

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-4978 of 2016

Date

Order with signature of Judge

**Present: Mr. Justice Muhammad Ali Mazhar
Mr. Justice Agha Faisal.**

**M.JAFFER RAZA.....V/S.....PROVINCE OF
SINDH & ANOTHER**

22nd May, 2018

Mr. Asad Iftikhar, Advocate for Petitioner.
Mr. Ghulam Shabbir Shah, Addl. Advocate
General Sindh alongwith Senator Dr. Karim
Khuwaja Chairman Sindh Mental Health
Authority.

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Muhammad Ali Mazhar, J : - This petition has been brought in the larger public interest by an advocate of this Court. It is contended in the petition that “The Sindh Mental Health Act 2013”, as well as Rules 2014 framed in pursuance of the Act are in field, but there is no proper implementation of the Act, hence in order to safeguard the interest of patients suffering from mental disorder as defined under the Act 2013, the petitioner has entreated for the following declaration and directions against the respondents:-

- i. *Declare that the acts and omissions of the Respondents is not establishing the Authority under Section 3, not establishing psychiatric facilities under Section 6 and not establishing community based health services under Section 7 of the Act are illegal and in contravention of the said Act.*
- ii. *Direct the Respondents to establish the Authority under Section 3 and psychiatric facilities under Section 6 of the said Act, expeditiously.*
- iii. *Direct the Respondents to establish community based health services under Section 7 of the said Act.*

- iv. Direct the Respondents to furnish a report on the psychiatric facilities established in the province since the promulgation of the said Act, if any.*

2. On last date of hearing, the learned Additional Advocate General Sindh was directed to call the Chairperson of the authority to apprise this court as to whether this Act has been made functional in the larger public interest or not? Today Dr. Karim Khuwaja, Senator and Chairman, Sindh Mental Health Authority is present and he has also submitted brief profile under the heading “Statement of Sindh Mental Health Authority”. He has pointed out that the Act was promulgated in 2013 whereafter Government of Sindh also promulgated Sindh Mental Health Rules 2014 to handle the procedural matters required to be complied with under the provisions of the Act. He has also attached Notification dated 25.08.2017 whereby the Government of Sindh constituted Sindh Mental Health Authority under the provision of Section 3(1) of the Sindh Mental Health Act, 2013 which describes the posts of Chairperson, Secretary and some other members. He has also attached copy of a Notification dated 13.04.2018 which was issued by the Secretary Health, Government of Sindh in pursuance of Section 4 of the Sindh Mental Health Act 2013 whereby the competent authority i.e. Chief Minister Sindh notified the Board of Visitors under the Sindh Mental Health Authority for a period of two years to carry out the purposes of the Act. This notification depicts that Justice (Retd.) Deedar Hussain Shah has been appointed as a Chairperson with four other members. The Chairperson of the Authority has also submitted Minutes of the First Meeting of Sindh Mental Health Authority dated

16.10.2017, to show that in the meeting various aspects were discussed to ensure due compliance of law. The concluding paragraph reflects that after due deliberation it was decided in the meeting of the Authority that Health Department would be requested to float the summary to the Chief Minister Sindh for grant of seed money for quick start of the Sindh Mental Health Authority at the earliest. This Minutes of Meeting must have been forwarded in the month of October 2017 to the competent authority but no progress has been shown by the learned Additional Advocate General Sindh or the Chairperson of the Authority, which may be considered a serious attempt towards its implementation.

3. The Chairperson of the Authority further submitted that after the aforesaid meeting, one more meeting was convened and he approached to the competent authority for grant of seed money time and again, but the matter is still pending. Once the law is made it is the responsibility of the State to implement it in letter and spirit, which is one of the basic elements and component of good governance. It appears that some preliminary formalities have been completed including constitution of the Authority and the Advisory Board, but due to non-availability of requisite fund the Authority is not made functional. Under Section 7 of the Sindh Mental Health Act 2013 it is further provided that community based mental health services shall be setup for providing mentally disordered persons, their families and others involved in their care with guidance, education, rehabilitation, aftercare and preventive measures and other support services on an informal basis. The explanation attached to this section elaborates that for

the purposes of this section, “community” shall include family, home, workplace, education institutions and other places where care and aftercare can be provided on an informal or voluntary basis. The law appears to be very effective and vibrant but unfortunately its proper implementation is lacking due to non-seriousness and proper attention. Unless the requisite funds are provided for establishing the Authority and its function in full swing, no community based mental health services can be setup to achieve its aim and objective. Besides establishing community based mental health services the Authority has to provide for and regulate the setting up of help lines and crisis centres for the general public with regard to mental health under subsection (7)(h) of Section 3 of the Act.

4. The Chairman of the Authority at this juncture avowed that some more vital functions are vested in the Authority in terms of Rule 22 of the Sindh Mental Health Rules 2014, which requires to maintain a register for registration of qualified psychiatrist recognized by the Pakistan Medical and Dental Council with the power to struck the name of a registered psychiatrist from the register if he is found guilty of misconduct and/or malpractices. It is further postulated in the said Rule that no psychiatric facility shall engage or employ a Psychiatrist unless he is registered with the Authority. To perform all these functions, a Secretariat is required to be established, but the Chairman of the Authority submits that there is no permanent secretariat or office of the Authority where the members may sit together and perform their statutory functions.

5. To enjoy the protection of law and to be treated in accordance with the law is an inalienable right of every citizen. The public functionaries are obliged to redress the grievances of citizens as envisaged by Article 4 of the Constitution of Islamic Republic of Pakistan which provides protection of law to every citizen. Whenever any inalienable right is violated, it amounts to violation of fundamental rights. Every statutory body or public functionary is supposed to function in good faith, honestly and within the precincts of their power so that persons concerned should be treated in accordance with the law.

6. The object of good governance cannot be achieved by exercising discriminatory powers unreasonably or arbitrarily and without application of mind, but such objective can only be achieved by following rules of justness, fairness and openness in consonance with command of constitution enshrined in different Articles of the Constitution including Article 4 and 25 which is supreme law of this country.

7. Learned Additional Advocate General Sindh submits that summary has been moved to the Chief Minister Sindh/Cabinet for allocation of funds, but it has not been sanctioned so far. The Chief Secretary Sindh is directed to immediately look into the matter on extreme priority to ensure that the summary will be approved for the allocation of fund within seven days and on allocation of funds the Authority shall perform its responsibilities and functions in accordance with law.

9. Petition is disposed of in the above terms.

Copy of this order may be transmitted to the Chief Secretary Sindh as well as Chief Minister's Secretariat and also learned Addl. A.G. Sindh to ensure compliance within the stipulated period.

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