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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 160/2021

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Decided on: 3rd May, 2021

MEHRAZ BANO

..... Appellant

Through: Md.Azam Ansari, Adv. with
Md.Ashfaque Ansari, Adv.

Versus

THE DIRECTOR, IHBAS & ANR.

..... Respondents

Through: Mr. Tushar Sannu, Standing Counsel
with Ms.Ankita Bhadouriya, Mr.Shubham Jain,
Advocates for IHBAS along with Dr.Deepak,
IHBAS

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: **D.N.PATEL, Chief Justice (Oral)**

Proceedings in the matter have been conducted through video conferencing.

C.M.No.15695-97/2021 (exemptions)

For the reasons stated in the applications and in view of the present prevailing situation, the present applications are allowed subject to just exceptions. However, the applicant is directed to file duly signed and affirmed affidavits within a period of one week from the date of resumption of regular functioning of the Court.

The applications are disposed of.

LPA No.160/2021

1. Being aggrieved and feeling dissatisfied by the order dated 28th April, 2021 passed by the learned Single Judge in C.M.No.15457/2021 in W.P.(C) No.4889/2021 (Annexure A-1 to the memo of this appeal), the present LPA has been preferred by the original petitioner.
2. Having heard the learned counsel for the parties and looking to the facts and circumstances of the case, it appears that the minor son of the appellant (original petitioner) is undergoing treatment at the Institute of Human Behaviour and Allied Sciences, New Delhi (hereinafter referred to as 'IHBAS'). The appellant is having apprehension that the confidential information with regard to the medical treatment and the sickness of the patient, that is, her minor son could be shared with persons other than the doctors who are treating him.
3. Learned counsel for the appellant has placed reliance upon Section 5 and Section 23 of the Mental Health Care Act, 2017 to be read with a decision delivered by the Hon'ble Supreme Court in *Justice K.S.Puttaswamy (Retd.) vs. Union of India & Ors.,(2017) 10 SCC 1* and submitted that the information with regard to medical treatment taken by the patient and the sickness from which the patient is suffering from, should not be shared with anyone else except the doctors of IHBAS who are treating the patient.
4. Learned counsel for the respondents submitted that they have already given an undertaking before the learned Single Judge which is also noted in

paragraph-5 of the impugned order that apart from the team of treating doctors, consisting of Dr. Amit Khanna, the Head of the Department, as also the Director, who is also a psychiatrist, no one else is permitted to access the record of the patient and that the file record has also been maintained securely by the treating doctors. It is also submitted by the learned counsel for the respondent that, in fact, the application preferred by the original petitioner being C.M.No.15457/2021 in this regard has been allowed by the learned Single Judge. Moreover, the writ petition is already pending before the learned Single Judge which is now adjourned to 23rd August, 2021.

5. In view of the above, it appears that the information with regard to sickness from which the patient is suffering from and the treatment which he is taking is not going to be shared by the respondents with any third party. Now, the question remains whether only the doctors who are giving treatment should know or the Head of the Department and the Director of the Institution should also know the nature of illness and the treatment given to the patient. In this regard Section 23(2)(b) of the Mental Health Care Act, 2017, reads as under:-

“23. Right to Confidentiality -

(1) xxx xxx यमेव xxx यते

(2) All health professionals providing care or treatment to a person with mental illness shall have a duty to keep all such information confidential which has been obtained during care or treatment with the following exceptions, namely:—

(a) xxx xxx xxx

(b) release of information to other mental health professionals and other health professionals to enable them to provide care and treatment to the person with mental illness;”

6. As is clear from a reading of the above provision that an exception has been carved out in the Act itself so that proper care and treatment could be provided to the person with mental illness. In our view also, it ought to be kept in mind that the Head of the Department and the Director of IHBAS **ought to know the nature of sickness and the treatment of the patient.**

This is for the welfare of the patient. It ought to be kept in mind that to ensure whether the treatment is going on in correct direction or not, it has to be monitored by the Head of the Department and the Director of the IHBAS.

7. Sometimes, the doctor, who is giving treatment may also require consultation with the Head of the Department and Director of the Institution. **This consultation is not just for nothing.** On the contrary, such consultation may prove helpful in giving treatment of the patient. It is like in the case of lawyer's argument; whenever, main lawyer is arguing the case, he/she is always taking assistance from the other junior lawyers associated with him/her and vice versa. Therefore, in medical field also whenever treatments are given by a particular doctor or doctors, the Head of the Department and the Director of the Institution should also know the nature of the sickness and the nature of the treatment being given to a patient.

8. Looking to paragraphs No. 4 to 6 of the impugned order of the learned Single Judge dated 28th April, 2021 passed in C.M.No.15457/2021 in W.P.(C) No.4889/2021, no error has been committed by the learned Single Judge and we are in full agreement with the reasons given by the learned Single Judge in the impugned order. Therefore, we see no reason to entertain this appeal.

9. We direct the respondents that the information about the sickness of the patient and the nature of the treatment being undertaken by the patient, shall not be shared with any third party except whatever has been stated by the respondents in paragraph No.5 of the impugned order.

10. With these observations, this appeal is dismissed.

CHIEF JUSTICE

JASMEET SINGH, J

MAY 03, 2021

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