

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(CRL.) 3317/2017

RAVINDER

..... Petitioner

Through: Mr.Akhil Sharma, Advocate with
Ms.Isha Aggarwal, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr.Tushar Sannu, Advocate with
Mr.Chaitanya Gosain, Advocate for Mr.Rahul
Mehra, Standing Counsel (Crl.) for R-1&2 along
with Insp.Vikram Singh, ASI Krishan Kumar,
P.S.Prashant Vihar.

Mr.S.D.Singh, Advocate with Mr.Rahul Kr.Singh,
Advocate for R-3 along with Dr.Om Prakash
(Associate Prof.), Dr.Pravesh (SR.), IHBAS.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

ORDER

%

25.11.2017

Crl.M.A.No.19521/2017 (exemptions)

1. Allowed subject to all just exceptions.

W.P.(Crl.) 3317/2017

2. The petition was directed to be listed before this Court on an urgent basis
and is taken up for hearing today.

3. Notice. Mr. Tushar Sannu, the learned counsel accepts notice for

Respondents No.1 and 2. Mr. S.D. Singh, the learned counsel accepts notice for Respondent No.3. Respondent No.4 is the person whose release has been sought by his son, the Petitioner.

4. This a writ petition complaining of illegal detention of Shri Ram Kumar @ Ram Kanwar (Respondent No.4) by the Institute of Human Behaviour and Allied Sciences ('IHBAS') (Respondent No.3).

5. The facts depicted in the present petition reflect a disturbing state of affairs as regards *prima facie* violations of the Mental Health Act, 1987 ('MHA') at various levels. It may be noted here that the Mental Healthcare Act, 2017 which is to replace the MHA is yet to be made operational.

6. The background to this petition is that Respondent No.4, who is 72 years old, has been defending a claim petition before the Motor Accidents Claim Tribunal ('MACT') at Rohini for over 10 years now as party-in-person. He is, in those proceedings, a co-respondent with his son, the Petitioner herein, who is operating a taxi. It appears that the mini-bus owned by Respondent No.4 and driven by the Petitioner was involved in the accident which gave rise to the above claim.

7. The above case was listed before the MACT, Rohini Courts on 3rd November 2017. It appears that in the course of the hearing, certain arguments and altercations took place between Respondent No.4 (appearing in person) and the lawyers appearing for the claimants in the said proceedings.

8. It appears that the Presiding Officer, MACT, Rohini called in the police and decided to have Respondent No.4 sent for medical evaluation to the Dr. Baba Saheb Ambedkar Hospital (BSA Hospital) in Rohini which is at a distance of around 2.5 k.ms. from the Rohini District Court. The Court has been shown the “Emergency Registry Card” of the BSA Hospital which shows that Dr. Himanshu Bhatheja, M.D. General Medicine, Senior Resident (‘SR’) at BSA Hospital first saw Respondent No.4 at 2.25 pm on 3rd November, 2017. He noted that the Respondent No.4 was “complaining, irrelevant, sometimes abusive giving history of stent in coronary artery in Apollo Hospital but showing no documents”. The said SR did not find anything abnormal but still referred Respondent No.4 to the Medical SR/Psychiatry SR for further medical examination and opinion.

9. The “Emergency Registration Card’ further shows that at 2.50 pm, Respondent No.4 was examined by Dr. Ashutosh Dash, SR. Under a portion titled “Mental State Examination” Dr. Dash noted: “No psychopathology detected”. Further, he noted “no thought or perpetual disturbances.” Under “attention and concentration”, he noted: “not maintained during interview”.

10. It appears that, in his own hand, Respondent No.4 wrote on the side of the above notings: “I am under treatment of Dr. K.K.Saxena, Indraprastha Hospital. Refused Admission in BSAH”. The Respondent No.4 also signed with the date of 3rd November 2017.

11. Below the above are notings to the effect: “patient repeatedly reluctant to go Medicine SR/ECG for further MX”; “on the cross sectional examination

the patient is not showing any problems for memory, thought disturbances”; “no past history of any psychiatric illness”. It appears that Respondent No.4 was kept at the BSA Hospital till 5:45 p.m.

12. As the events thereafter have unfolded, ASI Krishan Kumar (who is incidentally also present in Court and has been instructing the learned counsel appearing for the State) took Respondent No.4 to the Rohini District Courts complex by which time, the said Court had closed for the day. As a result, the Respondent No.4 had to be taken to a Duty Metropolitan Magistrate (Duty MM). It appears that the Duty MM was in the trans-Yamuna area and, therefore, the Respondent No.4 could be produced before her only at 9:30 p.m. at her residence. The order passed by her reads as under:

“DD No. 18 PP PV Dated 03.11.2017
PS Prashant Vihar
03.11.2017

At my home at 09.30 pm

Pr. Person Ram Kumar with ASI Krishan Kumar

A person Ram Kumar has been produced before me today at my home by ASI Krishan Kumar. It is submitted that this person has created a *ruckus* today in Court No. 13 Rohini Court today and the learned Judge has got informed the area police about it. His MLC was done at BSAH, Sector 10, Rohini. MLC perused.

I have talked quite some time with the patient. He is unable to give any coherent answers and seems to be potentially violent. His whereabouts and family is also not ascertainable for questioning him. He has a very threatening attitude towards

everyone.

Hence, I deem it fit to allow this application. I hereby pass reception order WRT patient Ram Kumar. He be kept under observation in IBHAs for 24 hours. Be produced before DMM on 5th November 2017. IBHAS to send their report in this regard.”

13. It now transpires that at that stage, no family members of Respondent No.4 was informed that he had been detained and was being produced before the Duty MM. ASI Krishan Kumar also did not consider it necessary to do so. As can be seen from the subsequent records of IHBAS, Respondent No.4 was carrying his case papers with himself. It should have easily given details of his address. It appears that he was also carrying his mobile phone. Yet the learned MM noted his “whereabouts and his family is also not ascertainable from questioning him”.

14. At the above stage, there was the medical report of the BSA Hospital which did not recommend admission to a hospital. Yet on the basis that he was “unable to give any coherent answer” and “seems to be potentially violent” she passed a “reception order” without referring to Section 28(1) of the MHA which mandates that the Magistrate may authorize detention of an alleged mentally ill person in a psychiatric hospital for a period not exceeding 10 days for enabling any Medical Officer to determine whether a medical certificate in respect of that alleged mentally ill person may properly be given under clause (a) of sub-section (2) of section 24. It must be noted that 3rd November 2017 was a Friday. The following day was Saturday and a holiday on account of Guru Nanak’s Birthday. Respondent No.4 was asked to be produced again before the Duty MM on Sunday and

IHBAS was asked to send a report.

15. When IHBAS received the Respondent No.4, it was 11 pm. The notes in the file of IHBAS show that Respondent No.4 was accompanied by the ASI and no one else. Why no family member was informed even at this stage is not clear. The file notings further show that Respondent No.4 was carrying his bag containing case papers which the ASI refused to take custody of. The observations of the doctor on duty show that Respondent No.4 had unkempt nails and smelled of tobacco smoke. He was restless, irritable; he stated that he wanted to rid the judiciary of corruption and that several people had targeted him with several court cases. The DMO, SR noted that he was refusing to go to bed but appeared drowsy. There is nothing in the notes of 3rd November 2017 that point to any “mental illness.” Nevertheless, the noting on 4th November 2017 of the DMO is to the effect “psychopathology maintained”. This is despite the fact that on 3rd November 2017, Dr. Dash of the BSA Hospital had specifically noted that there was no “psychopathology detected”. The other notes of 4th November 2017 show that Respondent No.4 continued to be irritable with “grandiose ideas”, “impaired judgment’ and absent “insight”. At 7 pm, it was noted that he refused to sit on the bed and maintained that he was not a patient. All of the above does not appear unusual if a person has been brought to a hospital for mental illnesses against his will.

16. On 5th November 2017, at 8.30 am, the DMO, SR noted that “patient woke up early, got dressed in his black suit and demanded to be sent home. He was repeatedly asking to call the police personnel who were with him so

that they could take him to Court where he would fight his case; escaping tendency”.

17. Half an hour prior to the above noting, on 7th November 2017, Dr Kirti Sharma of IHBAS separately noted in the emergency card: "patient requires admission for detailed assessment and evaluation - It is requested to the Hon'ble Court to issue appropriate reception order under Section 28 of the MHA Act, 1997 may be passed for the same."

18. The Court repeatedly asked Mr. S.D. Singh, learned counsel appearing for IHBAS, whether there was any other 'report' prepared by IHBAS for being produced before the Duty MM on 5th November 2017. He answered in the negative but urged that all the notings on the file maintained by IHBAS be seen.

19. When the case was listed on 5th November 2017, the Duty MM passed the following order:

“ASI Krishan in person along with patient namely Ram Kumar who is produced from IHBAS referred by Dr. Kirti Sharma, Senior Resident Psychiatry, IHBAS Delhi along with his two sons namely Ravinder and Rajiv and one daughter namely Smt. Renu.

I perused the report of patient Ram Kumar. Report of doctor reflects that the patient required admission for detailed assessment and evaluation.

Concern M.S. IHBAS is hereby directed to admit the patient Ram Kumar.

IO and concerned doctor is hereby directed to file the medical report of patient before concerned court on 20.11.2017. Copy dasti.

sd/-
Duty MM (North) Rohini Courts, Delhi”

20. It is significant that on the above date of hearing, the presence of two of the sons and the daughter of Respondent No.4 was noted, and yet the learned Duty MM does not appear to have interacted with them at all. The order simply states that “the patient required admission for detailed assessment and evaluation” and a direction was given to IHBAS to admit the Respondent No.4.

21. The above order was clearly contrary to the provisions of Section 28 (1) of the MHA which makes it mandatory for the Magistrate call for a 'medical certificate' in respect of the allegedly mentally ill person as required by Section 24 (2) (a) of the MHA. Nowhere in the file produced today in the Court, the Court could not peruse any such certification that the Respondent No.4 is a 'mentally ill person'. Without such certification, continued detention of the Respondent No.4 at IHBAS *prima facie* appears to have erroneously ordered by the Duty MM.

22. Further in terms of Section 28 (2) MHA, the detention could be ordered only for a period of ten days at a time. However, the Duty MM ordered detention of Respondent No.4 till 20th November 2017 i.e. for 15 days. Clearly the Duty MM did not peruse the MHA. Unfortunately, the learned APP for the State did not draw the attention of the Duty MM to the above provisions of the MHA. What is also significant is that the Duty MM did not notice that none was representing Respondent No.4, although his family was present.

23. Meanwhile, the family of Respondent No.4 has been made to run from pillar to post trying to get Respondent No.4 released from IHBAS. As it transpired on 7th November 2017, Respondent No.4, who is a heart patient, complained of breathlessness and IHBAS referred to him for consultation to the GTB Hospital, Dilshad Garden. It is pointed out by learned counsel for the Petitioner that Respondent No.4 did not receive appropriate treatment for his heart problem at the GTB Hospital. Respondent No.4 was thereafter taken back to IHBAS.

24. On 20th November, 2017, the Respondent No.4 was again produced before the Court of the learned MM-04, North, Rohini Court. The report dated 10th November 2017 prepared by IHBAS and addressed to the learned MM for the hearing reads as under:

“The aforesaid patient was admitted at IHBAS on 03.11.2017 in compliance to the Hon’ble Court order for detailed assessment and evaluation. It is submitted to the Hon’ble Court that patient is under evaluation and after completion of evaluation, he will be examined by Standing Medical Board. This whole process will take around 4-6 weeks and the report will be submitted to the Hon’ble Court at the earliest.

This is for your kind information and necessary action, pleased.”

25. The order dated 20th November, 2017, passed by the learned MM reads as under:

“Ld. APP for State.

ASI Krishan in person with patient namely Ram Kumar.

Medical report of patient Ram Kumar filed which reflects that patient is under evaluation and after completion of evaluation, patient will be examined by Standing Medical Board and this whole process will

taken around 4-6 weeks' time.

As per medical report, IO and concerned doctor is directed to file the medical report of patient on 05.01.2018. IO is further directed to admit the patient Ram Kumar in IBHAS.

Director IBHAS is further directed to take care of mental as well as physical health care of the patient.

Director IBHAS is also directed to appear in person in the court on next date of hearing.

Another application moved by applicant for release of patient Ram Kumar @ Ram Kanwar from IBHAS. In view of the report of doctor, the present application stands dismissed.”

Sd/-

MM -04 (North), Rohini Courts, Delhi”

26. It is significant again that even as on that day, i.e., 20th November 2017 Respondent No. 4 was not represented by counsel. An application was filed for release of Respondent No. 4 which was simply dismissed in view of the report of IHBAS. Again the attention of the learned MM was not drawn to the mandatory requirement under Section 28 read with 24 (2) (a) of the MHA. The order which extended the detention till 5th January 2018 at IHBAS without a certificate of mental illness being issued was in clear violation of those provisions.

27. The learned MM also appears not to have taken note of the averments in the application filed by the son of Respondent No.4 that “the Applicant’s father wills suffer irreparable physical, as well as mental loss due to unnecessary stay in the IHBAS.” It was specifically mentioned that he is heart patient.

28. The Court has been shown a report dated 24th November 2017 of the IHBAS which read thus:

“The aforesaid patient was admitted at IHBAS on 3rd November 2017 in compliance to the Hon’ble Court order for detailed assessment and evaluation. Patient has been assessed in detailed and diagnosed as suffering from Manic Episode for which medications were prescribed but patient had not been taking medications for the same. **Although patient has no high risk behaviour and psychiatrically can be treated on outpatient basis.** The final report of mental status will be submitted to the Hon’ble Court through Standing Medical Board at the earliest.

It is further submitted to the Hon’ble Court that patient is known case of Coronary artery disease/Ischemic cardiomyopathy (Ejection fraction 30-365%) with Moderate MR with Mild TR. Currently, patient reported breathlessness and he was sent to Cardiology Department, Rajiv Gandhi Super Specialty Hospital. In Rajiv Gandhi Super Specialty Hospital, he has been admitted on the advice of the concerned doctors (copy enclosed).

Hence it is requested to the Hon’ble Court to kindly issue discharge order from IBHAS and issue an order for admission in Rajiv Gandhi Super Specialty Hospital.

This is for your kind information and necessary action, please.”

29. The above report is prepared for hearing on 5th January 2018. It clearly states that Respondent No.4 has no “high risk behaviour and psychiatrically can be treated on outpatient basis.” Yet, IHBAS did not instruct the learned APP or by itself bring this fact to the notice of the learned MM at once.

30. It appears that as a result of the above report, Respondent No. 4 has now

been taken to Rajiv Gandhi Super Specialty Hospital where he is present hospitalized. Learned counsel for the Petitioner points out that his heart condition has deteriorated.

31. The Court is left in no doubt that there has been a total violation of the mandatory provisions of Section 28 (1) read 24 (2) (a) of MHA at every stage in these proceedings. In none of the proceedings did the Duty MM/MM ensure that the Respondent No.4 was represented by counsel. No question was even put to him in that regard. The orders passed, on the reports of IHBAS, have resulted in a violation of the fundamental right of Respondent No.4 to life and liberty under Article 21 of the Constitution.

32. While a further detailed order will have to await the completion of pleadings and hearing of all the parties, the Court issues the following directions for immediate compliance:

(i) Respondent No. 4 is hereby directed not to be taken back to IHBAS after he is found fit for discharge from the Rajiv Gandhi Super Specialty Hospital.

(ii) After his discharge from the Rajiv Gandhi Super Specialty Hospital, Respondent No.4 will be taken care of by his family at his home;

(iii) The orders dated 3rd, 5th and 20th November 2017 passed by the learned Duty MMs and MM respectively directing the detention of Respondent No.4 at IHBAS are hereby set aside. As far as IHBAS is concerned, this order should be treated as an order of discharge of

Respondent No. 4 as inpatient of IHBAS. Further proceedings before the MM are hereby stayed.

(iv) Separate affidavits shall be filed by the Director, IHBAS as well as each of the mental health professionals associated with the treatment of Respondent No. 4 during his stay at IHBAS explaining how without a proper certificate being issued regarding the mental illness of Respondent No. 4 within the meaning of Section 24 (2) (a) read with Section 2 (1) of the MHA his continued detention in IHBAS was justified;

(v) An affidavit giving dates and time be filed by the ASI Krishan Kumar explaining *inter alia* why the family members of Respondent No. 4 were not immediately informed of his whereabouts when he was detained on 3rd November 2017 itself and why this was not done not till 5th November 2017. He also file a detailed account of what transpired between the time that Respondent No. 4 was taken from the BSA Hospital to the residence of learned MM at 9.30 pm on 3rd November 2017.

(vi) The above affidavits will be filed within two weeks with advance copy to learned counsel for the Petitioner who may file a response thereto before the next date of hearing.

(vii) A copy of this order to be placed forthwith before the concerned Committees of the High Court on the administrative side supervising the work of the learned MMs who passed the orders dated 3rd, 5th and

20th November 2017 together with a copy of the paperbook of this case for their perusal and appropriate action;

(viii) A copy of this order be delivered forthwith to the Director, Delhi Judicial Academy (DJA) to organise at least four exclusive orientation courses on the MHA, in the next year, for the benefit of judicial officers as well as the mental health professionals of IHBAS and other similar institutions in the NCR of Delhi in which the representatives of the Delhi Police will also participate.

33. List on 14th December 2017 at 2.15 pm. A copy of this order be given *dasti* to learned counsel for the parties under the signature of the Court Master/Private Secretary.

S. MURALIDHAR, J.

I.S. MEHTA, J.

NOVEMBER 25, 2017
'anb' lrd