

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****AD-HOC NO. WP-LD-VC-28 OF 2020****WRIT PETITION (ST.) NO. OF 2020**

Grant Medical Foundation Ruby Hall Clinic, Pune ... Petitioner

Versus

State of Maharashtra and Ors. ... Respondents

Mr.S.R.Nargolkar a/w. Mr. Arjun Kadam for the Petitioner.

Mrs.Shruti D. Vyas, B Panel Counsel for the State.

CORAM : S.J.KATHAWALLA,**DATE : 22ND MAY, 2020****P.C. :**

1. The Petitioner – Grant Medical Foundation Ruby Hall Clinic, Pune, has filed the above Writ Petition seeking the following reliefs :

“(a) A Writ of Mandamus or any other suitable Writ, Order or direction in the nature of a Writ of Mandamus be issued, thereby directing the Respondent State to hear and decide the representation made by the Petitioner, copy of which is at Exhibit-B to the Petition as expeditiously as possible and pending such determination of the representation, the Petitioner be permitted to utilize the money available in the bank account, maintained for implementation of the IPF Scheme by the Petitioner, for treatment of COVID-19 patients in the Petitioner hospital, who do not fall within the beneficiary categories defined by the Scheme.

(b) Pending hearing and final disposal of this Writ Petition, the Petitioner may be permitted by a Writ, Order or direction of this Honourable Court to utilize and spend the money in the bank account maintained by the Petitioner for implementation of the Indigent Patient Scheme framed under Section 41AA of the Maharashtra Public Trust Act, 1960 for treating and caring for such COVID-19 patients admitted to the Petitioner hospital, who are not covered as beneficiaries of the said Scheme.”

2. The Petitioner has moved for urgent orders in the above Writ Petition.
3. The Petitioner is a Public Charitable Trust (**‘Petitioner Trust’**) duly registered under the provisions of the Bombay Public Trust Act, 1950 and also a Society registered under the provisions of the Societies Registration Act, 1860. The Petitioner Trust runs a hospital by the name Ruby Hall Clinic, which is a prestigious multi-disciplinary, modern, well equipped hospital, having facility of 500 beds and specializes in treating patients afflicted with cardiac, nephrology, neurology and cancer problems.
4. In O.S. Writ Petition (PIL) No. 3132 of 2004, this Court had vide its Order dated 17th August, 2006, approved “The Scheme for treatment to indigent patients and weaker section patients for the purposes of Section 41AA of the Bombay Public Trust Act, 1950”. The said Scheme was latter enforced and implemented as a Scheme under Section 41AA of the Bombay Public Trust Act, 1950.

5. Some of the salient features of the said Scheme are as follows :

(a) The public charitable hospitals falling within the definition of “State aided public trust” are under a legal obligation to reserve and earmark 10% of the total operational beds for the indigent patients and provide free medical treatment to them. Also, 10% of the total operational beds are to be earmarked and reserved for the weaker section patients at concessional rates (clause 2).

(b) Every public charitable hospital shall create a separate fund to be named as “Indigent Patients Fund” (IPF) and shall credit 2% of gross billing of all patients (other than indigent and weaker section patients) without any deduction (clause 4). The amount credited to this account shall be utilized only for providing medical treatment to the indigent and weaker section patients (clause 7).

(c) Following non-billable services are to be provided free of cost to the indigent as well as weaker section patients :

(i) Bed (ii) RMO services (iii) Nursing care (iv) Food (if provided by the hospital) (v) Linen (vi) Water (vii) Electricity (viii) Routine Diagnostics for treatment of general specialties ; and (ix) House keeping services (clause 8).

(d) The relatives of the trustees of public charitable hospitals, the employees and their dependents are not to be included in the category of indigent and weaker section patients for the purpose of the said Scheme (clause 13).

6. According to the Petitioner, the Petitioner Trust has adhered to the said Scheme without prejudice to its contention that the provisions of Section 41AA of the

Bombay Public Trust Act, 1950 and consequently the Rules and Scheme framed thereunder, are not applicable to the Petitioner Trust. Consequently, the amount as mandated by the said Scheme is being credited into a bank account by the Petitioner Trust and there is a substantial amount currently lying in the said bank account.

7. The Petitioner Trust has further averred in the above Writ Petition that presently during this period of pandemic, no planned surgeries, procedures and operations, not in the nature of life saving or emergency procedures / surgeries / operations can be carried out. These are the surgeries, operations and procedures, which enable the Petitioner Trust to cross subsidize the costs of treating the patients covered by the said Scheme. The Out Patient Department of the Petitioner Trust is completely shut-down and income / revenue from this source, is also not available. It is submitted that though the income sources of the Petitioner Trust have dried up, the salaries of the staff and resident doctors running into lacs of rupees have to be borne by the Petitioner Trust. In addition, the Petitioner Trust also has to bear the cost burden of fixed overheads such as electricity, maintenance of equipment, municipal charges towards water, sewerage and other municipal taxes and charges.

8. The Petitioner Trust has further stated in the Writ Petition that a request was made by the Trust to the Chairman, Monitoring Committee, District Level, Pune, being the Deputy Charity Commissioner to permit the administration of the Petitioner Trust to utilize the money available in the "Indigent Patients Fund" for defraying the costs incurred by the Petitioner Trust for treatment of patients, who do

not fall in the categories of indigent and weaker section, during the period when the pandemic is going on. However, Respondent No. 3 has expressed his inability to grant the request. The Petitioner Trust has therefore made a representation to the State Government and to the Hon'ble Chief Minister for clarification to be issued or permission to be granted or for modifying / amending the said Scheme to enable the Petitioner Trust to make the necessary expenditure from Indigent Patients Fund, which representation is pending determination with the Respondents.

9. The Petitioner Trust has therefore in the above Writ Petition sought directions against the State Government to decide their representation at the earliest and in the meantime allow the Petitioner Trust to defray expenses for treating patients, by using the money available in the said 'Indigent Patients Fund'. The Petitioner Trust has also stated in the above Writ Petition that the Petitioner Trust undertakes to reimburse the money into the said Fund, if the representation is not favourably decided by the State Government. An undertaking to this effect, along with an undertaking that no person belonging to indigent/weaker section category, will be turned away untreated on the ground of lack of funds, is subsequently submitted by Dr. Purvez Keki Grant, Managing Trustee of the Petitioner Trust.

10. The Petitioner Trust has in the above Writ Petition further averred that no prejudice will be caused to the Respondents if the present Writ Petition is allowed, and the reliefs sought are granted. However, if the reliefs prayed are not granted, the Petitioner Trust will suffer economic irreversible losses, which cannot be compensated

in terms of money.

11. Vide his Affidavit dated 14th May, 2020, the Deputy Charity Commissioner, District-Pune, has strongly opposed the urgent reliefs sought by the Petitioner Trust, interalia on the grounds that no details whatsoever have been provided by the Petitioner Trust about its financial status; that the Petitioner Trust is bound to have its financial plan for emergency, like the present one; that the stand of the Petitioner Trust is vague and does not inspire any confidence; that the said Indigent Patients Fund has been set up pursuant to the Scheme framed by this Court, exclusively for the benefit of indigent and weaker section patients; that grant of any permission to the Petitioner Trust to use funds earmarked for the purpose as abovementioned, will defeat the very purpose of creating such Fund, and would open floodgates for making similar applications by other hospitals.

12. After going through the contents of the above Writ Petition, this Court noted that the Petitioner Trust has in the Writ Petition not made any mention as to what amount is lying in the said “Indigent Patients Fund” ; also no details / particulars of actual / estimated expenditure required to be incurred, is provided; and the Court is also not provided with any particulars qua the amounts lying in the current / savings and / or the fixed deposit accounts of the Petitioner Trust with various banks. When this Court called upon the Advocate appearing for the Petitioner Trust to provide these details, except for stating that there should be an approximate amount of Rs. 3 Crores in the said “Indigent Patients Fund”, the Learned Advocate

had no other instructions in the matter. The matter was therefore kept in the afternoon session on 15th May, 2020 to enable the Advocate to obtain the aforesaid necessary details / particulars in the matter. In the afternoon session, the Court was informed that the Accountant of the Petitioner Trust is unwell. The matter was therefore adjourned to 16th May, 2020. On 16th May, 2020, the Court was informed that since the Accountant of the Petitioner Trust is unwell, the Advocate appearing for the Petitioner Trust was unable to gather information with regard to the exact current financial status of the Petitioner Trust, more particularly the details of the amounts lying in the bank account/s / fixed deposits.

13. Since the matter is moved for urgent reliefs, it is not possible for the Court to repeatedly adjourn the same matter/s, to enable the Advocates to take instructions in the matter. In a matter like the present one where an Application is made by the Petitioner Trust, which runs a prestigious multi-disciplinary, modern, well equipped Hospital, like Ruby Hall Clinic, seeking permission to use the amounts lying in the “Indigent Patients Fund”, the Petitioner Trust ought to have set out in the Writ Petition itself, the amount lying with them in the said ‘Indigent Patients Fund’, and also ought to have disclosed the current financial status of the Petitioner Trust, more so, when in the Writ Petition it is submitted by the Petitioner Trust that if the relief sought is not granted, the Petitioner Trust will suffer economic irreversible losses, which cannot be compensated in terms of money.

14. In view of the above, on 16th May, 2020 the matter was closed for orders,

with liberty to the Petitioner Trust to file its written note / submissions, setting out its current financial status by 18th May, 2020. In the Written Submissions dated 18th May, 2020, submitted by the Assistant General Manager – Legal on behalf of the Petitioner Trust, it is mentioned that :

“2. The Petitioner has to make payments towards all overheads such as Electricity (Rs.1.5 Crores approx.) Salaries and wages (Rs.9 Crores approx.) and all other outgoings such as charges towards laundry bed linen, providing food to patients, staff and doctors and running the canteen facilities, running the pharmacy, cleaning services, security guards services etc. The Hospital also has to make payments to Doctors and Consultants on account of assured professional fees as per the agreements with them. The Hospital also has to pay the municipal taxes (Rs1 Crore annually). All the fixed overhead charges and fees have to be borne irrespective of whether the hospital functions at regularly strength or not.

3. The opening balance in the bank account of the Petitioner was Rs. 10 Crores 25 lacs approx. as on 1st April, 2020 and the same has plunged to Rs.3 Crores 65 lacs approx. as on 15th May, 2020. The Petitioner will have to make payments towards salaries, wages, consultant’s fees etc. shortly. The Petitioner trust had to borrow money by way of an overdraft of Rs.8 Crores from the Zoroastrian Bank to meet the salary expenditure and to make other payments for the month of April, 2020 and the overdraft was received in the said bank account on 2nd May, 2020.”

15. From the above particulars, I find that even at this stage, the Petitioner Trust is attempting to avoid providing specific particulars qua its income and expenses. Instead of making general statements, the Petitioner trust could clearly have set out in its written note, the amounts required to be paid/defrayed under various heads for the months of April-May 2020, and the amounts already paid so far.

16. Again, the Petitioner Trust in the above Writ Petition did not make a whisper of it having fixed deposits to the tune of Rs.68 Crores. It is only when the Petitioner Trust was compelled to disclose its current financial status, that they informed the Court about its fixed deposits, and tried to explain away this fact by stating that these are long term fixed deposits which are earmarked for capital expenditure. The Petitioner Trust has even as on date, not provided particulars as to the rate of interest received thereon, the term of the deposit and whether any deposits have recently matured, or are likely to mature shortly.

17. The Petitioner Trust has shown reluctance to utilize the amount of Rs.68 Crores on the ground that the same is earmarked by it for meeting capital expenditure. However, the Petitioner Trust is seeking urgent permission of this Court to utilise a sum specifically earmarked for the indigent and weaker section of the patients under a Scheme formulated under Section 41AA of the Bombay Public Act, 1950. The relief sought will require a detailed hearing and cannot be granted at this stage as an urgent relief by this Court. Moreover, the Petitioner Trust has not stated in any of its pleadings / written submissions, the exact amount lying in the "Indigent

Patients Fund”, and even if it is assumed, as verbally informed, that an amount of Rs.3 Crores is lying in the said Fund, the Petitioner Trust instead of using the said Rs.3 Crores, can use an amount of Rs.3 Crores from its fixed deposits running into Rs.68 Crores to tide over the financial difficulties claimed by them. In view thereof, the urgent relief sought by the Petitioner Trust permitting them to use the amount lying in the ‘Indigent Patients Fund’ is rejected.

18. Needless to add that the Petitioner Trust is always free to use the amounts lying in the “Indigent Patients Fund” to treat the indigent patients suffering from COVID-19 and / or from any other sickness, in consonance with the Scheme formulated under Section 41AA of the Bombay Public Act, 1950.

19. However, the representation made by the Petitioner Trust, shall be disposed off by the concerned authority, within a period of two weeks from the date of uploading of this Order, without being influenced by the observations made herein.

20. This Order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Order.

(S.J.KATHAWALLA, J.)