

S/L 9
03.08.2021
Court. No. 19
GB

W.P.A. 11214 of 2021

Club Bonviveur & Ors.
VS
The Barasat Municipality & Ors.

(Through Video Conference)

Mr. Srijib Chakrobarty,
Mr. Suvraneel Saha.

...for the Petitioners.

Mr. Syed Aejaaz,
Mr. Sankar Ghosh.

...for the Respondent nos.1 to 3.

The petitioners are the trustees, who are aggrieved by the rejection of their application for a certificate of enlistment. The petitioners applied for a provisional certificate of enlistment/trade licence for running the business of club under the name and style of “CLUB BONVIVEUR”. The petitioners formed a trust by a registered a trust deed dated August 6, 2020 for the purpose of running the club. The club is a non-profitable, non-commercial, non-political, public charitable trust as per the deed. The Chairperson, Board of Administrators, Barasat Municipality by an order dated February 10, 2021 rejected the application for enlistment, as according to the Chairperson, the club did not come within the ambit of Schedule-1(3) of Section 118 of the West Bengal Municipal Act, 1993.

Mr. Chakrobarty, learned advocate appearing on behalf of the petitioners contends that the Chairperson is not

the authority to issue the order. That the municipal authorities do not have any right to probe into the legality/nature of the trust and deny the trade licence or the enlistment. It is further submitted that the profits of the club would be channelised for charitable purpose. Finally, it is urged that the municipal authority is bound by law to issue trade licence and certificates of enlistment for any business in terms of Section 118 of the West Bengal Municipal Act, 1993.

Mr. Aejaaz, learned advocate appearing on behalf of the Barasat Municipality submits that the trust deed does not reflect the objects. The nature of public charity has not been mentioned. That there are no indications in the trust deed that the club would be used for charitable purpose. That the trust deed was defective and the trust was formed only for the purpose of evading tax. However, he admits that the Chairperson, Board of Administrators, Barasat Municipality is not the authority to pass the order of rejection. According to Mr. Aejaaz the Executive Officer of the Municipality is the appropriate authority.

Having heard the rival contentions of the parties, this Court is of the opinion that the order dated February 10, 2021 should be set aside on the ground of lack of jurisdiction as also on the ground that the same is not a speaking order.

The writ petition is disposed of.

The order dated February 10, 2021 is set aside.

The appropriate authority of the municipality shall decide the issues raised by the petitioners in accordance with law upon giving an opportunity of hearing to the petitioners and on perusal of the documents that may be submitted by the petitioners in support of their contentions. A reasoned order shall be passed and communicated to the petitioners.

The entire exercise shall be completed within a period of six weeks from date of communication of this order.

This Court has not decided the merits of the matter. The appropriate authority shall deal with the issue independently and in accordance with law.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)