IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5357 OF 2014

Cochlea Pune,)
A Public Trust, through)
Dr. Avinash Madhavrao Wachasundar.).. Petitioner
Vs
The Charity Commissioner and Others.).. Respondents

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Shri Vaibhav M. Parashurami i/by Shri Vikrant V. Parashurami for the Petitioner.
Shri V.P. Malvankar, AGP "A" Panel for the Respondent Nos.1 to 3.

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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 7TH AUGUST 2015

ORAL JUDGMENT (PER A.S. OKA,J)

. The submissions of the learned counsel appearing for the parties were heard on the earlier date. By this Petition under Article 226 of the Constitution of India, the Petitioner has impugned the order dated 4th June 2012 passed by the learned Charity Commissioner of the State of Maharashtra, Mumbai. A scheme was framed by this Court under the order dated 31st August 2009 in Writ Petition (PIL) No.3132 of 2004 which is applicable to the Public Charitable Hospitals. Clause 1 of the Scheme reads thus:-

> "(1) The public charitable trust registered under the provisions of the Bombay Public Trusts Act, 1950 (for short "B.P.T. Act") which are running Charitable Hospital, including nursing home or maternity home, dispensaries or any other center for medical relief and whose annual expenditure exceeds Rs.5 lakhs are "State aided public trust" within the meaning of clause 4 of section 41AA."

2. Clause (2) of the said Scheme provides that the public charitable trusts which are known as "State aided pubic trusts" covered by the aforesaid Clause (1) shall be under legal obligation to reserve and earmark 10% of the total number of operational beds for indigent patients and provide medical treatment to the indigent patients free of costs. Clause (2) further provides that the public charitable trusts covered by Clause (1) of the said Scheme shall earmark 10% of the total number of operational beds at concessional rate to the weaker sections patients as per the provisions of Section 41A of the Bombay Public Trusts Act, 1950 (for short "the said Act"). Clause 4 of the Scheme lays down that the public charitable hospitals are required to create separate fund known as "Indigent Patients Fund". The scheme requires such public charitable trusts to render services as set out therein. It is provided that 2% of the gross billing of all patients (other than weaker sections and indigent patients) in each month shall be transferred to Indigent Patients Fund Account. Clause (19) of the said Scheme reads thus:-

> "19. The Charitable Hospitals which face individual difficulties in meeting objectives/obligations under this Scheme shall be at liberty to apply to the Charity Commissioner with all supporting documents who may consider suitable modifications, if a case for relief is made out."

3. Clause 20 of the Scheme provides that the Charity Commissioner shall notify the list of Chartable Hospitals in the manner provided therein.

4. It appears that the name of the Petitioner which is a Society registered under the Societies Registration Act, 1860 and a Public Trust which is registered under the said Act was notified in the list of public charitable trusts covered by Clause (1) of the said Scheme. Initially, the Petitioner made various Applications to the learned Joint Charity Commissioner for deletion of its name. On 31st August 2009, the Petitioner applied to the learned Joint Charity Commissioner for deletion of its name by contending that the Petitioner is working in the field of rehabilitation of hearing impaired members of the Society especially congenital young deaf children by imparting speech and pre-school training free of cost. It is stated that the Petitioner was integrating such deaf children to normal schools for better development of future career. An affidavit was filed by Dr. Avinash Wachasundar, the Chief Managing Trustee of the Petitioner Society in support of the said Application setting out the details of the activities of the Petitioner. By the impugned order, the said Application dated 31st August 2009 has

been rejected by the learned Joint Charity Commissioner. Thereafter, consequential steps were taken by the Monitoring Committee appointed to oversee the operation of such trusts, by issuing a notice to the Petitioner on 7th May 2014. After a notice was issued to the Petitioner, on 18th February 2014 a representation was made by the Petitioner to the learned Joint Charity Commissioner pointing out that the Petitioner is not covered by Clause (1) of the said Scheme. There is a reply filed by Shri Mohan Dattatraya Gade, the Assistant Charity Commissioner, Maharashtra State, Mumbai.

5. On 20th January 2015, a notice for final disposal of this Petition at admission stage was issued. The learned counsel appearing for the Petitioner has invited our attention to the activities of the Petitioner and submitted that none of the activities are covered by Clause (1) of the Scheme framed by this Court. Inviting our attention to the impugned order passed by the learned Joint Charity Commissioner, he urged that there is no finding recorded by the learned Joint Charity Commissioner on merits after taking into consideration the activities of the Petitioner. He would, therefore, urge that the categorization of the Petitioner trust in the category covered by Clause (1) of the Scheme is completely erroneous. The learned AGP supported the impugned order and urged that no interference is called for.

6. We have carefully considered the submissions. We have perused the relevant part of the Scheme framed by this Court. The following categories of the public charitable trusts which are duly registered under the said Act are covered by Clause (1) of the Scheme.

(i) Charitable Hospitals;

(ii) Nursing Homes or Maternity Homes;

(iii) Dispensaries; and

(iv) Any other Center for medical relief

The aforesaid categories are covered by Clause (1) provided the annual expenditure exceeds Rs. 5 lacs.

7. The question is whether the activities conducted by the Petitioner Society fall in any of the categories mentioned in Clause (1) of the said Scheme.

8. In support of the Application dated 31st August 2009, the Chief Managing Trustee Dr. Avinash Wachasundar filed an affidavit. The nature of the activities of the Petitioner have been specified in the said affidavit, which reads thus:-

> "I say that the trust is working in the field of Rehabilitation of hearing Impaired people in our

> society especially congenital deaf children by imparting Speech and Pre-school training free of cost and integrating them to normal school for better development of future career of such deaf children.
>
> I say that our trust is non-governmental organization (NGO) working for rehabilitation of Hearing Impaired people mainly children through various programme, e.g.
>
> (1) Early Detection & Early Intervention Programme
> (2) Parents Infant Programme (PIP)
> (3) Pre-school activity etc.
>
> I may say that the preschool activity is carried out on behalf of cochlea Pune only, as other special schools are meant for children above 6 yrs. but our preschool is meant for children from 0 to 6 yrs. It is a day care centre."

9. Even in the Application dated 31st June 2009, the Petitioner specifically contended that it was working in the field of rehabilitation of hearing impaired members and especially congenital young deaf children. It was stated that the trust was imparting speech and pre-school training free of cost for the purposes of integrating them to normal schools for better development of future career. If what is stated in the Application dated 31st August 2009 and the aforesaid affidavit is correct, it cannot be said that the Petitioner is running "other center for medical relief". By no stretch of imagination, the case of the Petitioner is covered by the other categories such as Hospital, Maternity Home or Nursing Home or Dispensary. In this context, it will be necessary now to consider what is held by the learned Charity Commissioner in the impugned order. In Paragraph 5 of the impugned order, the case made

out by the Petitioner has been set out. The only finding recorded is in Paragraph 6 of the impugned order, which reads thus:-

> "6. ...... I have also called the report from the Joint Charity Commissioner, Pune. It is seen from the reports that the trust is registered under the Bombay Public Trusts Act, 1950, the income and expenditure is above Rs.5.00 lakhs and rehabilitation of Hearing Impaired members of the society especially congenital young deaf children is come under any other center medical relief".

10. The learned Charity Commissioner has merely observed that the rehabilitation of hearing impaired members of the Society especially congenital young deaf children will come under the category of "other center for medical relief". It is not the finding recorded in the impugned order that the case made out by the Petitioner in the Application and affidavit was incorrect or false. The case of the Petitioner was that the Petitioner was imparting speech and pre-school training free of cost to the congenital young deaf children with the object of integrating them to normal schools for better development of future career. We have perused the affidavit of Shri Mohan Dattatray Gade, the learned Assistant Charity Commissioner, Mumbai. Even in the said affidavit, it is not stated that the Petitioner is carrying on any of the activities covered by the categories mentioned in Clause (1) of the said Scheme framed by this Court. So long as the Petitioner is carrying on activities which are specifically stated in the aforesaid affidavit of Dr.

Avinash Wachasundar, we fail to understand as to how the Petitioner will be governed by Clause (1) of the said Scheme. As stated earlier, even in the affidavit-in-reply filed on 5th March 2015, no material is placed on record to show that the Petitioner is carrying on any activities which are covered by Clause (1) of the said Scheme. Thus, it can be safely stated that even as of 5th March 2015, the Petitioner was not carrying on any of the activities which will attract the provisions of Clause (1) of the said Scheme framed by this Court.

11. We have perused the communication dated 18th February 2014 issued by the Chairman of the Monitoring Committee by which an action against the Petitioner has been initiated. The said communication proceeds on the footing that the Clause (1) of the said Scheme is applicable to the Petitioner. Therefore, even the said communication cannot be sustained.

12. Accordingly, the Petition must succeed. While allowing the Petition, we make it clear that what is held by this Court is based on the material available as of 5th March 2015. If thereafter, the Petitioner has commenced any activities which will be covered by the Clause (1) of the said Scheme framed by this Court, it will be open for all the concerned Authorities to take action against the Petitioner.

13. Subject to what is observed above, the Rule is made absolute in terms of prayer clauses (a) and (b). There will be no order as to costs.

(REVATI MOHITE DERE, J) (A.S. OKA, J)