

27.03.2023
Item No.07
Court No.32
Avijit Mitra

FMA 28 of 2023
with
IA No.CAN 1 of 2019 (Old No.CAN 6291 of 2019)

Mahadev Mondal
- Versus -
The State of West Bengal & ors.

Mr. Achin Kumar Majumder
...for the appellant

The present appeal has been preferred challenging an order dated 28th March, 2019 passed in a writ petition being WP No.5151 (W) of 2019. By the said order, the learned Court directed that *‘it would be appropriate to dismiss the writ petition with terms being imposed upon the writ petitioner. The writ petition will pay costs assessed at Rs. 1,00,000/- (Rupees One Lakh Only) to the West Bengal State Legal Services Authority, Kolkata within a period of a fortnight from date’*. In the said order it was further observed that *‘in the event, the writ petitioner approaches the authority for grant of fresh license or seeks to prefer an appeal from the orders of rejection, if he is are so entitled to do, then the authority considering the application for grant of fresh license or the appellate authority, considering the appeal, as the case may be, will consider the same provided the petitioner is*

able to produce documentary evidence establishing compliance with this order’.

Mr. Majumder, learned advocate appearing for the appellant submits that the learned Court imposed costs as it was alleged on behalf of the respondents that the appellant/petitioner had suppressed the fact that his application for grant of Country Spirit ‘Off’ &/or ‘On’ license or F.L ‘OFF” Shop license (hereinafter referred to as the said license) at village Charghat was rejected at least twice earlier.

Mr. Majumder contends that there was no suppression of any material fact in the writ petition. From the contents of the appellant’s representation dated 1st March, 2016 annexed at page 56 of the stay application it would be explicit that the appellant applied for the said license at village Charghat and such prayer was rejected by an order 4th November, 2015. The said document was a part of the writ petition. Upon obtaining a provisional certificate of trade from Charghat Gram Panchayat, the appellant again renewed his prayer by submitting fresh representations but such prayer for grant of licence was not considered and as such he was constrained to prefer the writ petition praying for issuance of necessary direction upon the respondents to grant the said license at village Charghat.

He further submits that in course of hearing of the writ petition, the respondents produced a memo dated

22nd August, 2013 but the same was pertaining to grant of license at a different place (village – Panchita) and such fact had no relevance as regards the appellant’s prayer in the writ petition. The Court was not apprised of such facts since the learned advocate of the appellant was absent on the date of hearing.

Records reveal that by an earlier order dated 5th December, 2022 this Court directed the respondents to file their affidavit-in-opposition.

Today, no one appears on behalf of the respondents and no affidavit-in-opposition has been filed.

We have gone through the averments made in the writ petition as well as the documents annexed to the writ petition and the memo dated 22nd August, 2013. The fact of earlier refusal of the appellant’s prayer for grant of license at village Charghat was disclosed in the appellant’s representation dated 1st March, 2016. The memo dated 22nd August, 2013, produced in course of hearing of the writ petition, pertains to grant of license at a different place (village – Panchita). It also appears that the appellant’s learned advocate was absent on the date of hearing. Had such facts been brought to the notice of the Court, the order would have been otherwise. For the laches on the part of the learned advocate, the appellant cannot suffer.

Costs are at the discretion of the Court and such power to impose costs is an extra ordinary power and is

to be used in extra ordinary circumstances. The conduct of the appellant does not on the whole warrant to castigate him as an unscrupulous litigant and no want of *bona fide* is imputable to the appellant.

In view thereof, the order dated 28th March, 2019 impugned in the present appeal is set aside.

It is made clear that in the event, the appellant approaches the authority for grant of fresh license or seeks to prefer an appeal from the order of rejection, then the authority considering the application for grant of fresh license or the appellate authority, considering the appeal, as the case may be, shall take a decision and communicate the same to the appellant.

The appeal and the connected application are, accordingly, disposed of.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)