

Karnataka High Court The Medical Relief Society Of . . . vs Union Of India And Others on 11 February, 1999 Equivalent citations: 1999 (65) ECC 42, 1999 (111) ELT 327 Kar, ILR 1999 KAR 1877, 1999 (3) KarLJ 439 Bench: T S Thakur ORDER 1. Common questions of law arise for consideration in these petitions, which were heard together and shall stand disposed of by this order. The questions primarily relate to a true and correct interpretation of Notification No. 64 of 1988, dated 1st of March, 1988 issued by the Central Government in exercise of its powers under Section 25 of the Customs Act, 1962 and the eligibility of the petitioners for the grant of exemption from payment of customs duty on the import of medical equipments from outside the country. The correctness of the orders passed by the respondents on the applications made by the petitioners for the grant of exemption certificates and the withdrawal of certificates already granted has been assailed on a variety of grounds. The challenge arises against the following backdrop.- 2. People's Union of Civil Liberties in a writ petition filed in public interest before the High Court of Delhi made serious allegations about what it described as a financial scam involving custom free, import of expensive medical equipment worth thousand crores on the basis of custom duty exemption certificates issued by the Directorate General of Health Services. These certificates were according to the petitioners, granted illegally with a view to defraud the exchequer of a huge amount recoverable on the import of such equipment by a large number of hospitals established in different parts of the Country. While the petition was pending consideration before a Division Bench of the High Court, the Government of India by an order dated 20th of May, 1996 appointed Sri K. Chandramouli, Joint Secretary, Ministry of Health and Family Welfare to conduct a preliminary enquiry as to the validity of the certificates issued by the Directorate of Health Services from time to time. The terms of reference for the enquiry entrusted to Sri Chandramouli were enlarged by the High Court by its order dated 23rd of May, 1996. The committee was among other aspects detailed in the modified terms of reference drawn up by the Court required to examine the validity of the certificates granted to 19 different hospitals including the petitioner-Ma-nipal Hospital, Bangalore. A report was in due course, submitted by Sri Chandramouli, which prima facie found the acts of the Officers of Directorate General of Health Services and Customs Department to be irresponsible and negligent. The report did not rule out large scale corruption in the issue of the certificates. Keeping in view the report and the fact that the evasion of duty involved ran into hundreds of crores, the Court by an order dated 18th of October, 1996 constituted two committees. The first committee comprising Sri S.D. Mohile, Member, Central Board of Excise and Customs was required to quantify the amount of customs duty forgone in cases where equipment/machinery was released with or without production of customs exemption certificate under Notification No. 64 of 1988 dated 1st of March, 1988 and to suggest steps to be taken for collection of the duty payable by the parties who had availed of the exemption available under the notification, to which they were not otherwise entitled. The second committee comprising officers of the Revenue Intelligence, Central Excise, the Directorate of Health Services and the CBI were constituted under the overall supervision and guid-

ance of Mr. Padam Rosha, (Retired) Director General, Security, J and K with the object of identifying the acts of omission and commission of the officers of the Directorate General, Health Services/Ministry of Health and Family Welfare/Customs Department, or any other Department which may have resulted in a loss to the Exchequer and the reasons for such acts of omission and commission and to enquire whether customs duty exemption certificate had been issued by the Ministry of Health and Family Welfare/Directorate General of Health Services in accordance with the terms and conditions laid down in the notification. The committee was also to enquire into whether any such certificates had been issued to persons, who were not otherwise entitled to the same, and to find out whether the concerned Institutions had satisfied the conditions, subject to which the exemption from duty was granted. These committees submitted their interim reports from time to time, upon consideration whereof, the Court by an order dated 19th of December, 1996 directed all pending applications for the grant of exemption certificates to be decided in accordance with law. By another order dated 1st of May, 1997, the Court directed the disposal of all such pending applications within a period of 3 months from the date of the said order with a direction to the Chief Secretaries of the State Governments to render all possible assistance and to furnish the necessary information in regard to the pending applications expeditiously so as to reach the Ministry of Health and Directorate General, Health Services not later than 10 days from the date of the order. Instructions were accordingly issued by the Government of India to all Chief Secretaries in terms of a letter dated 30th of May, 1997 to despatch the requisite information in a proforma forwarded to them under the said letter so as to reach the Ministry within 10 days. The following passage from the letter is in this regard relevant.- “In the meantime, the High Court of Delhi has directed this Ministry to ensure the disposal of the 112 applications for exemption certificates, which are pending consideration within the next three months, i.e., by 30th of July, 1997 positively. For doing so, it is necessary to obtain the relevant information about the applicant, in the prescribed proforma, duly certified by the State Health Secretary himself/herself. This would obviate the possibility of certificates being given routinely as has happened in the past. In order to expedite the process, the High Court of Delhi has directed the State Governments through the Chief Secretaries to supply the Ministry/Directorate General of Health Services (DGHS) relevant information in respect of pending applications. The Court has further directed that instructions should be issued to the Chief Secretaries that this information shall be supplied and should reach the Ministry not later than 10 days from the receipt of request for such information. As directed by the Court, a copy of the relevant extract containing their directions are enclosed herewith so that necessary action can be taken by you personally to ensure that there is no delay in the transmission of the information”. 3. The letter also gave instructions to the authorities to monitor the grant of the benefit by the beneficiary institutions to ensure that the same reached those eligible for the same. It also emphasised the need for making recommendations after due and proper verification of the facts to avoid the issue of certificates in a routine manner as had been happening in the past. Individ-

ual time bound notices were also issued by the Directorate General of Health Services to the Institutions concerned asking them to furnish information on matters set out in the notices. A copy each of these notices was, forwarded even to the State Health Secretaries with the request that the response received from the Institution duly verified and certified by the Secretary, Health Services be forwarded to the Directorate General of Health Services within the stipulated period to ensure compliance with the directions issued by the Court. 4. Most of these applications were rejected by the High Power committee in the Directorate of Health Services on the basis of whatever material was available with it as in most of the cases the response from the State Government was delayed. In the case of Manipal Hospital, Bangalore and Kasturba Medical College, Manipal and Kasturba Medical College, Mangalore, these applications were rejected on different dates between 3rd of July, 1997 to 23rd of July, 1997. The delay in the response from the State Government was, it appears, brought to the notice of the Delhi High Court, who by order dated 1st of August, 1997 directed that all such cases in which recommendations of the State Government had been received upto 8th of August, 1997 should be reconsidered by the committee. Consequently, the request was reconsidered in the light of the recommendations of the State Government, who rejected the same for the second time by orders that have been challenged in these writ petitions and to which I shall presently refer. The committee was of the view that the Institutions did not for various reasons qualify for the grant of exemption under the exemption notification. Certificates already issued as in the case of Karnataka Institute of Medical Sciences (KIMS) were also directed to be cancelled. 5. Several contentions have been urged on behalf of the petitioners in these petitions in an attempt to demonstrate that the petitioners were eligible for the grant of the exemption certificates and the rejection of their applications by the respondents was unfair and arbitrary. Before I deal with these contentions, it is necessary to briefly refer to the exemption notification in order to properly appreciate the scheme and the purpose underlying the same. The notification envisages exemption of all equipments, apparatus, and appliances including spare parts and accessories thereof, the import of which is approved either generally or in each case by the Government of India or by the Directorate General of Health Services as essential for use in any hospital specified in the table appended to the notification. The table below the notification classifies hospitals in four different categories. Category-1 deals with hospitals certified by the Ministry of Health and Family Welfare as being run or substantially aided by such Charitable Organisations as may be approved from time to time by the said Ministry. Category-2 comprises hospitals, which may be certified by the Ministry of Health and Family Welfare in each case to be run or providing medical, surgical or diagnostic treatment without any distinction of caste, creed, race, religion or language and free on an average to 40% of the outdoor patients and all indoor patients with a family income of less than Rs. 500/- per month. In Category-3 fall hospitals which the Ministry of Health and Family Welfare may having regard to the treatment available therein or the geographical situation thereof or the class of patients for whom such treatment is provided either generally or in each case certify that

the hospital even though it makes a charge for the said treatment is nevertheless run on no profit basis and is deserving of exemption from pay-merit of duty on the import of hospital equipment, provided that the equipment so imported is received by way of a free gift from a donor abroad or purchased out of the donations received in foreign exchange. The 4th and the only other category comprises hospitals, which are in the process of being established and in respect of which the Ministry of Health and Family Welfare is of the opinion that there is an appropriate programme for establishment of the hospital, that there are sufficient funds and other resources worked for such establishment and that such hospital would be in a position to start functioning within a period of one year and would be relatable to a hospital specified in Category-1, 2 or 3 referred to above. The hospitals established by the petitioners in this bunch of petitions claims to be falling in Category-2 of the table appended to the notification. It would therefore be profitable to extract para 2 of the table, which deals with the said category in extenso.- “2. All such hospitals which may be certified by the said Ministry of Health and Family Welfare, in each case, to be run for providing medical, surgical or diagnostic treatment not only without any distinction of caste, creed, race, religion or language but also,- (a) free, on an average, to at least 40 per cent of all their outdoor patients; and (b) free to all indoor patients belonging to families with an income of less than rupees five hundred per month, and keeping for this purpose at least 10 per cent of all the hospital beds reserved for such patients; and (c) at reasonable charges, either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in clauses (a) and (b)”. 6. A plain reading of the above would show that any hospital claiming benefit under Category-2 shall have to establish to the satisfaction of the Government of India and the Ministry of Health and Family Welfare or the Directorate General of Health Services to the said Government that- (1) It is a hospital, which provides medical, surgical or diagnostic treatment without any distinction of caste, creed, race, religion or language, (2) It is a hospital, which on an average provides such treatment to at least 40% of all its outdoor patients, (3) It is a hospital, which provides such treatment to all indoor patients belonging to families with an income of less than Rs. 500 per month and keeps for that purpose at least 10% of all the hospital beds reserved for such patients, and (4) It is a hospital, which charges reasonable rates either on the basis of the income or otherwise from all patients other than those given free treatment in terms of condition Nos. (2) and (3) above. 7. It is only in case the hospital satisfies the Central Government or the Directorate General of Health Services that it fulfills the conditions stipulated that can result in the grant of an exemption certificate in its favour. According to the respondents, the petitioner-hospitals do not satisfy the requirement of 40% outdoor patients being treated free nor do they satisfy the requirement of keeping at least 10% of all its beds reserved for patients with a family income of less than Rs. 500/- per month. The respondents argue that the obligation to provide free treatment is a continuing obligation, the failure whereof at any stage would entitle them to not only withdraw the exemption certificates, issued earlier, but also take coercive steps for the recovery of customs duty payable on the equipment

imported. 8. Two decisions of the Supreme Court that deal with the true import of the notification need be noticed at this stage. In *Mediworld Hospital and Health Care Private Limited v Union of India and Others*, a diagnostic centre was aggrieved of the refusal of an exemption certificate on the ground that the notifications did not envisage any benefit in favour of such centres run on purely commercial lines. The Supreme Court held that the respondents having extended benefit of exemption under the notification to similar other centres, denial of the same to the petitioner would fall foul of Article 14 of the Constitution. More importantly, the Court declared the obligation to provide free treatment to 40% outpatients and all indoor patients with a family income of less than Rs. 500 per month to be a continuing obligation. In order to ensure that the benefit reached the deserving, the authorities were asked to monitor the same and to take appropriate action if there was a default in the discharge of that obligation. The following passage from the said decision is in this connection apposite.- “While, therefore, we accept the contentions of Mr. Jaitley, learned senior Counsel appearing for the appellant that the appellant was entitled to get the certificate from respondent 2 which would enable the appellant to import the equipment without payment of customs duty but at the same time we would like to observe that the very notification granting exemption must be construed to cast continuing obligation on the part of all those who obtained the certificate from the appropriate authority and on the basis of that to have imported equipments without payment of customs duty to give free treatment at least to 40 per cent of the outdoor patients as well as would give free treatment to all the indoor patients belonging to the families with an income of less than Rs. 500/- p.m. The competent authority, therefore, should continue to be vigilant and check whether the undertakings given by the applicants are being duly complied with after getting the benefit of the exemption notification and importing without payment of customs duty and if on such enquiry the authorities are satisfied that the continuing obligations are not being carried out then it would be fully open to the authority to ask the person who have availed of the benefit of exemption to pay the duty payable in respect of the equipments which have been imported without payment of customs duty”. 9. The Court also read into the scheme of the exemption notification an obligation to publish in the press information regarding the availability of free treatment for the patients of the prescribed income group. The Court observed.- “It is needless to reiterate that all the persons including the appellant who had the benefit of importing the hospital equipment with exemption of customs duty under the notification should notify in the local newspaper every month the total number of patients they have treated and the 40% of them are the indigent persons below stipulated income of Rs. 500/- per month with full particulars and address thereof which would ensure that the application to treat 40% of the parties free of cost would continuously be fulfilled. In the event of default, there should be coercive official action to perform their obligation undertaken by all such persons. This condition becomes a part of the exemption order application and strictly be enforced by all concerned including the Police Personnel when complaints of non-compliance were made by the indigent persons, on denial of such treatment

in the concerned hospital or diagnostic centres, as the case may be". 10. The other decision in Faridabad CT Scan Centre v Director General of Health Services and Others, arose out of a similar case, in which the Supreme Court while dismissing the SLP filed by the Diagnostic Centre partly overruled the decision in Mediwell's case insofar as the same held that refusal of a benefit extended to others would amount to hostile discrimination against the petitioners. The Court held that if any such benefit was found to have been granted illegally or underservedly, there was no question of its refusal in other cases constituting hostile discrimination. The Court repelled the contention based on Article 14 in the following words: "3. We fail to see how Article 14 can be attracted in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and, therefore, there will be discrimination against others if correct orders are passed against them. In fact, in the case of Union of India (Railway Board) v J.V. Subhaiah, the same learned Judge in his judgment has observed in para 21 that the principle of equality enshrined under Article 14 does not apply when the order relied upon is unsustainable in law and is illegal. Such an order cannot form the basis for holding that other employees are discriminated against under Article 14. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others. With respect, the decision in Mediwell Hospital does not lay down the correct law on this point". 11. The orders passed by the respondents refusing the grant of exemption certificates to the petitioners have therefore to be viewed in the context of the requirements stipulated in the exemption notification as explained and elucidated by the two judgments referred to above. 12. There is one other aspect with which I must deal at this stage since the same is common to all the cases. One of the reasons, which the respondents have while refusing the benefit of the notification cited against the petitioners is that they are not providing any free treatment to the indoor patients with family income of less than Rs. 500/- per month. It is pointed out that what is provided by the hospitals to such patients is not treatment, but only free consultation and waiver of registration and ward charges. Insofar as consumables are concerned, whether the same are in the form of medicines, injectibles or otherwise the patient is asked to purchase the same from the market for use in the hospital. The hospitals on the other hand contended that the notification did not envisage providing free medicines and other consumable articles to the indoor patients admitted to the hospital or to the outdoor patients treated free. Any interpretation making supply of medicines, it was contended, would make the entire scheme underlying the exemption unworkable and economically unviable for the hospitals. The question therefore is as to what exactly do the words "medical, surgical or diagnostic treatment" appearing in para 2 of the notification mean. Stated differently does the term 'treatment' include application of remedies whether medical, surgical or diagnostic or would it be limited only to consultation and advice tendered to the patients. In the absence of any definition of the term treatment either in the exemption notification or the

Customs Act, there is no option but to give the word its ordinary meaning as understood in common parlance. Chambers 20th Century Dictionary defines the word 'treatment' as under:- "The act or manner of treating; management: behaviour to anyone; way of applying remedies". Similarly Black's Law Dictionary gives the word 'treatment' the following meaning: "A broad term covering all the steps taken to effect a cure of an injury or disease: including examination and diagnosis as well as application of remedies". 13. It would thus appear that the word treatment is not confined only to examination or diagnosis as contended by the respondents, but includes steps taken to effect a cure for a disease or injury. What is significant is that the expression is wide enough to include the application of remedies to the disease and not just its diagnosis. It would include medicines and therapies considered necessary for cure. This interpretation is supported by the context, in which the term has been used in the notification as also the purpose underlying the same. The word 'treatment' appears in the company of expressions 'medical', 'surgical' and 'diagnostic'. The expression 'diagnosis' implies the process of identifying the disease by means of its symptoms. The expression 'diagnosis' according to the Dictionary, means distinguishing or differentiating a disease by its symptoms. The diagnosis of the disease, may itself involve a prolonged investigation and may in turn constitute a part of the treatment to be given to the patient. Medical or surgical treatment that any such diagnosis may indicate is what the notification envisages and not just the diagnosis or advice. 14. The words used in the notification apart, the purpose underlying the exemption unquestionably was to grant exemption only to hospitals, where the prescribed percentage of patients from the poorest of the poor sections of the society with a family income of not more than Rs. 500/-per month could get free treatment. It was contended by Mr. Shevgoor and perhaps rightly that in the current economic scenario with the purchasing power of the rupee on the decline a family income of Rs. 500/- is the barest minimum for survival. One can even say that those with that kind of income for an entire family are living on the edge and may be a vanishing specie. What however is evident from the limit on the income placed by the authority issuing the notification is that it had in mind the poorest of the poor sections of the society when a provision for exemption of duty on import of equipment was made. The intention of the authority issuing the notification could never be that those, who fall in that category should be satisfied with free advice of a Doctor in the hospitals getting exemption and should even as indoor patients fetch their own medicines or pay for the consumables. To attribute that intention to the Government would amount to frustrating the very purposes behind the grant of exemption. If a patient, who falls in the eligible category is also required to pay for the medicines and other consumable items used by the hospital in their treatment, it would render any such treatment in the hospital a luxury which he can ill-afford. The notification has therefore to be interpreted rationally in order to ensure that the object underlying the same is advanced. The predominant object behind the grant of an exemption, which ran into hundreds of crores if not thousands was to ensure that the poorest in the society have an advantage of being treated free in such hospitals. The colossal amount of duty

involved in the exemption could not conceivably be waived or given up by the Government only for purpose of providing free consultation to such patients. Viewed thus, the expression medical, surgical or diagnostic treatment in the exemption notification must be interpreted to mean treatment not only in the nature of providing admission and accommodation to the hospital, diagnosis and investigation, but free medicines and consumables also. 15. It is time now to examine the case of each one of the hospitals, who have filed these petitions in the context of the above. Manipal Hospital, Bangalore 16. Writ Petition Nos. 28186 and 28187 of 1996 filed by this hospital, challenges the validity of an order dated 27th September, 1996 issued by the Assistant Commissioner of Customs Mangalore, whereunder Customs Bond 123/91, dated 4th of October, 1991, for a sum of Rs. 2,61,22,467-00 was enforced against the petitioner on account of its failure to produce relevant documents in connection with the import of equipment and calls upon the petitioner to pay an amount of Rs. 31,03,27,369.00 towards customs duty. 17. In Writ Petition No. 7730 of 1998 the petitioner-hospital challenges the validity of an order dated 29th of October, 1997, rejecting its applications for the grant of "Exemption Certificates" in respect of equipment indicated in the annexure to the said order. Similarly, Writ Petition No. 28589 of 1998 calls in question an order of rejection dated 2nd of June, 1998, issued against the petitioner-hospital following order dated 29th of October, 1997 challenged in W.P. No. 7730 of 1998. Writ Petition No. 29130 of 1998 filed by this hospital assails the validity of order dated 25th of August, 1998, issued by the Deputy Director General of Health Services, cancelling the CDECs issued in its favour for the equipment referred to in the annexure thereto. It would thus appear that the petitioners' entitlement for the grant of the exemption certificates has been determined by order dated 29th of October, 1997 issued by the Directorate General of Health Services, which order has been made a basis for rejection of the other applications as also for recall of the CDECs granted earlier. The enforcement of the Bond and proceedings for the recovery of the Customs Duty payable on the import of the equipment which forms the subject-matter of Writ Petition Nos. 28186 and 28187 of 1996 would depend upon whether the petitioner is entitled to the issue of the certificates for it was not disputed that if the certificates are declined the respondents would be entitled to enforce the Bond and recover the duty assessed against the petitioner. 18. In its order dated 29th of October, 1997, the Directorate General of Health Services has held the petitioner disentitled to the issue of "Exemption Certificate" on more than one grounds. One of the grounds is that since the hospital only provides free admission and consultation to the in-patients and levies charges for medicines and other consumables, it is in effect providing no free treatment to such patients. The other significant reason for denial of the certificate is that hospital has not maintained any records indicating the number of indoor patients treated free and belonging to families with income less than Rs. 500/-p.m. No beds for such patients have according to the respondents been reserved as required under the notification. The facts relevant to these grounds, are not disputed. The hospital does not dispute that the cost of drugs and materials is charged both from outdoor and indoor patients. This is evident

from the proforma in which the hospital has furnished the requisite information to the committee appointed by the State Government. In answer to para 3-A, the hospital has given the figures of the total number of patients treated and the number of those patients treated free during 1994, 1995 and 1996. Para 4(b) of the proforma required the hospital to indicate the facilities/services available in the hospital, in answer to which it has produced the information brochure of the hospital. Para 4(c) of the proforma is for our purposes relevant and may therefore be extracted together with the hospital's response to the same.- "4(c) Facilities/services free Cost of drugs and materials to OPD patients referred to in are charged, Registration clause (a) above.- and consultation charges are free". Similarly, in reply to para 4(h) of the proforma, the hospital has stated thus.- "4(h) Facilities/services pro- 10% of the beds - available vided free to indoor patients are in the free category referred to in clause (d) where beds, above operations/procedures etc. are free. For economically weaker sections concessions are granted in the bills at the time of discharge. In case of dialysis Prosthetics, Cobalt therapy, dentures etc., only service charges are free, actual material cost has to be met by the beneficiary".

19. The above would indicate that the so-called free treatment given to both OPD and in-patients does not include medicines. The free treatment is limited even according to the petitioner to lab investigations, x-rays, bed charges and professional charges only. This position was not disputed by Mr. Shevgoor, Counsel appearing for the hospital in the course of his submissions as indeed the same could not have been disputed in view of the following specific averments made in para 9.7 of W.P. No. 7730 of 1998.- "Medicines and consumables cannot be supplied free to in-patients as the cost is prohibitive and there is no financial aid for supplying free medicines. Further, supply of medicines free is not a part of the conditions in Annexure-B, No such practice exists even in Government hospitals. The poor patients are given free diagnosis, lab investigations, x-rays, bed charges, professional charges including service of doctors, nurses and para-medical staff, instrument charges and operation theatre charges. Therefore, more than fair and reasonable compliance of the conditions is done by the petitioners. Further, the exact income of the patient cannot possibly be ascertained at the time of his admission".
20. As observed in the earlier part of this order, the expression "Free Treatment" does not imply investigation, diagnosis, x-rays, or bed charges only. Treatment implies application of remedies considered necessary for curing the disease or injury. The admitted position however is that the hospital does not provide free treatment in that sense to either category of patients. According to Mr. Shevgoor, it is not possible for any hospital to do so because of the prohibitive cost involved in the same. That is not in my opinion the question. If it is not for any reason possible for a hospital to provide free treatment as contemplated by the notification it is under no obligation to do so. But having imported equipment it cannot claim exemption from payment of duty on the ground that the notification places

a condition impossible of performance. As to what are the conditions subject to which an exemption should be granted is a matter that rests with the Government. No importer of equipment can claim that a particular condition imposed by the exemption notification is far too stringent to be included in the same nor can an importer demand that the conditions should be so liberally construed as to enable the free import of equipment even when the object underlying the exemption is defeated by such an interpretation. Economic viability of a hospital is therefore no reason for either relaxing the conditions stipulated by the notification or an extravagantly liberal interpretation of the same. If the intention, was to grant exemption only to such hospitals as provide free medical treatment to the poorer sections of the society, there is no reason why those who do not satisfy that requirement should benefit from a concession that was never meant for them. The respondents were therefore perfectly justified in declining to grant the exemption certificates to the petitioner on the ground that it did not qualify for the same.

21. The second and an equally important reason which lends itself as a basis for the impugned orders of rejection, is the fact that the petitioners had neither reserved 10% of its beds for patients with a family income of less than Rs. 500/- nor were those to whom such indoor treatment was given identifiable by reference to their income. It was contended by Mr. Shevgoor, that the reservation of the beds was not necessary, so long as patients who qualified for free treatment were entertained and given such treatment. It was submitted that there was no material to show that even a single patient who deserved free indoor treatment had been refused admission. At any rate so long as free treatment was provided to everyone who was eligible for the same, argued the learned Counsel, reservation of beds was unnecessary, and a wastage which could prejudicially affect genuine patients visiting the hospital for urgent medical treatment.
22. The notification as already noticed earlier envisages free treatment to all indoor patients belonging to families whose income is less than Rs. 500/- p.m. There is no limit on the number of such patients which the hospital must treat in order to qualify for an exemption. That is however only one aspect. The other requirement which is equally important is that the hospital must keep for the purpose of providing such treatment to that category of patients at least 10% of the hospital beds reserved. This is evident from a careful reading of the notification. Such a reservation is by no means a purposeless requirement. Reservation of beds assumes importance keeping in view the fact that the hospital itself determines as to who should be admitted when and in which category. Given a choice the hospital would, unless precluded from doing so, prefer a patient who pays over one who does not. There is therefore a conflict between the interests of the hospital and its duty at all times which gets subdued if the reservation is enforced. A reservation of 10% of the Beds would reduce the temptation which the hospitals may have for admitting payment patients in preference to the indigents seeking free treatment for once it is known

that beds reserved for free patients cannot be used for a patient who pays, such beds shall have to be utilised for “Fee Patients” only. There is admittedly no reservation of Beds in the petitioner-hospital which means that an essential requirement of the notification is not satisfied.

23. More importantly the hospital has not been able to demonstrate that those to whom it claims to have given “free indoor treatment” really belonged to the class of patients referred to in para 2(b) of the notification. The hospital has not maintained any record regarding the income of the patients admitted for free treatment. This is evident from Note 1 to para 3(d) of the proforma in which the hospital has stated thus.- “Note.-1. Records were not maintained due to non-availability of correct information regarding income of the patients. Hence, total number of admission shown will be free including patients having income less than Rs. 500/-”.
24. Mr. Shevgoor, learned Counsel for the petitioner-hospital did not in the course of his submissions dispute the fact that there was no record indicating the income of the patient admitted for free treatment. There was not even a declaration from the patient concerned regarding his income let alone a certificate to support the same. No satisfactory or transparent mechanism was disclosed by the hospital for purposes of determining whether a patient being admitted for treatment was really one belonging to the income group eligible for free treatment. While according to Mr. Shevgoor, it was the Public Relations Officer of the hospital who determines on the basis of his subjective satisfaction whether a patient deserves free treatment. According to the inspection report, submitted by the Assistant Director General (HA) copy whereof was produced by Mr. Ashok Haranahalli, the decision whether a patient should be given free treatment is taken by the consultant of the hospital not necessarily on the basis of his income. Such being the case, the hospital wants this Court to believe that all those who were admitted as in-patients during the relevant period i.e., 1994-96 belonged to the category of patients with less than Rs. 500/- income every month, for it is then alone that the hospital can show that it has treated at least 10% of the patients of the eligible category free. Records for the relevant years were summoned for verifying whether there really was any process of determination of the eligibility of the patients howsoever unsatisfactory. The records reveal that a large number of those who were granted treatment are working as doctors and nurses in the petitioner-hospital. There is no indication whatsoever in the record as to why was a patient given a free card for “Free Treatment”. It is in that view difficult to accept the contention urged on behalf of the hospital that all the patients treated free during the aforementioned period should be deemed to be those belonging to the lower income group. Mr. Shevgoor, was I must say fair enough to concede that all those treated free did not belong to that category. According to him, the hospital was for various reasons required to give free treatment to people holding high positions who expected to be treated free and would even walk out without paying up the bill. Such aberrations argued Mr. Shevgoor were a part of

the system in which the hospital was functioning and could not therefore be avoided. That may indeed be so. But then that is no reason why all such people who walk in and walk out of the hospitals on the strength of the positions they hold, the contacts they have or the privileges they enjoy should be counted as patients treated free in the specified income group. It would be a traversity if treatment given to such influential and affluent class of people were to be described as charity only to justify the grant of exemption from payment of duty to the hospital. What the notification has in view is not a hospital who pampers those in high places but one who gives free treatment to those who find it difficult to survive let alone afford the luxury of being treated in a private hospital. The refusal of the exemption applied for by this hospital and the withdrawal of the CDECs granted to it in the past cannot therefore be found fault with. Kasturba Medical College, Manipal

25. This hospital has filed Writ Petition Nos. 28019 and 28105 of 1996 for a mandamus directing the respondents to consider the applications for the grant of exemption certificates in regard to imports made by it. An order dated 27th of September, 1996 issued by the Assistant Commissioner of Customs, Mangalore whereby a bond furnished by the petitioner was sought to be enforced against it has also been assailed. In W.P. No. 7488 of 1998 this hospital has called in question the validity of order dated 12th of September, 1997, rejecting the petitioners' applications for the grant of CDECs in connection with the imports referred to in the annexure to the said order. A mandamus directing the respondents to consider the applications of the petitioner afresh has also been prayed for.
26. The primary question that arises for consideration in all these petitions is whether the petitioner-hospital was entitled to the issue of the exemption certificates applied for or secured by it keeping in view the requirements prescribed in the exemption notification. A time bound notice was issued to the petitioner-hospital also and upon its failure to provide the requisite information, the request for grant of the certificates declined by the committee constituted for the purpose in terms of a decision taken on the 22nd of July, 1997. That decision was later reviewed by the committee in the light of the directive issued by the Delhi High Court in the committee's meeting held on 20th of August, 1997. Fresh inputs made available to the committee subsequent to its earlier decision, also did not in the opinion of the committee make any improvement in the case of the hospital. The report received by the committee from the State Government after verification by its officers pointed out the following deficiencies.-
 - (1) No installation certificates regarding the equipment had been furnished by the institution to the State Government;
 - (2) Although 91 to 93% of its patients were said to have been treated free yet upon a detailed verification it was found that the said treatment was confined only to free consultation, everything else like investigation, purchase of medicines etc., being charged.

- (3) Each patient was required to pay a Registration fee of Rs. 12/-although certain concessions are given to the poor patients at the time of their discharge;
 - (4) No records were maintained or available to show that the income of patients treated free whether in the in-patient or out-patient department was less than Rs. 500/- p.m.
27. In the proforma filled up by Institution the above position is substantially reiterated while describing the facilities/services offered free to OPD patients, the hospital has stated thus.- "Cost of the drugs and materials are charged. One time new registration charges of Rs. 12/- collected towards the cost of the file and other stationaries".
 28. Similarly while describing the facilities/services provided free to indoor patients, the hospital has stated as under.- "10% of the Beds available are in the free category where everything is free including diet, drugs, operations, investigations etc., for economically weaker sections. Concessions are granted in the bills at the time of discharge, cost of dialysis, prosthetics, cobalt therapy, dentures etc. Only service charges are free. Actual material cost has to be met by the beneficiary". Insofar as the free treatment to patients with a family income less than Rs. 500/- is concerned, the hospital admits that no records are maintained as to the income of the patients granted free treatment. It has all the same claimed that 8,075 patients admitted in the year 1994, 7,867 patients admitted in the year 1995 and 8,024 patients admitted during the year 1996, should be treated to be admissions granted to patients having a family income of less than Rs. 500/- per month. In other words every patient to whom the hospital has given free treatment during the period aforementioned, is according to the hospital a patient with a family income of less than Rs. 500/- per month. In the absence of any record or satisfactory mechanism for determining the eligibility of the patient for free treatment in the prescribed category, the respondents were justified in holding that the hospital had not established its entitlement to the grant of exemption certificates. As in the case of Manipal Hospital, Bangalore, so also in the present case, the absence of any transparent and satisfactory method for determining the entitlement of those seeking free treatment, makes it difficult to count all those treated free or given concessions at the time of their discharge, as patients belonging to the poorer sections of the society having regard in particular to the fact that a large number of such patients are admittedly treated free for considerations other than their financial status. The figures indicated by the hospital in fact appear to include patients to whom concessions have been given at the time of discharge. As to what is the nature of a concessions has not been indicated. In any event, a concession in the charges levied for treatment is not the same thing as free treatment is not the same thing as free treatment as envisaged by the exemption notification. Superadded to this is the fact that no free treatment is provided in certain disciplines like dialysis, prosthetics, cobalt therapy, dentures etc.,

which implies that the hospital's free treatment programme is selective and not available to a poor patient regardless of the speciality in which such treatment is needed.

29. In the out-patient department, the hospital is admittedly charging registration fee and cost of drugs and materials. It is only consultation which is given free to the patients. That is evident from the hospital's own version extracted earlier and corroborated by the report of Dr. S.B. Shamrao, Joint Director of Government of Karnataka, a copy of whose communication dated 23rd of July, 1997, addressed to Secretary to Government, Health and Family Welfare Department, was placed on record by Mr. Haranahalli. Assuming therefore that the non-furnishing of installation certificates by the institution is not of much consequence insofar as the entitlement of the institution was concerned, yet, the failure of the institution to satisfy the requirement of free treatment to indoor and outdoor patients was sufficient to deny the benefit of the exemption to it. The hospital has also admitted that it has not published in any newspaper or by any other mode, information for the benefit of the general public as to the availability of free treatment for OPD and IPD patients. What is stated is that statistical information is circulated among the staff members and the public in the information brochure which is in the light of the decision of the Supreme Court in *Mediwell's* case not a sufficient compliance with the continuing obligation cast upon such hospitals in providing free treatment. Kasturba Medical College, Mangalore
30. Writ Petition No. 7731 of 1998 filed by this college challenges the validity of an order dated 13th of October, 1997 issued by the Director General of Health Services, whereby the petitioner was held disentitled to the issue of the CDECs in respect of the equipments mentioned in the annexure to the order. In Writ Petition No. 29115 of 1998, the petitioner has called in question the validity of an order dated 20th of August, 1998, whereby CDECs issued in its favour and detailed in the annexure accompanying the order have been withdrawn on the ground that the petitioner was not eligible for the same.
31. There is no material difference either in the background in which the writ petitions have been filed or the ground on which the CDECs have been refused by the respondents. The request for the grant of exemption certificates was considered and turned down by the CDECs committee in its meeting held on 22nd of July, 1997. The matter was examined further in the committees meeting held on 21st of August, 1997, in which the committee reiterated its earlier view. The rejection order issued on 13th of October, 1997 inter alia points out that the college was not providing free treatment to 40% of the OPD patients. The order further states that the information provided does not state whether the free treatment given by the hospital was to patients with a family income of less than Rs. 500/- per month.
32. In the proforma furnished by the college on 2nd of April, 1993, the college has described the facilities/services provided to free OPD patients in the

following words.- “All patients are given consultation, examination and advice free of cost. In case various investigations like laboratory, x-rays etc., are required, nominal charges are levied. Medicines have to be purchased, while the prescription by Doctor would be free of cost. In case of poor patients who are unable to pay, even investigation charges are made free and they are helped with drugs free of cost, as far as possible”.

33. It would appear from the above that the college is not providing free treatment within the meaning of the exemption notification. What is on its own showing free is consultation, examination and advice. Investigations and medicines are charged or have to be purchased by the patients concerned. The expression ‘in case of poor patients, who are unable to pay even investigation charges are made free and are helped with drugs free of cost as far as possible’ is much too vague to be capable of understood as a uniform policy or practice followed by the college for providing free drugs to the poor patients. The supply of drugs is qualified by the words ‘as far as possible’. Even in regard to investigation charges, it is not stated that the same are free for those, who belong to the poorer sections. What is suggested is that ‘they are made free’, which apparently means that such charges are made free only on case to case basis not necessarily for the benefit of every patient. As to what are the norms fixed for this kind of concession is not disclosed nor is any material produced to show that the so-called free treatment is made available to at least 40% of the total outdoor patients. Suffice it to say that the statement made by the hospital does not even make a claim to the effect that it is providing free treatment to 40% outdoor patients. The respondents were therefore justified in holding that the institution did not satisfy the requirements of the exemption notification.
34. Even in regard ‘Indoor Patients’, the position is no better than what is discussed in the earlier part of this judgment while dealing with the cases of the other two hospitals. There is not even a suggestion anywhere in the writ petition or the information furnished by the college in the proforma that the college has been publishing any information for the benefit of the general public regarding the availability of free treatment in its Indoor and Outdoor Patient Departments as required in terms of the decision of the Supreme Court in *Mediwell’s* case. In the totality of these circumstances, therefore, I see no error in the view taken by the respondents to warrant interference. KIMS Hospital and Research Centre, Bangalore
35. This hospital has in Writ Petition No. 3010 of 1998 assailed the validity of order dated 12th of December, 1997 issued by the Directorate General of Health Services refusing to issue the installation certificates and revoking the CDECs already granted in its favour on the ground that the hospital does not satisfy the requirements of the exemption notification. A demand notice issued by the Assistant Commissioner of Customs asking the hospital to pay a sum of Rs. 86,15,252.44 towards customs duty payable on the medical equipment imported by it has also been challenged besides an order dated 22nd of January, 1998 issued by the Superintendent of Cus-

toms, Bangalore detaining the equipment in question for non-payment of the amount mentioned above. In Writ Petition No. 14643 of 1998 this hospital has challenged the order made by the Assistant Commissioner of Customs, Chennai confirming a demand of Rs. 14,53,564/- under Section 28(2) of the Customs Act, 1962 consequent upon the petitioner's failure to produce an installation certificate and the revocation of the CDECs granted in its favour.

36. The petitioner claims to be what is described by it as a 'Substantially Charitable Institution'. Apart from its own hospital it is utilising the clinical facilities available in the general hospital at Jayanagar with a total bed capacity of 340 patients. The petitioner's case is that it is providing 100% free service to out-patients visiting the hospital besides providing free treatment to 12 to 14% of the in patients with an income of less than Rs. 500/- per month. The income of the hospital is alleged to be much less than its expenditure, thereby making it a Charitable Institution. Medical equipment was imported by this Institution and exemption from payment of customs duty claimed in terms of certificates issued under the exemption notification. In response to the time bound notice issued to this Institution, it claimed in the proforma provided to it that it had treated during the years 1994, 1995 and 1996 all the patients in the OPD free of any charge. What is important is that the so-called free treatment to OPD patients is limited only to consultations, which implies that all other procedures including medicines required for treatment of such patients is charged. Insofar as indoor patients are concerned, the hospital claims to have reserved 80 beds representing 10% of the total bed strength for patients belonging to Rs. 500/- per month income group. The hospital has admitted that it has not published any information in the local newspapers regarding the availability of free treatment to OPD and IPD patients. For the years 1994 and 1995, the hospital claims to have admitted 1,200 patients in Rs. 500/- per month income group, 1,300 patients for the year 1995 and 1,600 patients for the year 1996. On the basis of the information provided by the Institution and the Family Welfare Department of the Government of Karnataka, the question of granting installation certification/or withdrawal of the CDECs already issued to the petitioner was considered by the committee in its meeting held on 16th of October, 1997. The committee was of the opinion that the Institution did not qualify for the grant of exemption as the OPD cases were treated free of consultation charges only. It also noted that in the rate list published by the Institution besides a registration fee of Rs. 10/- per patient, small procedures like ECG, ultra sound scanning, x-rays were also charged from the patients visiting the Out-Patient Department of the hospital. The rate list issued by the hospital did not make any mention of any free treatment to any patient either in the Out-Patient or In-Patient Department. In the latter Department, the wards were classified into three categories, viz., General, Semi-Special and Special and an admission fee of Rs. 25/- was being charged even for the General Ward besides a ward charge of Rs. 15/-

per day per patient. Injections were also chargeable both from the in and out-patients even when disposable needles and syringes are brought by the patient himself. These facts in the opinion of the committee disentitled the petitioner from claiming any exemption. The committee accordingly recommended the revocation of the CDECs earlier issued to the petitioner on 9th of March, 1992 and 5th of October, 1993. A formal order to that effect followed on 12th of December, 1997, which is under challenge in these proceedings.

37. Mr. Veerabhadrappe, Counsel appearing for the petitioners, argued that the petitioner did not have an adequate notice or opportunity to produce material in support of its claim that it was eligible for the grant of exemption. The order was in that sense violative of the principles of natural justice, according to the learned Counsel. I do not see any substance in that submission. In response to the petitioners application for the grant of installation certificate, it was required by the Directorate of Health Services' letter dated 28th of April, 1997 to furnish the requisite information including a certificate from the Director of Health Services of the State Government to the effect that the Institution/hospital provided free medical, surgical and diagnostic treatment to all patients belonging to families with income less than Rs. 500/- per month and to 40% of outdoor patients. This was followed by a communication dated 30th of June, 1997 from the Directorate once again requiring the petitioners to furnish the requisite information in compliance with the direction issued by the Delhi High Court. By an order dated 17th of July, 1997 the Directorate rejected the request of the petitioner for installation certificates partly because the petitioner had failed to provide the requisite information. In the meantime, the State Government appears to have sent up its recommendations on the basis of the report of a committee comprising Dr. V.G. Vijayalakshmi and D. Lakshmanachar. The report and the information furnished by the petitioner in the proforma besides the rate list forwarded by the committee thus provided the basis for a second look at the petitioner's claim in the committee's meeting held on 16th of October, 1997. The entire exercise was not only intended to see whether installation certificates applied for by the petitioner should be issued but also whether the petitioner was discharging its continuing obligation in terms of the exemption notification. The issue of the installation certificate was itself dependent upon the continued discharge of that obligation. Failure on the part of the petitioner to establish that it was discharging its obligation was therefore bound to result in not only the refusal of the installation certificates applied for by it, but also revocation of the CDECs already granted. That is precisely what happened in the instant case. Based on the information made available to it, the committee came to the conclusion that the petitioner was not eligible for the grant of the installation certificates or exemption from payment of duty by reason of its failure to satisfy the requirements of the exemption notification. The said decision was taken on the basis of the information provided by the petitioner as

also the report of the committee appointed by the State Government, the correctness whereof has not been disputed by the petitioners. It is therefore difficult to see how having been granted an opportunity to furnish the requisite information and having availed of that opportunity, the petitioner can possibly turn round and say that the decision was violative of principles of natural justice.

38. Mr. Veerabhadrappe next argued that the petitioner was actually providing free medical treatment to all the outdoor patients and that the contrary view taken by the committee was not justified. I see no merit in that submission either. The information furnished by the petitioner to the State Government and verified by it clearly stated that the so-called free treatment to OPD patients was confined only to free consultation. There is no explanation forthcoming from the petitioner as to why it did not claim that free treatment included medicine, investigations etc., in the information furnished by it, if it was actually providing those facilities to the patients. The proforma filled up by the petitioner specifically limits the free treatment to 'free consultation' only. This was found to be correct even by the committee appointed by the State Government and was corroborated by the rate list published by the Institution, according to which even minor procedures, which usually form a part of the treatment for OPD patients are charged. The committee was in that view perfectly justified in holding that the Institution was not satisfying one of the basic requirements for the grant of exemption, in that it was not providing free treatment to 40% of its out-patients.
39. If the rate list published by the Institution is seen and believed even the indoor patients are charged for the treatment they get in the Institution. Assuming however that any free treatment was given to the patients belonging to the prescribed income group, yet there is nothing to show as to how the entitlement of the patients is determined for the same. Mr. Veerabhadrappe in the course of his submissions produced certain registers in order to show that patients were granted free treatment on the basis of their income. A perusal of the said register reveals that almost every patient, who is said to have been given free treatment has declared his monthly income to be Rs. 500/-. What is the basis for the said declaration is not available in the record. How did the hospital accept the statement of the patient about his income is also not clear. No procedure or mechanism is admittedly prescribed by the hospital in this regard. It appears from the entries made in the register as though all such people to whom the hospital has treated free have invariably and as though mechanically declared the income at Rs. 500/-. The registers maintained and the entries made in the same are totally unsatisfactory and unreliable to say the least. In the circumstances, the view taken by the respondents holding the petitioner to be disentitled to the grant of an exemption does not, in my opinion, suffer from any error to warrant interference.
40. Mr. Veerabhadrappe next argued that the demand for payment of duty on the import of equipment was beyond the period prescribed under Section

28 of the Customs Act, therefore bad in law. He urged that Section 28 empowered the Customs Authorities to issue a notice to the person responsible for such payment within a period of one year from the relevant date. The extended period prescribed for recovery of the duty in terms of proviso to sub-section (1) to Section 28 was, according to the learned Counsel inapplicable as it was not the case of the respondents that there was any collusion or any wilful misstatement or suppression of facts by the petitioner-importer.

41. Mr. Haranahalli on the other hand contended that the impugned orders of seizure of the equipment were referable to Section 111(o) of the Customs Act, which reads thus.- “Confiscation of improperly imported goods, etc.- The following goods brought from a place outside India shall be liable to confiscation.-

- (a) to (n) xxx xxx xxx;
- (b) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer“.

42. A plain reading of the above would show that goods, which are exempted from payment of duty subject to any condition are liable to be confiscated in case the conditions subject to which the same are exempted from duty are not satisfied unless the non-observance thereof sanctioned by the proper officer. The medical equipment in the instant case was imported subject to the condition that the petitioners continuously discharge the obligation of providing a medical, surgical and diagnostic treatment to at least 40% of its outdoor patients and to indoor patients with a family income of less than Rs. 500/- per month. Failure to discharge that obligation was liable to expose the equipment to confiscation besides entitling the respondents to recover the amount of duty payable on the same. Proceedings for recovery of the exempted customs duty or the confiscation of the equipment in the above circumstances does not fall foul of Section 28. In the result, these petitions fail and are hereby dismissed with costs assessed at Rs. 2,000/- in each petition.