

**(2014) 08 GUJ CK 0063**  
**In the Gujarat High Court**

**Case No :** Writ Petition (PIL) No. 257 of 2013 and Civil Application No. 3060 of 2014

Baldevbhai H. Jadav

APPELLANT

Vs

Medical Superintendent

RESPONDENT

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**Date of Decision :** 11-08-2014

**Acts Referred:**

Bombay Provincial Municipal Corporations Act, 1949 — Section 254, 260  
Income Tax Act, 1961 — Section 35(A)(c), 80G(5)

**Citation :** (2014) 08 GUJ CK 0063

**Hon'ble Judges :** Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

**Bench :** Division Bench

**Advocate :** P.J. Mehta, Advocate for the Appellant; Vacha Desai, AGP, Trivedi and Gupta, R.D. Dave and V.M. Pancholi, Advocate for the Respondent

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**Judgement**

J.B. Pardiwala, J.—By this writ application in the nature of a Public Interest Litigation, the petitioner, a General Secretary of "Dardi Seva Samiti" a registered organization of Patient Welfare under the Gujarat Cooperative Societies Act, has prayed for the following reliefs :

"12..

(a) Be pleased to pass appropriate order against the Respondent No. 1 directing to invite Quotations of the Counters" allotment through Public Advertisement within one month of Civil Hospital premises counters, Ahmedabad.

(b) Be pleased to direct the Respondent No. 3 Municipal Commissioner to demolish and remove the illegal construction and encroachment established in Civil Hospital Premises, Asarva, Ahmedabad in the public interest.

(c) Be pleased to direct the Respondent No. 2 to hold Detailed Inquiry against Respondent No. 1 malpractices and collusion in allotment of various counters without following the due process of law in the public interest."

2. The case made-out by the petitioner in this petition may be summed-up thus:

2.1. The "Dardi Seva Samiti" is an organization registered under the Gujarat Cooperative Societies Act. The avowed object of the society is to take care of the welfare of the patients. The organization provides various services to the needy and poor patients including their relatives in connection with proper guidance of the civil hospitals, various medical facilities, consultation with the hospital staff for proper demonstration and treatment etc. One of the main concerns of the organization is to protect the patients from touts and unscrupulous elements operating within the Civil Hospital premises. According to the petitioner, there has been an arbitrary allotment of various counters of Tea, Coffee, breakfast, fruits, medicines etc., at the instance of the respondent no. 1 within the campus of the Civil Hospital situated at Asarva, Ahmedabad past couple of years without inviting tenders from public at large, with a view to control the price of the commodities sold within the campus of the Civil Hospital and also with a view to maintain the quality of the food. According to the petitioner, few unscrupulous elements have managed to get space allotted within the campus of the Civil Hospital and are carrying-on business without any control or restrictions at the end of the Civil Hospital authority.

2.2. Practically all the cabins/shops have been constructed without any permission from the municipal authorities. The entire Civil Hospital campus has been encroached upon by such persons resulting in various types of nuisance. No hygiene and sanitation is being maintained.

2.3. According to the petitioner many persons have been allotted land within the civil hospital campus by the respondent no. 1 for a period of one year. However, in spite of expiry of the said period such persons continue to occupy the place and the respondent no. 1 has not bothered to invite fresh bids from people at large who are ready and willing to provide better services to the patients at the subsidized rates.

2.4. The petitioner had taken-up this issue with the respondent no. 2, Ministry of Health & Medical Education, but despite many reminders, no action has been taken till this date.

2.5. Hence this petition.

3. Stance of the respondent no. 1:

3.1. The Central Government constituted the Rogi Kalyan Samiti/Hospital Management Society. The Ministry of Health & Family Welfare has framed guidelines which provides for "developing/leasing out different vacant land in the premises of the hospital for commercial purpose with a view to improve the financial position of the society." The Central Government has accepted the Central Government's Notification and pursuant to the same the Secretary (Family Welfare) and the Commissioner vide its letter dated 14th March, 2005 constituted the society. The State Government has adopted the guidelines of the

Central Government with few modifications.

3.2. The State Government has constituted the committee vide its Resolution dated 5/2/2005. In the guidelines framed by the State Government there is a specific provision to utilize/lease surplus land/space for commercial purposes and patient related activities like Pharmacy, Telephone Booth, Milk Parlour and the society is also empowered to manage/permit contractor to run Canteen, Rest-House, Parking Stand, Ambulance service and other facilities within the hospital complex owned or managed by the Government and utilize the income derived from the same.

3.3. So far as the management of the funds of the society and accounts are concerned, there is a specific rule which takes care of the same.

3.4. The society got registered under the Gujarat Public Trust Act on 23rd September, 2005. The society is also registered under the Gujarat Cooperative Societies Act. The Society has obtained exemption certificate under Section 80G(5) of the Income Tax Act, 1961. It has also obtained the approval from the Ministry of Finance, Department of Revenue for exemption under Section 35(A) (c) of the Income Tax Act, 1961. The Committee has also obtained registration under the Foreign Contribution (Regulation) Act, 2010.

3.5. The accounts of the society are being regularly audited and a separate account is maintained in the name of the committee.

3.6. On behalf of the respondent no. 1 an affidavit-in-reply has been filed duly affirmed by the Incharge Administrative Officer, Civil Hospital, Ahmedabad stating that the respondent no. 1 has already published E-Tender Notice dated 1st March, 2014 inviting bids from the persons interested to carry-on business within the premises of the civil hospital. In such circumstances referred to above, the grievance redressed by the petitioner no longer survives and the allotment would be made in terms of the tender document.

4. Stance of the Respondents carrying-on business as on today within the Civil Hospital Campus:

4.1. The petitioner society is not recognized by the Civil Hospital for providing any assistance to the patients as claimed in the petition.

4.2. The allegations that few unscrupulous elements have captured the counters being run in the civil hospital premises and the patients and their relatives are being exploited are far from truth.

4.3. The allegations that the entire civil hospital premises has been encroached upon by such shopping centers and is causing public nuisance and problems relating to hygiene and sanitation are also not correct.

4.4. The allegation that there is violation of Section - 254 of the Bombay Provincial Municipal Corporation Act read with Sec. 260 is also not correct.

4.5. The services like sale of Tea, Coffee and food articles is at a cheaper rate and the premises is also being kept clean. The private respondents are paying quite a substantial amount to the hospital authority by way of rent and royalty.

4.6. The allegation that food of inferior quality is being provided is also not true and correct. The allegation that sub-standard quality of medicines are being sold within the civil hospital premises is also not true and correct.

5. During the pendency of the main Writ Petition, one Civil Application No. 3060 of 2014 was filed by the private respondents inter alia praying for the following reliefs:

"5.

(A) This Hon"ble Court may be pleased to pass appropriate orders and/or to quash and set aside action of Opp. No. 2 inviting tenders by public notice at Annexure "B" (Colly.) and further be pleased to restrain Opp. Nos. 2 to 4 from disturbing and continuing business activities as per their allotment letters issued by Opp. No. 2 without any interference or harassment.

(B) This Hon"ble Court may be pleased to declare that there is no requirement under law for issuing tender in respect of service of tea, coffee, snacks, xerox centre and mobile charger which are being rendered by the applicants.

(C) Pending, hearing and final disposal of this application further action and procedure adopted by the Opp. No. 2 pursuant to advertisement inviting tenders at Annexure-"B" (Colly.) may kindly be stayed.

(D) Any other and further relief as this Hon"ble Court may deem fit and proper be granted."

5.1. In the Civil Application it has been averred that most of the applicants are small people engaged in serving tea, coffee and light refreshment to the public. The letters of allotment issued in favour of the private respondents make it clear that the applicants have to pay rent for using the space within the Civil Hospital compound and they are also obliged to provide tea, coffee and snacks at a reasonable price to the people at large, patients, hospital staff and medical students round the clock. It has also been averred that the people are happy with the services rendered by the applicants at a reasonable price. It is alleged that the petition has not been filed with a bona fide intention and there is no need for issue of any public advertisement inviting tenders for allotment of counters.

5.2. In all there are 43 persons who have been permitted to occupy a particular place in the hospital compound.

5.3. In the Civil Application it has also been averred that the hospital authorities in the Tender Form has made it a condition precedent to possess and provide various documents and details like PAN card, Professional Tax Registration number, VAT/Sales-tax Registration Number, Income-tax Returns, Shops &

Establishment Registration etc. which, most of the applicants do not possess and at the same time is not easy to get such registrations. According to the applicants to obtain the sales-tax registration/VAT/TIN Registration number, it is a pre-condition to submit all bills and invoices for a turnover exceeding Rs. 5.00 lac in a year, one must possess a registration certificate under the Bombay Shops and Establishment Act, Professional Tax Registration number, and is also required to deposit Rs. 25,000/- for getting such VAT/TIN registration Number. As a small type businessmen, they are not required in law to file an Income-tax return or obtain registration under the Bombay Shops and Establishment Act and none have a turnover of more than Rs. 5.00 lac in a year.

5.4. According to the applicants, for the services being rendered within the civil hospital premises, the tenders are not required to be issued and in most of the Government Corporations and Agencies, persons like the applicants are permitted to sell Tea, Coffee, Snacks etc. without inviting tenders.

5.5. The applicants have given example of places like Law Garden etc. where hawkers are allowed to carry on their business in their individual stalls.

6. We have heard Mr. P.J. Mehta, the learned advocate appearing for the petitioner, Miss Vacha Desai, the learned Assistant Government Pleader for respondent nos. 1 and 2, Mr. Abhishek Mehta for M/s. Trivedi & Gupta for the respondent no. 3 and Mr. R.D. Dave and Mr. V.M. Pancholi, the learned advocates for the private respondents.

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this petition is whether the petitioner is entitled to any of the reliefs as prayed for.

8. It appears that the Central Government, under the National Rural Health Mission framed a policy to have Hospital Management Society-Rogi Kalyan Samiti at the District and Block Hospital (CHC) in all the States and Union Territories. The Government of India in its Ministry of Health and Family Welfare has also issued guidelines for constitution of Rogi Kalyan Samiti/Hospital Management Society. The committee would be a registered society and would act as a Group of Trustees for the hospitals to manage the affairs of the hospital. The Committee would not function as a Government Agency, but as an NGO, so far as the functioning is concerned. It is also entitled to utilize all Government assets and services to impose user charges and is also free to determine the quantum of charges on the basis of local circumstances.

9. To achieve the objective as provided in the guidelines, the following are the main functions and the activities of the society.

? Identifying the problems faced by the patients in CHC/PHC;

? Acquiring equipment, furniture, ambulance (through purchase, donation, rental or any other means, including loans from banks) for the hospital;

- ? Expanding the hospital building, in consultation with and subject to any Guidelines that may be laid down by the State Government;
- ? Making arrangements for the maintenance of hospital building (including residential buildings), vehicles and equipment available with the hospital;
- ? Improving boarding/lodging arrangements for the patients and their attendants;
- ? Entering into partnership arrangement with the private sector (including individuals) for the improvement of support services such as cleaning services, laundry services, diagnostic facilities and ambulatory services etc;
- ? Developing/leasing out vacant land in the premises of the hospital for commercial purposes with a view to improve financial position of the Society;
- ? Encouraging community participation in the maintenance and upkeep of the hospital;
- ? Promoting measures for resource conservation through adoption of wards by institutions or individuals; and,
- ? Adopting sustainable and environmental friendly measures for the day-to-day management of the hospital, e.g. scientific hospital waste disposal system, solar lighting systems, solar refrigeration systems, water harvesting and water recharging systems etc.

10. It appears that the State Government vide its resolution dated 14th September, 2004 constituted an Advisory Committee for all the hospitals of the State at the District level comprising of the following members :

11. In the affidavit-in-reply filed on behalf of the respondent no. 1, it is made clear that the petitioner, in his capacity as the General Secretary of the Samiti constituted in accordance with the policy of the Central Government, has filed this petition in public interest raising substantially two issues.

11.1. First, with regard to the haphazard allotment of space within the campus of the civil hospital to 43 individuals who are carrying-on business like running a Xerox Center, Tea and Snacks centers etc., and secondly, the allotment should be in accordance with law and not at the whims of the respondent no. 1.

12. The grievance of the petitioner as such would no longer survive as the respondent no. 1 has already published a E-Tender Notice on 1st March, 2014 inviting bids for the allotment of Counters from persons interested. In the E-Tender document which has been published, various terms and conditions have been prescribed with a view to see that the allotment is strictly in accordance with law. In view of such development the grievance redressed by the petitioner in public interest would no longer survive.

13. However, on behalf of the private respondents who are occupying land as on today within the premises of the civil hospital, it has been strenuously submitted that even if they want to participate in the auction proceedings proposed to be

conducted by the Civil Hospital authorities, they will not be able to meet with the stringent requirements stipulated in the tender document. According to the private respondents, as on today, they are actually carrying on business by paying a substantial amount towards rent and royalty and if their possession is disturbed, it would cause irreparable injury which cannot be compensated in terms of money.

14. It is but obvious that when the hospital authorities have taken decision to invite the tenders for the allotment of land within the premises then in such circumstances the private respondents who are actually running their stalls/cabins will have to vacate. If, according to the private respondents the agreement or contract with the hospital authorities at the time of allotment has created any legal right in their favour to continue with the business carried-on within the hospital premises, then it would be open for them to seek appropriate legal remedy before appropriate forum in accordance with law.

15. We do not propose to go into the question as regards legal rights, if any, accrued in favour of the 43 individuals who have been allotted land by the hospital authorities within the premises of the hospital. We only approve the decision of the Hospital authorities to invite tenders by E-auction from the persons interested to run stalls/cabins according to the terms and conditions prescribed in the tender document. If the hospital authorities have insisted on certain documents like PAN card, VAT registration etc. as a pre-condition to qualify for the bid, then in such circumstances no illegality could be said to have been committed by the authority. What has been pleaded before us by the private respondents is the hardship to fulfill such requirements, but it is upto the hospital authorities to lay down the terms and conditions and it is not for the Court to prescribe what should be the terms and conditions of the tender document. The allotment by way of inviting tenders has its own advantages. The whole process of allotment would be transparent and at the same time there would be no room for any favouritism.

16. For the foregoing reasons, we hold that since the respondent no. 1 has already issued a tender notice way back in the month of March, 2014, they should now proceed to finalize the bids received, if any, in accordance with law. The respondent no. 1 is also free to take appropriate steps in accordance with law so far as the eviction of the private respondents is concerned.

17. In view of the observations made above, this petition stands disposed of. No costs. In view of disposal of the main petition, the connected Civil Application also stands disposed of.