

S/L. 23.
29.08.2019
MNS

**Calcutta High Court
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction**

WPA 408 of 2019

**Sri Jhantu Paul
Vs.
Siliguri Municipal Corporation
and others**

Mr. Joyjit Choudhury,
Mr. Rohit Agarwal

...for the petitioner.

Mr. Kumar Shantanu

...for the respondents.

Affidavit-of-service filed in court today be
taken on record.

Both sides are represented.

In the present writ petition, the petitioner has come up with a grievance that despite the Mayor-in-Council of the Siliguri Municipal Corporation having taken a decision, as empowered by Section 41 of the West Bengal Municipal Act, 2006, to the effect that the application of the petitioner for installation of a patient lift in his residence was decided and approved, no action was taken pursuant to the said decision dated June 20, 2019, by the Siliguri Municipal Corporation, represented by

its Commissioner, as envisaged under Section 44 of the said Act of 2006.

It is argued that, due to the extreme urgency involved, since the petitioner has both his kidneys damaged and is undergoing dialysis three to four days a week, it is extremely difficult for the petitioner to move up and down from his second floor residence at his home. As such, due to the extreme urgency, the petitioner started making the necessary structures for constructing the lift, prior to the Commissioner having issued a formal permission.

However, it is submitted that the permission was mandatorily to be given by the Commissioner in view of the decision dated June 20, 2019 already taken by the Mayor-in-Council.

By the impugned notice dated August 9, 2019, the petitioner was directed to appear before the Commissioner on the allegation that the petitioner had been installing the lift without prior permission or approval from the Commissioner, despite the Commissioner sitting tight over the matter of granting such approval.

Learned counsel appearing for the respondents submits that the petitioner

started such construction of elevator without waiting for the permission to be formally granted by the Commissioner and as such, the notice was merely given for the petitioner to appear before the Commissioner with all valid documents/building plan within a limited period, failing which appropriate legal action would be taken against the petitioner.

In view of the implicit urgency involved, although the petitioner might have been at minor fault in starting preparation for installation of the lift prior to obtaining a formal permission, the Commissioner is guilty of applying a “dog in the manger” policy by withholding the permission, which he could not in view of the decision dated June 20, 2019, taken by the Mayor-in-Council of the Corporation long back, on the one hand and insisting that the petitioner is installing the lift without permission, on the other.

It was the incumbent duty of the Commissioner to immediately grant permission to the petitioner pursuant to the decision already taken by the Mayor-in-Council and there lies no further adjudicatory power with the Commissioner within the scheme of the 2006 Act to sit tight over the decision taken by

the Mayor-in-Council in the matter of installation of lift.

As such, WPA 408 of 2019 is allowed, thereby directing the respondent no. 1 to immediately grant permission to the petitioner for installation of the lift at the petitioner's residence, as decided by the Mayor-in-Council of the Siliguri Municipal Corporation on June 20, 2019, latest within one week from date. The impugned notice is quashed and set aside.

However, it is made clear that if the petitioner, even after the grant of such permission, resorts to any violation of deviating from the sanctioned plan in respect of such installation, it will be open to the Commissioner to take necessary steps at that point of time without being influenced by any of the observations made herein.

There will be no order as to costs.

Let photostat certified copies of this order, if applied for, be made available to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)