

(2006) 01 KL CK 0054

In the High Court Of Kerala

Case No : O.P. No. 25413 of 2001 and W.P. No. 34104 of 2004 and connected cases

Maulana Hospital

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 207 ELT 189 : (2006) 1 KLT 681

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : Antony Dominic, E.K .Nandakumaar, A.K. Jayasankar Nambiar, Priya Mahesh and Priya Manjooran, for the Appellant; John Varghese, Asst. Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.

W.P.(C) No.34104/2004

1. The petitioner is a Multi Speciality Referral Hospital. It imported a Whole Body CT Scanner, availing duty exemption, granted under Exhibit P1 notification, on the strength of Exhibit F2 Customs Duty Exemption Certificate, issued by the Director General of Health Services The Scanner was imported in 1991. After a few-years, the Apex Court, in 1996, in Mediwell Hospital and Health Care Pvt. Ltd. Vs. Union of India and others, held that the conditions contained in Ext. P1, concerning free medical treatment to inpatients and outpatients etc. are continuing obligations of the importer and if it is found that those conditions are not complied with, exemption already granted can be withdrawn. Apparently, pursuant to the said decision, the Director General of Health Services issued Ext. P3 communication to the petitioner, calling upon it to furnish certain details mentioned therein. The petitioner forwarded Ext. P4 reply, through the Kerala Government. Thereafter, the petitioner has been served with a copy of Ext. P5

letter, addressed by the Kerala Government to the Director General of Health Services, stating that the State Government is not in a position to certify or recommend the information/documents furnished by the petitioner hospital for the reasons mentioned therein. Upon receipt of that letter, the petitioner filed Exhibit P6 representation before the State Government, pointing out that the stand taken by it, in Exhibit P5, is not correct. A copy of it was forwarded to the Director General of Health Services also. Later, the petitioner has been served with Exhibit P7 order dated 5.12.2000, cancelling Exhibit P2, for the reason that the Hospital does not satisfy the conditions contained in Exhibit P1, for the grant of exemption from payment of customs duty. Relying on that, the Commissioner of Customs passed Exhibit P8 order, demanding a customs duty of Rs. 23,41,202/- from the petitioner. A redemption fine of Rupees Five lakhs and a penalty of Rupees Two lakhs were also imposed. The petitioner submits, it challenged Exhibit P8 before the Customs, Excise and Service Tax Appellate Tribunal. The said Tribunal quashed Exhibit P8 and remanded the matter to the Commissioner of Customs, who again passed an order similar to Exhibit P8, which is now pending in appeal before the CESTAT. Since Exhibit P7 was relied on by the Commissioner of Customs, the petitioner challenged that order before this Court, by filing W.P.(C)No. 29212 of 2003. This Court quashed the said order and directed the Director General of Health Services to pass a fresh order, after affording an opportunity of being heard to the petitioner. Pursuant to the said direction of this Court, the petitioner was heard and Exhibit P10 order has been passed, ordering that it is not eligible for exemption under Exhibit P1 notification. In other words, Exhibit F2 has been withdrawn. This writ petition is filed, challenging Exhibit P10.

2. The Director General, in Exhibit P10, has found that the documents produced by the Hospital, to support its claim that it is providing free treatment to 40% of the outpatients and 10% of the inpatients, were tampered documents. The petitioner submits, the said finding has been rendered without putting it on notice. The finding of tampering was arrived at, relying on the report filed by the customs authorities, concerning the very same subject matter. The petitioner submits, copy of the said report was not served on it. Therefore, the impugned order is vitiated by the violation of the principles of natural justice. The petitioner further contends, even if it does not provide free medical treatment to 40% of the outpatients, if the number of patients treated in medical camps is also reckoned, it is satisfying the stipulation that free medical treatment should be extended to 40% of the outpatients. It is contended that the claim of the petitioner, based on the number of outpatients, has been wrongly rejected. It is also pointed out that the Madras High Court in Apollo Hospitals Enterprises Ltd. v. Union of India 2001 (46) RLT 249 has ordered the competent authority to reckon the number of patients treated in the medical camps also, for satisfying the requirements of Ext. P1 notification. The petitioner also relied on the decision of the Bombay High Court in Shashank Bhalchandra Subhedar (Dr.) Vs. Dir. Gen. of Health Services, , in support of its contention regarding violation of the

principles of natural justice.

3. The respondents have filed a detailed counter affidavit, dealing with the contentions of the petitioner. They reiterated the stand taken in the impugned order. Relying on the decision of the Apex Court in Mediwell Hospital's case (supra), it is submitted that the obligation to satisfy the requirements of Exhibit P1 exemption notification, is a continuing obligation. They also rely on the decision of the Karnataka High Court in The Medical Relief Society of South Kanara, Manipal, Dakshina Kannada and Others Vs. Union of India and Others, , wherein it was held that the treatment, if any, given to the persons attending the medical camps, cannot be reckoned as treatment granted to the outpatients, in terms of Exhibit P1 notification.

4. Before dealing with the rival contentions, it will be beneficial to extract the relevant portion of Exhibit P1 notification, which reads as follows:

1. XXX XXX XX 2. All such hospitals which may be certified by the said Ministry of Health and Family Welfare, in each case, to be run for providing medical, surgical or diagnostic treatment not only without any distinction of caste, creed, race, religion or language but also,-

(a) free, on an average, to at least 40 per cent of all their outdoor patients; and

(b) free to all indoor patients belonging to families with an income of less than rupees five hundred per month, and keeping for this purpose at least 10 per cent of all the hospital beds reserved for such patients; and

(c) at reasonable charges, either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in clauses (a) and (b).

5. Going by the above provisions, the petitioner is eligible to get exemption from payment of customs duty, on satisfying the following conditions: (1) It should provide medical, surgical or diagnostic treatment to all patients without distinction of caste, creed, race, religion or language, (2) It should extent free treatment to forty percent of the outpatients, (3) It should render free treatment to all inpatients, belonging to the families with an income of less than Rs.500/- per month and also keep at least ten per cent of the beds reserved for such patients, and (4) It should extend treatment at reasonable charges to the patients, not covered by conditions 3 and 4, mentioned above. The dispute in this case is concerning only Condition Nos. 2 and 3. The finding of the authority on the above two points in Exhibit P10 is that the petitioner does not render free treatment to inpatients and outpatients, as stipulated above. It is also found that the petitioner has produced some forged documents, to inflate the number of patients, treated free by it. It is further found that even assuming, all the documents produced by the petitioner are genuine, even then, according to its own showing, there is short fall, to fulfil the requirement of free treatment to forty per cent outpatients for various periods. But, the said defect in the

petitioner's case is attempted to be got over, by contending that the Hospital is conducting free medical treatment camps and the patients treated there should also be included among the number of outpatients. The finding of the second respondent, as to the dispute whether patients treated in the medical camps could be included among the number of outpatients, is contained in paragraph VI of Exhibit P10, which reads as follows:

As per the patients treated in camps it is stated that camps are by and large held for screening general public to detect possibility of certain diseases among them. They comprise both healthy as well as unhealthy population. Large number of people attend the camps. The persons attending the medical camps cannot be even called out patients. The notification No. 64/88-Cus. provides for free medical, surgical or diagnostic treatment which should be with reference to the out patients treated at the hospital, which includes all the equipments imported availing of the duty exemption benefits. The screening does not imply medical, surgical or diagnostic treatment. Cases requiring medical, surgical or diagnostic treatment are usually referred to the hospitals. The persons who approached the medical camps cannot be said to be the persons who would otherwise have approached the hospital. The intention of the notification by allowing the duty free import of high tech cost-intensive equipments are for providing secondary and tertiary health care and made them accessible to patients who does not have access/affordability to such treatment. Hence, the patients treated in camps cannot be accounted for the free indoor or outdoor treatment for the purpose of fulfilling the conditions of the notification.

The petitioner attacks the above finding, relying on the decision of the Madras High Court in Apollo Hospitals Enterprises Ltd. 's case mentioned above. The respondents support it, relying on the decision of the Karnataka High Court in Medical Relief Society of South Kanara 's case (supra). In medical camps, normally, some preliminary examination alone is conducted. If it is found that a patient requires treatment, normally, he is directed to come to the hospital for further detailed examination and treatment. The word "outpatient" is used in Exhibit P1 in the normal sense, as understood in medical parlance. Outpatient is one, who gets treatment from a hospital without being hospitalised. He is examined, diagnosis is made and medicines are prescribed for a few days. He takes the medicine and comes back after the stipulated days. His ailment may be of such a nature, which may not require hospitalisation. This is the concept of treatment as outpatient. In this view of the matter, I feel that the view taken by the Karnataka High Court on this point is the correct one. The view taken by the second respondent on this point, is certainly a plausible view, which does not require any interference under Article 226 of the Constitution of India. So, the number of outpatients does not come to the stipulated forty per cent, if the patients attending the medical camps are excluded. Going by Exhibit P1 notification, all the four conditions, enumerated above, should be cumulatively satisfied, for getting the exemption available under that notification. If one of them remain not satisfied, the hospital goes out of the purview of exemption. In

view of my finding that the petitioner does not satisfy the condition regarding the percentage of outpatients treated, I am not deciding on the contention of the petitioner on other points.

In the result, I find nothing illegal with Exhibit P10 order, warranting interference under Article 226 of the Constitution of India. Accordingly, the writ petition fails and it is dismissed. No costs.

O.P. No. 25413/2001

6. The petitioner is a Charitable Society, registered under the Travancore Cochin Literary, Scientific and Charitable Societies Act XII of 1955. It wanted to import a Selection LDR/MDR with cs-137 Unit for treatment of cancer patients. So, for obtaining exemption from payment of customs duty, it moved the second respondent Director General of Health Services and obtained Exhibit P2 Customs Duty Exemption Certificate dated 4.7.1991. On the strength of that certificate, the import was made and it is being used in the hospital. While so, the petitioner was served with a notice by the second respondent, calling upon it to furnish certain details, to ascertain whether it is complying with the stipulations contained in the exemption notification, during the post-import period. It filed Exhibit P5 reply. But, without hearing the petitioner, the second respondent cancelled Exhibit P2, by Exhibit P6 order. When the customs authorities took further action, pursuant to Exhibit P6, the petitioner filed Exhibit P8 representation before the Government, praying to recall Exhibit P6. Thereafter, O.P. No. 11670/2001 was filed before this Court, challenging Exhibit P6. This Court directed the Government to consider and pass orders on Exhibit P6. In obedience to the said direction, Ext. P12 order has been passed, rejecting the contentions of the petitioner and affirming Exhibit P6. In Ext. P12, it was found that the petitioner does not provide free treatment to forty per cent of the outpatients. It is also found that the petitioner has failed to substantiate its claim that it is giving free indoor treatment to all patients having an income below Rs. 500/- per month. This Writ Petition is filed, challenging Exhibit P12. The petitioner asserts, it is giving free treatment to more than forty per cent of the outpatients and also gives free treatment to all inpatients having an income below Rs. 500/- per month. It is submitted that the findings to the contrary are unsustainable.

7. Respondents 1 and 2 have filed a counter affidavit, supporting the impugned order and dealing with the contentions of the petitioner.

8. Heard the learned counsel on both sides.

9. Going by Exhibit P 12,I find that both the findings of the second respondent, concerning free treatment to forty per cent of the outpatients and free treatment to all inpatients, having an income below Rs. 500/- per month are findings of fact. Though, the petitioner vehemently disputes those findings, I find that those findings cannot be described as perverse or based on no materials. Therefore, this Court is not justified in interfering with Exhibit P12, under Article 226 of the

Constitution of India.

Accordingly, the writ petition is dismissed. But, this will not stand in the way of the petitioner invoking the Statutory remedy available to it against the decision of the customs authorities that may be taken, pursuant to Exhibit P12.