

04.08.2021.

WPA 11888 of 2021

Inderjit Malhotra and Ors.
Vs
Kolkata Municipal Corporation & Ors.

Mr. Debangshu Dinda
... For the Petitioners.

Mr. Sanjay Kr. Baid.
Mr. Micky Chowdhury
... For the Respondent No. 5.

The petitioners have prayed that the respondent no. 3 has granted the certificate of enlistment illegally to Kolkata Nursing Training Institute in the name of Raj Malhotra and Kamal Kumar Jindal. The petitioners claim to be the heirs of Raj Malhotra. It is contended that the certificate of enlistment was given on June 24, 2021. Although Raj Malhotra expired sometime in the year 2020. It is further submitted by the petitioners that once the partnership has been dissolved on the death of one of the partners that is Raj Malhotra, the certificate of enlistment should not be granted in favour of the Nursing Institute.

Mr. Baid, learned Advocate appearing on behalf of the respondent no. 5, the surviving partner, submits that raising controversy with regard to the continuation of the partnership firm and the nursing institute the petitioners filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before this court.

The said application was registered as AP/194/2021. The petitioner prayed for an injunction restraining the respondent no. 5 from continuing with the institute. This court refused the injunction and the following order was passed :-

“Upon hearing learned counsel, there appears to be certain differences which have arisen between the surviving heirs of the deceased partner and the remaining partner in the firm. Since the Institute is a running enterprise and involves the fate of a large number of trainees who are yet to be complete the course, this Court is not inclined to pass any orders which would affect the running of the Institute at this stage. However, the petitioners, as the surviving legal heirs of the deceased partner who were admittedly in charge of the continuing operations of the Institute, cannot be totally excluded from access to certain basic information concerning the running of the Institute. The distribution of assets etc. can be adjudicated in the arbitration proceedings pending which the petitioners should be given measure of relief in the form of appointment of a fit person as Receiver for maintaining records of the accounts of the business of the Partnership Firm post 28th October, 2020, which is the date of death of the deceased partner, Raj Malhotra.

The Receiver should restrict his work only to keeping all accounts of the business and nothing else. Mr. Tanmay Mukherjee of the Bar Association Room No. 11 is appointed as Receiver with a remuneration of Rs. 50,000/- at the first instance which is to be borne by the petitioners. The Special Officer will be provided secretarial assistance, if required, the cost of which shall also be borne by the petitioners. This order shall remain till affidavits are filed by the parties or any other orders passed by this Court whichever is earlier. Let Affidavit-in-Opposition be filed within four weeks from date, Affidavit-in-Reply be filed within one week thereafter.

Let this matter after five weeks.

Supplementary affidavit filed by the petitioners is taken on record.”

This Court was of the opinion that an injunction should not be granted restraining the respondent no. 5 from running the institute. The future of several students undergoing the course who had invested a lot of money could not be jeopardized by stopping the institute completely. The Court was of the opinion that the distribution of the assets of the firm shall be adjudicated in the arbitration proceedings pending and a receiver was appointed for maintaining the accounts.

It is submitted by the respondent no. 5 that the receiver has already held meetings. Thus, the question of interference with the running of the business/training institute has already been decided by the appropriate forum. The contention that the Kolkata Municipal Corporation ought not to have issued the certificate of enlistment in the name of the deceased partner has to be raised before the competent authority of the corporation. The said authority of the corporation shall consider the issue raised by the petitioners in accordance with law.

As there is already an order of this Court that the business cannot be stopped, the Kolkata Municipal Corporation shall find out a way so as to ensure that a certificate of enlistment is issued in such a form and manner that the institute can continue to operate. The petitioner shall file a representation before the licensing officer of the KMC, who shall consider the representation

of the petitioners and dispose of the same in accordance with law, upon affording an opportunity to the parties to place their cases.

The entire exercise shall be completed within 8 weeks from date of communication of this order.

The writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)