

Court No. 24

21.09.2021

(Item No. 204
& 205)

(AB)

W.P.A 10413 of 2021

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CAN 1 of 2021

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CAN 2 of 2021

(Via Video Conference)

M/S. K. D. Mahanta & Co. & Anr.

vs

The State of West Bengal & Ors.

With

W.P.A 10562 of 2021

M/S. Uday Chakraborty & Ors.

Vs.

Bharat Petroleum Corpn. Ltd. & Ors.

Mr. Tapas Kumar Ghosh

Mr. Tanmoy Chowdhury

..... for the petitioners in WPA 10413 of 2021

Mr. Partha Sarathi Bhattacharyya

Mr. Prosenjit Mukherjee

Ms. Ankita Dey

Mr. Raju Bhattacharyya

... for the petitioners in

WPA 10562 of 2021 and

for respondent Nos. 7 & 8

in WPA 10413 of 2021

Mr. Puspendu Chakraborty

..... for respondent No. 6 in

WPA 10413 of 2021 and

respondent Nos. 1, 2 & 8 BPCL

Mr. Shyamal Pandey

Mr. Somnath Gangopadhyay

... for respondent nos. 10 and 11 in

WPA 10562 of 2021

Mr. Susovan Sengupta

Mrs. Supriya Dubey

Mr. Manas Kumar Sadhu

.....for the State

M/S. K. D. Mahanta & Co. claiming to be a partnership firm in W.P.A. 10413 of 2021 along with one Mahua Mahanta daughter of late Gurudas Mahanta claiming to be the partner of M/S. K. D. Mahanta & Co. challenges the action on the part of

the District Magistrate, Bankura in issuance of memo No. 192/JM dated 18th March, 2021 whereby the Territory Manager (Retail) Rajbandh, Bharat Petroleum Corporation Limited has been requested to continue the supply of MS & HSD to K.D. Mahanta & Co., Bishnupur, Bankura till 31st May, 2021 by lifting the ban on supply of MS & HSD with immediate effect. According to the petitioners the supply ought not to have been restricted only till 31st May, 2021.

By an earlier communication dated 18th February, 2021 the District Magistrate, Bankura requested Subhra Mahanta to submit the current lease document for the land in question (Plot No. 10005, Sabek Plot No. 13956, Mouza – Bishnupur Municipality, J.L. No. 101, P.S. Bishnupur). It was mentioned that for non-submission of lease document, the prayer for renewal of license will not be entertained.

The other writ petition being WPA 10562 of 2021 has been filed by Uday Chakraborty and others claiming themselves to be the landlords and owners of the property in question. The prayer made in the said writ petition is for cancelling the license for running the Petroleum Pump in the name and style of M/S. K. D. Mahanta & Company.

Prayer has been made for a direction upon the District Magistrate, Bankura to take all steps to stop

the business of M/S. K. D. Mahanta and Company and to hand over the peaceful possession of the land in question in their favour.

This Court by an order dated 19.05.2021 passed in W.P.A. 10413 of 2021 directed the Oil Company to continue supply of the oil to the petitioner till 30th June, 2021.

The interim order thereafter stood extended for a period of three months or until further orders whichever is earlier.

Today the matter has appeared in the list for extension of interim order.

At the time of consideration of the prayer of the petitioners in W.P.A. 10413 of 2021 for extension of interim order, submission has been made on behalf of the State respondents that the order dated 18th February, 2021 is an appealable one. Provision of the amendment made in the West Bengal Motor Spirit and High Speed Diesel (Licensing and Regulation of Supply) Order, 2000 published in the Kolkata Gazette Extraordinary on August 13, 2015 has been placed in Court.

In the said amendment Appellate Authority has been mentioned. "Appellate Authority" means the Commissioner of Food, West Bengal against an order passed by the District Magistrate.

By the order dated 18th February, 2021 the District Magistrate opined not to renew the license in the absence of the current lease document for the land in question.

The petitioners in WPA 10413 of 2021 have various reasons as to why the lease document could not be extended. It is not open for the writ court to enter into the facts relating to the extension of the lease document by and between the landlord and the tenant.

In view of the above, writ petition being W.P.A. 10413 of 2021 is disposed of by granting leave to the petitioners to approach the Appellate Authority against the order passed by the District Magistrate, Bankura.

In the event, appeal is preferred before the Appellate Authority within a fortnight from date, the same shall be considered strictly in accordance with law, after giving an opportunity of hearing to all necessary parties, including the petitioners, at the earliest, but positively within a period of eight weeks from the date of filing of the appeal. The Appellate Authority shall pass a reasoned order and communicate the same to all the parties immediately thereafter.

The petitioners and the other interested parties shall be allowed the opportunity to rely upon such

documents which may be required for the purpose of taking a decision in the instant matter.

The Appellate Authority shall consider the prayer of the petitioner for condoning the delay in preferring the appeal as the petitioners had approached the Writ Court on 28th April, 2021 challenging the impugned order.

In Re: **W.P.A. 10562 of 2021**

The prayer of the petitioners in W.P.A. 10562 of 2021 praying for cancellation of license shall also be taken into consideration by the Appellate Authority.

However, it is made clear that the Appellate Authority will not, under any circumstances, enter into the private dispute in between the landlord and the tenant i.e. the petitioners and the private respondents herein. The parties will be at liberty to approach the appropriate Court of law for settling their civil disputes.

In the event, the Appellate Authority opines to reject the prayer of the petitioners for grant of extension of license the said impugned order shall not be given effect to for a fortnight after the date of communication of the said order upon the petitioners in WPA 10413 of 2021. Till such time the interim order passed in the said matter shall continue.

It is made clear that this Court has not entered into the merits of the claim made either by the writ petitioners or the private respondents herein and all points are left open to be decided by the Appellate Authority at the time of consideration of the appeal to be filed by the petitioners in WPA 10413 of 2021.

The Appellate Authority will not be swayed with the extension of the interim order that has been passed for the limited period and will be free to pass any order that commences to the authority as appropriate in the facts and circumstances of the instant case.

The writ petition along with all connected applications stand disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)