

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

CAN 1 of 2021
in
WPA 17141 of 2021

Kanti Ranjan Das
Vs.
Kolkata Metropolitan Development Authority & Ors.

Mr. Satyajit Talukdar
... For the applicant/KMDA

Mr. Biswabrata Basu Mallick
... For the petitioner

In re: CAN 1 of 2021

Affidavit of service filed in Court today is taken
on record.

This is an application made by Kolkata
Metropolitan Development Authority (in short “KMDA”)
for modification of the order dated 16th November, 2021.
The operative part of the said order is as follows:-

“It appears that the appeal has not yet been
disposed of by the said Vice-Chairman of KMDA,
being the respondent no.5 in the instant writ
petition.

The respondent no.5 is therefor directed to
hear out the appeal and decide the same by a
reasoned order within a period of four weeks from
date after affording the petitioner a reasonable
opportunity of hearing in accordance with the
prevailing Covid-19 protocol.

The respondent no.5 shall immediately upon passing of the order in the petitioner's appeal shall communicate the same to the petitioner.

The Appellate Authority shall be free to decide all issues involved in the appeal independently and without being any way influenced by the instant order since I have not gone into the merits of the matter.

All other reliefs in the writ petition are not considered and the petitioner shall free to claim such reliefs in appropriate proceedings.”

It is submitted on behalf of the applicant (KMDA) that under the Regulation 88 of the Kolkata Metropolitan Development Authority (Service) Regulations, 1975 (hereinafter referred to as the “1975 Regulations”), the Disciplinary Authorities are named by designation. Any appeal from an order of such designated disciplinary authority has to be made before a specific Appellate Authority spelt out under the 1975 Regulations. In the instant case, the Disciplinary Authority was the Secretary and, as such, the statutory appeal in view of the provisions of Regulation 88 will go before the Vice-Chairman. The writ petitioner had filed a statutory appeal on 8th April, 2021, which was pending on 16th November, 2021 when the order was made. In such circumstances, this Court directed the Vice-Chairman to dispose of the petitioner's pending statutory appeal within a period of four weeks from 16th November, 2021.

At the time when the order was passed, on behalf of KMDA it was not pointed out to this Court that the Board of KMDA had, by that time, become non-functional and the post of Vice-Chairman was also lying vacant. It is now submitted by KMDA that unless the Board is constituted, no appointment of Vice-Chairman can be made. The election of Kolkata Municipal Corporation has just ended and unless the Mayor is elected, the Board of KMDA cannot be constituted as the Mayor is the Ex-Officio Member of the Board of KMDA.

The modification application has been filed only on 6th December, 2021 after lapse of two weeks' time out of the four week' time period granted for disposing of the appeal in terms of the order dated 16th November, 2021. KMDA has, by its act and conduct, burdened this Court to revisit the order dated 16th November, 2021 by not pointing out to the Court the correct state of affairs.

This action on the part of an authority under Article 12 of the Constitution of India is not appreciated. However, keeping in mind the hardship that may be faced by the writ petitioner due to impasse created by KMDA, the Chairman of KMDA is directed to dispose of the petitioner's appeal within a period of three weeks from date on the same terms and conditions as in the order dated 16th November, 2021.

The order dated 16th November, 2021 is modified only to the extent as aforesaid.

The instant order shall be read with in consonance with the order dated 16th November, 2021.

Nothing further remains to be adjudicated in this modification application. The same is disposed of accordingly without any order as to costs.

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

(Arindam Mukherjee, J.)