2018 SCC OnLine Del 8450

In the High Court of Delhi at New Delhi
(BEFORE S. MURALIDHAR AND C. HARI SHANKAR, JJ.)

Dr. Sangamitra Acharya & Anr. ..... Petitioners

Mr. Trideep Pais with Mr. Shivam Sharma, Ms. Seema Mishra, Ms. Deeksha Gujral, Advocates.

v.

State (NCT of Delhi) & Ors. ..... Respondents

Mr. Rajshekhar Rao, Amicus Curiae.

Mr. Rahul Mehra, standing counsel with Ms. Kamna Vohra, additional standing counsel and Mr. Prashant Singh, Advocate for R-1.

Mr. Joydeep Mazumdar, Mr. Debojyoti Bhattacharya & Ms. Momata C. Bhattacharya, Advocates for R-2, 3, 4.

Mr. Mukul Talwar, Senior Advocate with Mr. Sunil Kumar, Mr. Mrinal Kanwar & Mr. Ankit Dixit, Advocates for CIMBS.

Mr. Kamlesh Mishra with Mr. Ahmad Parvez and Md. Aslam, Mr. Aditya Mishra, Advocates for ALMAS Ambulance.

W.P. (Crl.) 1804/2017 & C.M. No. 9963/2017

Decided on April 18, 2018, [Reserved on : 17th February, 2018]

The Judgment of the Court was delivered by

S. MURALIDHAR, J.

Introduction

1. Important questions of law arise for determination in this petition under Article 226 of the Constitution of India filed by a teacher of classical music, and his wife (Petitioners 2 and 1 respectively), seeking a writ of *habeas corpus*. These questions involve interpretation of the relevant provisions of the Mental Health Act, 1987 ('MHA') in light of the right to life, liberty, dignity and in light of the right to privacy and autonomy of an adult female, as guaranteed in the Constitution of India.

2. The chief protagonist in this petition is a 23 year old woman, Z (name withheld for reasons of privacy). Around 5 pm on 11th June 2017, Z was forcibly taken away from the residence of her music teacher in Khirki Extension, Delhi with whom she had been residing since she turned 18. This was done at the behest of Z's parents and brother, with the help of the local police of Police Station (PS) Malviya Nagar, and an ambulance service. She was taken away to a privately run mental hospital and kept there without her consent till the morning of 13th June 2017. Pursuant to the orders passed on 12th June 2017 in this petition, Z was produced before this Court on 13th June 2017. Z returned to the Petitioners' residence that day on the orders of this Court. But that obviously was not the end of the matter.

3. In the hearings that ensued over the next few months, this Court heard the submissions of the Petitioners and Z, her parents and brother, the police, the private mental hospital and the ambulance service. The records of the police, the private mental hospital and the ambulance service and the documents produced by the parents and brother of Z were examined. The Court was assisted by Mr. Raj Shekhar Rao, Advocate, appointed as Amicus Curiae.

4. In the judgment that follows the Court has concluded that the forcible taking away of Z from the residence of the Petitioners on 11th June 2017 and her consequent detention at the private mental hospital till the morning hours of 13th June 2017 was

illegal and unconstitutional and violative of her fundamental rights to life, liberty, dignity and privacy under Article 21 of the Constitution of India and Section 19 of the MHA. The Court has passed consequential orders fastening liability on each of the actors responsible for the above illegal acts and awarded Z token compensation even while leaving it open to her to seek other appropriate legal remedies for further reliefs.

The Respondents

5. The State of the National Capital Territory of the Delhi represented by the Station House Officer (SHO) of PS Malviya Nagar is Respondent No. 1. Z's mother, father and brother are Respondents 2 to 4 respectively. The Cosmos Institute of Mental Health and Behavioural Sciences ('CIMBS'), Delhi Psychiatry Centre, the private mental health facility at 35, Defence Enclave in Preet Vihar, Delhi, its Director Dr. Sunil Mittal, and the other mental health professionals associated with CIMBS - Dr. Sameer Kalani and Dr. Raj Mishra - participated in the hearings by filing their respective affidavits and producing the relevant record. The Almas Ambulance Service ('Almas') through its Director Dr. Israul Haque Shaikh, and its employees viz., Mr. Abdul Gaffar, Mr. Virender Kumar Mishra, and Ms. Anamika Tiwari have also participated in the hearings by filing their respective affidavits and producing the record. These parties have been represented by counsel. They have also filed their respective written submissions.

6. The Court, therefore, considers it appropriate to formally implead CIMBS, Dr. Mittal, Dr. Mishra, and Dr. Kalani as Respondents 5 to 8 respectively. Almas, Dr. Shaikh, Mr. Gaffar, Mr. Mishra and Ms. Tiwari are impleaded as Respondents 9 to 13 respectively.

The background

7. During the summer vacation of this Court in 2017, this petition was first mentioned for listing on 12th June 2017. The Petitioners rushed to this Court concerned about the safety and security of Z. The Petitioners stated that Z had been residing with them since she was 18 years and had been learning Hindustani classical music from both of them since she was 11 years old. Z is stated to be deeply interested in pursuing a career in classical music. The Petitioners stated that Z was unable to get along with her parents and her brother. Once she turned 18, Z voluntarily moved in with the Petitioners at their residence. Since then, the Petitioners had been taking care of her.

The first round before the MM

8. Unhappy that Z had left them, her parents instituted Criminal Complaint No. 255/1A/2014 under Section 25 of the MHA in the Court of the learned Metropolitan Magistrate 10 ('MM') (South-East), Saket Courts, Delhi in 2014. In the said complaint Z's parents averred that there was a history of mental illness running in the family and that their daughter's behaviour had undergone a drastic change since 2011. They alleged that their daughter had been enticed away by the Petitioners who had undue influence over Z from the time when she was a minor. They alleged that their daughter was suffering from a serious mental disorder which required medical care and treatment. They prayed for a direction that Z should remain under the care and control of her parents.

9. The said complaint came to be dismissed by the MM on 29th April 2015. In the said order, the learned MM noted that a chamber hearing was held with the parties. One Dr. Sidharth Chellani, a psychiatrist who claimed to have treated Z, appeared before the MM and explained his report dated 25th May 2014. The learned MM noted that Z spoke about being harassed by her parents previously and how she had approached National Commission for Women ('NCW') for redress. Z informed the MM that she was a major; had never suffered from any mental ailment; had no intention of joining her parents and wanted to live separately.

10. In para 4 of her order dated 29th April 2015, the learned MM noted as under:

> "I have heard the arguments advanced by both the parties, and have gone through the material available on record and after considering the medical records furnished by the complainant regarding mental ailment suffered by the family members and also the medical record of the alleged victim (Z) and after giving a chamber hearing to both the parties, I am of the considered view that victim (Z) is not suffering from any mental ailment which can incapacitate her to take decision or function to a normal day to day life. Further all the medical records furnished by the complainant pertained to the period when (Z) has allegedly left the house of the complainant/applicant after attaining majority. Further the report furnished by Dr. Sidharth Chellani does not disclose any severe mental illness of the victim, therefore, the application is not maintainable and the same is dismissed.
>
> Application is consigned to record room."

11. Z's parents allowed the above order of the learned MM to attain finality as they did not challenge it further. However, the above failed attempt at bringing Z back under their control did not deter them from initiating a second round of litigation. In 2016, they approached this Court with W.P. (Crl.) 1293 of 2016. In that writ petition, Z's parents asked that they should be appointed as guardians of Z.

Second round before this Court

12. The writ petition was heard by a learned Single Judge of this Court on four occasions. It transpires that during the pendency of the writ petition, Z, on the orders of the Court, underwent an evaluation at the All India Institute of Medical Sciences ('AIIMS'). She interacted with about 3-4 different doctors over the course of 6-7 sessions which involved history taking, psychological tests, and conversations. Among the tests administered were the Draw a Person Test ('DAPT'), Sack's Sentence Completion Test ('SCT'), and the Rorschach Inkblot Test (RIBT). The final report dated 5th July 2016 of AIIMS stated that there was "no indication towards psychosis (schizophrenia) or any other psychopathology". Overall test findings indicated that the patient suffered from a great deal of stress as well as anxiety owing to the "family conflict she is having". In the light of this report, the said writ petition was dismissed as withdrawn. Therefore, the second attempt by Z's parents to get her declared to be mentally unsound failed.

Z gets 'picked up' by her parents

13. Less than a year thereafter, on 11th June 2017, a letter was addressed by Z's parents to the SHO of PS Malviya Nagar, the relevant portions of which read as under:

> "Our daughter is suffering from probable Psychological disorder case and has left her residence from ...New Delhi and is staying with her musical teacher ...at Khirki Extn, Malviya Nagar. Our daughter is not in a position to take her own decision and is totally under the control of guru couple. Doctor has advised for immediate medical attention and psychiatric treatment of our daughter. We, therefore, picking up our daughter physically from your locality by Ambulance for her appropriate medical treatment so that she can live her life freely with the mainstream. This is for your kind information and for submission to the Ambulance authority as the area is under your jurisdiction.
>
> 2. It is also intimated that it is our presumption that our daughter is being exploited by the guru couple....under the pretext of teaching classical music. It is, therefore, requested that the matter may be enquired properly and necessary inputs in this matter will be provided to you by us."

14. The above intimation did not mention that Z was above 18 years of age. It also suppressed the fact that two earlier attempts by Z's parents to have her returned to their control, by using the MHA, once before the learned MM in 2015 and another before this Court in 2016, had failed. A bald assertion was made to the effect that:"Doctor has advised for immediate medical attention and psychiatric treatment of

our daughter". There was no medical certificate issued by any doctor at this stage giving such advice. Clearly Z's parents had already by this time arranged for an ambulance for the purpose of "picking up" their daughter physically from the residence of the Petitioners for "appropriate medical treatment so that she can live her life freely with mainstream society". The letter revealed that Z's parents were only presuming that Z was being exploited by the Petitioners. Therefore, they asked that the "matter may be enquired properly" with the assurance that they would provide inputs to the police.

15. Z's parents state that they consulted Dr. Sunil Mittal, the Director of CIMBS on 22nd May 2017 at around 1 pm in his chamber and discussed with him, in detail, the past medical condition of Z and the ongoing legal disputes. They claim to have shown Dr. Mittal the Court orders, doctors' certificates, and assessment reports and that the meeting went on for more than an hour. Z's parents claim that they decided on the aforementioned course of action on 11th June 2017 on the advice of Dr. Mittal. In an affidavit dated 23rd August 2017, Z's father asserts:

> "I say that it was Dr. Mittal who had suggested to me that in case I inform the Police that I will pick up my daughter for medical examination from the Petitioner's place, the hospital authorities will be able to arrange an ambulance and supporting medical staff for bringing (Z) to their Hospital for necessary medical assessment and medical treatment. Accordingly, I was provided with the contract details of 'Almas Ambulance Services' and subsequently I had acted as per the advice of the doctor."

16. Z's father goes on to state in his affidavit that CIMBS maintains an operational connection with an ambulance service provider, i.e. Almas whose contact details were provided to him by CIMBS authorities.

17. It transpires, from the affidavit dated 6th July 2017 filed by Dr. Israul Haque Shaikh, the Director of Almas, that they were approached by Z's father for shifting Z from the Petitioners' house in Khirki Extension. Dr. Shaikh led the Almas team which comprised Mr. Abdul Gaffar (coordinator), Mr. Virender Kumar Mishra (male nurse), and Ms. Anamika (attendant). In the affidavits filed by Dr. Shaikh and the others of the Almas team, it is claimed that at around 4.40 pm, Mr. Abdul Gaffar got a call from Z's father stating that a police officer had also arrived and asked the ambulance to reach the address of the Petitioners. According to Dr. Shaikh, thereafter the consent form was got filled by Z's father. A copy of the intimation given by Z's parents to the SHO, Malviya Nagar was also given to Dr. Shaikh. He found this to be stamped with the seal of PS Malviya Nagar as DD No. 19B at 10.05 am on 11th June 2017.

18. Among the documents given to the ambulance was "an old prescription" which was the handwritten observation dated 26th May 2014 of Dr. Sidharth Chellani. This was the same document that had been produced before the learned MM and which was referred to in the order dated 29th April 2015 dismissing the complaint of Z's parents under Section 25 MHA. In other words, despite the above opinion being more than three years old, and not found acceptable by the MM, Z's parents persisted in using the same opinion to forcibly take Z away against her wishes.

19. According to the State, on 11th June 2017, Z's father called Head Constable ('HC') Praveen attached to PS Malviya Nagar, from his mobile number on the latter's mobile number at 5.33 pm. It is claimed that HC Praveen was at PS Malviya Nagar at that point in time. This call was returned at 5.45 pm by HC Praveen. The CDRs of the mobile phones of Z's father and HC Praveen which were examined by the police, and produced before this Court, show that HC Praveen reached the Petitioners' house at around 5.45 pm on 11th June 2017.

The Petitioners' complaint to the police

20. Petitioner No. 1 gave a complaint (DD No. 54A) to the SHO of PS Malviya Nagar,

on 11th June 2017 stating that at around 5 pm Respondent Nos. 2 to 4, along with 15 others, forcibly barged into the Petitioners' house. It was stated that Petitioner No. 2 who was 69 years old was beaten and bound. It was also stated in the said complaint that Z was forced onto a bed by 2-3 men (unidentified) and forcibly injected with a substance that caused her to faint. The Petitioners' home was ransacked and Z's possessions and documents were taken by her parents and brother. It was also stated in the complaint that the Petitioners were forced to sign a document. Petitioner No. 1 states that she approached the plain-clothes policeman who was present during the incident and informed him about the dismissal of previous litigation by this Court. However, he took no notice of this information.

21. Petitioner No. 1 called the police at No. 100 and when they failed to take action, she approached PS Malviya Nagar. In the status report first filed by the SHO of PS Malviya Nagar on 13th June 2017, it was acknowledged that after Z was taken away in the Almas Ambulance, a PCR call was received at PS Malviya Nagar (DD No. 42A) at 6.15 pm. It was noted that the caller had stated that a girl was being forcefully taken away in an ambulance from a house at Khirki Extension towards C.R. Park. This was marked to Assistant Sub-Inspector (ASI) Samsul Waris.

22. DD No. 45A of the same date recorded at 6.40 pm wherein the caller stated that the girl's parents had beaten her up and given her an injection and taken her away. The caller also gave a mobile number. It is not in dispute that the earlier call at 6.15 pm was by an impartial bystander and the subsequent call at 6.40 pm was made by Petitioner No. 1.

The response of the police

23. The affidavit filed by the DCP (South District), acknowledges the presence of HC Praveen at the spot when Z was taken away. It is, however, sought to be explained that HC Praveen could not determine whether Z was being taken away forcibly by her parents. The report of enquiry states that by the time HC Praveen realized the gravity of the situation, Z had already been taken away by her parents. Strangely, HC Praveen did not inform the senior officials of PS Malviya Nagar of the incident. He filed a report only on the following day.

24. Meanwhile, the Petitioners, along with their lawyers, went to PS Malviya Nagar and spoke to the SHO. According to the Petitioners, HC Praveen was present at that time. However, the SHO did not question him about his involvement. The SHO purportedly refused to admit that a police officer was present during the incident. The Petitioners point out that though HC Praveen was present in his official capacity, he was dressed in plain clothes. Such behaviour, it is contended, is not consistent with the claim made by the Deputy Commissioner of Police (DCP) (South District) in his affidavit that HC Praveen and the SHO acted in a bona fide manner.

25. The complaint given by the Petitioners at PS Malviya Nagar was kept pending. The reason given is that Z was unavailable to make a statement. She was declared by the treating doctor at CIMBS to be unfit to make a statement. The Petitioners point out that this is inexplicable given that it is highly unreasonable to expect an abducted individual to be made available for statement.

26. The affidavits of the Almas staff reveal that HC Praveen was informed at around 7 pm that Z was shifted to CIMBS. Why HC Praveen did not pass on this information immediately to his senior police officers is not clear. The CDRs show that at 4.45 pm, the ambulance had left the premises of the Petitioners at Khirki Extension.

Events at CIMBS

27. The Indoor File of CIMBS indicates the time of admission of Z as 7.55 pm on 11th June 2017. Z's age is noted as 23 years. Her date of birth is mentioned as 21st January 1994. The name of her father and mother are given. Under ‘Admission Diagnosis’, it is stated:“Deferred (to assess for psychiatric illness, substance use

disorder)". The signature of the attendant/patient at the bottom of the page is that of Z's father. The Indoor File itself appears to be a bunch of thirteen documents and on each page, Z's father appears to have signed. The consent is not given by Z. On page two of the Indoor File, also, the signature is of Z's father with Z's mother signing as a witness. Even pages which are not applicable like 'Admission of Voluntary Patient' and 'Admission of Minor' have been signed by Z's father.

28. There are two medical certificates dated 11th June 2017 on pages seven and eight of the Indoor File. The first is signed by Dr. Sameer Kalani. The time of examination is shown as 7.45 pm. The form reads as under:

> "This is to certify that I have examined Ms. *Z* d/o *(Z's father)* R/o *[New Delhi]*
>
> and find that she is suffering from *Deferred (to assess for psychotic disorder, substance use disorder)*
>
> with features of
>
> *suspected substance use, harassment (sexual), staying with her guru, suspected to be suffering from psychotic disorder, suspicious against family members, refusing to go back home, family has brought her today after allegedly fighting with her guru and brought her to hospital for detailed evaluation and treatment of psychiatric illness*
>
> due to which she is unmanageable at home, is dangerous to self and others and it is my considered opinion that she should be hospitalized in a specialized psychiatry unit for further observation/evaluation and appropriate treatment.
>
> He/she may be admitted at CIMBSs-Delhi Psychiatry Centre, 35 Defence Enclave, Vikas Marg, Delhi - 110 092. Under provision of Section 19(2) of the Mental Health Act, 1987 for the above purpose."

29. In the above form the portion in italics is written by hand and the rest of the form is pre-printed. In other words while the symptoms described to the doctor is noted by hand, the diagnosis portion viz., that the patient is "unmanageable at home, is dangerous to self and others and it is my considered opinion that she should be hospitalized in a specialized psychiatry unit for further observation/evaluation and appropriate treatment" is pre-printed. In other words, the diagnosis is in a standard template which is the same for each patient, seemingly to satisfy the requirement of Section 19(2) MHA.

30. Another identical form appears at page eight of the Indoor File which has been signed by Dr. Raj Mishra, where what has been mentioned in the earlier certificate is reproduced verbatim with the time of examination shown as 10.10 pm. There is a third medical certificate, in the same form, on the following date at 7 pm signed by Dr. Shobana Mittal. In other words, three doctors, two on 11th June 2017 and the third on 12th June 2017 used the same pre-printed form to give identical certificates for the purposes of Section 19(2) MHA.

31. The conclusions in the pre-printed part of the above certificates viz., that Z was dangerous to herself and others and, therefore, should be hospitalized could not have possibly been arrived at in the short time that the two doctors had to assess her after she brought to CIMBS. The notes on the file maintained by CIMBS in fact point to the contrary.

32. Under Section 19(1) of the MHA, where a person is bought in as mentally ill person and sought to be admitted under special circumstances, an application would have to be made in that behalf by a relative or friend of such person if the medical officer in charge is satisfied that it is in the interest of such person to do so.

33. In the present case admittedly, there was no application made by a relative or friend as required under Section 19(1) of the MHA. The medical officer in charge of CIMBS was Dr. Sunil Mittal. He was first required to satisfy himself that Z was not

capable of giving consent to observation and treatment. Secondly, he had to be satisfied that it would be proper for Z to be examined by two medical practitioners working in the hospital. As it transpired, Dr. Sunil Mittal was unavailable at the time owing to the fact that 11th June 2017 was a Sunday. According to Dr. Kalani, Dr. Mittal's permission for admitting Z was taken over the phone.

34. Under Section 19(2) of the MHA, the application under Section 19(1) has to be accompanied by medical certificates from two medical practitioners. One of these has to be a medical practitioner in government service. The certificate is to the effect that the condition of a mentally ill person is such that he should be kept under observation and treatment as an in-patient in a psychiatric hospital. The proviso to Section 19(2) of the MHA states that if the medical officer in charge is satisfied that it is proper to do so, he can cause a mentally ill person to be examined by two medical practitioners working in the hospital itself instead of requiring any certificate.

35. The time of admission as per the Indoor File was 7.55 pm. By this time, only one medical certificate had been issued by Dr. Kalani. Therefore, the procedure under Section 19 of the MHA was clearly not followed. With Dr. Sunil Mittal not being present at the time, the question of his being satisfied about the need for Z's hospitalisation in terms of the proviso to Section 19(2) of the MHA did not arise.

36. The two medical certificates issued on 11th June 2017 were in a pre-printed proforma. This cannot be accepted as a valid compliance with the requirement of Section 19(2) MHA given the serious nature of the consequences that would ensue taking away the liberty of the person forcibly hospitalised in a mental health institution.

37. A patient cannot be admitted merely for observation under Section 19(2) of the MHA. A patient has to be admitted for both observation and treatment. In fact, the admission diagnosis had purportedly been deferred as recorded on the first page of the Indoor File. It appears that she was examined by Dr. Kalani at 7.45 pm and then by Dr. Raj Mishra at 10.10 pm. From the notes maintained at CIMBS, which have been produced before this Court, it appears that at 9.30 pm on 12th June 2017, Dr. Kalani wrote in the Indoor File that "(Z) has been met and informed that she would be leaving tomorrow and she is quite relaxed and comfortable. Discharge process to be initiated". This is after stating that "assessments need to be completed for conclusive diagnosis" and "considering the absence of current active psychotic psychopathology, continued admission under Section 19 of Mental Health Act 1987 does not seem to be necessary".

38. If this was the situation on 12th June 2017 at 9.30 pm, there was no occasion for Dr. Kalani to inform Sub-Inspector (SI) Yogesh of PS Malviya Nagar that Z was not fit for making a statement. Dr. Kalani's note on the file at 10 pm on 12th June 2017 reads as under:

> "Patient's IO Mr. Yogesh called now and has sent a police officer from Malviya Nagar PS. He has directed that this police officer will stay tonight in hospital campus to ensure that patient's family does not take her away tonight. Further, IO Mr. Yogesh has conveyed that he will personally come tomorrow morning around 10 -10.30 am to take patient with him, which should be conveyed to patient only. He has been told that (Z) has been already informed about her leaving tomorrow."

39. The Court viewed the CCTV footage which shows SI Yogesh accompanied by another police man walking into CIMBS and then entering a separate room. However, it was maintained in the inquiry conducted by the DCP, pursuant to the orders of the Court, that SI Yogesh was not permitted to speak to Z and, therefore, could not record her statement that night. The affidavit of the Petitioners and Z reveal that she was, by this time, under a great deal of stress and was repeatedly asking to be released.

40. What is strange is a handwritten letter was given to SI Yogesh Kumar by Dr.

Sameer Kalani on 12th June 2017 where he states as under:

> "(Z), D/o (Respondent No. 3) is currently admitted in our hospital Delhi Psychiatry Centre-CIMBS, for purpose of detailed evaluation and assessment (Psychological tests) to elicit any psychiatric illness.
>
> Currently as evaluation is ongoing, kindly she be taken statement once assessments are completed. She will be fit to give statement once her assessments are completed (approximately within 3 days)."

41. On one hand, Dr. Kalani had made a noting at 10 pm that SI Yogesh had been told that Z had already been informed about her leaving the following day whereas, on the other hand, in the handwritten letter to the SI, he was seeking 3 days' time.

Order dated 12th June 2017

42. All this was happening on the same day when this Court had passed an order, in the forenoon, directing the police to meet Z. The said order reads as under:

> "1. The matter is taken on board.
>
> 2. Issue notice. Ms. Kamna Vohra, the learned ASC accepts notice.
>
> 3. The SHO of the concerned Police Station will immediately visit the residence of Respondents No. 2 and 3 to meet the daughter of Respondents No. 2 and 3, i.e., Z. The SHO will be accompanied by a lady police officer. It will be responsibility of the SHO to ensure the presence of Z in Court tomorrow, i.e., 13th June, 2017.
>
> 4. *Dasti* under the signature of the Court Master."

43. The Court is informed by the counsel for the State that the above order was collected before 2 pm and handed over to the SHO of PS Malviya Nagar. However, it appears that this order was not in fact shown to the doctors at CIMBS by SI Yogesh on the same day. This was a serious lapse.

44. The case of the police is that SI Yogesh reached CIMBS at 5.30 pm on 12th June 2017 itself and submitted a request to Dr. Kalani for recording the statement of Z and also apprised him of the writ petition filed in this regard. The aforementioned handwritten letter of Dr. Kalani is claimed to have been given to SI Yogesh at 6 pm. However, all of this does not fit with the other evidence that has come on record.

Order dated 13th June 2017

45. On 13th June 2017, Z was produced before this Court and a detailed order was passed on that date. *Inter alia*, the Court observed that the SHO of PS Malviya Nagar made no preliminary inquiry with regard to the intimation given by the parents of Z but had merely made an endorsement on the complaint assigning the task to HC Praveen for inquiry and necessary action.

46. The Court observed as under in para 21 and 22 of the order passed on 13th June 2017:

> "21. The status report strangely on the one hand acknowledges that the police facilitated the forcible taking away of Z at the insistence of respondents 2 and 3 and on the other hand they were also taking action on a complaint by the Petitioners about Z having been forcibly taken away in an ambulance.
>
> 22. It is incomprehensible that the police acted to facilitate the illegal taking away of an adult person against her wishes from where she was staying without even making a basic inquiry. What is even more strange is that a team of a doctor, a coordinator and two nurses also accompanied Respondents 2 to 4 and facilitated the forcible taking away of Z. If what Z states is right that they have forcibly injected some substance before her forcibly taking away, it is a very serious matter."

47. This Court in the above order also commented on the conduct of the doctors of CIMBS and the *prima facie* violations of the MHA. The Court met Z, and also separately met her parents in the chambers. Since Z had expressed her desire to go back to the

Petitioners, the Court directed that she should be allowed to do so right away without any hindrance from any quarter whatsoever. She was also afforded police protection. The Court further directed that Z's medical examination regarding external injuries suffered by her would be conducted on that day itself by the SHO accompanied by a lady Constable from any Government Hospital.

48. The Court ordered an exhaustive inquiry to be conducted under the direct supervision of the Commissioner of Police. Notices were directed to be issued to the staff of Almas as well as Dr. Raj Mishra and Dr. Sameer Kalani of CIMBS. The parents of Z were asked to file their individual affidavits stating that they would not in any manner interfere with the peaceful life of Z and subject her to any sort of harassment. The case was then directed to be listed for further hearing on 7th July 2017.

Orders thereafter

49. On 7th July 2017, the Court noted that affidavits had been filed by the father and brother of Z, in compliance with the earlier directions. Affidavits were also filed by Dr. Raj Mishra and Dr. Sameer Kalani of CIMBS and Dr. Israul Haque Shaikh, Abdul Gaffar, Virender Kumar Mishra, and Anamika Tiwari of Almas. Mr. Raj Shekhar Rao, Advocate was appointed as *amicus curiae* to assist the Court on the legal issues that arose in the matter.

50. On 25th August 2017, the Court directed that the report of the DCP on the enquiry that was ordered to be held by the Court be provided to learned counsel for the parties. Mr. Mukul Talwar, learned Senior Counsel appearing for CIMBS, undertook to provide to the DCP all the relevant records available with them.

51. On the next date of hearing, i.e. 13th October 2017, on an application by the Petitioners, the Court directed that the investigation of FIR No. 231/2017 be entrusted to the District Investigation Unit (DIU) of the South District under the supervision of the same DCP who had earlier filed a report. The Court clarified that this was not meant to delay the completion of investigation but to ensure that it proceeds in an impartial manner in accordance with law.

52. On 15th December 2017, the Court was informed that a charge-sheet had been filed by the DIU in FIR No. 231/2017. Copies thereof were made available to all the counsel. The Court noted that an affidavit dated 7th December 2017 had been filed by Dr. Sunil Mittal. The Court fixed the schedule of arguments.

53. On 19th January 2018, Dr. Sunil Mittal was directed to produce on an affidavit the original record of treatment of Z at CIMBS and all connected documents, both paper and electronic (including CCTV footage), within the next three days and when deposited, it was asked to be kept in a sealed cover.

Final arguments

54. On 17th February 2018, the arguments were finally heard. On that date, the Petitioners tendered their affidavits in rejoinder to the affidavit of the Respondent No. 3 and an additional affidavit of Z enclosing a copy of the Outpatient Treatment note dated 5th July 2016 issued at the time of her examination at AIIMS pursuant to the order of this Court in W.P. (Crl.) 1293/2016. Both the affidavits were taken on record.

55. Mr. Talwar's request that CIMBS should be permitted to file another affidavit to place on record the exchange of messages between Dr. Sunil Mittal and his colleagues over WhatsApp was declined particularly since the arguments were concluded on that date.

56. The Court has heard the oral submissions of counsel for the various parties : Mr. Trideep Pais learned counsel for the Petitioners, Mr. Rahul Mehra, Standing counsel for the State, Mr. Mukul Talwar, Senior counsel for CIMBS and its doctors, Mr. Joydeep Mazumdar, learned counsel for Z's parents and brother, Mr. Kamlesh Kumar Mishra, learned counsel for Almas and its staff and Mr. Rajshekhar Rao, Amicus Curiae. Their elaborate written submissions have also been considered. The Amicus Curiae has also

submitted two detailed notes of submissions on various aspects.

The broad issues involved

57. At the outset, it stands clarified that this judgment pertains to the violation of the provisions of the MHA and the Constitution of India and the resultant directions that are required to be passed by the Court. The Court is conscious that a charge-sheet has been filed in the criminal case arising from FIR No. 231/2017 registered at PS Malviya Nagar against the parents, brother and other relatives of Z, CIMBS and its doctors and Almas and its team. It is clarified that the said criminal case will be decided and orders passed by the concerned Courts in accordance with law uninfluenced by anything that might be said in this order.

58. Another caveat is that the Court is not discussing the provisions of the Mental Healthcare Act 2017 which has been enacted by Parliament. This is because at the time of the episode in the present case, it is the MHA that was applicable. The 2017 legislation has been notified by the central government to come into operation only with effect from 8th July 2018.

59. The issues that arise are discussed hereafter under the following broad heads:

(i) The Constitutional dimensions of the right of choice in the context of the rights of an adult female to exercise her full right to life and liberty under the Constitution of India.

(ii) The scheme of the MHA and the procedure required to be followed thereunder for involuntary admission to a mental health facility.

(iii) The role and liability of the police, CIMBS, Almas and Z's parents.

(iv) Consequential reliefs.

The Constitutional dimension of the right of choice

60. It is an admitted position that on the date of the incident, i.e. 11th June 2017, Z was more than 23 years old. Admittedly, her date of birth is 21st January 1994. Section 41(1) of the Guardians and Wards Act, 1890 ('GWA') provides that the powers of the guardian automatically cease upon the minor ceasing to be as such. In *Mt. Naima Khatun* v. *Basant Singh*, AIR 1934 All 406, it was observed as under:

> "Under the provisions of Section 41, the powers of the guardian automatically cease on the ward ceasing to be a minor. No order by the Court declaring him to have attained majority is required by Section 41."

61. Section 3 of the Indian Majority Act, 1875 defines 18 years to be the age of majority. Section 4 of the Hindu Minority and Guardianship Act, 1956 ('HMGA') defines a minor as "a person who has not completed the age of eighteen years". A collective reading of these provisions makes it clear that Z completed 18 years of age on 21st January 2012 and from that day onwards, was an adult entitled to make her own life choices. She could decide whom she wanted to live with and where. Her parents could not have dictated to her where, with whom and how she should live.

62. The Constitution of India implicitly recognizes the right to full personhood. The Preamble expressly recognized the right to dignity of an individual. Article 21 guarantees to all persons the right to life and personal liberty and protects every person from deprivation thereof "except according to procedure established by law". Article 21 of the Constitution has been interpreted by the Supreme Court of India, over the years, to include many facets of a full and meaningful life.

63. In *Justice K.S. Puttaswamy (Retd.)* v. *Union of India*, (2017) 10 SCC 1, a nine-Judge Constitution Bench of the Supreme Court unanimously concluded that "the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part-III of the Constitution". The separate opinions of several of the judges elaborated on the different facets of privacy. The opinion of Dr. D.Y. Chandrachud, J., with which four other learned judges

concurred, focused *inter alia* on the elements of privacy arising in varying contexts from the other facets of freedom and dignity recognized and guaranteed by the fundamental rights contained in Part III of the Constitution. 'Privacy' was discussed in the context of 'choice' and it was explained:

> "The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha suffixed right of privacy : this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination."

64. Among the nine primary types of privacy that were elucidated, one concerned 'decisional privacy' reflected by an ability to make "decisions in respect of intimate relations". This would include the right to specify whom to include and whom to exclude from one's circle. In his concurring opinion, S.A. Bobde, J. explained as under:

> "To exercise one's right to privacy is to *choose* and specify on two levels. It is to *choose* which of the various activities that are taken in by the general residue of liberty available to her she would like to perform, and to *specify* whom to include in one's circle when performing them. It is also autonomy in the negative, and takes in the choice and specification of which activities not to perform and which persons to exclude from one's circle. Exercising privacy is the signalling of one's intent to these specified others - whether they are one's co-participants or simply one's audience - as well as to society at large, to claim and exercise the right. To check for the existence of an actionable claim to privacy, all that needs to be considered is if such an intent to choose and specify exists, whether directly in its manifestation in the rights bearer's actions, or otherwise."

65. R.F. Nariman, J. pointed out that in the Indian context, a fundamental right to privacy would cover at least three aspects : firstly, the privacy relatable to the physical body such as the right to move freely; secondly, informational privacy which deals with a person's mind and recognized his control over the dissemination of material that is personal to him; and thirdly, "the privacy of choice which protects an individual's autonomy over fundamental personal choice". In a separate concurring opinion, Sanjay Kishan Kaul, J. acknowledged that there could be invasion of privacy both by State and non-State actors and the right can be legitimately exercised against both.

66. Violation of one's rights could be by state or non-state actors. The obligation to respect one's rights is placed both on state and non-state actors. In *Justice K.S. Puttaswamy (Retd.)* v. *Union of India* (supra), the concurring opinion of S.A. Bobde, J., noted that "common law rights are horizontal in their operation when they are violated by one's fellow man" and "he can be named and proceeded against in an ordinary Court of law". The position is no different under the Constitution of India. While some of its provisions recognise the obligation of the State, some others recognise the

obligation of non-state actors as well. For e.g., Articles 14 and 15(1) speak of the state obligation of not denying equal protection of laws and of non-discrimination on grounds of religion, place of birth etc. However, Article 15(2) talks of not subjecting a citizen to any disability, liability, restriction or condition with regard to access to sops, public restaurants, use of wells, tanks, bathing *ghats* and roads etc. and thus, places that obligation on both state and non-state actors. Likewise, Article 17 which abolishes untouchability and declares it to be an offence and Article 23(1) that prohibits trafficking in human beings and *begar* recognises the obligation flowing therefrom of both state and non-state actors.

67. An impingement of the freedom of speech and expression could be perpetrated by both the State and a non-State actor and an aggrieved person could come to the Court seeking protection against such invasion whether by the State or a non-State actor. Protection against an attack on the right of life, liberty, privacy and dignity can be exercised not only against the State but also against non-State actors. Article 21 places an obligation both on state and non-state actors not to deprive a person of life, liberty, privacy and dignity except in accordance with the procedure established by law.

68. In other words Articles 15(2), 17, 19, 21 and 23 acknowledge the horizontal nature of those fundamental rights. They can be enforced against not just the State but non-state actors as well. The mere fact that the enforcement of such rights might depend on State action or enforcement of judicial orders by the State will not detract from their horizontal nature. The horizontal dimension of these rights enables an aggrieved person to invoke constitutional remedies to seek the protection and enforcement of such rights against invasion by a non-state actor.

Scope of a habeas corpus petition

69. The writ jurisdiction of a High Court under Article 226 of the Constitution is, therefore, invoked not only for assertion of the rights to life, liberty and a variety of fundamental rights against invasive State action but also against invasive action by non-State actors, including individuals. Increasingly, in the *habeas corpus* jurisdiction, this Court is approached by a large number of individuals and married couples praying for protection against invasion of their rights to life and liberty and 'choice' by close relatives and other non-State actors. Much of the exercise in the *habeas corpus* jurisdiction by a writ Court is to forge remedies and shape reliefs for which persons whose rights of choice and, therefore, of life, liberty, and dignity are under constant threat from their own family members.

70. Therefore, in a *habeas corpus* petition, like in the present case, when the plea before the Court is that a person should be protected against coercive retributive action of her parents, for making personal life choices, the Court shall not hesitate to exercise its jurisdiction to grant relief. In effect, the Court would be recognizing that the threat to the right of 'choice' of a person and thereby right to life, liberty, and dignity can very well come from the person's own parents irrespective of the age and gender of such person.

71. In *Gian Devi* v. *Superintendent, Nari Niketan, Delhi*, (1976) 3 SCC 234 the Supreme Court held that once a woman was 18 years of age, no fetters could be placed on an individual's choice on where and with whom she wished to reside. It was observed:

> "...Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age. As the petitioner is *sui juris* no fetters can be placed upon her choice of the person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter."

72. The Supreme Court in a recent decision in *Shafin Jahan* v. *Asokan K.M.* (decision dated 9th April 2018 I Crl. A. No. 366 of 2018) (hereafter the *Hadiya case*), after referring to the decisions in *Kanu Sanyal* v. *District Magistrate, Darjeeling*, (1973) 2 SCC 674 and *Ummu Sabeena* v. *State of Kerala*, (2011) 10 SCC 781 explained the scope of the High Court's *habeas corpus* jurisdiction as under:

> "27 Thus, the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without sanction of law. It is the primary duty of the State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subterfuge. The role of the Court is to see that the detenue is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint. The issue will be a different one when the detention is not illegal. What is seminal is to remember that the song of liberty is sung with sincerity and the choice of an individual is appositely respected and conferred its esteemed status as the Constitution guarantees. It is so as the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework. Once that aspect is clear, the enquiry and determination have to come to an end."

73. In *Soni Gerry* v. *Gerry Douglas*, 2018 (1) KHC 142 the Supreme Court was examining the plea of a mother questioning the choice of her adult daughter to live with her father. In upholding the daughter's choice, the Court observed:

> "10....Suffice it to state that we had directed the daughter of the Petitioner to remain personally present in Court and gave the responsibility to the father to see that she is present. She has appeared. She has, without any hesitation, clearly stated that she intends to go back to Kuwait to pursue her career. In such a situation, we are of the considered opinion that as a major, she is entitled to exercise her choice and freedom and the Court cannot get into the aspect whether she has been forced by the father or not. There may be ample reasons on her behalf to go back to her father in Kuwait, but we are not concerned with her reasons. What she has stated before the Court, that alone matters and that is the heart of the reasoning for this Court, which keeps all controversies at bay.
>
> 11. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/he is entitled to make her/his choice. The Courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the Court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

74. In *Common Cause (A Regd. Society)* v. *Union of India*, 2018 (4) SCALE 1 a Constitution Bench of the Supreme Court recognised an individual's right to die with dignity and held:

> "Our autonomy as persons is founded on the ability to decide : on what to wear and how to dress, on what to eat and on the food that we share, on when to speak and what we speak, on the right to believe or not to believe, on whom to love and whom to partner, and to freely decide on innumerable matters of consequence and detail to our daily lives."

75. In the *Hadiya case* (supra), the Supreme Court was considering an appeal against the judgment of the High Court of Kerala annulling a marriage between an adult woman to a Muslim man after she converted to Islam. In doing so the High Court exercised its jurisdiction in the *habeas corpus* jurisdiction having been approached by the woman's father, who found her choice of conversion to Islam and subsequent marriage to be unacceptable.

76. While reversing the judgment of the Kerala High Court, a three judge Bench of

the Supreme Court in the *Hadiya case* unanimously ruled that the High Court had been "erroneously guided by some kind of social phenomenon." The leading opinion of Dipak Misra, CJI observed:

> "53. It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance of the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence. To have the freedom of faith is essential to his/her autonomy; and it strengthens the core norms of the Constitution. Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realization of a right is more important than the conferment of the right. Such actualization indeed ostracises any kind of societal notoriety and keeps it bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition.
>
> 54. Non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a Constitutional Court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the Court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. Sans lawful sanction, the centripodal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept."

77. In his concurring opinion in the *Hadiya case* (supra) Dr. D.Y. Chandrachud, J. observed:

> "19.…Neither the state nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty under the Constitution. In deciding whether Shafin Jahan is a fit person for Hadiya to marry, the High Court has entered into prohibited terrain. Our choices are respected because they are ours. Social approval for intimate personal decisions is not the basis for recognising them. Indeed, the Constitution protects personal liberty from disapproving audiences.
>
> 23. The High Court, in the present case, has treaded on an area which must be out of bounds for a constitutional court. The views of the High Court have encroached into a private space reserved for women and men in which neither law nor the judges can intrude. The High Court was of the view that at twenty four, Hadiya "is weak and vulnerable, capable of being exploited in many ways". The High Court has lost sight of the fact that she is a major, capable of taking her own decisions and is entitled to the right recognised by the Constitution to lead her life exactly as she pleases. The concern of this Court in intervening in this matter is as much about the miscarriage of justice that has resulted in the High Court as much as about the paternalism which underlies the approach to constitutional interpretation reflected in the judgment in appeal. The superior courts, when they exercise their jurisdiction *parens patriae* do so in the case of persons who are incapable of asserting a free will such as minors or persons of unsound mind. The exercise of that jurisdiction should not transgress into the area of determining the suitability of partners to a marital tie. That decision rests exclusively with the individuals themselves.
>
> Neither the state nor society can intrude into that domain. The strength of our

Constitution lies in its acceptance of the plurality and diversity of our culture."
(emphasis supplied)

Role of Z's parents

78. In the present case, the trouble started for Z when she began to exercise her personal choice as regards her career and consequently her place of residence. She chose to pursue a career in music and, therefore, spent more time with her music teacher and his wife in order to fully involve herself in music. Notwithstanding that Z was an adult, her choices were evidently unacceptable to her parents. As is apparent from the written submissions filed by them, Z's parents are under a mistaken assumption that "in case of a daughter she remains a dependent on her parents till she gets married, irrespective of the fact that whether she has attained majority or not". This mistaken notion forms the basis upon which they have taken it upon themselves to make Z's choices for her notwithstanding that Z, having attained the age of majority, can exercise her free will uninfluenced by what her parents might feel or think.

79. Another troubling aspect of this case is that Z's parents, proclaiming that they were acting for the welfare of their daughter, have repeatedly attempted to have her declared to as be mentally ill simply because they do not agree with the choice she has made. They even went to the extent of getting her evaluated by a psychiatrist, Dr. Chellani, way back in May 2014. Despite that report of Dr. Chellani not being accepted by the learned MM who dismissed their complaint under Section 25 of the MHA, the parents of Z, in utter violation of her right to informational privacy, have given a copy of the said psychiatric evaluation to not only the doctors at CIMBS but even to the ambulance provider, Almas.

80. Having evaluated the circumstances under which Z was forcibly removed from the house of the Petitioners (where she was living of her own free will) by her parents who acted in collusion with the local police of PS Malviya Nagar and the staff of Almas, the Court is unable to reach any other conclusion than to hold that Z's fundamental rights to life, liberty, privacy, and dignity under Article 21 of the Constitution of India have been flagrantly violated.

81. Furthermore, Z was admitted to CIMBS at the instance of her parents. Her father signed the admission forms while falsely stating that she was unable to give consent to being admitted. From the circumstances that emerge from the record it appears apparent to this Court that here again, Z's parents have violated her fundamental rights to life, liberty, privacy, and dignity in collusion with the police, the ambulance service and abetted by CIMBS.

82. Even more troubling is the fact that Z's parents suppressed material facts regarding their two failed previous attempts to get her to be declared to be mentally unsound. This resulted in the local police, the ambulance staff and the doctors at CIMBS to proceed as though Z was indeed mentally unsound or suffered from some kind of mental illness which required urgent treatment.

83. In the Court's view, therefore, the actions of Z's parents which were carried out with the aid of the local police, the staff of Almas, and the staff of CIMBS were in clear violation of Z's fundamental rights to life, liberty and the right to dignity enshrined in Article 21 of the Constitution. This violation of her rights was triggered by her exercising her freedom of choice as a female adult by choosing whom she wanted to stay with. The Court, therefore, rejects the plea of Z's parents that they acted in the larger interests of the daughter and in consideration of her well-being since their actions indicate the opposite.

The scheme of the MHA

84. Before proceeding to examine the role of CIMBS in the episode, the Court proposes to analyse the relevant provisions of the MHA. The MHA is a statute that has

provisions that might result in the deprivation of a person's liberty. The scheme of the MHA is such that it contemplates both voluntary and involuntary admission of a mentally ill person in a psychiatric hospital or psychiatric nursing home as defined under Section 2(q) MHA. One such provision which is relevant in the context of the present case is Section 19 MHA which occurs in Part II, Chapter IV titled 'Admission under special circumstances'.

85. In this context, it requires to be noticed that the MHA replaced the earlier Indian Lunacy Act, 1912 ('ILA') which had become outdated. Parliament acknowledged that mental illness was a curable conidtion and that the attitude of society towards persons suffering mental illness had changed considerably. It was realized that, "No stigma should be attached to such illness". The Statement of Objects and Reasons of the MHA envisaged that mentally ill persons "are to be treated like any other sick persons and the environment around them should be made as normal as possible". It is with this object in view that it was thought necessary to have "fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach". The broad scheme of the MHA is to regulate the establishment and maintenance of psychiatric hospitals or psychiatric nursing homes only upon obtaining a license. The Licensing Authority ('LA') under Section 2(g) means such officer or authority as may be specified by the State Government to be the LA for the purposes of the MHA. As far as the National Capital Territory of Delhi is concerned, the State Mental Health Authority ('SMHA') constituted under Section 4 of the MHA has been authorized by the Government of NCT of Delhi to be the LA under the MHA.

86. The license thus granted to run a psychiatric hospital or psychiatric nursing home as defined under Section 2(q) MHA includes the power to revoke the license. This has to be read with the State Mental Health Rules 1990 ('SMHR') which prescribes the minimum facilities for treatment of all patients, the procedure for admission and/or detention in psychiatric hospitals and psychiatric nursing homes, etc. As far as Delhi is concerned, Rule 25(1) envisages an application for reception order by the medical officer in charge or the husband, wife or any relative making an application in Form-7 or Form-8 respectively. Where the application is by a husband, wife or relative of a person who is alleged to be mentally ill, it has to be accompanied by "necessary medical certificates" and such an application is required to be signed by such husband, wife or relative or friend and verified by two independent witnesses.

87. This requirement flows from Section 19 MHA itself which reads thus:

> "19. Admission of mentally ill persons under certain special circumstances.—
>
> (1) Any mentally ill person who does not, or is unable to, express his willingness for admission as a voluntary patient, may be admitted and kept as an in-patient in a psychiatric hospital or psychiatric nursing home on an application made in that behalf by a relative or a friend of the mentally ill person if the medical officer in charge is satisfied that in the interest of the mentally ill person it is necessary so to do:
>
> Provided that no person so admitted as an in-patient shall be kept in the psychiatric hospital or psychiatric nursing home as an in-patient for a period exceeding ninety days except in accordance with the other provisions of this Act.
>
> (2) Every application under sub-section (1) shall be in the prescribed form and be accompanied by two medical certificates, from two medical practitioners of whom one shall be a medical practitioner in the service of Government, to the effect that the condition of such mentally ill person is such that he should be kept under observation and treatment as an in-patient in a psychiatric hospital or psychiatric nursing home:
>
> Provided that the medical officer, in charge of the psychiatric hospital or

psychiatric nursing home concerned may, if satisfied that it is proper so to do, cause a mentally ill person to be examined by two medical practitioners working in the hospital or in the nursing home instead of requiring such certificates.

(3) Any mentally ill person admitted under sub-section (1) or his relative or friend may apply to the Magistrate for his discharge and the Magistrate may, after giving notice to the person at whose instance he was admitted to the psychiatric hospital or psychiatric nursing home and after making such inquiry as he may deem fit either allow or dismiss the application.

(4) The provisions of the foregoing sub-section shall be without prejudice to the power exercisable by a Magistrate before whom the case of a mentally ill person is brought, whether under this section or under any other provision of this Act, to pass a reception order, if he is satisfied that it is necessary so to do in accordance with the relevant provisions of this Act."

88. Section 19(1) MHA first of all envisages that the mentally ill person is unable to "express his willingness for admission as a voluntary patient". In other words, where a person is in a position to express willingness, then Section 19 will not apply at all. Section 15 MHA would apply when a person, as in the present case, is not a minor and is capable of expressing his or her willingness to be admitted as a voluntary patient in a psychiatric hospital or nursing home. Where it is a minor, the request for voluntary admission is made by a guardian under Section 16 MHA.

89. Section 19 MHA contemplates a situation where an involuntary admission of a mentally ill person to a mental health facility can take place without the intervention of the Court. It is, in that sense, a standalone provision. While there is a certain degree of supervision and control when a Magistrate is brought into the picture when an application for a reception order is made under Section 25 MHA, there is none in the procedure envisaged under Section 19 MHA. However, in the Court's view, the standard to be adopted by a Magistrate when passing a reception order under Section 25 MHA shall also apply to the procedure adopted under Section 19 MHA, i.e. an objective satisfaction that the person requires admission to a psychiatrist hospital for observation and treatment.

90. The determination of mental illness for the purposes of Section 19 MHA has to be based on objective criteria. In the context of the ILA, and the procedure for involuntary commitment to a mental hospital thereunder, the Madras High Court, in *Sesha Ammal* v. *Venkatanarasimha Bhattachariar*, AIR 1935 Mad 91 held that "the Court must hold that both unsoundness of mind and incapacity to manage his affairs are present and that the latter is due to the former". Dealing with the expression "unsoundness of mind", the Allahabad High Court in *Joshi Ram Krishnan* v. *Rukmini Bai*, AIR 1949 All 449 observed as under:

> "Unsoundness of mind implies some unusual feature of the mind as has tended to make it different from the normal and has, in effect, impaired the man's capacity to look after his affairs in a manner in which another person without such mental irregularity would be able to do in a matter of his own. The idea suggests some derangement of the mind, whatever be its degree and it is not to be confused with, or taken as analogous to, a mere mental weakness or lack of intelligence. A man may find it difficult to answer questions of a particular class, but if he intelligently answers questions of various other sorts concerning himself, his family and property, he cannot be classed with men of unsound mind being unable to manage their affairs. If a man is able to understand and answer questions on various matters except those relating to arithmetical calculations, he cannot be regarded as mentally unsound, although he would be held as having a weak or undeveloped mind."

91. Further in *R. Lingaraj* v. *Parvathi @ Kundhi Ammal*, AIR 1975 Mad 285, it was observed by the Madras High Court as under:

> "unsoundness of mind has reference to a mental condition which falls outside the range of the wide spectrum of mental calibre …..However low the intelligence quotient of a simpleton may be, his mental capacity is preferable to an integrated and sound mind, while the mental factor of a person of unsound mind can have reference only to a mind affected by severe congenital subnormality or to a disintegrated or deranged or dishevelled mind. It is in this perspective, the ability of a person with unsound mind to take care of himself and manage his affairs has to be assessed."

92. Therefore, the satisfaction that has to be arrived at by the medical officer-in-charge of a private mental health facility for the purposes of Section 19 MHA i.e. involuntary admission under special circumstances, has necessarily to meet this standard. As rightly pointed out, the procedure for involuntary admission under Section 19 MHA is only applicable when the patient is in fact mentally ill and a satisfaction has been reached to that end. Admitting a patient under Section 19 MHA merely for observation cannot be countenanced as doing so would be in violation of a person's rights to life, liberty, and dignity granted under Article 21 of the Constitution of India.

93. In the present case, Z was, to begin with, treated as a person who was not able to express her willingness as a voluntary patient. The question then arises as to who should decide whether a person is or is not able to express willingness to be admitted as a voluntary patient. Obviously that determination can and should only be made by a qualified mental health professional. It is only such a person who satisfies the requirement spelt out in Section 19(1) MHA who may declare someone to be admitted as an involuntary patient in a psychiatric hospital or psychiatric nursing home.

94. For the purposes of the said admission, the following conditions are required to be fulfilled in terms of Section 19(1) MHA:

(i) An application is to be made on behalf of such person who is sought to be admitted, by a relative or friend of such person.

(ii) The medical officer in-charge has to be satisfied that it is in the interest of the mentally ill person that it is necessary so to do.

95. Therefore, even if an application is made by a person claiming to be a relative of the mentally ill person seeking admission of such person into the mental health institution on a voluntary basis, the medical officer in charge (who in this case is admittedly Dr. Sunil Mittal) must be satisfied that it is necessarily in the interest of the mentally ill person that they be admitted to the mental health institution. The proviso to Section 19(1) MHA specifies an outer time limit for which such a person can be kept as an in-patient, i.e. no such patient can be kept in the institution for more than 90 days and that is also subject to what is required to be fulfilled in terms of other provisions of the MHA.

96. Section 19(2) MHA states that the application shall be in the prescribed form. Rule 25(1) specifies the form. It states that the application by relatives and others will be in Form-8. The said form reads as under:

FORM VIII

(See rule 25)

APPLICATION FOR RECEPTION ORDER

(By relative or other)

To

.....

Sir,

Subject : Admission of ___ son/daughter of ___ into psychiatry hospital/nursing home as in-patient.

I __ son/daughter of __ residing at ___ request you kindly arrange for admission in respect of Sh./Smt. ___Aged __ Years, ___son/daughter of ___ as an in-patient to (name of the hospital) or any other hospital/nursing home. He/She has the following suggestive of mental illness.

1. .....

2. .....

I, who is (relationship) of Sh./Smt. ___ have an income of Rs. __ and agree to pay the charges of treatment, if any, according to the rules and also assure that I shall abide by the rules and regulation of the institution. I state that I have/have not made any such previous application with regard to the mental condition of ___ As required, I herewith enclose the two Medical Certificates needed for the purpose.

Yours faithfully,

Signature.....

Name in Capital.....

Witnesses:

97. The form of the two medical certificates has not been set out. However, Section 19(2) of the MHA spells out what should accompany the application as under:

(i) The application in a prescribed form has to be accompanied by two medical certificates.

(ii) One of the certificates should be from a practitioner in the service of the government and the other certificate by another mental health practitioner.

(iii) Both certificates will be to the effect that the condition of a mentally ill person is such that he should be kept under observation and treatment as an in-patient in a psychiatric hospital or psychiatric nursing home.

98. The proviso to Section 19(2) is to the effect that if the medical officer in charge is satisfied that it is proper so do to, he can cause the mentally ill person to be examined by "two medical practitioners working in the hospital or in a nursing home, instead of requiring such certificates.

99. Section 19(1) read with Section 19(2) of the MHA mandates that the medical officer in-charge has to record two kinds of satisfaction - first, in terms of Section 19 (1) of the MHA, the satisfaction that it is in the interest of the medically ill person that they necessarily be admitted to a mental health institution; and second, the satisfaction in terms of the proviso to Section 19(2) of the MHA that it is proper to cause such mentally ill person to be examined by two medical practitioners working in the hospital itself instead of requiring the two certificates as provided under Section 19(2) of the MHA.

100. For the purposes of Sections 19(1) and 19(2) of the MHA, the medical officer in-charge cannot delegate this crucial function of the recording of the satisfaction of two separate kinds to some other person.

The role of CIMBS

101. It was submitted on behalf of CIMBS that since 11th June 2017 was a Sunday, the medical officer in charge, Dr. Sunil Mittal, was not available. In order to satisfy the requirement of Section 19(1) MHA, he was contacted on the telephone by Dr. Sameer Kalani and, after being explained the diagnosis, conveyed his oral satisfaction that Z should be admitted as an in-patient at the hospital.

102. The Court is unable to accept the above explanation offered by Dr. Sunil Mittal. Incidentally, it may be mentioned that in order to buttress this submission, Mr. Mukul Talwar, learned Senior Counsel appearing for CIMBS, sought to place on record the text messages exchanged between Dr. Sunil Mittal and the two doctors on the

premises, i.e. Dr. Raj Mishra and Dr. Sameer Kalani. The Court has not permitted the said text messages to be brought on record because there was sufficient time for Cosmos to have done so without waiting for the last day when the petition was being heard finally. Nevertheless, it is not as though such text messages would have helped the matter seeing as Dr. Mittal was obviously not even on the premises of the hospital.

103. Since the responsibility of arriving at a satisfaction as to a patient's mental health under Section 19(1) MHA is not meant to be delegated to anyone else, the satisfaction that had to be recorded had to be of Dr. Sunil Mittal himself and no one else. In the present case, the satisfaction for the purposes of Section 19(1) MHA was two-fold : that Z, being a mentally ill person, was unable to express her willingness to be admitted in the psychiatric hospital and further that her admission in the hospital would be in her best interest. This satisfaction could not have been arrived at by Dr. Sunil Mittal by just listening on the phone (or by a WhatsApp message) to the diagnosis of some other doctor, even though such doctor was a qualified mental health practitioner. Such an opinion could only be formed by Dr. Mittal himself after interacting with the patient. Clearly that interaction did not take place in the present case.

104. Would it be impractical and unreasonable to interpret Section 19 1) of the MHA in a manner that makes it compulsory for the medical officer in charge of the mental health institution to himself record his satisfaction about the need for a mentally ill person to be admitted as an in-patient? The Court thinks not. The Parliament has intended, as a safeguard, that when a person is brought in by someone else, who could be a relative or a friend claiming that such person is mentally ill and not in a position to express their willingness to be admitted as an in-patient, the medical officer in charge of the facility should himself be personally satisfied that such person is in fact mentally ill and therefore, unable to convey their willingness to be admitted in a mental health institution. If it is a holiday or for some reason the medical officer in charge is not available for recording such a satisfaction, then such a person will not be admitted on that day in the facility. That person has to wait for some other day on which the medical officer in charge is available or, if it is an emergency, go to some other mental health institution for that purpose. These are matters that have consequences not just for the treatment but the liberty of the person. The least restrictive alternative has to be the guiding factor.

105. There are no two ways of looking at it. Since this is a special procedure and talks of special circumstances, the safeguard against an arbitrary and involuntary admission is that a qualified mental health practitioner who is in charge of the facility would himself or herself be personally satisfied as required by Section 19(1) MHA. There was a clear infraction of this requirement as far as the present case is concerned. Dr. Sunil Mittal had never personally examined Z on 11th June 2017 prior to her being admitted as an in-patient in the CIMBS.

106. Again, it was Dr. Mittal who had to record his satisfaction about dispensing with the two medical certificates from mental health practitioners, one of whom had to be in the service of the government in terms of the proviso to Section 19(2) MHA. Here again, the file notings did not show the recording of any such satisfaction by Dr. Mittal prior to Z's admission in the hospital that instead of the two medical certificates accompanying the application, two of the doctors in the hospital could examine her. Therefore, there is a second violation of the statutory requirement under the proviso to Section 19(2) of the MHA.

107. On the contrary, CIMBS appears to be using a standard pre-printed form consisting of thirteen pages without bothering to find out whether Z was in a position to express her willingness. It was presumed that she was not in a position to give her consent and signatures were taken of her father on all thirteen pages. In fact, the

application submitted by Z's father was not in accordance with Form-8 under Rule 25 of the SMH Rules. It was also not witnessed by two persons, as required by the Rule.

108. Apart from dispensing with the requirement of the certificates, the CIMBS appears to have ignored the requirement of Section 19(2) MHA whereby two certificates were required for having a patient admitted as an in-patient. In the present case, the certificates are all by the in-house doctors of CIMBS, not one of them was a practitioner in government service. There are three medical certificates - two dated 11th June 2017 and another dated 12th June 2017 by Dr. Shobana Mittal. That certificate is anyway superfluous in the context of Section 19(2) of the MHA and, therefore, need not be referred to at this stage.

109. The two medical certificates dated 11th June 2017 are of Dr. Raj Mishra and Dr. Sameer Kalani. Both are psychiatrists attached to CIMBS - neither is in government service. The certificates given by them are almost identical. The crucial portion of the certificates is in a printed form, as already noticed. In fact, they had not come to a definitive opinion on the need for Z to be admitted as an in-patient. That opinion has been deferred by both of them.

110. The doctors at the CIMBS overlooked what Section 19(1) MHA read with Section 19(2) MHA required them to do. Unless the medical officer in-charge was satisfied that Z was unable to express her willingness and that it was in her interest to get admitted as an in-patient, Z simply could not have been admitted in the hospital. The justification offered by the doctors at CIMBS is that in order to determine whether she required hospitalization, she was required to be kept in observation in the hospital after being admitted as an in-patient. This is contrary to the scheme of Section 19(1) MHA read with Section 19(2) MHA.

111. In other words, it is not as if a person can be admitted to a mental health institution in order to determine whether they require such an admission. The determination that she requires admission should be made prior to her actual admission and not later. In the present case, this basic requirement has been violated. Z was admitted into CIMBS as an in-patient without any clear determination as to whether she was required to be so admitted. On the contrary, even by the end of the day on 11th June 2017, Dr. Kalani came to the conclusion that Z did not require to be admitted as an in-patient. It had already been decided by then that she was going to be released on the following day.

112. Here, the Court would like to clarify that what Section 19 MHA envisages is that till such time the medical officer in charge records in writing his satisfaction that the person is unable to express willingness to be admitted and is mentally ill and requires hospitalization, such a person can only be examined in the out-patient department. From those assessments the medical officer in-charge will have to be convinced that such a person requires to be admitted. In other words, the medical officer in-charge cannot direct the admission of a person into the hospital as an in-patient without recording such a satisfaction in the first place. Involuntary admission cannot be recommended for the purposes of recording such a satisfaction.

113. There is no explanation offered for the failure of Dr. Sunil Mittal, as the medical officer in charge of CIMBS, to himself examine Z and come to the conclusion that she requires treatment as an in-patient. The proviso to Section 19(2) MHA which provides for dispensing with the certificate procedure was in fact not satisfied in the present matter. One certificate was prepared at 7 : 35 pm and the other at 10pm and, therefore, both these doctors obviously did not examine Z at the same time. In the notes, it is sought to be justified by saying that Dr. Sunil Mittal was ‘consulted’. The notes do not themselves say that he was spoken to over the phone. Clearly, he was not physically present in the hospital. Consultation over the phone will never satisfy the requirement under Section 19 MHA. This is not a function that could have been

delegated by Dr. Sunil Mittal to anyone else. In the present case, there is no justification shown by Dr. Mittal for a departure from the above procedure.

114. In order to justify the action, it is sought to be contended by CIMBS, that no advice was given by them to Z's parents to get her admitted to the hospital for treatment. This Court finds this hard to believe. The out-patient records of CIMBS too reveal that Z's father did consult Dr. Kalani. In any event, it would not have been possible for Z's parents to simply get Z admitted to the mental hospital without first talking to the doctors there. It would have also not been possible for them to know which ambulance to choose without the advice of CIMBS. The affidavits filed on behalf of CIMBS in this regard did not satisfactorily address this aspect of the matter.

115. A vague statement is made that at the hospital, Z "had not expressed her willingness to be admitted as a voluntary patient". Reading the affidavits of the parents, doctors of CIMBS and Z herself carefully and the fact that it is Z's father who had signed all the documents, it is evident that from the moment she was brought into the hospital, it was presumed by the doctors there that Z was not in a position to express her willingness for treatment. It is just presumed that she was incapable of giving consent and that it was to be her father who was to give consent.

116. This is a serious flaw in the entire procedure followed by the hospital under the MHA. Notes made by the doctors who examined Z speak to the contrary. By 10 pm that day, Dr. Kalani had already come to the conclusion that Z did not require any treatment as in-patient. Therefore, bypassing the procedure under the MHA, i.e. the medical officer in charge having to satisfy himself that the patient brought to the hospital had to be admitted as an involuntary patient under special circumstances, Z was without justification detained in the CIMBS on the night of 11th and 12th June 2017. From this moment onward, everything that was done by the hospital was in violation of the MHA.

117. The fact that the term 'mental disorder' has not been defined under the MHA does not mean that there is no responsibility on the doctors to first find out if the patient is indeed suffering from any such mental disorder prior to getting her admitted to a mental health facility. The reference has been made to the International Classification of Diseases and the WHO Guidelines, ICD-10 on 'classification of mental and behavioural disorders'. It is claimed that drug abuse is a mental disorder which requires medical treatment.

118. It is claimed by CIMBS that the parents of Z gave her background as a person who had a history of drug abuse and was suffering from mental disorder and that they simply believed what the parents of Z said in this regard. The fact of the matter is that the CIMBS doctors never bothered to ascertain whether Z was in a position to give her consent to the treatment that they were proposing. Again, a vague statement is made that both examining doctors "were of the opinion that the patient possibly suffered from one or more mental disorders requiring treatment/admission". The notes referred to are pages 59 to 62 of the patient medical records and pages 22 to 24 of the loose paper compilation.

119. The Court here first would like to refer to the certificates themselves issued by Dr. Raj Mishra and Dr. Kalani. In the relevant column, both certificates have deferred giving any medical opinion that Z was suffering from any mental disorder. It is plain that the doctors at CIMBS are trying to obfuscate the obvious error in not first ascertaining whether Z was suffering from any mental disorder at all.

120. Repeated references have been made to the certificate issued by Dr. Chellani way back in May 2014. This same certificate was used by Z's parents to first transport her in the ambulance and then to get her admitted into CIMBS. This was a three year old certificate. This certificate had already been seen by the learned MM who first dealt with the complaint made by Z's parents way back in 2015 and was rejected along with

the parent's complaint that Z required involuntary admission into a mental health institution.

121. While it does appear that Z's parents suppressed this fact, it was incumbent upon the doctors at CIMBS, when faced with such a certificate which is three years out of date, to first satisfy themselves that Z needed treatment and admission as an involuntary in-patient at the hospital instead of blindly acting on the basis of such certificate.

122. There was no basis whatsoever for either Dr. Raj Mishra or Dr. Kalani to announce a 'Code White' and 'Code Violet' alert. Code White refers to a suicidal patient and Code Violet refers to a violent patient. Z was neither. There was nothing which occurred during the evening hours of 11th June 2017 that could have persuaded either of these doctors to come to such a conclusion.

123. A person brought to a mental health institution without her consent, and sought to be admitted faces a serious infraction of her life and liberty. This dictates the mandatory nature of the safeguards under the MHA having to be scrupulously followed. Unless a patient is actually found to be suffering from a mental illness which cannot be treated except by way of admission into the hospital, such patient should not be admitted either as a voluntary or involuntary patient into a mental health institution. This is the scheme of the MHA itself and, therefore, a violation of the statutory procedure results in not only incalculable harm to the person but also a serious violation of her constitutional rights.

124. A reading of the notes preserved at CIMBS shows that apart from Dr. Mishra and Dr. Kalani, there was also a clinical psychologist who was examining Z. She too came to the conclusion that Z did not actually require treatment as an in-patient. It is remarkable that overlooking all these notes, Dr. Kalani simply decided to detain Z for one more night on the pretext that it would not be safe for her to return that night itself. This kind of conclusion is most inexplicable.

125. Z was an adult woman and was entitled to take her own decisions. The fact that she was never consulted and never spoken to as an adult who could take decisions of her own accord is a serious failing on the part of the doctors at CIMBS.

126. It is sought to be contended that this was a case "involving physical abuse, alleged sexual abuse, drug abuse, history of mental illness and self harm". This submission is unfounded. The fact of the matter is neither of the doctors who attended or talked to Z bothered to actually find out if she had suffered any of the above abuses. They simply presumed that what Z's parents were saying was true.

127. The Court is also not convinced about the explanation given by the hospital for not allowing SI Yogesh to record her statement in connection with the complaint of abduction made by the Petitioners. Even on the part of SI Yogesh, he had the order of the Court with him and could easily have shown it to the doctors to ask them to comply with it immediately. This was not done. There was a specific direction by this Court that the police should meet Z and such a direction was binding on the hospital.

128. The notes kept by the doctors do not show that they were shown the order of the Court. This part of the narrative of both CIMBS and the police is not convincing. Not only was this Court's order violated but Z was unnecessarily detained by CIMBS for a whole day and night which is totally unjustified and in clear violation of Section 19 MHA read with Article 21 of the Constitution of India.

129. The doctors admit that the essential aspect of Section 19 MHA is the 'special circumstances' viz., that a person sought to be admitted as an involuntary patient does not or is unable to express willingness for admission as an in-patient. However, nothing in any of the affidavits states that any of the doctors asked Z whether she was willing to be admitted as an in-patient. Z could not be expected to, of her own accord, express willingness to be admitted as an in-patient. It would be unreasonable to

expect that a patient who was brought to the hospital in circumstances such as those in the present case would know the requirements under Section 19 of the MHA. Therefore, this stand of the hospital cannot be accepted at all.

130. The submission of CIMBS on the question of the possibility of evaluating Z's mental health as an out-patient is that there may be instances where a patient may not come back to the OPD for evaluation and therefore, it becomes necessary in such circumstances for the patient to be hospitalised. This submission is totally unacceptable to the Court. The Court can only reiterate that the MHA is very clear that it is only a mentally ill person who can be admitted to a mental health facility. Further, the determination as to the person's mental health has to precede the admission of the person. It goes without saying that that there cannot be a presumption that a person is mentally ill or incapable of giving consent. The Court concludes, in light of the above discussion that the involuntary admission of Z to the CIMBS at 7.55 pm on 11th June 2017 was in clear violation of the requirement of Section 19(1) MHA read with Section 19(2) MHA.

Repeated violation by the Delhi Psychiatry Centre?

131. Two decades ago, in a judgment dated 1st May 1997 in *Anamika Chawla* v. *Metropolitan Magistrate*, (1997) 5 SCC 346 the Supreme Court was considering the legality of a commitment order passed by an MM in Delhi requiring the Petitioner there to be admitted to the Delhi Psychiatry Centre at 35, Defence Enclave, Vikas Marg Delhi (which incidentally is the very same CIMBS to which Z was admitted) on the basis of certificates issued by two psychiatrists, one of whom was Dr. Sunil Mittal. The opening paragraph of the judgment reads thus:

> "This case arises of alleged ill-treatment of Mrs. Anamika Chawla by her husband and her father. The case is going on since 29th July 1995. Smt. Anamika Chawla came up against the order passed by the Metropolitan Magistrate on 29th July, 1995 ordering to be admitted to Delhi Psychiatry Centre, 35, Defence Enclave, Vikas Marg, New Delhi, for observation and treatment. This Order was passed with undue haste even without seeing the alleged patient. Medical certificates were produced from Dr. Sunil Mittal and Dr. S.C. Malik. The case of the petitioner, Mrs. Chawla, is that neither of the two doctors had ever met her or examined her. The allegation appears to be true."
>
> (emphasis supplied)

132. The Supreme Court further observed in its judgment as under:

> "The case has now gone on a number of days. We heard the Doctors and examined the reports heard all the parties. Mrs. Chawla has appeared before us personally on a number of days. We have spoken to her on all these days. We have not noticed the slightest abnormality in her behaviour.
>
> .....
>
> We hold that there was no basis for passing the impugned order dated 20th July, 1995 by the Metropolitan Magistrate. The Order is quashed. The Writ Petition filed in this Court by Anamika Chawla is disposed of finally as above. There will be no order as to costs."

133. If, for the second time around, Dr. Sunil Mittal has, without seeing a patient, agreed to her being admitted to the same Delhi Psychiatry Centre of which he is Director, then it is indeed a serious matter. It is shocking that Dr. Sunil Mittal has repeated the violation that was first noticed by the Supreme Court two decades ago. No action appears to have been taken against him in all these years and the pattern of his professional misconduct does not appear to have changed. The consequences for the victims of his misconduct are evident in both instances. The impunity with which this misconduct is imbued calls for immediate action by the Medical Council of India (MCI).

Code of professional ethics

134. The Court has asked both the *amicus curiae* and Mr. Talwar to address it on the ethical code of psychiatrists. It appears that under the extant scheme of the MCI there is no separate code of ethics for psychiatrists. There are Forensic Psychiatrist Clinical guidelines published by the Indian Psychiatric Society. While there is a lot of literature available on the treatment of patients and the protocol to be followed, there is very little on the code of ethics for psychiatrists. For instance, the question of whether it is appropriate for a psychiatrist to issue diagnoses of mentally ill patients on pre-printed templates is unaddressed. To this Court, such a practice reflects a non-application of mind by a psychiatrist.

135. In the present case, the pre-printed portion of the form manifests a presumption that the patient is dangerous and unable to take care of himself or herself. How can this be a standard diagnosis for all in-patients? The fact that identical certificates have been issued by the two doctors, without striking off the inapplicable portions, further points to the danger of using such pre-printed forms. One can understand the use of the pre-printed forms in the out-patient department of a government hospital for routine illnesses such as common cold, fever, cough, etc. where there is not adequate time to write out in hand the actual diagnosis. However, for a patient coming in for admission on an involuntary basis or even, for that matter, on a voluntary basis as mentally ill as envisaged by the MHA, it is inconceivable that such a pre-printed form could be issued as a diagnosis.

136. If there is no code of ethics for psychiatrists in this country, it would be indeed a serious lacuna which ought to be remedied. An aspect of this matter which is disturbing is psychiatrists being able to talk to each other on the telephone or through WhatsApp messages to decide whether a patient requires treatment as envisaged. This again is totally unacceptable. It is illegal and has implications of unconstitutionality. A professional psychiatrist requires personal interaction with a person before making a diagnosis of such person's mental condition. It is inconceivable that a psychiatrist can determine the mental state of a person by merely discussing the symptoms and conditions with another fellow psychiatrist over the telephone. If this practice is being followed then it has to be stopped. A code of ethics must be formulated in this regard.

137. The MCI appears to be the common body dealing with all complaints against psychiatrists as well as other medical practitioners. The Court leaves it to the MCI to formulate a separate code of ethics for psychiatrists to follow. Such a code will reinforce the law.

138. The Court concludes this part of the discussion by holding that the practice adopted in the present case by Dr. Sunil Mittal, Dr. Raj Mishra, and Dr. Sameer Kalani was in violation of the law, the professional medical ethics and norms. They failed to satisfy themselves about the capacity of Z to give consent to treatment. Z was forcibly kept by them at the CIMBS without her consent in violation of the MHA and the Constitution of India.

139. In view of such a serious breach of the law and professional ethics, action ought to be taken against the above doctors by the MCI. However, the question as to what action is to be taken against each of them is left to the MCI to decide. MCI will take note of this being the second known instance in twenty years of violation of the law and ethics by Dr. Sunil Mittal and the Delhi Psychiatry Centre.

140. On her part, Z is permitted to file a formal complaint with the MCI relying upon the affidavits and records submitted by CIMBS in this matter. If such complaint is filed, it is expected that the MCI will deal with it promptly and render a decision no later than six months from the date of receiving such complaints.

Role of the ambulance Almas

141. The Court now turns to the role of the ambulance staff that accompanied Z. In the first place, it must be noticed that Dr. Israul Haque is in fact not an allopath at all. He holds a degree in Ayurvedic medicine. It is therefore pertinent to ask whether a person holding a degree in Ayurvedic medicine can be permitted to operate an ambulance which might have to cater to patients who require specialised treatment and care?

142. It is disturbing to note that this ambulance run by Almas is registered in Haryana but does not satisfy the requirements of the guidelines for running such ambulance in Haryana. The anomaly is that since it does not operate in Haryana but in Delhi then there is no action against such ambulance possible in Haryana. As far as Delhi is concerned, the ambulance does not satisfy the requirements for running such an ambulance in Delhi either. However, since the vehicle is registered in Haryana, Almas is able to get away by taking a stand that they are not required to satisfy the requirements of running an ambulance in Delhi. This is how an ambulance which does not satisfy the guidelines in both for Haryana and Delhi is able to operate an ambulance in Delhi and that too by a doctor who is not an allopathic doctor but a holder of a degree in Ayurvedic medicine. Clearly the ambulance does not satisfy the requirements of Central Guidelines for running an ambulance. This is again a serious lacuna in law which requires to be addressed.

143. It appears that Almas simply made the services available without taking any basic precaution of satisfying themselves that this was a genuine complaint of a person suffering from mental illness. They appeared to have followed no protocol whatsoever and had simply gone by the application submitted by Z's father which was enclosed with the three year old notes of Dr. Chellani. It should not have been so naive as to act on the basis of a three year old certificate to determine that the patient that they were carrying in the ambulance was incapable of taking her own decisions.

144. The manner in which the ambulance staff has been used to forcibly take Z away from the home of the Petitioners is illegal and unconstitutional. They have all been party to depriving Z of her liberty and virtually rendering her into the custody of the hospital without her consent. Almas has to be restrained from offering this type of ambulance services.

145. It has been pointed out by the learned *amicus curiae* that Almas which is registered in Delhi as an Ambulance Service Provider company was incorporated on 4th October 2012 and, therefore, the revised Guidelines for Registration of Ambulances in Delhi would apply. In terms thereof, "An ambulance vehicle can be registered by the Transport Department in Delhi only after it has the approval of Committee for Registration of Ambulances (CRA)". It is unclear from the records whether the ambulance in the present case has been registered as per the guidelines.

146. The learned *amicus curiae* has also pointed out that the guidelines required the presence of a medical control physician who would be required to give an undertaking that he shall be responsible for maintaining the quality of the service provided in the ambulance. It is pointed out that there is a lacuna inasmuch as neither the guidelines nor the National Ambulance Code AIS : 125 approved by the Ministry of Road Transport and Highways prescribe for or regulate the provision of service by the staff of the ambulance and this is a lacuna that requires to be addressed and remedied.

147. A copy of the intimation letter from Z's parents to the police was handed over to Almas. The letter noted that Z was suffering from a "probable psychological disorder". The consent form for Almas for shifting psychiatric patients clearly stipulates "Authorization of shifting of psychiatry patient to hospital/rehabilitation centre for diagnostic/therapeutic procedure". Therefore, there is a presumption that the medical control physician present in the ambulance would conduct a preliminary examination

or perform a diagnosis in order to determine whether the person to be transported is in fact a psychiatric patient or not. Such preliminary examination was even more necessary in the present case considering the intimation letter only mentioned a "probably psychological disorder".

148. From the complaint of the Petitioner No. 1 to the SHO of PS Malviya Nagar given on 11th July 2017 itself and the statement of the Petitioner No. 1 and Z's own statement under Section 164 Cr PC, it is plain that some form of drug/anaesthetic substance was administered to Z without ascertaining whether she in fact was a psychiatric patient. The Court agrees with the submission of learned *amicus curiae* that the ambulance staff grossly neglected the duty of care owed to Z. They proceeded to abet the abduction of Z and administered drugs to her by injection in the absence of any medical records and on the mere say so of Z's family. This indeed appears to be a fit case for revocation of the registration of the ambulance company if, indeed, it is so registered. A peremptory direction is issued to the Government of NCT of Delhi to take action in regard to Almas and such ambulances which have been registered outside the NCT of Delhi but are operating in Delhi with impunity and in violation of the applicable guidelines.

Role of the police

149. Turning now to the police, the report of inquiry submitted to this Court by the DCP seeks to give a clean chit to HC Praveen who is attached to PS Malviya Nagar. HC Praveen went to the house of the Petitioners in plain clothes. He actually oversaw the forcible taking away of Z from the house of the Petitioners. The DCP's report puts out a weak defence for HC Praveen and seeks to project that he was acting in a *bona fide* manner.

150. When a group of persons barges into a house, pins down a person forcibly, injects her with a sedative, and tries to take her away in an ambulance, a policeman cannot possibly be under the *bona fide* belief that all this was done in her best interest. Clearly, HC Praveen failed in his duty of protecting the life and liberty of a citizen. He should not have allowed Z to be taken away forcibly by her parents in the above violent manner. He also did not inform the Petitioners about where Z was taken. The report of inquiry of the DCP clearly shows that HC Praveen was present at the Petitioners' residence at around 5 pm. HC Praveen cannot possibly take the defence that he did not know where Z has been taken in the ambulance. It is disconcerting that despite these lapses no disciplinary action has been taken against HC Praveen.

151. The role of SI Yogesh was also hugely problematic. Instead of acting promptly on the complaint given by the Petitioners, he walked into the hospital in the late hours. When the doctors in CIMBS told him that Z was not fit to speak to him, he does not appear to have shown them the order of this Court dated 12th June 2017 directing that he should meet Z and record her statement. The report of the DCP does not address this part at all.

152. The delay in the registration of the FIR on the complaint of the Petitioners in the present case is unacceptable considering that the complaint clearly named the persons responsible for the abduction. The role of SI Yogesh Kumar needs to be probed further to ascertain whether he was acting in a bona fide manner and whether in fact he communicated the order of this Court to the staff at CIMBS. If he did not do so, he has much to answer for.

153. The Court would, therefore, direct that a full-fledged inquiry be conducted by the police into the roles of SI Yogesh Kumar and HC Praveen in this entire matter. Further, on the aspect of violations of the MHA, the Delhi Police appears to have left it to the Secretary (Health) GNCTD who is apparently enquiring into the matter. The Court directs the Secretary (Health) GNCTD to share with the Delhi Police within four weeks the report of such enquiry and for the Delhi Police to take further action in

accordance with law in terms of such report.

154. The Court considers it appropriate to direct that the Delhi Police shall prepare a manual detailing how to deal with cases under the MHA and, after 7th July 2018, the Mental Healthcare Act 2017. It must prepare a protocol in consultation with legal experts as well as experts in mental healthcare and spread awareness on the issue of mental health. The Central and State Mental Health Authorities must, in collaboration with the State Judicial Academies, hold programmes on periodic basis with civil society groups, Resident's Welfare Associations, Police Officers, lawyers and Judges to sensitize them about the various compliances under the MHA and its successor, the Mental Healthcare Act 2017, and how to treat persons who are sought to be governed by the said legislation.

Consequential directions for compensation

155. The Court is conscious that a charge sheet has been filed and a criminal case has been registered and, therefore, the Court would not like to say anything more on the criminal culpability of these persons being conscious of the fact that the degree of proof of criminal culpability is higher. However, the Court would be failing in its constitutional duty if it did not pronounce on the serious violations of the right to life and personal liberty experienced by Z which more than adequately stands established in the present case.

156. The task of the Court in exercising its *habeas corpus* writ jurisdiction does not necessarily stop with ending unlawful detention of a person. In the constitutional jurisdiction, the power of the Courts to grant further consequential relief has been explicitly recognised.

157. In a similar context as the present, i.e. one where there was an involuntary admission of a person to mental health facility against her wishes, the Madras High Court in *Meera Nireshwalia* v. *State of Tamil Nadu*, 1990 SCC OnLine Mad 558 granted her monetary relief after referring to the decisions of the Supreme Court in *Rudul Sah* v. *State of Bihar*, (1983) 4 SCC 141, *Sebastian M. Hongray* v. *Union of India*, (1984) 3 SCC 82 : AIR 1984 SC 1026 and *Bhim Singh* v. *State of Jammu & Kashmir*, (1985) 4 SCC 677.

158. Likewise, in *Arvinder Singh Bagga* v. *State of U.P.*, (1994) 6 SCC 565, the Supreme Court did not stop with granting relief of termination of illegal detention. It continued the writ petition as one for qualified *habeas corpus* for examining the legality of the detention and for determining whether the Petitioner is entitled to be compensated for the illegal detention as a public law remedy for violation of her fundamental rights under Article 21 of the Constitution, quite apart from criminal or civil liability which may be pursued in the ordinary course. Ultimately, the Court did order, after inquiry, as under:

> "On a perusal of all the above, we are really pained to note that such things should happen in a country which is still governed by the rule of law. We cannot but express our strong displeasure and disapproval of the conduct of the police officers concerned. Therefore, we issue the following directions:
>
> 1. The State of Uttar Pradesh will take immediate steps to launch prosecution against all the police officers involved in this sordid affair.
> 2. The State shall pay a compensation of Rs. 10,000 to Nidhi, Rs. 10,000 to Charanjit Singh Bagga and Rs. 5000 to each of the other persons who were illegally detained and humiliated for no fault of theirs. Time for making payment will be three months from the date of this judgment. Upon such payment it will be open to the State to recover personally the amount of compensation from the police officers concerned."

159. In *Burhanuddin Tahevali Bilaspurwala* v. *Union of India*, 1993 SCC OnLine Del 580, this Court followed the decision in *Nilabati Behera* v. *State of Orissa*, (1993) 2

SCC 746 and *Bhim Singh* v. *State of Jammu & Kashmir* (supra) and observed as under:

> "15. The question then arises, if the petitioner is entitled to any compensation for infraction or invasion of his rights granted under article 21 of the constitution, and if so, to what amount. The law is now well settled that relief of monetary compensation as exemplary damages in proceedings under article 226 of the constitution for "established infringement of the indefeasible right granted under Article 21 is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen". ..... In the present case the petitioner was in illegal custody for 15 days. Law is not settled as to what amount of compensation is to be awarded in such cases. We do not think any difference can be made if a citizen is poor or rich for the purpose of award of compensation in a case like the present one. Whether a person is rich or poor personal liberty has the same meaning. It may perhaps be more in the case of poor and a downtrodden who has to earn for his livelihood each day."

160. In *Tirath Ram Saini* v. *State of Punjab*, (1997) 11 SCC 623, a *habeas corpus* petition was being decided by the Supreme Court regarding the wrongful confinement of two persons by police authorities for a period of two months. Compensation was awarded to each of them for such unlawful detention. In *Union of India* v. *Luithukla*, (1999) 9 SCC 273, the Court allowed the compensation in a *habeas corpus* petition by observing as under:

> "9. As to the plea on behalf of the appellants that the affidavits on their behalf should not have been rejected by the High Court without a factual enquiry, we would comment that the High Court ought to have added that it was open to the first respondent to file a suit against the appellants to claim damages, if so advised. In that event a trial on facts would have been necessary and would have taken place. As it is, Budha Singh was last seen in the company of security forces, now 16 years ago. The security forces must, therefore, be held to be liable to make payment of the aforestated nominal amount of rupees one lakh to the 1st respondent."

161. This Court in *ABC* v. *Commissioner of Police*, 2013 SCC OnLine Del 449 was dealing with a case where a young girl's identity as a victim of sexual abuse was disclosed by a television channel in gross violation of her fundamental rights to life, liberty and privacy. Compensation was granted against the television channel as "a palliative measure leaving it to the victim to seek further damages in appropriate civil proceedings".

162. Keeping in view the above exposition of law, the Court directs that within a period of four weeks from today, Z will be paid compensation as follows : Rs. 3 lakhs by CIMBS; Rs. 1 lakh each by Almas and the State and Rs. 3 lakhs by her parents. The compensation amounts will be paid by demand draft in Z's name, within four weeks from today, and will be deposited by Z in her own account. Z will be free to utilize the amount in whichever way she deems fit. This will not preclude Z from seeking other appropriate remedies in any other proceedings.

Summary of conclusions and directions

163. The conclusions and directions of the Court in this judgment are summarised as under:

(i) Protection against an attack on the right of life, liberty, privacy and dignity can be sought not only against the State but also against non-State actors. Article 21 places an obligation both on state and non-state actors not to deprive a person of life, liberty, privacy and dignity except in accordance with the procedure established by law. In other words Articles 15(2), 17, 19, 21 and 23 acknowledge the horizontal nature of those fundamental rights. They can be

enforced against not just the State but non-state actors as well.

(ii) In a *habeas corpus* petition when the plea before the Court is that a person should be protected against coercive retributive action of her parents, for making personal life choices, the Court shall not hesitate to exercise its jurisdiction to grant relief. In effect, the Court would be recognizing that the threat to the right of 'choice' of a person and thereby right to life, liberty, privacy and dignity can very well come from the person's own parents irrespective of the age and gender of such person.

(iii) The actions of Z's parents in removing her forcibly from the Petitioners' residence and getting her admitted without her consent to the CIMBS on 11th June 2017, with the aid of the local police, the staff of Almas, and the staff of CIMBS, was in clear violation of Z's fundamental rights to life, liberty and the right to dignity enshrined in Article 21 of the Constitution. This violation of her rights was triggered by her exercising her freedom of choice as a female adult by choosing to leave her home, and deciding where she would like to reside. The Court rejects the plea of Z's parents that they acted in the larger interests of their daughter and in consideration of her well-being since their actions indicate the opposite.

(iv) The procedure for involuntary admission under Section 19 MHA is only applicable when the person has been found to be mentally ill as required by law and a satisfaction has been reached to that end. Admitting a person under Section 19 MHA merely for observation cannot be countenanced as doing so would be in violation of a person's rights to life, liberty, and dignity granted under Article 21 of the Constitution of India.

(v) Section 19(1) read with Section 19(2) of the MHA mandates that the medical officer in-charge has to record two kinds of satisfaction - first, in terms of Section 19(1) of the MHA, the satisfaction that it is in the interest of the medically ill person that they necessarily be admitted to a mental health institution; and second, the satisfaction in terms of the proviso to Section 19(2) of the MHA that it is proper to cause such mentally ill person to be examined by two medical practitioners working in the hospital itself instead of requiring the two certificates as provided under Section 19(2) of the MHA. The medical officer in-charge cannot delegate this crucial function of the recording of the satisfaction of two separate kinds to some other person.

(vi) In the present case, the satisfaction for the purposes of Section 19(1) MHA could not have been arrived at by Dr. Sunil Mittal by just listening to his colleagues on the phone (or by a WhatsApp message). Such satisfaction could have been arrived at by Dr. Sunil Mittal only after interacting with Z. Clearly that interaction did not take place in the present case.

(vii) A person cannot be admitted to a mental health institution in order to determine whether she requires such admission. The determination that she requires admission should be prior to her admission and not later. The involuntary admission of Z to the CIMBS at 7.55 pm on 11th June 2017 was, therefore, in clear violation of the requirement of Section 19(1) MHA read with Section 19(2) MHA.

(viii) A professional psychiatrist requires personal interaction with a person before making a diagnosis of such person's mental condition. A psychiatrist cannot determine a mental state of a person by merely discussing the symptoms and conditions with another fellow psychiatrist over the telephone. To do so is illegal and unconstitutional.

(x) The MCI should formulate a separate code of ethics for psychiatrists to follow, which will reinforce the law.

(xi) The practice adopted in the present case by Dr. Sunil Mittal, Dr. Raj Mishra, and Dr. Sameer Kalani was in breach of the law, professional medical ethics and norms. The question as to what action is to be taken against them is left to the MCI to decide. MCI will take note of this being the second known instance in twenty years of violation of the law and ethics by Dr. Sunil Mittal and the Delhi Psychiatry Centre.

(xii) Z is permitted to file a formal complaint with the MCI relying upon the affidavits and records submitted by CIMBS in this matter. If such complaint is filed, it is expected that the MCI will deal with it promptly and render a decision not later than six months from the date of receiving such complaint.

(xiii) The Almas ambulance staff grossly neglected the duty of care owed to Z. They proceeded to abet the abduction of Z and administered drugs to her by injection in the absence of any medical records and on the mere say so of Z's family. This is a fit case for revocation of the registration of Almas as an ambulance company if it is so registered and stopping their further functions.

(xiv) Almas and its team have been party to depriving Z of her liberty and virtually rendering her into the custody of the hospital without her consent. Almas has to be restrained from offering any type of ambulance services. A peremptory direction is issued to the Government of NCT of Delhi to take action in regard to Almas and other ambulances, on being checked, which have been registered in states outside the NCT of Delhi but are operating in Delhi with impunity and in violation of the applicable guidelines.

(xv) The police has abetted the flagrant violation of Z's fundamental rights to life, liberty, privacy and dignity under Article 21 of the Constitution. A full-fledged inquiry be conducted by the police into the roles of SI Yogesh Kumar and HC Praveen in this entire matter.

(xvi) Further, on the aspect of violations of the MHA, the Delhi Police appears to have left it to the Secretary (Health) GNCTD who is apparently enquiring into the matter. The Court directs the Secretary (Health) GNCTD to share with the Delhi Police within four weeks the report of such enquiry and for the Delhi Police to take further action in accordance with law in terms of such report.

(xvii) The Delhi Police shall prepare a manual detailing how to deal with cases under the MHA and, after 8th July 2018, the Mental Healthcare Act 2017. It must prepare a protocol in consultation with legal experts as well as experts in mental healthcare and spread awareness on the issue of mental health.

(xviii) The Central and State Mental Health Authorities must, in collaboration with the Delhi Judicial Academy, hold programmes on periodic basis with civil society groups, Resident's Welfare Associations, Police Officers, lawyers and Judges to sensitize them about the various compliances under the MHA and its successor the Mental Healthcare Act 2017 and how to treat persons who are sought to be governed by the said legislation.

(xix) Z will be paid compensation as follows : Rs. 3 lakhs by CIMBS; Rs. 1 lakh each by Almas and the State and Rs. 3 lakhs by her parents. The compensation amounts will be paid by demand draft in Z's name (which has been withheld in this judgment for reasons of privacy) within four weeks from today and will be deposited by Z in her own account. Z will be free to utilize the amount in whichever way she deems fit. This will not preclude Z from seeking appropriate remedies in other proceedings in accordance with law.

(xx) Z's parents and brother will be continued to be bound down by their affidavits of undertaking to this Court that they will not come in the way of Z's peaceful existence and choices.

(xxi) The criminal case arising out of FIR No. 231/2017 registered at PS Malviya

Nagar will be decided by the concerned Courts in accordance with law uninfluenced by anything said in this order.

164. The writ petition and the application are disposed of in the above terms. The records of CIMBS of the treatment of Z shall continue to remain in a sealed cover with this Court. Given the sensitive nature of this case, the record (other than the judgment) shall not be made available for inspection or for issuance of certified copies thereof unless specifically ordered by the Court.

165. The Court records its appreciation of the excellent assistance provided by counsel for the parties and in particular Mr. Rajshekhar Rao, learned Amicus Curiae.

166. Certified copies of this judgment be delivered through a Special Messenger forthwith to the Chief Secretary, Govt. of NCT of Delhi, the Secretary, Medical Council of India, the Commissioner of Police, the Delhi Judicial Academy, the Central Mental Health Authority and the Delhi State Mental Health Authority for compliance with the above directions.
