

12.07.2021
Item No. 3-4
Crt.No.11
b.r.

MAT 598 of 2021
with
IA No. CAN 1 of 2021, CAN 2 of 2021

Jayasri Banerjee
Vs.
Gautam Saha & Ors.
With
MAT 599 of 2021
With
IA No. CAN 1 of 2021, CAN 2 of 2021
Jayasri Banerjee
-vs-
Gautam Saha & Ors.
(Via video conference)

Mr. Probal Kumar Mukherjee, Sr.Adv.
Mr. Sourav Roy
..... for the Appellant for both the appeals.

Mr. Debasish Ghosh
Mr. Subhajit Roy
..... for the Respondent no.1.

Mr. Ranjit Chatterjee
Mr. Subhrangsu Panda
..... for the K.M.C.

Mr. Jayjit Ganguly
Mr. Arindam Paul
..... For the Responent no.7.

Arguments and counter arguments in these matters have taken several twist and turns. However, at the heart of the matter is the challenge to the order of the Hon'ble Single Bench dated 24th June, 2021 in the writ petition, being W.P.A. 10625 of 2021.

It is submitted that the Hon'ble Single Bench after only hearing the writ petitioners/the private respondents to this appeal and the respondents/Kolkata Municipal

Corporation (KMC) directed the KMC to close down the industrial unit (of the appellant) immediately and forever in the said residential premises and cancel the trade licence and other licence (of the appellant) if any issued by the Kolkata Municipal Corporation immediately and to file a report on the next date at 2 p.m.

Mr. Probal Mukherjee, learned Senior Counsel appearing for the appellant, submits that the appellant is a *bona fide* and subsisting holder of a licence to sell non-food items, including medical gases. The licence of the appellant is supported by a permission under the Drugs and Cosmetics Rules, 1945 (for short the 1945 Rules). On the basis of such licence and permission the appellant was carrying on business of storage of essential non-food items, including oxygen cylinders for medical use. Such storage facility at the premises in issue was meant to supplement the larger storage unit of the appellant, to be accessed only for medical emergencies.

Learned Senior Counsel for the appellant submits that no part of the business was illegal. Such storage activity, including of medical oxygen, was in conformity with Section 435 of the K.M.C. Act, 1980 read with Schedule-V thereof. The attention of this Court is drawn by learned Senior Counsel to Part-II of Schedule-V which, *inter alia*, has as its Head Note :-

“ARTICLES WHICH MAY NOT BE STORED IN ANY PREMISES WITHOUT PERMISSION EXCEPT FOR DOMESTIC PURPOSES.

1.

23. Compound gas, such as oxygen gas, hydrogen gas, nitrogen gas, carbon dioxide gas, sulphur dioxide gas, chlorine gas, acetylene gas, etc.

24.”

Pointing out to Item no.23 under Part-II Schedule-V (*supra*) which includes compound gases such as oxygen, Mr. Mukherjee submits that articles which may not be stored in *any* premises without permission except for domestic purposes, when read in the converse would also mean articles *including* compound gases such as oxygen which *may* be stored in *any* premises *with permission* and, such storage *may* not be for domestic purposes. Learned Senior Counsel argues that the appellant holds all necessary licences connected to the alleged hazardous activity carried on by the appellant at the premises in issue which are in conformity with Section 435 of Chapter-XXV of the K.M.C. Act, 1980.

Summing up his arguments, Mr. Mukherjee submits that the order impugned of the Hon’ble Single Bench is drastic. Merely acting on a writ petition of the private respondent to this appeal, who claims to be one of the residents of the premises in issue, the Hon’ble Single Bench ignored all licences of the appellant and directed closure of the business of the appellant *immediately and forever* without giving the appellant the opportunity of being heard. Learned Senior Counsel therefore seeks a reversal of the order impugned.

Mr. Ranajit Chatterjee, learned Counsel for the *K.M.C.*, takes this Court back to a situation *qua* the statutory provisions contained in the KMC Act, 1980 wherein and whereunder the *K.M.C.* is required to be satisfied regarding the sanction of a building plan prior to permitting an alleged hazardous activity by grant of a municipal licence for operating on and from the said premises. It is, to the mind of this Court, an argument of convenience since the rider follows that, at this stage, the sanction plan is not readily available with the records of the *K.M.C.*

To the further mind of this Court the argument of the *K.M.C.* is required to be answered with the presumption that when the Municipal Licence in favour of the appellant was granted and renewed, all associated aspects, including the sanction of the building plan for a particular purpose under Sections 396, 420 etc. of the KMC Act, 1920 ought to have been in place. Therefore, this Court is not stretched to enter into aspects connected to building plan as submitted by Mr. Chatterjee on the validity of the fact that the Municipal Licence of the appellant was granted, renewed and never revoked till the order impugned of the Hon'ble Single Bench.

Mr. Debasish Ghosh, learned Counsel, appears for the writ petitioner/the private respondent to this appeal and submits that whatever be the legal stand taken by

learned Senior Counsel for the appellant, it is an admitted position that oxygen cylinders are stored in bulk and such bulk storage as well as transportation has the potential of causing hazard at any time.

Mr. Ghosh places particular reliance on Section 420 of the K.M.C. Act, 1980 submitting that the nature of the business carried on by the appellant would be clearly hit by the conditions specified in Section 420 (*supra*).

Mr. Jayjit Ganguly, learned Counsel appearing for the private respondents to this appeal, adopts the stand of the appellant.

Having heard the parties and considering the materials placed, this Court is *ad idem* with the stand taken by learned Counsel for the appellant that the order impugned of the Hon'ble Single Bench suspending the business of the appellant *immediately and forever* is drastic and the further direction to cancel the trade licence and other licence, if any, issued by the *K.M.C.* is equally injurious to the appellant's constitutional rights to livelihood and trade of choice.

Furthermore, this Court is of the view that the issue raised before the Hon'ble Single Bench being related only to the supply and storage of oxygen cylinders and, does not cover such other non-food items covered by the Licence granted by the *KMC*, the present appellant is entitled to the extent of protection as granted by the directions *issued* above.

This Court also cannot be in agreement with the order of the Hon'ble Single Bench that notwithstanding the extent of prejudice complained of by the writ petitioner, an order of deprivation of livelihood and trade could be passed without granting or affording an opportunity to the affected party of being heard.

In the light of the above discussion, the portion of the order of the Hon'ble Single Bench cancelling the Municipal Licence of the appellant *immediately and forever* is struck down.

The appellant shall now be entitled to do business on the strength of such Licence from the premises in issue covering all other non-food items under the Licence except, in respect of supply and storage of oxygen cylinders for which this Court intends to issue certain further directions as recorded below.

Accordingly, the *K.M.C.* and local police shall forthwith de-seal the said premises of the appellant and restore the *status quo ante* as prevailing prior to the passing of the order impugned dated 24th June, 2021 except, the supply and storage of oxygen cylinders.

However, since certain questions of facts pertaining to the activity of supply and storage of oxygen cylinders in the premises in issue appears to be at the root of the problem, only on the limited issue of the entitlement of the appellant to carry on its business of supply and storage of oxygen cylinders from the premises in issue,

the Commissioner, K.M.C. shall hear out all the parties and pass a reasoned order not later than a period of two weeks from the date of communication of this order.

It is made clear that the hearing to be conducted by the Commissioner, K.M.C. is restricted to the activity of supply and storage of oxygen cylinders on and from the said premises but, does not affect the right of the appellant, subject to the Licence, to carry on such other business as permitted by the Licence on and from the said premises.

Since the appeal and the application have been exhaustively heard on the admitted materials placed before this Court, it is not necessary to invite affidavits and all allegations contrary thereto are deemed to be denied and disputed.

The appellant is directed to implead the Commissioner, K.M.C. as a party respondent to this appeal by amending the cause title of this appeal forthwith through her Advocate-on-Record.

Needless to add, in view of above discussion, the prayer for leave to appeal made in both the applications numbered as **CAN 1 of 2021 in MAT 598 of 2021** and **MAT 599 of 2021** stand **allowed**.

In view of the order passed in MAT 598 of 2021 the report filed by the Licence Officer dated 25.06.2021, as referred to in the order dated 25.06.2021 passed by the Hon'ble Single Bench, cannot stand. Consequently the

order dated 25.06.2021 of the Hon'ble Single Bench including the said report stand set aside.

MAT 598 of 2021 with CAN 2 of 2021 and MAT 599 of 2021 with CAN 2 of 2021 are accordingly **disposed of.**

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

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

(Saugata Bhattacharyya, J.)

(Subrata Talukdar, J.)