

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present:**

Ahmed Ali M. Shaikh, CJ  
Yousuf Ali Sayeed, J

CP No.D-4861 of 2017

For hearing of main case.

Date of hearing: 27.10.2021

Petitioner Dur Muhammad Shah, Advocate present in person.

Respondent No.1 Aga Khan University Hospital, through Mr. Jam Zeeshan,  
Advocate

Respondent No.2 to 6 through Mr. Abdul Jalil Zubedi, AAG

**ORDER**

**AHMED ALI M. SHAIKH, CJ.**- Petitioner, a practicing lawyer, has invoked the Constitutional Jurisdiction of this Court questioning the affairs of the Aga Khan University Hospital (the “**Hospital**”).

2. Petitioner pleaded that the Hospital established in 1985 is constructed on the land allotted by the Respondent No.2 through Respondent No.3 the Deputy Commissioner, East, Karachi, on the following terms and conditions enumerated in the Sanad and Ijazatnama dated 17.11.1980 issued by the Respondent No.3:-

“a. This grant is free of charge for construction of a Charitable Hospital & Medical College.

b. No portion of the land shall be used for commercial purpose or any other purpose.

c. The grant will be cancelled and land reverted to the Provincial Government, if it is used for any other purpose.”

3. It is further averred in the memo of Petition that the construction of several blocks of the Hospital and its extension, spread over 83 acres, has been made without approval of the Respondents No.5 and 6 while the Hospital is being run on commercial basis in sheer violation of the aforesaid condition. The Petitioner alleged that while the website of the Respondent No.1 has portrayed the Hospital as a private and non-profitable institution providing high quality healthcare it is charging higher fees from the patients, including needy and poor as compared to charitable Hospitals like Indus Hospital, Liaquat National Hospital and even a non-charitable hospital like Ziauddin Hospital.

4. After notice, the Respondent No.1 filed comments raising the preliminary objection as to the maintainability of the Petition and stating that the Hospital is owned and managed by the Aga Khan Hospital and Medical College Foundation (the “AKHMCF”), registered as a non-profitable organization under the Companies Ordinance. It is further stated that the income and property are only used for its objectives and not distributed to any individual or institution. The Federal and Provincial Governments treat the AKHMCF as a charitable and non-profitable organization and any donation made to it is exempted from the payment of Income Tax, land revenue charges, etc. On the land provided, the AKHMCF has established a hospital consisting of 750 beds and in 2015 the Hospital provided patient welfare to 488,000 patients, which accumulated to Rs.1.47 billion. From the 35% subsidy scheme in its general ward 42,000 patients were benefited. In the comments it is further averred that the AKHMCF used the granted land for Aga Khan University, established and operated as a medical college, which is amongst the 250 top ranked medical colleges worldwide. The Respondent No.1 denied that the AKHMCF is engaged in commercial activities. It was submitted that the mere recovery of charges will not change the very character of the Hospital from charitable to commercial as it is not earning any profits or distributing any sums to its members but the residual amounts after expenses are reinvested in the hospital for further improving its facilities and welfare aid of the poor patients.

5. Petitioner appearing in person submits that the land in question was granted for construction of a hospital and college on charitable basis but against that the Hospital is charging hefty fee for providing medical services to the poor and needy and just as eyewash some medical facilities on welfare basis to a few is being provided, which does not bring the Hospital within the definition of charitable institution. He further submitted that in fact the grant is being used in contravention of the conditions enumerated in the Sanad and Ijazatnama and the official respondents be directed to take action against the Hospital for violating the very terms and condition of the grant and simultaneously ensure that medical facilities are being provided to poor and needy free of costs.

6. Learned counsel for the Respondent No.1 while raising objection as to the maintainability of the petition submitted that the under Article 199 of the Constitution, the Petitioner is obliged to show that he has been directly affected in some manner, while neither in the pleadings nor during arguments has a single instance been cited of his rights having been directly affected or any injury caused to him. Accordingly, he has no locus standi to file the Petition.

7. He submitted that the AKHMCF has fulfilled its commitment by constructing a state of the art Hospital and medical services provided to the

patients therein have no parallel. He submitted that even the Government has also exempted the Hospital from the payment of Income Tax and land revenue charges. It has 11000 staff and 700 faculty members while there is no quota for any city or province, reserved seats, self-finance seats and admission on donations or gifts. He further submitted that the Aga Khan University provides financial aid to 33% MBBS Students besides full scholarship to five students. Besides, the Aga Khan University provides financial assistance, through loan and grants, to those students who could not pay tuition fee, boarding and lodging charges. He further submitted that the Petitioner has failed to cite a single instance that a single penny of the income of the Hospital is being distributed amongst Members of the Foundation. He invited our attention to the license issued by the Security and Exchange Commission of Pakistan under Section 42 of the Companies Ordinance, 1984, to the AKHMCF which defines the primary object of the Foundation to establish the Aga Khan Hospital and Medical College, Karachi.

8. We have heard the Petitioner, learned Counsel for the Respondent No.1 and learned AAG, who opposed the petition. The first and foremost question involved in these proceedings is whether the Hospital for which the land was granted to the AKHMCF is serving the very purpose of providing charity to the patients or is being run on commercial basis. The meaning of word “Charitable Institution” as provided in the Six Edition of the Black’s Law Dictionary is that:-

“One which dispenses charity to all who need and apply for it, does not provide gain or profit in private sense to any person connected with it and does not appear to place obstacles of any character in way of those who need and would avail themselves of charitable benefits it dispenses. Distinctive features are that it has no capital stock or shareholders and earns no profit or dividends; but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in the charter.”

9. The Black’s Law Dictionary further defines the “Charitable purpose” as:

“Term as used for purpose of tax exemption has as its common element the accomplishment of objectives which are beneficial to community or area, and usually recognized charitable purposes, not otherwise limited by statute, are generally classified as: relief of poverty; advancement of education; advancement of religion; protection of health; governmental or municipal purposes; and other varied purposes the accomplishment of which is beneficial to community.

A gift is for charitable purpose if it is for religious, scientific, charitable, literary, or educational purposes under tax law. These purposes are also required for a trust to qualify as a charitable trust.”

10. During hearing learned counsel for the Respondent No.1 conceded that there are two groups of patients; one who could pay the charge and other who could not. The first category of patients is fully charged for the treatment and

healthcare facilities provided by the Hospital to them while second category divided into two kinds of patients; first who have no means to pay the expenses and charges of the Hospital and for said purpose a proper scrutiny is being made by the relevant section of the Hospital where income and means of poverty ridden patients are being examined and such category of patients provided full cover while for other category having some means subsidy/aid to the extent of 35% is extended to them. However, the Hospital never returned any patient on account of his social status.

11. From the material available on record, filed by the Hospital, reflects that the Government of Sindh has exempted the Property Tax in respect of the establishment of Aga Khan Development Network and AKHMCF. Moreover, under Clause 61 of part I of the Second Schedule to the Income tax Ordinance, 2001 the AKHMCF is exempted from payment of income tax. Towards fulfilment of the very object of the grants, the AKHMCF has constructed a Medical College and 750 bed hospital.

12. Alongwith the Counter-Affidavit, the Hospital has also annexed a Study titled "The Aga Khan University's Economic Impacts in Pakistan" conducted by the Centennial Group International a leading international strategy and policy firm, comprised of several former senior World Bank Representatives and Advisors. The Study reflects that in the year 2015 the Hospital and AKHMCF had an economic impact in Pakistan of more than Rs.103 Billion or US\$ 1 Billion and supported nearly 42,000 jobs, 33,000 in Sindh.

13. The AKHMCF is a company not for profit licensed under Section 42 of the Companies Ordinance, 1984 and generally non-profit making organization operates on the principle that none of its member will receive profits from such organization and such organization applies its surplus funds on the promotion of its objects, rather than distributing it amongst its members. However, during course of the arguments the Petitioner could not rebut that the income of the Hospital was solely applied for the promotion of its objects, and no portion of such income was distributed, paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the members of the AKHMCF.

14. As to the concept of charity, reference may be made in that regard to the Judgment of the Privy Council in the case of reported as LE CRAS v. PERPETUAL TRUSTEE CO., LTD. AND OTHERS, FAR WEST CHILDREN'S HEALTH SCHEME AND OTHERS v. PERPETUAL TRUSTEE CO., LTD. AND OTHERS [1967] All E.R. 915 where it was observed that:

“it would be a wrong conclusion from them to state that a trust for the provision of medical facilities would necessarily fail to be charitable merely because by reason of expense they could only be made use of by persons of some means. To provide, in response to public need, medical treatment otherwise inaccessible but in its nature expensive, without any profit motive, might well be charitable; on the other hand to limit admission to a nursing home to the rich would not be so. The test is essentially one of public benefit, and indirect as well as direct benefit enters into the account. In the present case, the element of public benefit is strongly present. It is not disputed that a need exists to provide accommodation and medical treatment in conditions of greater privacy and relaxation than would be possible in a general hospital and as a supplement to the facilities of a general hospital. This is what the private hospital does and it does so at, approximately, cost price. The service is needed by all, not only by the well to do. So far as its nature permits it is open to all; the charges are not low, but the evidence shows that it cannot be said that the poor are excluded: such exclusion as there is, is of some of the poor—namely those who have (a) not contributed sufficiently to a medical benefit scheme or (b) need to stay longer in the hospital than their benefit will cover or (c) cannot get a reduction of or exemption from the charges. The general benefit to the community of such facilities results from the relief to the beds and medical staff of the general hospital, the availability of a particular type of nursing and treatment which supplements that provided by the general hospital and the benefit to the standard of medical care in the general hospital which arises from the juxtaposition of the two institutions.”

15. Here in the case in hand, the Hospital’s healthcare facilities are available to every citizen, albeit subject to charges on a case to case basis. Moreover, the Hospital acts within its aims and objects and is a non-profitable organization whose earnings and income are being utilized for the purpose of the Hospital, Education, etc. and thus satisfies the conditions of the license/sanad. As such, in view of the foregoing, we are of the opinion that the Petition has no merit and is dismissed with cost of Rs.15,000.00 to be deposited with the High Court Clinic Account under a proper receipt within thirty days of the date of this order.

Chief Justice

Judge