

OD - 4

ORDER SHEET

WPO 453 of 2020

IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

SOMA BANERJEE  
VS.  
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:  
The Hon'ble JUSTICE AMRITA SINHA  
Date: 29<sup>th</sup> January, 2021.

Appearance:

*Mr. Raja Basu Chowdhury, Adv.*  
*Mr. Suman Dutta, Adv.*  
*Ms. Dipika Basu, Adv.*  
*... for the petitioner*

*Mr. Suvasish Sengupta, Adv.*  
*... Administrator*

*Mr. Achintya Kumar Banerjee, Adv.*  
*Ms. Manisha Nath, Adv.*  
*... for KMC*

*Mr. Priyankar Saha, Adv.*  
*Mr. Aditya Mondal, Adv.*  
*Mr. Saptarshi Kumar Mal, Adv.*  
*... for the respondent no.4*

*Mr. Suman Dutt, Adv.*  
*Mr. Niladri Khanra, Adv.*  
*... for the respondent nos.5 to 9*

The Court : The petitioner claims to be the wife of one Rajib Deb, since deceased. The said Rajib Deb was a businessman and he was a member of a partnership business where he had 50 percent share.

A Certificate of Enlistment was issued in favour of the said Rajib Deb along with one Monotosh Saha, who happens to be the other 50 percent

shareholder of the partnership business. Rajib Deb expired on 26<sup>th</sup> June, 2015. The Certificate of Enlistment was in respect of businesses including M/s. Super Fried Chicken (The Bhoj) and New Super Guest House.

The allegation of the petitioner, at this stage, is that after the death of Rajib Deb, the Kolkata Municipal Corporation has incorporated the name of one Oyendrilla Deb, who claims to be the daughter of deceased Rajib Deb, in the Certificate of Enlistment.

According to the petitioner, she being the wife of the deceased is entitled to a share in respect of the business of the deceased. The Corporation ought to have incorporated her name, in the Certificate of Enlistment, on the death of the said Rajib Deb who was a 50 percent shareholder of the aforesaid businesses.

It appears that a Testamentary Suit has been filed in this Court which is pending adjudication. The Court had appointed an Administrator *pendente lite* to look after the property of the deceased. Orders have been passed from time to time in the said probate proceeding wherein the Administrator has been directed to ensure that there is no change in the nature and character of the business, save that is required in usual course of operating the business. The Administrator has been directed to visit the business in question once in a month and put his signature in the books maintained by the partnership firm. The direction has also been passed for engaging a Chartered Accountant for the purpose of maintenance of the books of accounts.

The issue in this petition is primarily challenging the issuance of the Certificate of Enlistment by the Kolkata Municipal Corporation by which the name of Oyendrilla Deb has been incorporated. It appears that the petitioner through her learned advocate has made a representation before the Kolkata Municipal Corporation highlighting certain illegalities which have been alleged to be committed by the Corporation at the time of issuance of the Certificate of Enlistment.

The learned advocates appearing on behalf of the private respondents vociferously oppose the contention of the petitioner. It has been submitted that there is a probate proceeding pending in Court and the petitioner being unsuccessful in obtaining orders thereunder has approached the Writ Court with the sole intention of entering into the business of the deceased.

Learned advocate appearing for the Kolkata Municipal Corporation submits, upon instruction, that the Certificate of Enlistment was issued relying upon the documents which were placed by the parties before the Corporation.

Section 199 of the Kolkata Municipal Corporation Act, 1980 contains the provision for issuance of Certificate of Enlistment of profession, trade or calling. The provision of law which was prevailing at the time of issuance of the said Certificate of Enlistment mentions that every person engaged or intending to be engaged in profession, trade or calling in Kolkata as mentioned in Schedule IV, either by himself or by an agent or representative, shall obtain a Certificate of Enlistment or get the same

renewed annually, as the case may be, from the Municipal Commissioner upon presentation of an application in such form as may be specified by the Municipal Commissioner together with such application fee.

In the instant case, a business is admittedly being carried on from the premises in question. The existing partner along with the respondent no.4 made an application, supported by documents, for issuance of the Certificate of Enlistment in their names. There was no representation on behalf of the petitioner at that point of time when the Certificate of Enlistment was originally issued in the name of the respondent no.4 and the respondent no.5. Presently, the petitioner has raised certain issues with regard to fraud which has been committed at the time of issuance of the said Certificate of Enlistment. The petitioner has not yet filed a formal application before the Kolkata Municipal Corporation highlighting the fraud which has been alleged to have been committed. A mere demand of justice from the learned advocate has been forwarded to the Kolkata Municipal Corporation.

If the petitioner is at all aggrieved by any action of the Corporation, then a formal application along with supporting documents is required to be filed before the Corporation for them to act on it. In the absence of the same, the Writ Court ought not to enter into the dispute at this stage. The petitioner will be at liberty to approach before the Kolkata Municipal Corporation along with supporting documents with regard to the allegation of fraud which has been alleged to have been committed at the time of issuance of the Certificate of Enlistment in the name of Oyendrilla Deb and

another. If such an application is made before the Corporation, the same shall be looked into, strictly in accordance with law, within twelve weeks from the date of making such application. No further order is required to be passed in the instant Writ Petition.

While deciding the issue, the Corporation shall afford an opportunity of hearing to the petitioner and all other necessary parties to arrive at a decision. It is made clear that the Corporation shall restrict the enquiry with regard to 50 percent share of the deceased Rajib Deb only and not with regard to the balance 50 percent share standing in the name of Monotosh Saha.

WPO 453 of 2020 is disposed of accordingly.

As the Writ Petition is disposed of without calling for any affidavit, the allegations made in the instant Writ Petition are deemed not to have been admitted by the respondents.

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

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

(AMRITA SINHA, J.)