

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (PIL) NO.3132 OF 2004

Sanjiv Rajanan Punalekar : Petitioner

V/s.

The State of Maharashtra & Ors. : Respondents

Mr. J.K. Mistry, Amicus Curiae.

Mr. R.M. Kadam, Advocate General, with Mr. Amjad Sayyed,
Assistant Government Pleader for respondent No.1.

Mr. C.U. Singh, Senior Counsel, with Ms Geetanjali Prabhu
i/b. M/s. Vigil Juris for respondent No.2.

Mr. H.M. Kulkarni i/b. A.M. Kulkarni for respondent No.7.

Mr. Mihir Desai for the intervenors.

CORAM : R.M. LODHIA & S.A. BOBDE, JJ.

DATE : AUGUST 17, 2004.

P.C.

We heard Mr. J.K. Mistry, Amicus Curiae,
Mr. C.U. Singh, Senior Counsel for the Association of
Hospitals, Mr. Ravi Kadam, Advocate General for the State
and the counsel appearing for other parties.

2. The Expert Committee was constituted by this Court on
October 14, 2005 to give recommendations on all aspects,
keeping in view the provisions of section 41AA of the
Bombay Public Trusts Act, 1950.

3. The Expert Committee has given its report thus:-

"1. The public Charitable trust registered under provisions of the B.P.T. Act which are running charitable hospitals including nursing home or maternity home, dispensaries or any other center for medical relief and whose annual expenditure exceeds of 5 lacs rupees are "state aided public trust" within the meaning of clause 4 of section 41AA of B.P.T. Act.

2. The public Charitable Trust under the provision of B.P.T. Act which are running charitable hospitals and covered under the definition of "state aided public trusts" are under legal obligation to reserve and earmark 10% of the total number of operational beds for indigent patients and to provide medical treatment to the indigent patients free of cost and to reserve and earmark 10% of the total number of operational beds at concessional rate to the weaker section patients as per the provisions of Section 41AA of Bombay Public Trusts Act, 1950.

3. In emergency, the charitable Hospitals must admit the patient immediately and provide to the patient "Essential Medical Facilities" for all life saving emergency treatment and procedure till stabilization. Further transportation to the public hospital would also be arranged by the charitable hospitals, if necessary. Charitable hospitals shall not ask for any deposit incase of admission of emergency patients.

4. For effective implementation of the provision of section 41AA and after considering the point of viability, the members of the committee recommend that each public charitable hospitals shall create separate fund which may be called as Poor Patients Fund (for the sake of brevity herein after referred as PPF), and shall credit 2 percent of gross billing of all patients (other than indigent and weaker section patients) of respective hospital without any deduction.

5. Donations that may be received by the

charitable hospitals from individuals or other charitable trusts or from any other source towards providing medical treatment to the indigent and weaker section patients shall be credited in PPF Account.

6. The account of PPF shall have to be earmarked under the head of PPF and same shall be reflected under the earmarked fund in the annual balance sheet schedule VIII Rules 7(1) of S.P.T. Rules.

7. The amounts credited in the PPF Account shall remain at the disposal of the respective charitable hospitals and the amount shall be utilized only for providing medical treatment to the indigent and weaker section patients as provided herein after.

8. The charitable hospitals shall provide following non billable services free to the indigent patients as well as weaker section patients—

- (a) Bed
- (b) RMO Services
- (c) Nursing Care
- (d) Food (if provided by the hospital)
- (e) Linen
- (f) Water
- (g) Electricity and
- (h) Routine Diagnostics as required for treatment of general specialities.
- (i) House Keeping services.

9. In case of indigent patients, Charitable hospitals shall provide medical examination and treatment in its each department totally free of cost. The indigent patient's bill of billable services shall be prepared at the rates applicable to the lowest class of the respective hospital. The medicines, consumables and implants are to be charged at the purchase price to the hospital. If Doctors forego their charges, then the same shall not be included in the final bill of the indigent patients. The bill so prepared shall be debited to PPF Account. Charitable hospitals shall not ask for any deposit in case of admission of indigent patients.

10. In case of weaker section patients, Charitable hospitals shall provide medical examination and treatment in its each department at concessional rates. The weaker

section patient's bill of billable services shall be prepared at the rates applicable to the lowest class of the respective hospital). The medicines, consumables and implants are to be charged at the purchase price to the hospital, however the weaker section patients shall pay atleast 50% of the bills of medicines, consumables and implants. If Doctors forego their charges, then the same shall not be included in the final bill of the weaker section patients. The bill so prepared after deducting the payment made by the weaker section patients shall be debited to PPF Account.

11. Charitable hospitals shall physically transfer 2% of the total patients billing (excluding the bill of indigent and weaker section patients) in each month to PPF Account. The amount available in the PPF Account shall be spent in the subsequent month in such manner to provide medical treatment to maximum number of patients. (If in minor cases of surplus, the same shall get adjusted in the following months.

12. Charitable hospitals shall furnish information to the office of Charity Commissioner regarding the amount collected in the PPF Account, treatment provided to the number of indigent patients and weaker section patients and the amount spend (sic) for respective patients alongwith the information required to be sent under Rule 25A of the Bombay Public Trusts Rules, 1951.

13. Trustees of the charitable hospitals shall not provide medical facilities to their employees, relatives of the trustees and close relatives of the employees in the category of indigent and weaker section patients.

14. As charitable hospitals have agreed to admit indigent or weaker section patients coming to their hospitals from any source either independently or through Government hospitals, Municipal hospitals etc. the committee is not recommending referral system as suggested in the Scheme dated 20/4/2005 submitted before the Hon'ble High Court. Committee is making recommendation regarding admission of patients as follows.

15. That the charitable hospitals shall

admit indigent patients to the extent of 10% of their operational beds/average occupancy for medical examination and treatment so also charitable hospitals shall admit weaker section patients to the extent of 10% of their operational beds/average occupancy for medical examination and treatment coming to their hospitals from any source. Charitable hospitals are at liberty to verify economic status of the patients to ascertain whether he belongs to indigent or economically weaker section category through their Medical Social Worker (MSW) on the basis of scrutiny of any one of the following documents produced by the concerned patients (1) Certificate from Tahasildar, (2) Ration Card/BPL Card/Certificate.

16. **Monitoring System:-** Members of the committee except representatives of the Association of Hospitals are recommending monitoring committee as suggested in the Scheme dated 20/04/2005 before Honourable High Court with slight modification i.e. instead of Director of Health Services, Health Officer of government hospital be included.

17. Alternatively members of the committee have no objection to form committee as suggested by the representatives of the Association of Hospitals i.e. the committee consisting of following members (1) Joint Charity Commissioner/Assistant Charity Commissioner and officer/officers that may be nominated by the Charity Commissioner.

18. Monitoring committee shall hold its meeting once in a month and monitor implementation of the Scheme by each charitable hospitals. Monitoring committee shall consider grievances of the patients, if any, made and submit its report to the Charity Commissioner.

19. Committee further recommends that in case of breach of terms and conditions of Section 41AA by any charitable hospitals besides penal action provided under Section 46 of the Bombay Public Trusts Act, 1950, Charity Commissioner shall make report to the Government of Maharashtra requesting to withdraw exemption granted to the concerned hospitals during the next preceding year in payment of contribution towards P.T.A. Fund

and amount of contribution towards P.T.A. Fund be recovered from the said hospital. Besides that Charity Commissioner shall request the Government to withdraw any other concessions/benefits given to the said hospital."

4. Mr.C.U.Singh, Senior Counsel for the Association of Hospitals, placed before us the following points for consideration:-

1. 2% of total patient's billing (other than billing of indigent patients and weaker section patients) to be set aside in PPF as per para 11 of recommendations, which will be in fulfillment of obligation under section 41AA.
2. Medicines and consumables for indigent/weaker section patients to be billed against PPF at lowest price charged to lowest class of patients by charitable hospital.
3. All expenses incurred on indigent/weaker section patients to be billed against PPF at lowest rate charged by charitable hospital to lowest class of patients.
4. Since "state-aided hospitals" are defined as those which are/were in receipt of state aid in the form of concessions and reliefs, all such concessions, benefits and reliefs which have been withdrawn should be restored.
5. Only employees and their dependants to be excluded from indigent/weaker section patients, and not other relatives who are not dependants.
6. Hospitals which face individual difficulties in meeting objectives/obligations may appeal to Charity Commissioner with all supporting documents, who may consider suitable modifications if case for relief made out.
7. Association of Hospitals in Mumbai and other Associations/Hospitals in other cities to be associated with Monitoring Committee."

5. We thoughtfully reflected over the points placed by Mr.C.U.Singh for our consideration in the backdrop of section 41AA of the Bombay Public Trusts Act, 1950 and the orders passed by the Court from time to time, particularly the orders dated December 15, 2004; March 16, 2005 and October 14, 2005. The order that we intend to pass is in continuation of these orders.

6. Here itself, we may indicate that the expression 'Poor Patients Fund' (PPF) used by the Committee needs to be changed. In our considered view, the expression 'Indigent Patients Fund' (IPF) is more appropriate. Accordingly, we direct that in clauses 4, 5, 6, 7, 9, 10, 11 and 12 of the recommendations of the Committee quoted above, the words "PPF Account" shall be read as "IPF Account". Similarly, in clauses 1, 2 and 3 of the points for consideration submitted by Mr.C.U.Singh, we shall read the term "PPF" as "IPF".

7. By and large, the recommendations made by the Committee meet the objectives of section 41AA and advance the cause of the indigent as well as weaker section patients for their treatment in the hospitals run by Charitable Trusts. However, few modifications are required in various clauses and particularly clauses 4, 11, 12, 13, 14, 15, 16 and 17 and a few new clauses need to be added.

3. Clauses 4, 11, 12, 13, 14 and 15 are reframed by us thus:

4. That each public Charitable Hospital shall create separate fund which may be called Indigent Patients Fund (for the sake of brevity, hereinafter referred to as "IPF") and shall credit two per cent of gross billing of all patients (other than indigent and weaker section patients) without any deduction.

11. The Charitable Hospital(s) shall physically transfer 2% of the total patients' billing (excluding the bill of indigent and weaker section patients) in each month to IPF Account. The amount available in the IPF Account shall be spent to provide medical treatment to maximum number of indigent and weaker section patients. In case of surplus or shortfall in the IPF Account of the month, the same shall get adjusted in the subsequent months. In case there is imbalance in the credit of the IPF Account and the expenditure incurred in the treatment of indigent and weaker section patients for more than six months, such Charitable Hospital may bring

this aspect to the notice of the Monitoring Committee who may issue appropriate directives to the concerned hospital.

12. The charitable hospitals shall furnish information to the office of the Charity Commissioner regarding the amount collected in the IPI Account, treatment provided to the indigent patients and the weaker section patients and their profiles prepared by the Medical Social Worker and the amount spent for the respective patients along with the information required to be sent under Rule 25A of the Bombay Public Trusts Rules, 1951.

13. The Trustees of the Charitable Hospitals shall not provide medical facilities to their relatives, the employees of the Trust and their dependants in the category of "indigent and weaker section patients".

14. The Charitable Hospitals shall admit indigent or weaker section patients coming to their hospitals from any source or through Government Hospitals, Municipal Hospitals, etc. The procedure for admission of patients shall be as provided in subsequent clauses.

- 10 -

15. The Charitable Hospitals shall admit indigent patients to the extent of 10% of their operational beds/average occupancy for medical examination and treatment. So also, the Charitable Hospitals shall admit weaker section patients to the extent of 10% of their operational beds/average occupancy for medical examination and treatment coming to their hospitals from the sources referred to in clause 14. The Charitable Hospitals shall verify the economic status of the patients from their Medical Social Worker on the basis of scrutiny of any one of the following documents produced by the concerned patients: (i) Certificate from Tahsildar; (ii) Ration Card/Below Poverty Line Card.

9. We intend to substitute clauses 16 and 17 by one clause and, accordingly, clause 16 shall read thus:

16. The Members of the Monitoring Committee in Greater Mumbai Region shall be as follows:-

(i) Joint Charity Commissioner, Maharashtra State, Mumbai (Chairman).

(ii) Joint Director of Health Services (Medical), Mumbai (Member-Secretary).

(iii) Secretary/Nominee of Association of Hospitals in Mumbai (Member).

(iv) Health Officer, Municipal Corporation of Greater Mumbai, Mumbai (Member).

The Monitoring Committee at the District Level shall be as follows:-

(i) Joint Charity Commissioner (Regional Level) or his nominee (Chairman).

(ii) Civil Surgeon (Member-Secretary).

(iii) Health Officer of Zilla Parishad (Member).

(iv) Representative of Charitable Hospitals in Districts (Member).

10. Clauses 18 and 19 shall be renumbered 17 and 18.

11. The following new clauses 19, 20 and 21 shall be as under:

19. The Charitable hospitals which face individual difficulties in meeting

- 12 -

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.

20. The Charity Commissioner shall notify the list of the Charitable Hospitals in Greater Mumbai Region on the Notice Board of his office and two newspapers widely circulated in Greater Mumbai, one in Marathi and the other in English and the list of Charitable Hospitals in each District on the Notice Board of the office of the Joint Charity Commissioner and the two widely circulated newspapers of the District.

21. Each of the Charitable Hospitals governed by this Scheme shall publish the Scheme on its Notice Board displayed at a conspicuous place of the Hospital.

12. The Scheme for treatment to indigent patients and weaker section patients for the purposes of section 41AA of the Bombay Public Trusts Act, 1950, approved by us is as follows:-

S C H E M E

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. The public Charitable Trust covered by 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 cost and reserve and earmark 10% of the total number of operational beds at concessional rate to the weaker section patients as per the provisions of section 41AA of the B.P.T. Act.

✓ 3. In emergency, the Charitable Hospitals must admit the patient immediately and provide to the patient "Essential Medical Facilities" for all life saving emergency

- 14 -

treatment and procedure till stabilization. Further transportation to the public hospital would be arranged by such Charitable Hospital, if necessary. The Charitable Hospitals shall not ask for any deposit in case of admission of emergency patients.

4. That each public charitable hospital shall create separate fund which may be called Indigent Patients' Fund (for the sake of brevity, hereinafter referred to as "IPF") and shall credit two per cent of gross billing of all patients (other than indigent and weaker section patients) without any deduction.

5. Donations that may be received by the charitable hospitals from individuals or other charitable trusts or from any other source for providing medical treatment to the indigent and weaker section patients shall be credited to IPF Account.

6. The account of IPF shall have to be earmarked under the head of IPF and same shall be reflected under the earmarked fund in the annual balance sheet (Schedule VIII Rules 7(1) of the D.P.T. Rules).

7. The amount credited to the IPF Account shall remain at the disposal of the respective Charitable Hospital and that amount shall be utilized only for providing medical treatment to the indigent and weaker section patients as provided herein after.

✓ 8. The Charitable Hospitals shall provide following non billable services free to the indigent patients as well as weaker section patients--

- (a) Bed
- (b) RMO Services
- (c) Nursing Care
- (d) Food (if provided by the hospital)
- (e) Linen
- (f) Water
- (g) Electricity and
- (h) Routine Diagnostics as required for treatment of general specialties.
- (i) House Keeping services.

9. In case of indigent patients, the Charitable Hospitals shall provide medical examination and treatment in its each department totally free of cost. The

indigent patient's bill of billable services shall be prepared at the rates applicable to the lowest class of the respective hospital. The medicines, consumables and implants are to be charged at the purchase price to the hospital. If Doctors forego their charges, then the same shall not be included in the final bill of the indigent patients. The bill so prepared shall be debited to IPF Account. The Charitable Hospitals shall not ask for any deposit in case of admission of indigent patients.

10. In case of weaker section patients, the Charitable Hospitals shall provide medical examination and treatment in its each department at concessional rates. The weaker section patient's bill of billable services shall be prepared at the rates applicable to the lowest class of the respective hospital. The medicines, consumables and implants are to be charged at the purchase price to the hospital, however the weaker section patients shall pay at least 50% of the bills of medicines, consumables and implants. If Doctors forego their charges, then the same shall not be included in the final bill of the weaker section patients. The bill so

prepared after deducting the payment made by the weaker section patients shall be debited to IPF Account.

11. The Charitable Hospitals shall physically transfer 2% of the total patients' billing (excluding the bill of indigent and weaker section patients) in each month to IPF Account. The amount available in the IPF Account shall be spent to provide medical treatment to maximum number of indigent and weaker section patients. In case of surplus or shortfall in the IPF Account of the month, the same shall get adjusted in the subsequent months. In case there is imbalance in the credit of the IPF Account and the expenditure incurred in the treatment of indigent and weaker section patients for more than six months, such Charitable Hospitals may bring this aspect to the notice of the Monitoring Committee who may issue appropriate directives to the concerned hospital.

12. The Charitable Hospitals shall furnish information to the office of the Charity Commissioner regarding the amount collected in the IPF Account, treatment provided to the indigent patients and the weaker section

- 1 -

patients and their profiles prepared by the Medical Social Worker and the amount spent for the respective patients along with the information required to be sent under Rule 25A of the Bombay Public Trusts Rules, 1951.

13. The Trustees of the charitable hospitals shall not provide medical facilities to their relatives, the employees of the Trust and their dependants in the category of "indigent and weaker section patients".

14. The Charitable Hospitals shall admit indigent or weaker section patients coming to their hospitals from any source or through Government Hospitals, Municipal Hospitals, etc. The procedure for admission of patients shall be as provided in subsequent clauses.

15. The Charitable Hospitals shall admit indigent patients to the extent of 10% of their operational beds/average occupancy for medical examination and treatment. So also, the Charitable Hospitals shall admit weaker section patients to the extent of 10% of their operational beds/average occupancy for medical examination and treatment coming to their hospitals from the sources referred to

-: 17 :-

in clause 14. The Charitable Hospitals shall verify the economic status of the patients from their Medical Social Worker on the basis of scrutiny of any one of the following documents produced by the concerned patients:

(i) Certificate from Tahsildar; (ii) Ration Card/Below Poverty Line Card.

16. The Members of the Monitoring Committee in Greater Mumbai Region shall be as follows:-

(i) Joint Charity Commissioner, Maharashtra State, Mumbai (Chairman).

(ii) Joint Director of Health Services (Medical), Mumbai (Member-Secretary).

(iii) Secretary/Nominee of Association of Hospitals in Mumbai (Member).

(iv) Health Officer, Municipal Corporation of Greater Mumbai, Mumbai (Member).

The Monitoring Committee at the District Level shall be as follows:-

(i) Joint Charity Commissioner (Regional)

Level) or his nominee (Chairman).

(ii) Civil Surgeon (Member-Secretary).

(iii) Health Officer of Zilla Parishad
(Member).

(iv) Representative of Charitable Hospitals in
Districts (Member).

17. The Monitoring Committee shall hold its meeting once in a month and monitor implementation of the Scheme by each of the Charitable Hospitals. The Monitoring Committee shall also consider grievances of the patients, if any, made and submit its report to the Charity Commissioner.

★ 18. In case of the breach of the Scheme and/or the terms and conditions of section 41AA by any Charitable Hospitals, besides the penal action as is provided under Section 64 of the B.P.T. Act, the Charity Commissioner shall make report to the State Government recommending withdrawal of the exemption granted to the concerned hospitals during the next preceding year in payment of contribution towards P.T.A. Fund and the amount of contribution towards P.T.A.

Fund be recovered from the said hospital). The Charity Commissioner may also request the Government to withdraw any other concessions/benefits given to the said hospital.

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.

20. The Charity Commissioner shall notify the list of the Charitable Hospitals in Greater Mumbai Region on the Notice Board of his office and two newspapers widely circulated in Greater Mumbai, one in Marathi and the other in English and the list of Charitable Hospitals in each District on the Notice Board of the office of the Joint Charity Commissioner and the two widely circulated newspapers of the District.

21. Each of the Charitable Hospitals governed by this Scheme shall publish the Scheme on its Notice Board displayed at a conspicuous place of the Hospital.

HIGH COURT, BOMBAY

- 22 -

13. We clarify that the following two points have been left open to be reconsidered after one year of the implementation of the Scheme by the Charitable hospitals, viz., (one) the expenses incurred on indigent/weaker section patients to be billed against IPF at lowest rate charged by Charitable hospitals to the lowest class of patients and (two) the restoration of the concessions, reliefs and the benefits which have been withdrawn.

14. We record our appreciation for the work done by the Expert Committee headed by the Charity Commissioner in submitting the draft Scheme under section 41AA of the B.P.T. Act for our consideration, after taking into consideration all relative aspects, including the views of the Association of Hospitals. We would like the public Charitable hospitals to remind themselves, the human service for which they came into existence, each time they provide treatment and health service to the indigent and weaker section patients.

15. The Scheme shall come into operation with effect from 1st September, 2006.

16. The Charity Commissioner is directed to submit the report indicating the implementation of the Scheme by each Charitable hospital for the period from 1st September 2006 to 31st August 2007 and the action against

such hospitals which defaulted in full implementation of the Scheme. The report shall be submitted by 30th September, 2007.

Let the matter come up 'for directions' on 4th October, 2007.

Sd/-

R.M. LODHA, J.

Sd/-

S.A. BODDE, J.

AUTHENTICATED COPY



TRUE COPY

**Station Officer
High Court, Appellate Side
Bombay.**

Handwritten signature and number 2118106