

12.12.19
Sl.No.02
Ct. No.01
Krishnendu

CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri

C.A.N.1 of 2019
In
M.A.T. 27 of 2019

Subinoy Das
-Vs-
The State of West Bengal & Ors.

Mr. Kushal Chakrabarti

For the Petitioner/Appellant

Mr. Subir Kumar Saha

Mr. Bikramaditya Ghosh

For the State

The present appeal has been preferred assailing an order dated 22nd August, 2019 passed in the writ petition being WPA 329 of 2019.

Shorn of unnecessary details, the facts are that the petitioner/appellant was issued an Electrical Supervisor's Certificate of Competency (in short, the said certificate) in the month of June, 1994 after he emerged to be successful in a written examination and an oral examination. The said certificate was renewed and revalidated from time to time till 29th January, 2017. Subsequent thereto, the appellant attended the office of the competent authority to submit his application for renewal but such application was not accepted since new rules came into force on and from

2nd November, 2017 debarring grant of renewal of certificate when such application for renewal, is not submitted within six months from the date of expiry of the certificate. The appellant accordingly submitted a representation to the competent authority on 22nd March, 2018. As the said representation was not considered, the appellant preferred the writ petition which had been dismissed by an order dated 22nd August, 2019.

Mr. Chakrabarti, learned advocate appearing for the appellant submits that under the old rules, renewal was granted for a period of five years and application submitted for renewal even after one year of expiry of the said certificate was acceptable for consideration subject to payment of an amount of penalty. Such provision has been altered by the new rules which were allegedly notified on 2nd November, 2017 specifically incorporating a bar that no such renewal would be granted in the event renewal application is not submitted within six months from the date of expiry of the said certificate. As the certificate expired on 29th January, 2017, the old rules were applicable in the case of the appellant.

He further argues that it is an impossibility on his part to come to learn about a notification purportedly published in an official gazette unless it is given wide publication. Such notification, which creates an absolute bar towards revalidation in the event the

application for renewal is not submitted within six months of expiry, ought to have been advertised properly in order to bring the same to the notice of the public at large.

Mr. Ghosh, learned advocate appearing for the State submits that admittedly the appellant did not apply for renewal within six months of expiry of the said certificate. Only a representation was submitted by the appellant and that too on 22nd March, 2018. On the date of such application, the new rules have come into force and as such, the same are applicable in respect of the appellant.

He further submits that the appellant cannot be granted premium for the laches on his part to approach the authorities within time and the learned Single Judge, upon considering such issue, has rightly dismissed the writ petition.

A perusal of the order, under appeal, does not reveal that the learned Single Judge was apprised of the old rules. The appellant's claim has been rejected on the basis of new rules which came into effect from 2nd November, 2017. Had the old rules been brought to the notice of the learned Single Judge, the result would have been otherwise. Furthermore, it appears that the learned Single Judge has proceeded on a basis that there was an inordinate delay of about two years on the part of the appellant to approach the competent authority but from the annexures to the writ petition, it

would be evident that the appellant approached the authorities on 22nd March, 2018, i.e., after a period of about one year one month. In view thereof, the order under appeal, in our opinion, is not sustainable.

For the purpose of adjudication of the present matter, the contents of the old rules and the new rules need to be considered.

Under the old rules, rule 22 was as follows :

“Renewal- Certificates of Competency shall be renewed every five years. The fee for renewal shall be Rs.10/- (ten) per annum and shall not be refunded on any account :

Provided that when the application for renewal together with the certificate and the Prescribed is not received before the expiry of the certificate a penalty not exceeding rupees five may at the discretion of the Secretary be charged in addition to the fee for renewal.

Certificates which have been received within one year from the date of expiry shall become invalid and the same can be revalidated in form ‘A’. In such cases of revalidation original registration numbers will be maintained, however, the date of revalidation will be the date of payment of fees therefor.”

Under the new rules, rule 27 runs is as follows :

“Renewal of Certificate of Competency of Supervisors – Certificates of Competency shall be renewed in every ten years and where the same is not revalidated at all even within six months from the date of its expiry, the said license shall be treated as cancelled. The licence shall be deemed to be in suspension from the date of

expiry till revalidation and the same will be treated as invalid on expiry. The fees for renewal shall be such as mentioned in Annexure IV and shall not be refunded on any account.

Provided that where the application for renewal together with the certificate and the prescribed fees has not been received before the date of expiry of such certificate a penalty as mentioned in Annexure IV shall be charged for renewal – revalidation.”

A detailed consideration of the contents of the old rules and the new rules would reveal that there are following differences:

- a) *Under the old rules, a Certificate of Competency was required to be renewed after every five years; whereas under the new rules such certificate is required to be renewed after every ten years;*
- b) *Under the old rules, even in the event, an application for renewal is submitted beyond a period of one year from the date of expiry, the same can be renewed on payment of fees as in the case of fresh application; whereas under the new rules, no application for renewal submitted after six months was acceptable;*
- c) *Under the old rules the period was of five years; whereas under the new rules the period of validity is of ten years.*

In the present case the appellant's certificate expired on 29th January, 2017. On the said date, the old rules were operative and as such in our opinion, the provisions of the old rules ought to have been made applicable in respect of the appellant. The new rules were notified in the official gazette on 12th November, 2017. It is an impossibility for the public at large to come to learn about such notification unless the same is widely published. It is well settled that if publication is through gazette notification and unless the gazette containing the notification is made available to the public, the notification cannot be said to have been duly published [see the judgment delivered in the case of *Collector of Customs vs. Gindal Strips Limited*, reported in 2000(1) CHN 332].

In our opinion, the old rules would be applicable in respect of the appellant which permits acceptance of an application for renewal even after expiry of a period of one year subject to the condition of payment of appropriate fees. It also needs to be taken into consideration that the appellant was granted certificate only after he emerged to be successful in a written examination and an oral examination. On the basis of the said certificate, he earns his source of livelihood. Such right has been sought to be taken away, that too,

applying the provisions of the new rules which totally debar acceptance of application of renewal after a period of six months.

In the said conspectus, we are of the opinion that the appellant's application for renewal along with an amount of Rs.500/-, which is the rate specified under the new rules, should be accepted by the competent authority.

Once the Court holds that the parties are entitled to the relief, it can certainly grant the same instead of relegating the matter to the executive functionary for further consideration [See the judgment delivered in the case of *Government of India & Ors. -vs- B. Anil Kumar & Ors.*, reported in 2010 (4) Supreme 77].

In the above facts and circumstances, the appellant's representation dated 22nd March, 2018 shall be treated to be the application for renewal under the old rules and the respondents shall grant such renewal for a period of five years in terms of the old rules on and from the date of the representation.

The appellant is directed to deposit an amount of Rs.500/- for such renewal and submit the challan towards such deposit along with a copy of the writ petition and a copy of the instant order to the respondent no. 2 within a period of three weeks. Upon receipt of such documents, the respondents

shall grant renewal of the appellant's certificate within a period of three weeks thereafter.

The above order has been passed in the peculiar facts and circumstances of the case and the same shall not be treated as a precedent.

With the above observations and directions the appeal and the connected application, being CAN 1 of 2019, are disposed of.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the learned advocates for the appearing parties upon compliance of all necessary formalities.

(Rajarshi Bharadwaj, J.)

(Tapabrata Chakraborty, J.)