

W.P.A. 8049 of 2012

**National Engineering Industries
Limited & Anr.**

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Siddhartha Banerjee

Mr. Suchayan Banerjee

Mr. S.K. Banerjee

....for the petitioner

Mr. Achintya Banerjee

Mr. Swapan Kr. Debnath

...for the KMC

The writ petition is heard in presence of the learned advocates representing the petitioners and Kolkata Municipal Corporation being the principal respondent.

Subject matter of challenge in this writ petition is demand notices dated 7th March, 2011 as well as demand notices dated 23rd November, 2011 whereby the Deputy Licence Officer (Cossipore Unit), Kolkata Municipal Corporation demanded payment of charges from the petitioners under several heads as indicated in those notices.

The case boils down to the fact that petitioner no. 1 is manufacturing unit producing rubber goods and for functioning of such manufacturing unit with effect from 1983-1984 onwards Kolkata Municipal Corporation issued trade licence which was renewed from time to time. It has also been contended on behalf of the petitioners that for running such manufacturing unit in the name and style of National Engineering Industries Limited regularly charges

as per demand of the Kolkata Municipal Corporation have been paid by the management of such manufacturing unit. Dispute arose after issuance of first demand notice dated 7th March, 2011 whereby concerned authority of Kolkata Municipal Corporation by treating one canteen run by the management of the said manufacturing unit as a separate unit levied certain charges including the charge as contemplated under Section 421 of the Kolkata Municipal Corporation Act, 1980.

Question arises for consideration whether the canteen which is being run by the management of the said manufacturing unit is to be treated as part and parcel of the manufacturing unit for providing food and beverages to the staff of the said manufacturing unit or this is an independent canteen which has been set up by the management of the manufacturing unit for selling food to the public in general with a commercial purpose.

It has been specifically averred in paragraph 17 onwards in the writ petition that the said canteen has been set up exclusively to serve food to the workers of the said manufacturing unit. Accordingly, the case has been made out by the petitioners that treating the said canteen attached to the manufacturing unit as separate unit in consonance with Section 421 of the Kolkata Municipal Corporation Act, 1980 such demand as emanates from the impugned demand notices cannot be raised thereby

compelling the management of such manufacturing unit to satisfy the demand of the Kolkata Municipal Corporation.

Mr. Achintya Banerjee, learned advocate representing the Kolkata Municipal Corporation being the principal respondent submits that the facts of this case attracts application of Section 421 read with Section 425 of the Kolkata Municipal Corporation Act, 1980. It has been argued that the food is not merely provided to the workers of the said manufacturing unit on the contrary the food stuff is being sold out to the public in general with commercial purpose. Statements have been made in paragraph 10 of the affidavit-in-opposition to explain the position that in consonance with the stand taken by the Kolkata Municipal Corporation factory, canteen, godown and office of such manufacturing unit are being run separately; therefore requires compliance of Section 421. Accordingly, it has been submitted that there is no error in issuing such demand notices as aforesaid which are impugned in this present writ petition and the management of the manufacturing unit is obliged to make payment in terms of such demand notices.

Having considered the submissions made on behalf of the respective parties this Court is required to consider contour of Section 421 of the Kolkata Municipal Corporation Act, 1980. For better understanding of such relevant provision which has been relied upon on behalf of

Kolkata Municipal Corporation this Court finds it necessary to quote Section 421 below:

“421. Eating houses, etc., not to be established without permission.-

- (1) No permission shall, without the written permission of the Municipal Commissioner or otherwise than in conformity with the conditions, if any, of such permission, use, or permit to be used, or materially alter, enlarge, or extend the use of, any premises for the purpose of establishing or keeping open an eating house, hotel, boarding houses, tea shop, coffee house, cafe, restaurant, refreshment room, snack shop, snack bar, sweet meat shop, liquor house, tavern, wine shop, beer shop, spirit shop, arrack shop, toddy shop, ganja shop, bhang shop, opium shop, tobacco shop, bidi shop, cigarette shop, zarda shop, betel shop or betel leaf masalla shop or for the purpose of sale of dab or dab water or any place, where the public are admitted for repose or consumption of any food or drink or where food is sold or is prepared for sale for any such purpose, or any premises let out to any person for performance of any sacred thread, marriage, annaprasan or sradh ceremony or marriage or death anniversary or similar other ceremony:

Provided that no such permission shall be granted in contravention of the provisions of section 425.

- (2) The Municipal Commissioner may at any time cancel or suspend any permission under sub-section (1), if he is of the opinion that the premises covered by such permission are not kept in conformity with the conditions of such permission or the provisions of any rules or regulations made in this behalf, whether the person is prosecuted under this Act or not.”

On consideration of the aforesaid provisions it appears that the management of the canteen or eatery is required to pay the charges in terms of the provisions of the Kolkata Municipal Corporation Act, 1980 if such canteen or eatery is run with a commercial purpose and selling food stuff to the public in general.

In the present case, there is nothing on record which goes to show that the management of manufacturing unit set up the canteen for other purposes in addition to provide food to the workers of such manufacturing unit. It has been submitted on behalf of Kolkata Municipal Corporation that on making inspection it has been found that the canteen of such manufacturing unit was used for commercial purposes. However, on making query nothing comes out which corroborates the submissions made on behalf of the Kolkata Municipal Corporation that the canteen attached to the manufacturing unit is being run for commercial purposes. A mere statement at the bar with regard to the mode of user of canteen justifying the demand as made by issuing impugned notices cannot be countenanced.

In aforesaid conspectus the demand notices issued by the concerned authority of Kolkata Municipal Corporation dated 7th March, 2011 and subsequent notices dated 23rd November, 2011 which are confined to the demand made by the Corporation relating to the canteen attached to the said manufacturing unit stand set aside.

However, this order shall not preclude the concerned authority of Kolkata Municipal Corporation to levy necessary charges for running the canteen which is attached to the manufacturing unit in accordance with law.

With the above observations and directions the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)