IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.20992 & 20993 of 2018
and
W.M.P.Nos.24642 & 24643 of 2018

W.P.No.20992 of 2018

Sundaram Medical Foundation,
Dr.Rangarajan Memorial Hospital,
ShanthiColony, 4th Avenue,
Anna Nagar, Chennai - 600 040.
Represented by T.N.P.Durai,
Trustee & Director of Administration ..Petitioner

Vs.

Chennai Metro Water Supply and
Sewerage Board,
Rep.by Area Engineer - VIII,
No.227, 2nd Avenue, 12th Main Road,
Anna Nagar, Chennai - 600 040. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of records of the respondent pertaining to the impugned demand notice bearing no. 08/100/04885/000 dated 09.08.2018 as well as the notice of disconnection bearing no.11488 dated 09.08.2018 and quash the same.

W.P.No.20993 of 2018

Sundaram Medical Foundation,
Dr.Rangarajan Memorial Hospital,
ShanthiColonu, 4th Avenue,
Anna Nagar, Chennai - 600 040.
Represented by its
Trustee & Director of Administration,
T.N.P.Durai. ..Petitioner

Vs.

The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 001. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to Order dated 22.06.2018 bearing Z.O.VIII.R.D.C.No./ 1715/ 2018 issued by the respondent and quash the same and consequently direct the respondent to pass orders of exemption from property tax under Section 101(e) of the Chennai City Municipal Corporation Act, 1919 in respect of its premises at Sundaram Medical Foundation, Dr. Rangarajan Memorial Hospital, Shanthi Colony, 4th Avenue, Anna Nagar, Chennai - 600040.

For Petitioner	:	Mr.Srinath Sridevan [in both W.Ps]
		For Respondent
in W.P.No.20992/2018:		Mr.N.Ramesh Standing counsel [For CMWSB]
in W.P.No.20993/2018:		M/s.Karthikaa Ashok Senior Standing counsel [For Chennai Corporation]

COMMON ORDER

The writ petitions on hand are filed by Sundaram Medical Foundation, Dr.Rangarajan Memorial Hospital, seeking exemption from payment of property tax under Section 101(e) of the 'Chennai City Municipal Corporation Act, 1919' [in short, 'CCMC' Act], in respect of its premises at Shanthi Colony, 4th Avenue, Anna Nagar, Chennai - 600 040. The application made by the writ petitioner was rejected in proceedings dated 22.06.2018 and the demand notice in proceedings dated 09.08.2018 are under challenge in the present writ petitions.

2. The facts in nutshell as narrated by the writ petitioner reveals that the petitioner / Sundaram Medical Foundation was created under and by a Deed of Declaration of Trust dated 29.11.1990. On 07.01.1991, the petitioner submitted application to the Government of Tamil Nadu, seeking allotment of lands, for the purpose of setting up of hospital offering free / concessional medical services. Another application was also sent on 29.03.1992. On 10.04.1992, the Government of Tamil Nadu issued G.O.Ms.No.460, Revenue and allotted an extent of 2542 Sq.Mtrs of land at Anna Nagar to the petitioner Medical Foundation for the purpose of setting up a hospital.

3. The petitioner had written a letter to the respondents on 14.12.1994, pointing out that it is a Charitable hospital and is to be exempted under Section 101(e) of the 'CCMC' Act. However, on 28.03.2002 and on 02.07.2005, the petitioner received demand notices from the 2nd respondent. On 27.08.2007, the petitioner preferred an appeal in M.T.A.No.21/2006 before the Learned Principal Judge, City Civil Court, challenging the order dated 19.06.2006 in TAT.No.112 of 2006. The Principal District Court quashed the demand and remanded the matter back to the Regional Deputy Commissioner. In proceedings dated 12.08.2008, the respondents passed a non-speaking order dated 12.08.2008, declining to grant exemption from payment of property tax. The writ petitioner filed W.P.No.21084 of 2008 and this Court passed an order on 28.08.2008, directing the respondents to re-consider the matter on merits. Once again, the respondent passed a cryptic order, refusing to grant exemption from payment of property tax in proceedings dated 27.01.2009. Again the writ petitioner filed W.P.No.2383 of 2009 and the said writ petition was allowed on 12.01.2015 and the matter was again remanded back to the Commissioner, Corporation of Chennai, to examine the application for exemption and pass appropriate orders. The Regional Deputy Commissioner passed another cryptic order dated 17.12.2015, rejecting the claim for exemption in proceedings dated 17.12.2015. The petitioner preferred an appeal on 12.02.2016 to the Taxation Appellate Tribunal. The Taxation Appellate Tribunal returned the appeal as not maintainable, stating inter alia that as there was no assessment order as per Form 10 and therefore, the appeal would not lie. Thereafter, an undated notice for demand and arrears of demand on the 16th May 2017, calling the petitioner to pay an amount of Rs.1,07,78,031/- vide Bill No.04885, the writ petitioner filed W.P.No.13489 of 2017 and the High Court of Madras quashed the said demand notices dated 17.12.2015 and allowed the writ petition on 08.08.2017, remanding the matter back to the respondents. On 17.04.2018, the petitioner received a communication from the respondents for an enquiry on 26.04.2018. On 26.04.2018, the petitioner submitted an interim reply and thereafter, on 07.05.2018, the petitioner submitted a detailed reply, furnishing reasons and the documents for grant of exemption from property tax. However, the respondents rejected the application, seeking exemption in proceedings dated 22.06.2018 and the said order is under challenge in the present writ petition.

4. The learned counsel for the writ petitioner mainly contended that as per Section 101(e) of the 'CCMC Act', the petitioner Foundation is a Charitable Hospital and therefore, they are entitled for exemption from payment of property tax. To substantiate the said contention with reference to the

provisions of the Act, the learned counsel for the petitioner solicited the attention of this Court with reference to the Proviso Clause to Section 101, which reads that “Provided that nothing contained in clauses (a), (c) and (e) shall be deemed to exempt from property tax any building or land for which rent is payable by the person or persons using the same for the purposes referred to in the said clauses.” Section 101 (e) of the 'CCMC Act' contemplates “Charitable hospitals and dispensaries but not including residential quarters attached thereto.”

5. Referring the said provisions, the learned counsel for the petitioner reiterated that the petitioner / Sundaram Medical Foundation was constituted by way of a Deed of Declaration of Trust, which is a Public Trust. The contentions in the Trust Deed reveals that it is a charitable hospital and therefore, there is no reason whatsoever to decline exemption from payment of property tax. The Government itself considered the Deed of Declaration of Trust and allotted land for construction of hospital and the petitioner invested huge amount by constructing buildings and running hospital and providing free treatment to poors and charges are collected from the affluent patients for the purpose of maintenance of the hospital and the petitioner Foundation is not running the hospital for profits. The income derived from and out of the hospital is spent for the maintenance, purchase of advanced equipments and for providing other facilities. Therefore, the writ petitioner is doing charity by treating the poors at free of cost and thus, they are entitled for exemption of property tax. In support of the contention, the learned counsel for the petitioner relied on the object of the Trust and further, the Principal City Civil Court at Chennai, considered the nature of the medical services rendered by the petitioner Foundation and observed that the petitioner is eligible for exemption under the provisions of the Act. However, the matter was remanded back to the Commissioner for fresh consideration for exemption of payment from paying property tax, after giving opportunity to the petitioner to submit evidences of beneficiaries and other documents. However, the respondent/Commissioner passed a cryptic order without even assigning any reason for the purpose of rejecting of the application. Thus, the petitioner was forced to file writ petition after writ petition and even the orders of this Court in the writ petition was not complied with in its real spirit and once again, a cryptic order was passed. Thus, the respondents have no valid reason to deny the claim of the writ petitioner. Contrarily, they are going on passing orders without assigning any reasons.

6. The learned counsel for the writ petitioner is of an opinion that total number of free patients treated by the petitioner hospital are falling within the conditions stipulated

in the Government order, granting land at free of cost. Thus the petitioner has complied with the terms and conditions stipulated in the Government order for the purpose of allotment of land and even now, they are maintaining the charity by providing medical treatments to the poor and needy persons.

7. The learned counsel for the petitioner solicited the attention of this Court with reference to the nature of advanced treatments provided to the poor patients with reference to the datas available.

8. The petitioner mainly relied upon the judgment passed in W.P.No.13489 of 2017 dated 08.08.2017 filed by the petitioner / Sundaram Medical Foundation, challenging the order of rejection passed earlier. The learned counsel for the petitioner is of an opinion that this Hon'ble Court adjudicated the merits elaborately in that writ petition and formed an opinion that the petitioner is entitled for exemption. However, the matter was remanded back on the ground that the respondents should consider the documents and other evidences produced by the writ petitioner. But, the respondent has not considered the observations made by this Court in its letter and spirit and rejected the application once again by assigning flimsy reasons. The learned counsel for the petitioner contented that this Court made strong observations regarding the eligibility for exemption to the writ petitioner and the relevant paragraph relied on by the writ petitioner are extracted hereunder:

> "19. In the case of Society of Jesus, (supra), the question which arose for consideration was, what is a charitable hospital and dispensary for the purpose of Section 110(e) of the Karnataka Municipal Corporation Act, 1976. After noting that nowhere in the Karnataka Act, Charitable hospital and dispensary has been defined, the Court referred to the dictionary meaning as well as Section 2(15) of the Income Tax Act, which defines charitable purposes to include relief of the poor, education, medical relief and the advance of any object of general public utility. After discussing further on what would mean 'charitable', the Court held as follows:
>
> > 7.........The object of establishment and continuance of the hospital and the dispensary must, for all purposes, strictly conform to the requirements of what is understood as 'charity' and a 'charitable' act. Therefore, while considering the question whether a hospital or a dispensary is a charitable hospital/dispensary or not, what is required to be considered is as to what is the object of establishing such a hospital/dispensary and as to how it is being run

and what is the purpose of its continued existence whether it is meant to relieve the hardship and extends medical facilities to the poor and the needy or it is meant to oblige the rich and the affluent who do not require any financial assistance in the form of free medical treatment or it is being run as a commercial venture; and whether such hospital/dispensary has been established and is being continued to support the needs of any particular caste or a religious faith. In my view, three conditions, which are required to be satisfied to get the benefit of exemption under Section 110(e) of the Act are, (1) the doors of such hospitals/dispensaries should be always kept open to all persons irrespective of any caste, creed, religious faith or sects; (2) such persons should be poor, needy and deserving persons who, on account of financial incapacity, are not in a position to get medical aid by paying money; and (3) the process of selection of patients for treatment among the three classes, referred to above, must be objective, transparent, fair, reasonable and free from any arbitrariness. That does not mean that for the purpose of running a charitable hospital/dispensary, if the facilities in the hospital are made available to the affluent and rich patients and if they are charged for the services rendered with a view to organise funds required to such a hospital, such a hospital will not lose the characteristic of a charitable hospital/dispensary. I am unable to accede to the contention of Sri Haranahalli that it is only such of those hospitals and dispensaries which totally give free medical aid and which do not collect any charges from patients either in-patient or out-patient, which can be treated as charitable hospitals and dispensaries and are entitled for exemption under Section 110(e) of the Act. It is necessary to point out that in a society like ours, where the country is still a developing country and where large sections of people are poor and not free from hunger and disease, the State alone, out of its revenue, cannot provide free medical aid to all those poor persons who are in need of it. Therefore, presumably, keeping that in view and with a view to encourage charitable attitude among the philanthropists, a provision like Section 110(e) of the Act has been made providing for exemption from payment of property tax in respect of a building and land used as charitable hospital/dispensary. There cannot be any doubt that it is only with a view to facilitate medical aid to the poor and needy and with a view to reduce financial burden of such charitable hospitals and dispensaries, such a provision has been made. The burden of running a charitable hospital and dispensary which is established and continued for the purpose of giving free/subsidised medical aid, can be reduced by various methods, (1) by granting exemption from payment of property tax in respect of the buildings solely used as charitable hospital/dispensary; (2) by raising donations from the rich and affluent; (3) by free service rendered by the doctors and other social groups in the hospital. The resources raised from all these may not be sufficient to cater to the needs of large sections of poor ailing patients who require medical treatment and that too, with the high degree of competency and proficiency and infrastructure developed with all the modern facilities established. For this, one of the modes of raising funds could be by making available some portion of the facilities available in the hospital to affluent and the rich patients and charging them for the services and the treatment given to them. Therefore, if the object of establishing and running a hospital and its continued existence, is to give medical aid to the poor and the deserving either totally free or to a large extent subsidised, if such a hospital collects substantial charges from the affluent and rich patients put of some portion of the facilities available in the hospital extended to them, in my view, as observed earlier, such hospitals and dispensaries cannot be considered as not charitable hospitals and dispensaries.”

20. In Municipal Corporation of Hyderabad Vs. Hyderabad Race Club, reported in AIR 1987 92, the Hon'ble Supreme Court laid down what would be the proper test to find out whether the income from the Race Club was used for a charitable purpose. It was held that the test to apply is to seek an answer to the question; “to what use is, the property put or for what purpose is the property put”. To ascertain whether such occupation or user is for charitable purpose. After referring to Section 202 (1) (b) of the Income Tax Act,

it was held that the expression “charitable” in the context of the said Section means a benevolent activity calculated to benefit the poor or the deprived. The Court after taking note of the above referred decision as well as certain English decisions held as follows:

> “8........To my mind, it appears that if a hospital extends free treatment around 50 (fifty) per cent with little variation to the poor, needy and other patients who, on account of financial constraints, are not able to meet the medical expenses, and the remaining 50 (fifty) per cent or around that, charges are collected from others who can afford to pay, such a hospital or dispensary, would satisfy the requirement of a charitable hospital and dispensary. However, it is needless to observe that the entire income derived by charging the patients, as stated above, should be solely utilised by the hospital/dispensary for the benefit of the hospital and for the benefit of the poor and the deserving, needy patients. The hospital is permitted to charge and collect money from the rich and affluent only with a view to make the hospital viable and with a view to get the best and qualitative treatment to the poor and the needy whenever it is required by them. Insofar as outpatients are concerned, it would not be permissible for the hospital to limit the extension of the medical facility to a limited number of poor patients. It has to be for all those who approach the hospital seeking free treatment. However, insofar as in-patients are concerned, it could be subject to the availability of the beds and other facilities in the hospital. The funds generated by the hospital by charging the patients has to be utilised, as noticed by me earlier, for the benefit of other poor and deserving patients. This does not mean that an additional income earned, in a particular year, cannot be carried over for future development and to be spent in a near future i.e., within a year or two of such accumulation.”

9. The learned counsel for the petitioner relied upon the case of Society of Jesus, which is referred by this Court in W.P.No.13489 of 2017 and reiterated that Section 110(e) of the Karnataka Municipal Corporation Act, 1976 is pari materia to Section 101(e) of the Chennai City Municipal Corporation Act, 1919. The Hon'ble Supreme Court of India made an observation that the “object of establishing such a hospital/dispensary and

as to how it is being run and what is the purpose of its continued existence whether it is meant to relieve the hardship and extends medical facilities to the poor and the needy or it is meant to oblige the rich and the affluent who do not require any financial assistance in the form of free medical treatment or it is being run as a commercial venture. ....if the facilities in the hospital are made available to the affluent and rich patients and if they are charged for the services rendered with a view to organise funds required to such a hospital, such a hospital will not lose the characteristic of a charitable hospital/dispensary."

10. Relying on the said portions, the learned counsel for the petitioner strenuously emphasized that the petitioner/Medical Foundation is satisfying all the criterias as contemplated under the provisions of Section 101(e) of the 'CCMC Act' and therefore, the reasons stated in the order impugned are untenable.

11. This Court in the above said W.P.No.13489 of 2017, elaborately considered the scope for grant of exemption and the Hon'ble Supreme Court in the case of Society of Jesus, also considered the principles to be followed for grant of exemption and thus, the writ petition is to be allowed.

12. The learned counsel appearing on behalf of the respondent/ Chennai Corporation raised an objection in respect of the contentions made on behalf of the writ petitioner in entirety.

13. The learned counsel for the respondents made a submission that even as per the official website of the petitioner/Sundaram Medical Foundation, they have stated as follows:

> About us
>
> Sundaram Medical Foundation was established in 1990 by Dr.S.Rangarajan with the help of M/s.Sundaram Finance Group of Companies as a Community Centred Hospital, following the best tradition of medical service. Dr.Rangarajan's vision was to provide Quality Health Care which is cost-effective and community centred. Today SMF is a multi-specialty hospital with state-of-the-art health care facilities providing services to New Born to Nineties under one roof.
>
> Vision:
>
> *SMF will provide Quality Health Care which is cost-effective and Community-centered in an environment which is clean, caring and responsive to the needs of the patient.

*SMF will serve as a Role Model of Health Care delivery system in India.

Accreditation

*Accredited under NABH (National Accreditation Board for Hospitals & Health Care providers).

* ISMS: First Hospital in India to be certified under the standard ISO/IEC 27001:2013—Information Security Management Systems.

* First NABL (National Accreditation Board for Testing and Calibration Laboratories) certified hospital based laboratory services in Biochemistry, Microbiology, Clinical Pathology and Histopathology in Chennai under the......

* ISO 9001:2008 Certified Organisation.

14. Though in the official website of the Sundaram Medical Foundation, it is stated that the Quality Health Care which is cost-effective and community centred has been stated as vision, the actual cost charged for treatment is not made available in the website of the petitioner. However, the rate of hospital wards at Sundaram Medical Foundation verified on 15.04.2015 was published by www.medifee.com. The learned counsel appearing for the respondents reiterated that the charges collected for Private Ward Super Deluxe is Rs.7,500/- even during the year 2015. It is contended that the said medifee.com is publishing the rates prescribed by various hospitals across the country. Thus, the said website is to be relied upon. However, the said contention is disputed by the respondents by stating that it is not the official website of the petitioner, therefore, cannot be relied upon. This Court is of the considered opinion that irrespective of these factors, the Court has to examine, whether the petitioner is falling within the category of charitable hospital within the meaning of the Act or not.

15. The learned counsel for the respondents with reference to the judgment of this Court in W.P.No.13489 of 2017, made a submission that this Court has laid down the principles to be followed for the purpose of grant of exemption. However, the Chennai Corporation is bound to consider the facts and circumstances with reference to the principles laid down by this Court. This Court has not considered the disputed facts. This Court remanded the matter back to the Corporation for fresh adjudication by granting liberty to the respondent Corporation to consider the actual facts and circumstances prevailing in the petitioner Sundaram Medical Foundation with reference to providing of treatment to poor, needy and deserving people. The Corporation officials had considered all the facts and circumstances and considered the nature of treatment, number of poor patients treated, facilities provided, charges collected from the patients, Bed charges etc., and formed an opinion that

the petitioner is not entitled for exemption from payment of property tax and accordingly, rejected the claim.

16. The learned counsel for the respondents is of an opinion that the impugned order passed in proceedings dated 22.06.2018 reveals that the documents produced by the petitioner were considered by the authorities and the finding was given by stating that the "treatment provided by the Sundaram Medical Foundation is not completely free of cost. The trust deed aimed at giving free treatment to economically weaker sections and not for all the public. Further, the petitioner have not produced any material evidence to prove that the activities of the hospital are completely charitable. Hence, the grant of exemption from payment of property tax, under Section 101 (e) of the 'CCMC Act 1919', not be considered and also rejected."

17. Further, the reasons given by the respondents is that "you have not followed the terms and conditions laid down by the Government in the 1st G.O cited, for which you have not produced any valid and strong document for providing free treatment to 30% outpatients and reserving 15% of total beds in the Hospitals for poor families, and giving free treatment to them, ever since its inception. Instead you have produced a list of beneficiaries being treated in the year of 2014-2015, which is not an adequate and sufficient document to prove your claim."

18. The respondents formed an opinion that even the conditions mentioned in G.O.Ms.No.460 dated 10.04.1992 has not been complied with by the petitioner. They are collecting higher charges for providing beds, treatment and other charges from the patients. Thus, the petitioner is not entitled for exemption under the provisions of the Act. The learned counsel for the respondents, at the outset, contended that the petitioner has not established that they are falling within the definition of charitable hospital under the Statute and therefore, the respondents have rightly rejected the application and thus, the writ petition is to be dismissed.

19. Payment of property tax is the law. Interpretation of Tax Law must be in its strict construction. Application for exemption is a right. Granting exemption is a concession. Grant of exemption must be an exception. Grant of exemption should be strictly in consonance with the provisions of the statutes with reference to the facts established.

20. Based on the above principles, the contentions raised by the respective parties to the lis on hand are to be considered by this Court. The Deed of Declaration of Trust dated 29.11.1990 provides that "Whereas the author of the Trust is desirous of providing medical relief and facilities to the poor and the

needy irrespective of caste, creed and religion either free of cost or at concessional rates and to others on such terms and conditions, but not for purposes of profit, as may be specified by the Trustees from time to time.”

21. Thus, the trust deed itself contemplates “either free of cost or at concessional rates”. Therefore, this Court is bound to consider the facts and circumstances as well as the charges collected by the petitioner Foundation for providing treatment in respect of other patients, who are not poors. In other words, what is necessary to be considered by this Court is that whether the petitioner is providing free treatment to few poors, so as to satisfy the conditions stipulated by the Government in order to retain the valuable land allotted in the prime location in Chennai City or they are providing complete charity as required under the provisions of Section 101(e) of the 'CCMC Act'. These factors are of paramount importance for the purpose of arriving a conclusion, whether the petitioner is eligible to avail the benefit of exemption under the provisions of Section 101(e) of the 'CCMC Act.'

22. Section 2(15) of the Income Tax Act, 1961 defines “Charitable purpose” as includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.”

23. The learned counsel for the petitioner argued that Charitable hospital does not mean that the treatment must be provided to all patients at free of cost. It is sufficient if portion of poor patients are treated at free of cost and for the maintenance of hospital, the petitioner is entitled to collect treatment charges from patients, who are capable of paying the treatment charges. In this regard, he relied on the judgment of the Apex Court of India in the cases of “Society of Jesus” and contended that, if the affluent and rich patients are charged for the services rendered with a view to organise funds required to such a hospital, such a hospital will not lose the characteristic of a charitable hospital/dispensary.

24. This Court is of the considered opinion that the observations made by the Hon'ble Supreme Court of India are relatable to the facts of that case and every case should be considered with reference to the particular facts and circumstances. The observations made cannot be applied directly, so as to defeat the very concept of Charitable hospitals as contemplated under the Statute. Thus, the observations are to be read and applied along with the facts and circumstances of each case to form an opinion, whether the hospital can be termed as a Charitable hospital for the purpose of grant of property tax exemption. Thus, the contentions, as it is, cannot be adopted.

However, the said contentions of the petitioners are to be considered strictly with reference to the facts and circumstances established for the purpose of claiming exemption.

25. Undoubtedly, this Court also made observations that collecting medical charges from rich patients will not change the characteristic of a Charitable hospital. However, to what extent, the poors, needy and deserving people are treated at free of cost; what all are the charges collected even from other patients; Whether would constitute the petitioner Foundation as a Charitable hospital or not is to be decided.

26. The respondents relied on the proceedings of the Regional Deputy Commissioner (Corporation of Chennai) dated 17.12.2015 and has stated that the writ petitioner initially accepted the property tax as assessed by the respondent Corporation with effect from 01/1996-97 as per GRS the tax is Rs.62,963/-. The tax was enhanced to Rs.1,07,835/- with effect from 2/1998-99 as per Section 137 of M.C.M.C.Act.

27. The learned counsel for the respondents brought to the notice of this Court that all along from the year 1996, the petitioner / Sundaram Medical Foundation was paying the property tax till the year 2005, when a revised demand notice was served, demanding a sum of Rs.4,32,227/-. Thus, the petitioner had accepted the assessment of property tax as assessed by the respondent / Corporation, knowing the fact that they are not Charitable Hospital falling within the ambit of Section 101(e) of the 'CCMC Act' and only after enhancement, they filed an application seeking exemption and thus, the writ petition is to be rejected.

28. Even the Regional Deputy Commissioner in proceedings dated 17.12.2015, formed an opinion that the petitioners are giving only 15% of the free medical treatment for the poor people and therefore, their case cannot be considered for the purpose of grant of exemption. The petitioners charging all fees leads to 85% from the patients. Thus, the petitioner/ Sundaram Medical Foundation cannot be termed as 'Charitable Hospital' within the meaning of Section 101(e) of the 'CCMC Act.'

29. This Court is of the considered opinion that the Deed of Declaration of Trust itself provides that either free of cost or at concessional rates. It is an admitted fact that few people are treated at free of cost and others are treated by collecting medical charges. Medical charges as well as the tariff for beds are the relevant factors to be considered for the purpose of forming an opinion, whether the petitioner can be termed as Charitable Hospital or not.

30. The General meaning for the word “Charity” is generosity and helpfulness, especially towards the needy or suffering. An institution engaged in relief of the poor, charitable organization is dedicated to the General Public purpose, more specifically, for the benefit of needy people, who cannot pay for benefits received. The charitable institution does not distribute earnings for the benefit of private individuals. Thus, the character of a Charitable institution must be considered with reference to the facts and circumstances as well as the manner, in which, such institutions are being run by such trust or person.

31. In this regard, it is contended on behalf of the petitioner that a Charitable medical institution need not be wholly charitable for the purpose of Section 101(e) of the 'CCMC Act' and even as per the Government order, allotting land to the petitioner, ratio has been fixed for providing service to the poor and needy people. He relied on the judgment of the Hon'ble Supreme Court in the case of Society of Jesus and reiterated that the petitioner may charge for the services rendered with a view to organize funds required to such hospital.

32. Thus, facts and circumstances of each case plays a pivotal role, for the purpose of applying the principles and therefore, this Court is of an opinion that the contention raised that the principles to be applied in all the Charitable institutions cannot be accepted.

33. The genuinity of the claim, the nobility of the medical services and the extent to which, such services are provided for poor, needy and deserving people and if at all the medical services provided, dominantly to the needy, poor and deserving people, then alone, an institution can be characterized as a Charitable Medical Hospital and not otherwise.

34. In the present case, the learned counsel for the petitioner made a submission that a holistic approach is required. Equally such a holistic approach is imminent for Revenue also. Thus, the holistic approach towards the institution alone would result in neutralizing the provisions of the Act more specifically, regarding property tax. As stated above, exemptions are exceptions and to be granted discreetly, if the applicant is capable of establishing that they are providing medical services dominantly to the poor, needy and deserving people of the society.

35. Large number of charitable institutions are functioning in our great Nation. The genuinity and the manner of functioning as well as the services provided to the poor, needy and deserving, are to be assessed for the purpose of extending

exemption from property tax, income tax, etc., Under the guise of running a charitable medical institution, if huge collections are made for the services provided, then one cannot trust upon the genuinity of the Charitable institution and under those circumstances, even the benefit of doubt is to be extended in favour of the Revenue and not to the Charitable Medical institution. It is to be re-emphasized that the benefit of doubt in this regard, must be extended to the Revenue and not to individual.

36. This Court is of the strong opinion that it is for the charitable institution to establish the facts and circumstances. In the present case, the petitioners have provided some data, showing that they are providing medical services to the poor, needy and deserving people. The data provided is extracted hereunder:

OUT PATIENTS STATISTICS - FREE PATIENT FOR THE YEAR 2014- 2015

MONTH	TOTAL NO OF PAID PATIENTS	TOTAL NO OF FREE PATIENTS	GRAND TOTAL
APR'14	12696	3726	16422
MAY'14	13362	3878	17240
JUN'14	13210	3627	16837
JUL'14	14777	3775	18552
AUG'14	13383	3392	16775
SEP'14	14508	4173	18681
OCT'14	13160	3167	16327
NOV'14	14780	3423	18203
DEC'14	14588	3791	18379
JAN'15	14155	3619	17774
FEB'15	14391	3648	18039
MAR'15	15572	4103	19675
DIAGNOSTIC		6175	
REGISTRATION		2437	
TOTAL	168582	52934	221516
FREE PERCENTAGE			24%

K.S.VARALAKSHMI
Sr. GENERAL MANAGER - ADMIN

37. The manner, in which, the statistics is provided by the petitioner, shows that they are providing services to the poor, needy and deserving as per the Government order in G.O.Ms.No.460, Revenue dated 10.04.1992 issued under Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978. Under the said Government Order, a prime property in Chennai City, measuring 2452 Sq.Mtrs at Anna Nagar was allotted for setting up of a hospital. The said Government Order stipulates that the percentage of reservation of beds for free treatment blocking to the poor family is reduced from 25% to 15%.

38. The petitioners have stated that they have complied with all the terms and conditions stipulated in the Government Order and therefore, they are entitled for exemption. The learned counsel for the petitioner made further submissions that even the Government has not initiated any action regarding any such violation of the Government Order and therefore, the Corporation cannot go into these facts as the petitioner has fulfilled the norms prescribed in the Government Order, while allotting land at free of cost.

39. Pertinently, the above factors were considered by the Regional Deputy Commissioner in proceedings dated 17.12.2015 itself. In the said order, the number of units, rate per unit, usage, occupancy and type of construction are elaborately considered. The Regional Deputy Commissioner made a finding that "Sundaram Medical Foundation Property tax was assessed to tax by Corporation Half yearly w.e.f.1/1996-97 as per GRS the tax is Rs.62,963/- and the tax was enhanced to Rs.1,07,835/- w.e.f. 2/1998-99/as per Section 137 of M.C.M.C.Act and a revised demand Notice was issued to the petitioner on 02.07.2005, demanding a sum of Rs.4,32,227/-. By challenging the said demand Notice, the petitioner / Sundaram Medical Foundation filed an appeal before the Taxation Appeal Tribunal and the same was dismissed by the Appellant Authority. Subsequently, the petitioner filed M.T.A 21/2006 before the Principal Judge, City Civil Court, Chennai. And the matter was remanded back to Commissioner, Corporation of Chennai for fresh consideration. With these observations, the Regional Deputy Commissioner, Chennai Corporation, passed a final order, holding that "On due inspection by the official concerned and scrutinize the writ petitioner's documents, evidences, it is found that the above Sundaram Medical Foundation cannot be exempted from the payment of Property Tax under Section 101(e), exempting category as per Chennai City Municipal Corporation Act 1919. The writ petitioner itself accepted that they are giving only 15% of the free Medical treatment for the poor people. The exemption from payment of property tax cannot be considered, since the writ petitioner's charging all fees leads to 85% from the patients."

40. The above facts are not controverted and this Court has considered the online web portal of the writ petitioner / Sundaram Medical Foundation and the facts were extracted in aforementioned paragraphs. Perusal of the above details regarding the charges collected from the patients, any prudent man will form an opinion that there is no reason to believe that the petitioner is running a Charitable Medical Institution by dominantly providing free medical services to the poor, needy and deserving citizen of this great Nation. It is to be remembered that any institution predominantly providing medical

services at free of cost to the poor, needy and deserving people, alone, may be granted with the benefit of exemption. The character of "predominant services" to be interpreted as if the services provided to poor, needy and deserving are not only provided to such poor, needy and deserving people, and they must have free access to such charitable medical institutions for the purpose of taking treatment. Thus, it is to be construed as poor, needy and deserving patients / citizen of this great Nation, must have free access to such Charitable institution and such institution should not refuse admission in the hospital at any circumstances to the poor.

41. In the absence of any such free access to poor, needy and deserving patients in charitable medical institution, one cannot come to the conclusion that such institutions are doing charity to poor, needy and deserving for the purpose of seeking exemption of property tax under the Statute. Tax being Revenue of the State, strict interpretation of law is not only imminent, but a constitutional mandate. Therefore, the benefit of doubt must always be extended to the Revenue and not to the individual as claimed by the petitioner.

42. We, the people of India, are generous in recognizing and appreciating the Charitable institutions. However, for the purpose of granting exemption of payment of tax, charity extended to be established to such an extent, so as to form an opinion that the access to poor, needy and deserving for treatment are not only provided, but they are allowed to get admission without any restrictions or hindrance and free access is provided.

43. On perusal of the official website of the petitioner/Sundaram Medical Foundation, the same would reveal that "Sundaram Medical Foundation was established in 1990 by Dr.S.Rangarajan with the help of M/s.Sundaram Finance Group of Companies as a Community Centred Hospital, following the best tradition of medical service. Dr.Rangarajan's vision was to provide Quality Health Care which is cost-effective and community centred. Today SMF is a multispecialty hospital with state-of-the-art health care facilities providing services to New Born to Nineties under one roof". The said informations provided about the Institution would reveal that free access to the poor, needy and deserving patients are either restricted or denied. The bed charges and other charges as made available in the website namely www.medifee.com is not accepted by the petitioner. This Court is of the opinion that the respondent/Corporation Officials conducted an inspection and made a finding that the petitioner/Hospital is collecting huge charges which is on par with the charges prescribed by the reputed Private Hospital in Chennai City. Based on the

inspection, the Corporation Officials formed an opinion that the petitioner/Sundaram Medical Foundation is not doing charitable services so as to grant exemption from payment of property tax. Thus, irrespective of the fact whether the petitioner is accepting the rates for hospital wards at Sundaram Medical Foundation published by www.medifee.com is correct or incorrect, the very facts regarding the inspection conducted by the Corporation Officials and their findings would show that there is no free access to the poor, needy and deserving patients in the petitioner/Hospital and the charges collected are also competitive and on higher side.

44. In fact, petitioners are predominantly providing services to rich and affluent. Thus, this Court is inclined to draw factual inference that the petitioner / Medical Foundation is providing free medical services to the poor, needy and deserving people restrictedly and to the limited extent for the purpose of retaining the free land allotted by the Government in G.O.Ms.No.460, Revenue dated 10.04.1992. The value of the land in Anna Nagar Location is running in several crores. Such a valuable land is allotted at free of cost in favour of the petitioner to run the medical institution and under the guise of maintenance of building and other infrastructures, the petitioners are collecting huge charges from the patients and providing least services to the poor and needy. Thus, such factors are to be inspected by the Government for the purpose of ascertaining, whether the Charitable institutions are functioning for the welfare of the poor, needy and deserving people and in the event of any contra facts, all suitable actions are to be initiated.

45. As far as the provisions of the Chennai City Municipal Corporation Act is concerned, it is unambiguous that Charitable Hospitals are eligible for exemption. However, the character of the Charitable Hospitals are to be scrutinized as the loss of Revenue is detrimental to the interest of public at large. Thus, the authorities are bound to be cautious, while scrutinizing all material facts and circumstances, for taking a decision. In the present case, the respondents have conducted inspection regarding the functioning of the petitioner / Medical Foundation and formed an opinion that they are providing free Medical services to 15% of the patients and they are collecting charges from 85% and further, the charges collected from the patients are comparable on par with the established reputed Hospitals in Chennai City.

46. In the Deed of Declaration of Trust, it is contended that the medical services are to be provided either free of cost or at concessional rates. However, the petitioner/Sundaram Medical Foundation cannot be said to be providing medical

services at concessional rates. In respect of poor, needy and deserving patients, there is no free access to the hospital as the manner in which the hospital website shows, would reveal that the access to the poor are either restricted or denied. Thus, the petitioner/Foundation is not honoring even in terms stipulated in the Deed of Declaration of Trust. Thus, it cannot be construed as if the petitioner is providing medical treatment at free of cost to the large number of poor, needy and deserving patients.

47. The Declaration of Trust of Deed unambiguously portrays that the medical services to be provided at free of cost or concessional rates. Though there is a clear indication that the rate fixed must be concessional, even for middle class, who are capable of paying medical charges, then the whole purpose and object of the Deed of Trust is to ensure that free medical services are provided to the poors in general and services also may be provided at concessional rates. However, in both the cases, there is a clear indication that the medical services is to be provided largely and predominantly to poor, needy and deserving people alone. When such a character is missing, then the writ petitioner Foundation is not entitled to get exemption. During the inspection, it is found that the petitioner is providing treatment to rich and affluent, but certainly not at concessional rate.

48. Thus, the petitioner is not entitled to avail the benefit of property tax exemption under Section 101(e) of the Chennai City Municipal Corporation Act. Consequently, they are not entitled to get exemption from payment of water and sewerage Tax and charges.

49. Accordingly, both the writ petitions fail and stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS IV)

True Copy

Sub-Assistant Registrar

Kak/ssb
To

1.The Area Engineer - VIII,
Chennai Metro Water Supply and
Sewerage Board,
No.227, 2nd Avenue, 12th Main Road,
Anna Nagar, Chennai - 600 040.

2. The Commissioner,
   Greater Chennai Corporation,
   Rippon Buildings,
   Chennai - 600 001.

+1 CC to M/s. Karthikaa Ashok, Advocate sr 25787
+1 CC to Mr. Srinath Sridevan, Advocate sr 25358.

SRA(CO)
SP(05/07/2021)