

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 880/2009

Reserved on: 16th March 2011

Decision on: 28th April 2011

SIR GANGA RAM TRUST SOCIETY Petitioner
Through: Mr. Maninder Singh, Senior
Advocate with Mr. Gaurav Sharma,
Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. A.S. Chandhiok, ASG with
Ms. Inderjeet Sidhu, Mr. Sandeep
Bajaj, Ms. Riya Kaul and
Ms. Neha Rastogi, Advocates.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
28.04.2011

1. This is the second round of litigation involving the Petitioner's challenge to a decision dated 16th March 2001 passed by the Directorate General of Health Services ('DGHS') in the Ministry of Health and Family Welfare ('MHFW'), Government of India, Respondent No. 5 withdrawing the customs duty exemption certificate ('CDEC') issued to the Petitioner for availing the benefit of exemption from payment of customs duty and

additional duty of customs for importing/acquiring medical equipments for treatment of patients at the Sir Ganga Ram Hospital ('SGRH') in New Delhi.

Background facts

2. The Petitioner Sir Ganga Ram Trust Society (GRTS) is registered under the Societies Registration Act, 1860 and is running the SGRH, a charitable institution, since 1954. According to the Petitioner, it does not have any corpus fund and all the income and profit from the SGRH is invested for the development of the SGRH. Further, the GRTS does not get any grant from any authority.

3. It is stated that on 30th August 1977 the Directorate of Health Services ('DHS') of the Delhi Administration [now the Government of the National Capital Territory of Delhi (hereafter 'the GNCTD')] certified SGRH to be a charitable institution running a free out-patient department ('OPD') and having 90 free beds. The certificate further stated that the medical facilities were provided in the SGRH without distinction of caste, creed and religion. This certificate was reiterated on 23rd March 1983. The DHS certified that as per its records SGRH had 98 free beds and free OPD services, qualifying the institution as a charitable one, for the purposes of claiming customs duty exemption and grant-in-aid under the pattern of Government of India,

MHFW.

4. On 1st March 1988 the Ministry of Finance, Government of India issued Notification No. 64 of 1988 granting customs duty exemption to hospitals satisfying the eligibility criteria indicated therein in respect of equipment imported for the treatment of patients. The categories of hospitals that could avail exemption in terms of the said notification were:

- (a) charitable hospitals; and
- (b) hospitals that provide medical surgical or diagnostic treatment
 - (i) free on an average, to at least 40 per cent of all their outdoor patients, and (ii) free to all indoor patients whose family income is less than rupees five hundred per month, and keeping 10 per cent of all the hospital beds reserved for such patients.

5. The Petitioner states that it applied for customs duty exemption for several imported equipments stating that it is a charitable hospital. A sample of the application submitted by the Petitioner has been enclosed with the writ petition. In the said application, the details of all the patients treated free for the years 1986, 1987 and 1988 was indicated. The Petitioner obtained CDEC under the said Notification No. 64 of 1988 for several equipments up to 1994 after which said notification stood withdrawn.

6. Following the decision of the Supreme Court in *Mediwell Hospital & Health Care Pvt. Ltd. v. Union of India* (1997) 1 SCC 759 [hereafter 'the *Mediwell Hospital* case'], certain information was sought by the DGHS
W.P. (C) No. 880/2009 Page 3 of 23

from the Petitioner Society on 12th May 2000 regarding (a) the date of installation of the equipments (b) number and percentage of OPD patients treated free and (c) number and percentage of indoor patients treated free whose family income was less than Rs. 500 per month. It may be mentioned here that in the *Mediwell Hospital* case, the Supreme Court had emphasized that the objective of giving free treatment to at least 40 per cent of the outdoor patients as well as free treatment to all the indoor patients belonging to families with an income of less than Rs. 500/- per month had to be achieved at all costs and that if the said obligation was not discharged steps ought to be taken for realization of the customs duty from such of those entities who had availed of the CDECs. The letter dated 12th May 2000 from the DGHS to the Petitioner sought information in respect of 44 equipments for which CDECs had been issued.

7. The Petitioner claimed that it was facing difficulty in locating the old records as the information sought related to the number of OPD and indoor patients treated free of cost in the SGRH up to 1999. On 31st August 2000 the Petitioner replied to the aforementioned letter dated 12th May 2000 in which it stated that the Petitioner had been able to locate some of the records. The Petitioner enclosed the details of equipments in respect of which the CDEC benefit had been availed of as Annexure-I. The details of the OPD as well as in-patients treated and those treated free at the SGRH during the years 1985 to 1999 was enclosed as Annexure-II and the details

W.P. (C) No. 880/2009 *Page 4 of 23*

of beds speciality-wise and beds reserved for indoor patients pertaining to families with income less than Rs. 500/- per month was enclosed as Annexure-III. The Petitioner reiterated that the SGRH was a 500 bedded charitable hospital and that it had reserved 100 beds out of the total 500 beds for treatment of poor patients.

8. It is stated that the DGHS carried out a surprise inspection on 17th/18th January 2001. The Petitioner states that it was not at that stage given a copy of the inspection report and that without affording it an opportunity of being heard the DGHS passed an order dated 16th March 2001 withdrawing the CDECs granted to the Petitioner. It was observed in the said order that the information furnished by the Petitioner was not sufficient. The inspection had revealed that the SGRH was running a paid OPD facility for which no records had been kept. The investigations done in the paid OPD were much more than the patients attending the General OPD. All patients attending the General OPD had to pay Rs. 10/- as registration charges. Although the consultation provided was free, the claim of SGRH that it had given free treatment to 40% of its OPD patients was not correct. The admission register as well as the case sheets did not mention income of the patients and, therefore, it was not possible to verify whether the SGRH gave free treatment to indoor patients whose income was less than Rs. 500/- per month. No bed was earmarked for such patients. On the date of the visit, a substantial number of patients admitted to such beds informed the

W.P. (C) No. 880/2009
Page 5 of 23

inspecting team that they had paid for the services earlier and were transferred to the General Ward category due to their inability to pay. Consequent upon the said inspection report the impugned order dated 16th March 2001 was passed whereby the CDECs issued to the Petitioner in respect of 44 equipments stood withdrawn.

9. By a letter dated 25th May 2001 the Petitioner furnished to the DGHS the statistical data from the records showing “(a) that all OPD patients and more than 10% of its indoor patients were treated freely; (b) that in so far as paid OPD was concerned, the hospital had only allotted rooms to the consultants for their practice and the hospital charged nothing; and (c) that the hospital had only one OPD and that was General OPD which was 100% free”.

10. On 7th October 2002 the Petitioner again wrote to the DGHS requesting that the decision dated 16th March 2001 withdrawing the CDECs be reconsidered. However, by a letter dated 20th June 2003 the DGHS maintained that it had treated the SGRH as a hospital falling under paragraph 2 of Notification No. 64 of 1988, and that the Petitioner did not fulfill the conditions stipulated therein. Consequently, the earlier decision dated 16th March 2001 was reiterated by the subsequent letter dated 1st October 2003 of the DGHS.

11. Aggrieved by the above decisions, the Petitioner filed W.P. (C) 5303-04 of 2004 in this Court. Pursuant to the orders passed in the said writ petition, two affidavits were filed by the Trustees of GRTS and by its Assistant Secretary stating as follows:

a. The SGRH collected from its consultants the total number of private patients treated by them. It also collected the number of private patients who visited the hospital on a sample basis in order to make a reasonable estimate of the total number of private patients treated by the consultants.

b. The percentage of OPD patients treated free during 1988 to 2003 was as follows:

(i) 100% of the OPD patients were treated free, if the General OPD patients of the hospital alone were considered;

(ii) 73% to 85% of the OPD patients were treated free, if the total number of OPD patients was taken as the aggregate of (a) number of private patients as reported by the consultants and (b) general OPD patients of the hospital.

(iii) 55% of the OPD patients were treated free, if the total number of OPD patients was taken as the aggregate of (a) number of private patients as collected by the hospital on sample basis; and (b) general OPD patients of the hospital.

(iv) Similarly, more than 40% of the investigations were free even after taking into account the number of investigations

done for private patients during the last six years i.e. 1998 to 2003, since the notification laid down as a requirement on an average such free treatment.

(v) During 1988 to 2003, percentage of indoor patients treated free was ranging between 17.5% to 20.38% as against the requirement of only 10%.

(vi) During 1998 to 2003, percentage of indoor patients transferred from paying wards to general ward was negligible and was ranging between 0.42% to 0.67%.

12. In the affidavit filed by the trustees, it was sought to be explained that GRTS had evolved a separate “Model” for achieving the twin purposes of making available the best consultants/surgeons for all poor patients attending free OPD and free indoor beds on daily basis. It is stated that this Model has been implemented since 1976. The Petitioner states that there are certain consultation cubicles where the private doctors work on a honorary basis with the SGRH and grant consultation to private patients for certain specified hours in the week. The patients visit the doctors in the rooms and they are not patients of the SGRH. In return, the consultants give free consultation in the General OPD. It is stated that through this method the Petitioner ensured continuous availability of high standard medical treatment/facilities to a large number of patients who were being treated free at the SGRH. It is stated that when the MHFW desired to know the

proportion of the number of patients attending the free General OPD, on the basis of calculation made for three days it was demonstrated that the number of patients treated at the free General OPD was more than 55% of the total number of patients. Ninety beds were also shown to be free beds.

13. On 10th August 2004 the Division Bench of this Court dismissed the Petitioner's writ petition. It was *inter alia* held that the petition raised disputed questions of fact which could not be examined in a writ petition. Aggrieved by the above order, the Petitioner preferred an appeal being Civil Appeal No. 7282-83 of 2005 which was disposed of by the Supreme Court on 24th October 2007 by the following order:

“Prima facie, we were of the view that the Director General Health Services (for short 'DGHS') had withdrawn/canceled the exemption certificate given to the appellants from payment of customs duty on import of medical instruments in terms of Notification No. 64/88-Cus. dated 1st March, 1988 in violation of the principles of natural justice.

Mr. Amarendra Sharan, learned Additional Solicitor General, after taking instructions, states that the impugned order of the High Court as well as DGHS be set aside and the case be remitted back to the DGHS to pass a fresh order in accordance with law after affording due opportunity to the appellants to put forth their point of view. That the appellants shall be supplied a copy of the inspection report carried out on 17th & 18th January, 2001.

In view of the statement made by the learned Additional Solicitor General, these appeals are allowed; impugned orders of the High Court and DGHS are set aside and the case is remitted back to the DGHS to pass a fresh order in accordance with law after affording due opportunity to the appellants to put forth their case. All contentions are left open.”

14. Thereafter on 6th December 2007 a fresh notice was issued to the Petitioner by the DGHS asking it to explain why the CDECs issued should not be withdrawn. On 20th December 2007 a letter was written to the DGHS by the Petitioner asking for a copy of the inspection report dated 17th/18th January 2001. After the receipt of the copy of the report the Petitioner submitted a detailed reply on 26th March 2008. It was submitted that the SGRH should be considered to be a charitable hospital under para (1) of the Table appended to the Notification 64/88. Alternatively, it was submitted that the SGRH in any event complied with the requirements of para (2) for availing of the customs duty exemption.

15. By the impugned order dated 28th August 2008 the DGHS reiterated its earlier order dated 16th March 2001. It was *inter alia* observed that the CDEC Committee had considered the request of the Petitioner to re-categorise the SGRH as a charitable hospital but did not agree with this request since this was made after a gap of 16 years after availing of the CDEC and further since the Petitioner Society had not been certified as a

charitable organization by the MHFW. A reference was also made to the decision dated 31st October 2007 of the Supreme Court in Civil Appeal Nos. 7284 of 2005 and 5054 of 2007 [*Jaslok Hospital & Research Centre v. Union of India* and *Keki Byram Grant v. Union of India* respectively, 2007 (12) SCALE 714] declining a similar request. The impugned order further stated that the SGRH had not provided any fresh information to substantiate its claim of having fulfilled the terms and conditions of the Notification No. 64 of 1988 dated 1st March 1988.

Submissions of counsel

16. Mr. Maninder Singh, learned Senior counsel appearing for the Petitioner submitted that the impugned order failed to consider the materials placed before the DGHS by the Petitioner and, therefore, the decision was vitiated in law. At the outset, it was submitted that the matter should not again be remanded to the DGHS for a fresh decision since the DGHS appears to have made up its mind to reject the Petitioner's representations. Reliance was placed on the judgments in *K.I. Shephard v. Union of India* (1987) 4 SCC 431 and *H.L. Trehan v. Hindustan Petroleum Corporation Ltd.* (1989) 1 SCC 764 to the effect that the post-decisional opportunity of hearing does not in such circumstances subserve the purpose of ensuring observance of the principles of natural justice.

17. It is next submitted that the DGHS failed to appreciate that the SGRH

has only one OPD and every patient who comes to the OPD is treated free. The SGRH provides cubicles/consultation rooms to enable doctors to attend to their private patients for which they charge consultation fee directly from such patients. The SGRH itself does not receive any payment from such patients. The model adopted by the SGRH satisfies the objective of providing free treatment both to the OPD as well as indoor patients as mandated by the Notification No. 64 of 1988 dated 1st March 1988.

18. It is submitted that SGRH's claim to be a charitable hospital was not made for the first time as erroneously observed in the impugned order. Reliance is placed on the certificates issued in 1977 and in 1983 by the DGHS certifying that SGRH was in fact a charitable hospital. In addition, a reference was made to a document of the DGHS which itself confirmed that for the years up to 1992 free treatment had been given to more than 40% OPD patients and a substantial number of indoor patients. The information provided by the Petitioner along with its letter dated 31st August 2000 was also referred to. It is submitted that the Committee chaired by Justice A. S. Qureshi that was constituted to review the existing free treatment facilities extended by charitable and other hospitals who had been allotted land on concessional terms/rates by the Government observed that the SGRH was a charitable hospital. Reference was also made to an order of the Income-tax Appellate Tribunal (ITAT) upholding the claim of the SGRH to be a charitable hospital. Mr. Maninder Singh submitted that although the land on

W.P. (C) No. 880/2009

which the SGRH stood, did not fall in the category of land allotted on concessional rates, the observations of the aforesaid Committee were relevant for the purposes of the present case. It was submitted that in any event Notification No. 64 of 1988 stood withdrawn with effect from 1st March 1994, and there was no need to report compliance with the conditionalities attached to the import of the equipments for any period thereafter. Reliance is placed on the decision of this Court in ***R.G. Stone Urological Research Institute v. Union of India* 173 (2010) DLT 385**.

19. Appearing for the Respondents, it is submitted by Ms. Inderjeet Sidhu, learned Advocate, that the impugned order dated 28th August 2008 confirming the earlier decision dated 16th March 2001 was passed after giving a personal hearing to the Petitioner and after considering its reply dated 26th March 2008. SGRH did not give any fresh information to substantiate its claim of having fulfilled the post-import obligations. Secondly, it is submitted that the SGRH cannot be permitted to seek change of categorization from para (1) to para (2) of the Table to the Notification No. 64 of 1988. It is pointed out that even the application submitted by the SGRH for obtaining the CDECs categorized SGRH under para (2) of the Table. The undertaking/declaration that the SGRH would fulfil the post-import condition also showed it to be falling in para (2). Likewise the proforma invoices categorized the SGRH as falling in para (2) of the Table to the notification. Thirdly, it is submitted that the certificates dated 30th

W.P. (C) No. 880/2009 *Page 13 of 23*

August 1977 and 23rd March 1983 issued by the Delhi Administration that the SGRH was a charitable hospital were not acceptable since a certificate in that regard had to be issued by the MHFW. The figures relied upon by the Petitioner in the representation dated 31st August 2000 were not supported by any evidence to suggest that more than 40% of the OPD patients in SGRH were being given free treatment. Admittedly the SGRH also did not maintain any admission register or case sheets of patients treated free of cost. It is alleged that the Petitioner deliberately concealed the records of the paid OPD. The Petitioner's claim that the private doctors were charging consultation fee directly from the patients and that SGRH was not involved in the receipt of payment by the private doctors was contrary to the stand taken in an earlier representation dated 25th May 2001 wherein the Petitioner claimed that the Consultant doctors contributed 33% of their income for the development of the hospital. It is pointed out that the inspection carried out on 17th/18th January 2001 showed that despite running a paid OPD no records have been kept and even the patients attending the General OPD have to pay Rs. 10/- as registration charges. Although the consultation was provided free, the Petitioner's claim that the SGRH had treated more than 40% of its OPD patients free, was not correct. The admission register as well as the case sheets did not mention the income of the patients and, therefore, it was not possible to verify whether the SGRH treated free all its OPD patients. The claim that 100 General Ward beds were free beds, was not found to be true since no bed was found to be

earmarked for the patients whose income was less than Rs. 500/- per month. It was submitted that the withdrawal of Notification No. 64 of 1988 with effect from 1st March 1994 would not affect the liability of the Petitioner from fulfilling the post-import conditions. As regards the decision of this Court in *R.G. Stone Urological Research Institute v. Union of India* (supra), it is stated that it is pending in appeal before the Division Bench. Reliance is placed on *Jaslok Hospital & Research Centre v. Union of India* (supra); *Medical Relief Society of South Kanara, Manipal, Dakshina Kannada v. Union of India* 1999 (111) ELT 327 (Kar); *Shah Diagnostic Institute Pvt. Ltd. v. Union of India* 2008 (222) ELT 12 (Bom); *Commissioner of Customs (Import) v. Jagdish Cancer & Research Center* AIR 2001 SC 3161 and *Social Jurists, A Lawyers Group v. Govt. of NCT of Delhi* 140 (2007) DLT 698 (DB).

Is SGRH a charitable hospital?

20. Notification No. 64 of 1988 talks broadly of two categories of hospitals which are eligible for customs duty exemption in relation to imported equipments to be used in such hospitals. The first is a charitable hospital which is covered by para 1 of the Table appended to the said Notification. In relation to such hospitals, the conditions specified in para 2 would not apply.

21. There are several documents placed on record which substantiate the

claim of the Petitioner that SGRH is a charitable hospital. The certificates dated 30th August 1977 and 23rd March 1983 issued by the Delhi Administration certifying that SGRH is a charitable hospital cannot be overlooked merely on the ground that there is no certification to that effect by the MHFW. A certification by the Delhi Administration would obviously be on the same parameters as evolved by the MHFW. Although Para 1 of the Table appended to Notification No. 64 of 1988 adverts to the certification by the MHFW of a charitable hospital, such certification by the Delhi Administration is not prohibited and should be accepted as long as the criteria for such certification is not shown to be different from that adopted by the MHFW.

22. The application filed by the Petitioner for obtaining the CDECs, a copy of which has been placed as Annexure P-6, states in column 2: “hospital is run by a charitable trust and is recognized as a charitable hospital by Delhi Administration.” The mere fact that the Petitioner gave particulars which would be relevant for exemption under para 2 of the Table appended to the Notification No. 64 of 1988 will not, in the opinion of this Court, act as an estoppel to prevent it from claiming the benefit of para 1 of the said Table. It is not possible to accept the plea that since the Petitioner did not claim this earlier, it would be precluded from doing so at a later point in time. What requires to be seen is whether in fact the Petitioner’s claim to be a charitable hospital is sustainable or not.

23. It must be recalled that the enquiry into whether the hospitals that had imported equipments in terms of Notification No. 64 of 1988 had fulfilled the post-import obligations commenced long after the Notification itself was withdrawn. The inquiry was conducted only on account of certain directions issued by this Court in a public interest litigation that such enquiry commenced. Consequently, many hospitals that had imported such equipments were required to produce records from 1985 onwards. Some of them might have preserved those records. But many may not have. This inevitably led to litigation with the Respondents insisting on the hospitals producing proof of having satisfied the post-import obligations. In the circumstances, if at the stage of producing such proof any hospital claims that it should have been treated even to begin with as a charitable hospital such plea ought to be examined by the Respondents and not brushed aside only on the ground that such a plea was not raised earlier.

24. The order dated 8th February 1984 of the ITAT in respect of the Petitioner for the assessment year 1979-80 is, in the context of the present case, relevant. It sets out the figures of free services rendered to the patients of the SGRH during the years 1976-77 and 1981-82. The order of the ITAT relied on a certificate issued by the DHS that SGRH was “a charitable hospital running a free out patients department and maintaining free beds”. The ITAT proceeded to observe:

“It is no doubt true that the hospital also had a number of paying

beds and it charged the patients who could afford but that fact by itself would not render the income of the hospital as not exempt u/s 10(22-A). Having regard to the predominant object of the society and the restrictions placed in clause 10 of its memorandum and articles of association which has been reproduced above, we do not find anything inconsistent with the claim made by the assessee that the hospital was being run as a public charity on a philanthropic basis. According to us a charity would not be any the less charity just because it runs certain beds in its hospital or nursing home on payment. After all a charity cannot and does not survive on voluntary contribution or subscription alone. In order that it could better provide medical facilities and in order that it could achieve in a better and larger manner the advancement of medical relief, if it charged fees from patients who could afford, it would not lose (*sic* 'loose') its character of working in a philanthropic manner. In other words, if the assessee hospital was, in order that it became financially viable, supported to an extent by the fees charged from patients it did not, according to us ceased to be a philanthropic institution engaged in advancement of medical relief. While determining whether an institution is philanthropic or not, three questions that may be asked are:

- i) Is it run for unselfish motives?
- ii) Is it for public in general?
- iii) Is it for general good?

Since, we find that the answers to these three questions are in the affirmative and since we also find that the profit motive stood completely eliminated in the case of the assessee as per clause 10 of its memorandum and articles of association, we would hold that the assessee society was running a hospital solely for philanthropic purposes and not for purposes of profit.”

25. Then there is an enquiry report of the Committee headed by Justice A.S. Qureshi. The terms of reference of the said Committee were as follows:

- “a) To review the existing free treatment facilities extended by the Charitable and other Hospitals who have been allotted land on concessional terms/rates by the Government.
- b) to suggest suitable policy guidelines for free treatment facilities for needy and deserving patients uniformly in the beneficiary institutions in particular to specify the diagnostic, treatment, lodging, surgery, medicines and other facilities that will be given free or partially free.
- c) To suggest a proper referral system for the optimum utilisation of free treatment by deserving and needy patients.
- d) To suggest a suitable enforcement and monitoring mechanism for the above including a legal framework.”

26. The Committee observed that very few of the hospitals in Delhi were providing free medical services. It observed “but now very few of them are genuinely charitable or social service institutions, such as Sir Ganga Ram Hospital, Batra Hospital, etc.” It further observed that “some charitable hospitals provide good free treatment facilities for needy and deserving patients, such as Sir Ganga Ram Hospital, Batra Hospital etc.” At this point in time several years after the import of the equipments and several years after the Notification No. 64 of 1988 has ceased to exist, to brush aside the

claim of the Petitioner that it should be treated as a charitable hospital, would not be justified. Consequently, this Court is of the view that the claim of the Petitioner to be treated as a charitable hospital for the purposes of Notification No. 64 of 1988 ought to be accepted by the Respondents.

Does the Petitioner satisfy the requirement of Para (2)?

27. The alternative plea of the Petitioner that it satisfies the requirement of para 2 of the Table appended to Notification No. 64 of 1988 is examined next.

28. The scope of enquiry is whether during the time Notification No. 64 of 1988 was in force, i.e., 1st March 1988 till 1st April 1994, the post-import obligations were fulfilled by the Petitioner. The inspection undertaken of the SGRH on 17th/18th January 2001 refers to data after 1995. It does not advert to data submitted by the Petitioner for the period during which the Notification No. 64 of 1988 was in force. Given the fact that the data pertained to patients receiving OPD treatment in the past and those who had received in-patient treatment up to 1st March 1994, there were no means to verify these details in 2001. Much less would it have been possible to verify those details in 2008. The question really revolves around the veracity of the figures furnished by the Petitioner along with its reply dated 31st August 2000. Those figures cover the period from 1985-89. This is reiterated in a letter dated 25th May 2001 after the Respondent DGHS withdrew the

W.P. (C) No. 880/2009

CDECs by its letter dated 16th March 2001.

29. As regards the contemporaneous record of the number of OPD patients treated free, the letter dated 21st July 1992 from the Delhi Administration to the DHS forwarding the application from the SGRH for customs duty exemption in regard to six different equipments is instructive. The said forwarding letter certifies as under:

“2. The institution provided free OPD to all patients reporting in OPD. Year-wise figures are as follows:

1987 : 2,02,361

1988 : 2,13,875

1989 : 2,26,797

3. Indoor treatment facilities are provided free of cost to all families with income of less than Rs. 500/- per month. For this purpose 49 beds reserved, out of total 498 beds which is not less than 10% of total bed strength of the hospital/institution.”

30. The above letter was placed on record before this Court by the DGHS itself. It is not clear whether there was any correspondence between the Delhi Administration and the DGHS in that behalf. The DGHS obviously accepted the certification by the DHS. Considering that this is a letter of 21st July 1992 and relates to the figures of 1987 to 1989, there is no reason why the DGHS should disbelieve it.

31. The impugned order passed by the Respondents reiterating the earlier order dated 16th March 2001 does not advert to the detailed representation made on 26th March 2008 by SGRH. The affidavit of the trustees filed in the earlier writ petition being W.P. (C) 5303-04 of 2004 pursuant to an order dated 12th April 2004, the relevant portions of which have been extracted hereinbefore, have also not been discussed in the impugned order. It was necessary for the Respondents to have considered whether the Model of free treatment provided in the OPD and to indoor patients by the SGRH served the object and spirit of the Notification No. 64 of 1988. The Respondents were also required to account for the fact that an examination of the compliance of the conditionalities in para 2 of the Table was being undertaken long after the Notification No. 64 of 1988 had ceased to be operative.

32. This Court is satisfied upon an examination of the said affidavit of the trustees that there was substantial compliance with the spirit and objective of Notification No. 64 of 1988 by SGRH during the period that the said Notification was in force. Therefore, the Petitioner should be held to have satisfied the requirements of para 2 of the Table appended to Notification No. 64 of 1988.

Conclusion

33. Consequently, the impugned order dated 28th August 2008 passed by the W.P. (C) No. 880/2009

DGHS, reiterating the earlier decision dated 16th March 2001 withdrawing the CDECs issued to the Petitioner is hereby set aside.

34. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J

APRIL 28, 2011

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