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

Date of decision: 19th April, 2021

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W.P.(C) 3190/2021

SHIKHA NISCHAL

..... Petitioner

Through

Mr. Shahrukh Ejaz & Mr. Nilotpal Bansal,
Advocates (M-7838390214)

versus

**NATIONAL INSURANCE COMPANY LIMITED
& ANR.**

..... Respondents

Through

Mr. Pankaj Seth, Advocate for R-1.
Mr. Abhishek Nanda, Advocate for R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through Video Conferencing.
2. Can mental illness be treated differently from physical illness for medical insurance purposes, is the question that arises in the present petition.
3. The petition raises an important issue relating to insurance coverage for mental illnesses and the provision of non-discrimination *qua* such illnesses as enshrined in Sections 21(1)(a) and 21(4) of the Mental Healthcare Act, 2017 (*hereinafter*, 'MHA, 2017').
4. The Petitioner in the present case regularly obtained health insurance policies from Respondent No. 1 - M/s National Insurance Company Limited (*hereinafter*, 'NICL'), since 2016. The last policy was purchased by her on 29th May, 2020, named as 'National Mediclaim Policy' (*hereinafter*, 'Healthcare Policy'). The said Healthcare Policy is valid for a period of one year 28th May, 2021. The sum insured was Rs. 3,95,000/-.
5. In June, 2020, the Petitioner developed a certain illness for which she obtained treatment from Sukoon Hospital, Gurugram. She was admitted in the

hospital on 28th June, 2020 and was discharged on 28th July, 2020, after a month of treatment. The total expenses incurred by her was Rs. 5,54,636/- for the said period of hospitalization. She was diagnosed with Schizoaffective Disorder - a mental illness. The Petitioner then applied for reimbursement of the expenses incurred in her treatment, amounting to Rs. 5,54,636/-, from NICL in terms of Clause 1.1 of the Healthcare Policy. As per the Petitioner, she is entitled to reimbursement in terms of Clause 1.1 of the Healthcare Policy which provides for insurance policy coverage for medical expenses incurred for hospitalization. The clause reads as under:

“... The policy covers medical expenses for 30 (thirty) days of pre hospitalization, 60 (sixty) days of post hospitalization, 140+ day care procedures/surgeries, Ayurveda and homeopathy treatment, organ donor's medical expenses, maternity, hospital cash ambulance, air ambulance, medical emergency reunion, vaccination for children and medical second opinion.”

6. She, however, received a letter dated 1st September, 2020 from NICL rejecting her claim, relying upon Clause 4.10 of the Healthcare Policy. The said Clause specifies the exclusions for coverage, in respect of which the insurance company would not be liable to make payments under the Healthcare Policy. Clause 4.10 reads as under:

“4 - Exclusions: The company shall not be liable to make any payment under the policy, in respect of any expenses incurred in connection with or in respect of-

...

***4.10 - Psychiatric disorder, intentional self-inflicted injury:** Treatment for all psychiatric and psychosomatic disorders/diseases, intentional self inflicted injury, attempted suicide”*

7. She then filed a complaint before the Insurance Ombudsman relying upon the provisions of MHA, 2017. The Insurance Ombudsman however, observed that the claim of the Petitioner would have to be settled in terms of the Clauses of the Healthcare Policy, and rejected the claim of the Petitioner.

8. The reliefs thus, prayed for in this petition are as under:

“a) Direct Respondent No.1 to reimburse the Mediclaim amount to Rs.5,54,363(Rupees Five Lakh Fifty-Four Thousand Six Hundred Thirty-Six Only)” while treating the Petitioner as it would have treated if mental illnesses were not excluded by the policy in compliance with Circular dated 16.08.2018 issued by the Respondent No.2.

b) Direct the Respondent No.2 to issue appropriate directions to Respondent No.1 to treat the Petitioner at par with the persons who purchased the National Mediclaim Policy after the amendment of the said policy to include coverage for mental illnesses.

c) Direct the Respondent No.1 to compensate for the mental harassment caused to the Petitioner due to the rejection of her claim.

d) Direct the Respondent No.1 to pay litigation cost to the Petitioner.”

9. Mr. Shahrukh Ejaz, Id. Counsel appearing for the Petitioner submits that the Petitioner is clearly covered under Section 21(4) of the MHA, 2017 which provides specifically that insurance companies would not make any distinction between mental illnesses and physical illnesses. He submits that NICL could not have rejected the claim of the Petitioner on the ground that the condition of the Petitioner was a mental illness. Further, the Insurance Regulatory and Development Authority of India (*hereinafter*, ‘IRDAI’) also had a bounden duty to ensure that the insurance products of NICL were in line

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with the law enacted i.e., MHA, 2017. He further submits that the MHA, 2017 has come into effect on 29th May, 2018, including Section 21(4) of the said Act, and in view thereof, both NICL and IRDAI are guilty of dereliction of duty and directions ought to be issued for reimbursement to the Petitioner.

10. Mr. Pankaj Seth, Id. Counsel appearing for NICL submits that since the last date of hearing i.e., 18th March, 2021, the IRDAI had directed NICL to pay the claim of the Petitioner. Accordingly, the maximum coverage of the Healthcare Policy being Rs. 3,95,000/-, the entire sum insured has been paid to the Petitioner. The claim of the Petitioner for Rs. 5,54,636/- is not payable as the total sum insured was Rs. 3,95,000/-, and as such, the latter amount would be the maximum amount payable.

11. Mr. Seth, Id. Counsel further submits that IRDAI had issued guidelines on 29th July, 2016 namely, Guidelines on Product Filing in Health Insurance Business (*hereinafter*, '2016 Guidelines') in respect of the manner in which the mediclaim policies were to be issued by the insurance companies. For every product, the insurance company had six months' time to commercially launch it, after approval being given by the IRDAI.

12. It is the submission of Mr. Seth, Id. counsel that the IRDAI approved the NICL's policy on 27th March, 2020 and in accordance with the 2016 Guidelines, the new product covering mental illness was launched within the six months period, on 1st July, 2020. The Petitioner, however, had renewed her Healthcare Policy in May, 2020, which was prior to the launch of the launch of the product now covering mental illnesses. Hence, she was bound by the terms of the Healthcare Policy availed by her. On a query from the Court as to why NICL has now chosen to pay the Petitioner, Mr. Seth submits that, since the IRDAI directed NICL to make the payments of the claim of the

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Petitioner, the claim has been paid.

13. On behalf of IRDAI, Mr. Abhishek Nanda, Id. Counsel appears and submits that as per Section 21(4) of the MHA, 2017, the obligation to cover mental illnesses is upon the insurer. IRDAI issued a circular dated 16th August, 2018, immediately, upon the notification of MHA, 2017, to the effect that the said provisions of the MHA, 2017 would have to be complied with by all the insurance companies with immediate effect. The IRDAI had complied with its obligation by giving the said direction to the insurance companies. He further submits that after the notification of the MHA, 2017 in fact, more than 234 products have been approved by the IRDAI, which are in compliance with the provisions of the MHA, 2017. Mr. Nanda, Id. Counsel also submits that apart from directing NICL to pay the claim of the Petitioner, the IRDAI has also sought a report from the NICL of any pending claims vide its letter dated 26th March, 2021, which reads as under:

“Sub: Coverage for Mental Illness diseases under Health Insurance policies issued by NICL

- 1. This has reference to a WP No.3190 of 2021 between Shikha Nischal Vs. NICL & Ors filed before the Hon'ble Delhi High Court. IRDAI has been arrayed as one of the respondents in the matter.*
- 2. It has been brought to the notice of Authority vide above writ petition that your company denied the reimbursement claim of the petition for mental illness hospitalization under 'National Mediclaim Policy' on the ground that the said disease is excluded as part of coverage under the said policy.*
- 3. Your attention is drawn to the provisions of section 21(4) of Mental Healthcare Act (MHCA)-2017 which has come into force with effect from 29.05.2018.*

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4. Attention is also drawn to Authority circular ref. no. IRDA/HLT/MISC/CIR/128/08/2018 dated 16.08.2018 issued to all insurers directing to comply with the provisions of MHCA-2017.

5. As per the documents submitted, it is observed that rejection of claim on the ground that 'exclusion of mental illness cover' under the said policy is not in compliance with the aforesaid provisions of the MHCA-2017.

6. Therefore, your company is instructed to look in to the matter and settle the claim of the petitioner in compliance with aforesaid provisions and submit an action taken report within 7 days from the date of receipt of this communication.

7. Further, your company is also advised to review all such cases where policies have been issued but claims relating to mental illness diseases are pending/rejected on the ground of 'exclusion of mental illness cover' under the said product. Action taken report in this regard may be submitted to Authority within 45 days from the date of receipt of this communication.

8. This has the approval of competent authority."

Analysis and Conclusions:

14. The present petition raises issues of grave public importance. In the modern world, mental health is as important as physical health. It was in recognition of this fact that the United Nations Convention on Rights of People with Disabilities (hereinafter, 'Convention') prohibited any form of discrimination in respect of mental illnesses or any other disabilities. The Convention recognises mental disabilities as a form of disability and enshrines the principle of 'non-discrimination' towards such disabilities. The Convention has been ratified by India on 1st October, 2007. The Convention not only recognises the need for non-discrimination *qua* disabilities in

general, but also specifically refers to medical insurance, under Article 25, in particular. The said Article reads as under:

“Article 25: Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender sensitive, including health-related rehabilitation. In particular, States Parties shall:

....

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;”

The spirit of the Convention, thus, ought to be reflected in the domestic regime in respect of mental healthcare.

15. Historically, in pre-independence India there were four legislations dealing with mental health being the Lunacy (Supreme Courts) Act, 1858; Lunacy (District Courts) Act, 1858; the Indian Lunatic Asylum Act, 1858 and the Military Lunatic Act, 1877.

16. Post independence, the Mental Health Care Act, 1987 was the first statute dealing with mental illnesses. In order to bring the domestic law in line with the applicable United Nations Convention, the Mental Healthcare Bill, 2016 was promulgated which finally led to the enactment of MHA, 2017. The stated object of the Bill is “to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for

matters connected therewith or incidental thereto”.

17. The MHA, 2017 has a specific provision, being Section 21, which recognises the right to equality and prohibits discrimination *qua* mental illnesses. Section 21 of the MHA, 2017 reads as under:

“21. (1) Every person with mental illness shall be treated as equal to persons with physical illness in the provision of all healthcare which shall include the following, namely:–

(a) there shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability;

(b) emergency facilities and emergency services for mental illness shall be of the same quality and availability as those provided to persons with physical illness;

(c) persons with mental illness shall be entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness;

(d) living conditions in health establishments shall be of the same manner, extent and quality as provided to persons with physical illness; and

(e) any other health services provided to persons with physical illness shall be provided in same manner, extent and quality to persons with mental illness.

(2) A child under the age of three years of a woman receiving care, treatment or rehabilitation at a mental health establishment shall ordinarily not be separated from her during her stay in such establishment:

Provided that where the treating Psychiatrist, based on his examination of the woman, and if appropriate, on information provided by others, is

of the opinion that there is risk of harm to the child from the woman due to her mental illness or it is in the interest and safety of the child, the child shall be temporarily separated from the woman during her stay at the mental health establishment:

Provided further that the woman shall continue to have access to the child under such supervision of the staff of the establishment or her family, as may be appropriate, during the period of separation.

(3) The decision to separate the woman from her child shall be reviewed every fifteen days during the woman's stay in the mental health establishment and separation shall be terminated as soon as conditions which required the separation no longer exist:

Provided that any separation permitted as per the assessment of a mental health professional, if it exceeds thirty days at a stretch, shall be required to be approved by the respective Authority.

(4) Every insurer shall make provision for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness."

The above provision sets out various protections to be extended to persons with mental illnesses so as to ensure that they are treated equally with persons who have physical illnesses. It is clear from a reading of Section 21(4) of the MHA, 2017 that there cannot be any discrimination in providing medical insurance between mental and physical illnesses or conditions.

18. The IRDAI regulates the personal insurance sector. It plays a pivotal role in safeguarding the interests of the policy holders. A perusal of the IRDAI Act, 1999 shows that one of its functions, under Section 14 of the IRDAI Act, 1999, is to protect the interest of the policy holders in respect of all kinds of

policies, including settlement of insurance claims. The IRDAI also has a supervisory jurisdiction to keep a watch on all the insurance products which are being issued by the various insurance companies. Section 14 of the IRDAI Act, 1999 reads as under:

“14. DUTIES, POWERS AND FUNCTIONS OF AUTHORITY.--(1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.
(2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include, -

(a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;

(b) protection of the interests of the policy holders in matters concerning assigning of policy, nomination by policy holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;

(c) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;

(d) specifying the code of conduct for surveyors and loss assessors;

(e) promoting efficiency in the conduct of insurance business;

(f) promoting and regulating professional organisations connected with the insurance and re-insurance business;

(g) levying fees and other charges for carrying out the purposes of this Act;

(h) calling for information from, undertaking

inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;

(i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938);

(j) specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;

(k) regulating investment of funds by insurance companies;

(l) regulating maintenance of margin of solvency;

(m) adjudication of disputes between insurers and intermediaries or insurance intermediaries;

(n) supervising the functioning of the Tariff Advisory Committee;

(o) specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organisations referred to in clause (f);

(p) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and

(q) exercising such other powers as may be prescribed.”

A perusal of the above provision shows that the IRDAI has a duty to ‘control’ and ‘regulate’ the terms and conditions of insurance policies. It also has the duty to protect the interest of policy holders and ensure that they are not

disadvantaged in any manner. Thus, it is the IRDAI's function to ensure that laws that are enacted for the benefit of policy holders are fully given effect to by the insurance companies.

19. It is also the IRDAI's admitted position that the provisions of Section 21(4) of the MHA, 2017 are liable to be given effect to. This is also confirmed by IRDAI in its circular dated 16th August, 2018 which reads as under:

“Re: The Mental Healthcare Act, 2017

1. Reference is drawn to the Mental Healthcare Act, 2017 which has come into force w.e.f 29.5.2018. As per Sec 21 (4) of the said Act, every insurer shall make provision for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness.

2. All insurance companies are hereby directed to comply with the aforesaid provisions of the Mental Healthcare Act, 2017 with immediate effect.”

20. Thus, the IRDAI's stand is that insurance is liable to be provided for mental illnesses upon the enactment of the MHA, 2017. Despite this being the position, the Insurance Ombudsman rejected the claim of the Petitioner in the following terms:

“21. Result of hearing of the parties (Observations and Conclusions):

Case called. Parties are prese and recail their arguments as noted in Para 18 above.

The claim related to “Schizoaffective disporder”. The Complainant's is that the Insurers cannot deny such claims as per the provisions of Mental Healthcare Act 2017. The Insurer clarify that while this particular policy excludes psychiatric and psychosomatic disorders/diseases vide Clause 4.10,

they have introduced newer products/policies that provide cover to these disorders/diseases also.

Upon examination of the arguments and the evidence submitted by the Complainant and the Insurers, I conclude that the provision of the Mental Healthcare Act 2017 cited by the Complainant is not relevant for this claim and the claim will have to be settled under the provisions of this policy and as this claim related to psychiatric and psychosomatic disorder/disease, which was specifically excluded under this policy, the Insurers were justified in repudiating the claim. Pursuantly, the complaint is liable to be rejected.

21. As per the above order of the Insurance Ombudsman, the Healthcare Policy, in Clause 4.10 provided for exclusion of certain conditions from the insurance cover. Psychiatric and psychosomatic disorders were part of the exclusions under the Healthcare Policy. Thus, the Insurance Ombudsman upheld the rejection of the claim of the Petitioner.

22. A perusal of the provisions of MHA, 2017 clearly shows that insurance companies had to make provision for mediclaim insurance for treatment of mental illnesses on the same basis as treatment available for physical illnesses. The MHA, 2017 was notified with effect from 7th July, 2018, however, as per the Id. Counsel for IRDAI, the MHA, 2017 came into effect from 29th May, 2018. Be that as it may, there is no doubt that the MHA, 2017 and its provisions, have been in effect since 2018.

23. The NICL and IRDAI have filed affidavits from which it is clear that the insured amount has now been paid to the Petitioner. Further, IRDAI has also stated as under:

“7. That as per Section 21 (4) of the MHC Act, 2017 along with Circular/directions as abovementioned issued by the Answering respondent, every insurer shall make provision for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness. It is submitted that all insurers including Respondent No.1 are bound to comply with the laws enacted by the Parliament, irrespective of the directions from the Answering respondent. The insurers are bound to follow the law as enacted by Parliament and the compliance of the same is not subject to any circular/guidelines issued by the answering respondent.

8. That for the implementation of the above said provisions the insurer ought to have provided coverage for mental illness in their existing policies, considering the treatment for the mental illness on the same basis as is available for treatment of physical illness. But the insurer continued its earlier plan and on 17.09.2019 application for revision of product was filed by the Insurer which was approved by the Answering Authority on 27.03.2020.

....

11. That in line with the above stated provisions, for many existing health insurance policies in case of certain physical ailments/illnesses specific waiting periods may be normally imposed. For example, two year waiting period may be specified for cataract, hernia, hydrocele, maternity coverage, four year waiting period may be specified for knee replacement surgeries, heart related diseases etc. Insurers impose these conditions to hedge against possible adverse selection, that is, people who are already planning to get these treatments may take the policy and undergo the treatment, thereby, jeopardizing the interest of genuine policyholders.

Insurers may be also not in a position to grant health insurance coverage only if people who are already suffering with any physical health condition/disorder (say cancer patients) approach for health insurance. Now, in view of aforesaid provisions of MHCA 2017 and the guidelines issued by the answering respondent, similar approach shall be adopted for categories of mental illnesses as is provided in case of physical illness.”

12. That having regard to the present issue bringing it to the notice of the Answering respondent through this Petition, answering respondent has taken up the matter with the Respondent No.1/insurer vide its letter dated 26.03.2021 having RefNo.

IRDAI/HLT/MISC/LEGAL/03/2020-21 and instructed it to settle the claim of the Petitioner. The insurer was further directed to review all such cases and submit an action taken report on ensuring compliance of relevant provisions of MHC Act, 2017. It is submitted that repudiation of claim by the Respondent No.1 is in violation of the MHC Act, 2017 and directions issued by the Answering respondent vide its circular dated 16.08.2018. Copy of letter dated 26.03.2021 is annexed as Annexure R-7.

24. Both the Respondents do not dispute the fact that mental illnesses had to be covered in all the mediclaim policies. NICL relies upon the 2016 Guidelines and the six months' period in the Guidelines for having postponed the issuance of products in compliances with the MHA, 2017. The relevant clause relied upon by NICL reads:

“10. If an insurer does not launch the product or modified product within a period of six months from the date of approval, the Insurer will be required to seek the approval of the Authority for launching the

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*product or the modification, as the case may be.
While seeking the approval, Insurers shall specify
(a) the reasons for not launching (b) if there are
any changes that may have an impact on the
assumptions made at the time of the filing the
product or the modification (c) if there is any other
impact such as owing to market dynamics etc.”*

The above clause in the 2016 Guidelines merely prescribes the maximum time within which a new product approved by IRDAI has to be launched by the company. Beyond the six months' period, the insurance company has to seek approval once again. The said clause does not offer any shelter to the NICL for not having implemented the provisions of the MHA, 2017. The chronology of events leading up to the approval of the new policy covering mental illnesses need not be gone into by this Court. The fundamental premise is that the non-implementation of the provisions of the MHA, 2017 for a period of two years is not permissible. Moreover, the fact that the 2016 Guidelines are being used in order to postpone the implementation of the provision of Section 21(4) of the MHA, 2017, would result in an incorrect interpretation of the Guidelines itself. Once the law has been enacted, in respect of all policies issued thereafter, the provisions ought to have been implemented by NICL and all other insurance companies. The IRDAI also has an absolute duty to ensure the said implementation. NICL's interpretation of the 2016 Guidelines would not be tenable as the same would be contrary to the MHA, 2017.

25. The crux of the above provisions, circulars and affidavits clearly is that mental illnesses cannot be treated differently from physical illnesses. Insurance policies also cannot discriminate between these two types of

illnesses. The reasons for the non-discriminatory provisions between mental and physical illnesses are not far to seek. While physical illnesses are manifested in the human body in some form, mental illnesses do not always have visible physical manifestations. However, mental illnesses can also be debilitating and destructive. The recent pandemic also highlights this beyond any doubt. Circumstances leading to patients requiring isolation, healthy persons being subjected to lock-downs, work from home conditions, loss of employment leading to lack of confidence for long durations have led to several mental problems. Such mental conditions need to be dealt with immediately. Availability of insurance for mental disabilities or conditions is, therefore, not only important but is an essential need. It is in recognition of the importance of a healthy mental state for a human being that both the Convention and the provisions of the MHA, 2017 discussed above, have been introduced.

26. No doubt, the basic obligation is that of the insurance company which is also to blame for having not issued the Healthcare Policy in compliance with the applicable provisions of the MHA, 2017. However, the IRDAI's functions are quite comprehensive and vital under the IRDAI Act, 1999 and if any insurance company is not in compliance with any provisions of the law, the IRDAI cannot turn a blind eye to the same. The IRDAI has a duty to fully supervise and ensure that the provision of the MHA, 2017 are implemented by all the insurance companies for the benefit of the persons who obtain mediclaim policies. This has clearly not happened, as is evident from the facts of the present case.

27. It is clear from a perusal of the provisions of MHA, 2017, as also the provisions of the IRDAI Act, 1999 that immediately upon the MHA, 2017

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coming into force, all insurance products ought to have extended the same treatment for mental and physical illnesses and remove any clause that discriminate between the same. The Insurance Ombudsman's order which holds that the provisions of the MHA are not relevant to the present Petitioner is untenable. The MHA, 2017 has come into effect from May/July, 2018, and thus the exclusion in the Healthcare Policy of NICL with respect to "*all psychiatric and psychosomatic disorders/diseases*", under Clause 4.10 as noted above, is contrary to law.

28. The facts of the present case would show clearly that as far as NICL is concerned, the provisions of the MHA, 2017 have not been given effect to till July, 2020, when the new product was launched by NICL i.e., almost for a period of two years after the MHA, 2017 came into effect. Therefore, persons who have obtained mediclaim policies, were not covered for mental illnesses, which would be contrary to the letter and spirit of the MHA, 2017.

29. An appreciation of the factual situation and the applicable provisions of law in operation shows:

- i) That upon the enactment of MHA, 2017, NICL did not implement the provisions of Section 21(4) of the Mental Healthcare Act, 2017, for extending medical insurance policies to cover mental illnesses;
- ii) Even after a period of two years, i.e., as of July 2020, insurance policies were being issued by NICL in violation of the provisions of the MHA, 2017;
- iii) The IRDAI had issued a circular dated 16th August, 2018. However, there was a need for the IRDAI to supervise and ensure that all insurance companies implement the provisions of Section 21(4) of

MHA, 2017, without exception;

iv) However, even till July 2020, NICL had not implemented Section 21(4) of the Act.

30. From the affidavits which have been placed on record by NICL, as also the IRDAI, it is clear that the provisions of the MHA, 2017 were in operation on 29th May, 2020, i.e., when the Petitioner purchased the Healthcare Policy in respect of which she had sought reimbursement.

31. The Insurance Ombudsman's order failed to consider the fact that the MHA, 2017 recognised the rights of the Petitioner and the conclusion of the Insurance Ombudsman that the provisions of the MHA, 2017 are not relevant, is completely contrary to law and is untenable. The MHA, 2017 and the provisions thereof, are absolutely relevant for a person who was suffering from Schizoaffective Disorder. Thus, the Petitioner was entitled for reimbursement of her claim as per the provisions of the MHA, 2017.

32. Post the filing of the present writ petition, in view of IRDAI's direction to NICL, it is submitted by all parties that the Petitioner's claim has been paid for the covered amount. However, in view of the fact that the Petitioner has had to resort to litigation for her claim to be honoured, it is directed that NICL shall pay a sum of Rs.25,000/- as costs to the Petitioner within a period of four weeks. Since, according to NICL, the ambiguity and vagueness has been created due to the 2016 Guidelines and the product approval dates by IRDAI, no damages/compensation are being imposed on NICL.

33. It is made clear that NICL and all insurance companies are liable to give effect to Section 21(4) of the MHA, 2017 with effect from the date when it has come into force i.e., 29th May, 2018. Mental illnesses ought to be covered without any discrimination. IRDAI would circulate a copy of this

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order in order to enable compliance by all the insurance companies.

34. The petition is disposed of in the above terms. All pending applications are also disposed of.

**PRATHIBA M.
SINGH
JUDGE**

APRIL 19, 2021

Rahul/Sp

(corrected and released on 27th April, 2021)

