition under Article 226/227 of the Constitution of India)

---

Present :- Shri Narendra Chandel, Advocate for the petitioners.  
Shri V.V.S. Murthy, Dy. Adv. General for the State.  
Shri Saurabh Dangi, Advocate appears as *amicus curiae*.

---

ORDER (OPEN COURT)

(Passed on this 16th day of September, 2013)

1. Heard learned counsel for the parties.
2. Initially, a writ petition, in the form of Public Interest Litigation (for short "PIL"), being WP No.3321 of 2004, was filed by Forum for Fact Finding Documentation and Advocacy, Raipur, seeking following reliefs :

"7.1 That, this Hon'ble Court be pleased to direct the state (respondent No.2) to keep the victim 'Chhaya' along with her child 'Rahul' in a safe place under supervision of 'guard' because the mother is insane lady and to provide the proper treatment to the victim 'Chhaya' through an expert of mental disease with providing

them food, shelter and other facilities treating them human beings.

7.2 That, this Hon'ble Court be pleased to direct the State to enquire about the entire matter relating to offence committed against the lady.

7.3 That, the Hon'ble Court further be pleased to direct the state (respondent No.2) to collect and keep all the insane girls, women who are wandering at the public place of this state, in a safety place and provide them proper and sufficient medical facility in connection with unsoundness of their minds in priority basis.

7.4 That, this Hon'ble Court be pleased to direct the respondent No.2 (State) to follow the contents of Sec.23 of Mental Health Act, 1987 strictly and to provide them proper and sufficient treatment because most of them are wandering without any cloth which has crossed the limitation of humanity also.

7.5 That, the Hon'ble Court further be pleased to direct the respondent No.1 and respondent No.2 to establish and manage 'Mental Hospital' and Mental Asylum for the Chhattisgarh State like other States, urgently in the interests of welfare of the public of the State.

7.6 Any other relief, this Hon'ble Court deems fit and proper be also granted to the victims (mother and child)."

3. A Division Bench of this Court by order dated 18-1-2005 observed that :

"Perusal of PUD shows that in the whole State of Chhattisgarh there is no place for keeping mentally challenged persons and they are wandering in open streets in whole State and so far no separate mental hospital is available in the whole State."

4. The aforesaid order was passed by this Court in the light of directions issued by the Supreme Court in the matter of "*In Re. Death of 25 chained inmates in Asylum Fire in Tamil Nadu*" *Saarthak Registered Society and Another v. Union of India and Others*"<sup>1</sup>.
5. In the said decision, the Supreme Court directed all the State Governments to frame policy and initiate steps for establishment of at least one Mental Health Hospital in each State. It was further clarified that a Mental Health Hospital as stated above means a full-fledged Hospital catering only to mentally challenged persons and does not include a separate psychiatric ward in a Medical College or Government Hospital.
6. Ultimately, WP No.3321 of 2004 was finally disposed of by this Court on 16-9-2008, observing as under :

---

<sup>1</sup>AIR 2002 SC 3693

“3. The petitioner, thus, in substance was seeking a direction to the respondents to provide mental health services in the State of Chhattisgarh.

4. In the affidavit dated 07-07-2008 filed by Dr. V. Jaiprakash, Deputy Director, Directorate of Health Services, Raipur, paras 3 & 4 read as follows :-

'3. In addition to the reply regarding construction of Mental Hospital in the State of Chhattisgarh. It is respectfully submitted that a work order has been issued to Mrs. (sic) M/s R.K. Transport & Constructions Pvt. Ltd., by order dated 31-05-2007, directing to complete the work within 18 months from the date of issuance of the work order. A copy of the order dated 31-05-2007 is attached and marked as **Annexure D-1.**

4. It is respectfully submitted that, it is expected that the construction of the Mental Hospital may be completed by the end of year 2008.'

5. In support of the above averments of the affidavit, a copy of work order dated 31-05-2007 issued by the Executive Engineer, Public Works Department, Bilaspur to M/s R.K. Transport & Constructions Private Limited, Korba has also been filed.

6. Thus, it is apparent that the State Government is making all possible efforts to provide mental health services in the State of Chhattisgarh.

7. So far as the compliance of Sections 23 & 24 of the Mental Health Act, 1987 is concerned the petitioner has not mentioned any specific case with details alleging noncompliance of the provisions of these sections.”

7. It was clearly stated by the State Government, in its affidavit dated 7-7-2008, filed in WP No.3321 of 2004, that construction of Mental Hospital in the State of Chhattisgarh may be completed by the end of year 2008.
8. The State Government completely failed to comply with the order, as it is informed that though the building was constructed, but it was never made a hospital, as aforesaid. It is further informed that the staff was also created numbering 135, subsequently they were posted in other places and the mental hospital as directed remained a dream for the persons whose kith and kins are suffering from mental illness.
9. In the meantime, the Mental Hospital building, which was constructed for purpose of treating the mentally challenged persons was handed over to the State University, Bilaspur, for a period of three years commencing from 23-4-2012, as is evident from the return dated 7-2-2013 filed by the State, meaning thereby

all the persons who are suffering from the above-stated mental ailment have been placed in dock and also establishes the fact that the State Government does not seem to be interested in opening the Mental Health Hospital at Bilaspur (Chhattisgarh), as undertaken by the State in the earlier writ petition.

10. Further, the State failed to discharge its obligation as well as duties and also the same is violative of the order dated 18-1-2005 of this Court as well as the directions issued by the Supreme Court in "*In Re. Death of 25 chained inmates in Asylum in Tamil Nadu*" *Saarthak Registered Society* (supra). This is a serious matter where human beings, who are mentally challenged, are suffering. They do not know what to eat and what to wear. Even they do not have food & clothes to wear and on account of this they some times become violent also.
11. Subsequent thereon the present PIL, being WP (PIL) No.39 of 2012 was filed by Smt. Mamta Sharma, Smt. Sunita Tikariya & Shri Bhishma Singh Tikariya, public spirited persons, seeking a relief to the extent to issue a writ in the nature of mandamus commanding to the respondent authorities to cancel the allotment of State University, Bilaspur, and the same may be provided for the purpose of mental hospital and nursing home to render the medical facilities to mentally ill persons.
12. The plea taken by the learned Dy. Advocate General appearing for the State that they created some wards in other hospitals is noticed to be rejected on the ground that the same is violative of

the directions of the Supreme Court in “*In Re. Death of 25 chained inmates in Asylum in Tamil Nadu*” *Saarthak Registered Society* (supra) wherein it was clearly directed to all the State Governments to frame policy and initiate steps for establishment of at least one Mental Health Hospital in each State. It was further clarified that a Mental Health Hospital as stated above means a full-fledged Hospital catering only to mentally challenged persons and does not include a separate psychiatric ward in a Medical College or Government Hospital. Mere creation of wards in other hospitals is not compliance of the order of the Supreme Court, as the requirement is a full-fledged hospital catering needs of mentally ill persons.

13. In the State of Chhattisgarh no mental hospital has been created till date and, as such, no care of mentally ill persons is being taken. This is a requirement that atleast one Mental Health Hospital should be in each State and the State has also given its undertaking, as aforestated, that the Mental Health Hospital would be created. It is a serious matter. University is necessary for education, but the basic human beings require first food, shelter, clothes to wear, proper treatment and then education and, as such, priority must be given to the Mental Health Hospital.
14. For the reasons mentioned hereinabove, we direct as under :
  - i. The Mental Health Hospital building at Bilaspur (Chhattisgarh) shall be handed over to the Health Department of the

State of Chhattisgarh within a period of six weeks.

- ii. All the staff including the Doctors be posted within a period of fortnight from the date of handing over of the Mental Health Hospital at Bilaspur (Chhattisgarh).
- iii. After posting of the Doctors & staff, the State is directed to search, locate and admit the mentally challenged persons in the Mental Health Hospital at Bilaspur (Chhattisgarh) for proper treatment, food and clothing.
- iv. We also make it clear that the facilities provided in other hospitals and medical colleges of the State for treatment of the mentally ill persons shall continue, as it is.

15. It is ordered accordingly.

16. With the aforesaid observations and directions, the writ petition is disposed of finally. No order as to costs.

J u d g e

J u d g e

Gowri