

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WP-LD-VC NO. 54 OF 2020

Abdul Shoeb Shaikh and Ors. ... Petitioners
V/s.
K.J. Somaiya Hospital and Research Center
and Ors. ... Respondents

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Mr. V. S. Shukla i/by M/s. V. S. Shukla and Associates for the
Petitioners.

Mr. Janak Dwarkadas, Senior Advocate a/w Mr. Ankit Lohia, Ms. Aziza
Khatri i/by M/s. AAK Legal for the Respondent No.1.

Mr. Abhay Patki, Addl. Government Pleader, State-Respondent Nos.2,
3, 5 and 6.

Ms. Pallavi Thakar a/w Ms. Oorja Dhond for the Respondent No.4.

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**CORAM: R. D. DHANUKA AND
MADHAV J. JAMDAR, JJ.**

DATE : 26th JUNE, 2020.

(IN CHAMBER- VIDEO CONFERENCE)

P.C:-

1. We have heard the learned counsel appearing for the parties at length. The undisputed position in the matter is that the Scheme prescribed under Section 41AA of the Maharashtra Public Trust Act empowering the Charity Commissioner and the State Government to issue directions in respect of hospitals to earmark certain beds for weaker section of the people under Section 41AA(4)(c) and for

indigent person under Section 41AA(4)(b) is applicable to the respondent no.1 Trust. One of the question raised by the petitioners in this Writ Petition is that though the respondent no.1 was required to reserve 10% beds for weaker section of the people and 10% beds for indigent persons out of the operational beds no such beds are provided. Out of 90 beds under those categories which were required to be reserved for the persons belonging to weaker section of the people and indigent persons in toto, all such beds had not been made available. The record indicates that only three patients were admitted by the respondent no.1 in the month of March 2020 out of 90 beds earmarked for indigent persons and persons belonging to the weaker section of the people under Section 41AA(4)(c) and (b) respectively.

2. It is the case of the respondent no.1 that the petitioners did not belong to any of these categories nor the petitioners produced any record to prove that the petitioners would fall under those categories. It is vehemently urged by Mr. Dwarkadas, senior counsel for the respondent no.1 that it was for the petitioners to produce a certificate of income from the Tehsildar or a certificate from the Social Welfare Officer proving income of the petitioners. On the other hand, it is the case of the petitioners that the petitioners having suffered from a covid-19 and required immediate medical help were not required to produce such certificate at the threshold while seeking admission in the hospital.

3. A perusal of the report submitted by the Joint Commissioner

indicates that the report submitted is on the basis of documents called for and submitted by the respondent no.1 and without visiting the premises and inspecting all the records. The affidavit in reply filed by the Charity Commissioner also clearly indicates that only three patients have been treated under the hospital scheme since lockdown till the end of May 2020. Petitioners claims to be staying in slums.

4. Whether it was the duty of the Management of respondent no.1 to enquire whether the persons seeking admission in the respondent no.1 hospital were falling under the category of Section 41AA(4)(b) and (c) or not or whether such patients were required to produce at the threshold the certificates of Tehsildar and Social Welfare Officer before seeking admission in the situation faced by the petitioners for patient of covid are some of the questions which require consideration in this matter.

5. In our *prima-facie* view a person who is suffering from the disease like covid-19 is not expected to produce a Tehsildar certificate or certificate from Social Welfare Officer before seeking admission in the hospital for seeking benefits under Section 41AA(4)(c) and (d). We are not inclined to accept the submission made by the learned senior counsel for the respondent no.1 that unless such certificate is produced by the petitioners at the threshold, the respondent no.1 is not liable to admit any such patient under those categories in the precarious situation prevailing at the date of admission of the petitioners.

6. We also noticed that the State Government was required to issue

a Notification dated 21st May, 2020, providing the rates for treatment of such patients and for other diseases in view of the grievances regarding exorbitant amount of money charged by Healthcare providers causing hardship to public in general during covid-19 pandemic. Government has also considered the provisions of Section 41AA of the B.P.T. Act in the said notification.

7. Rule. Mr. Dwarkadas, learned senior counsel for the respondent no.1 waive service. Mr. Patki, learned counsel for the respondent nos.2, 3, 5 and 6 waive service.

8. Considering the facts of this case, we are directing the respondent no.1 to deposit a sum of Rs.10,06,205/- in this Court within two weeks from today.

9. Hearing of the Writ Petition is expedited.

10. This order will be digitally signed by the Personal Assistant of this Court. Associate of this Court is permitted to forward the parties copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

[MADHAV J. JAMDAR, J.]

[R. D. DHANUKA, J.]