

Ml- 04.05.2023
238 Ct.15
rkd

W.P.A. 25533 of 2014
(IA NO: CAN 1/2015 (Old No: CAN 10653/2015))

Satyabrata Pal
-vs-
State of West Bengal & Ors.

Mr. Dwaipayan Sengupta,
Mr. Ravi Kumar Dubey

....for the petitioner.

Mir Anuruzzaman

....for the Rajpur Sonarpur Municipality.

The decision has been taken by Rajpur Sonarpur Municipality (hereinafter referred to as the “said Municipality”) dated 29th May, 2014 based on building plan submitted by the petitioner, namely, Satyabrata Pal, Secretary, Sonarpur Club Samannya Sammilani, which is subject matter of challenge in the present writ petition. Three grounds have been assigned to reject the building plan submitted by the petitioner which are quoted below:

“(a) Rule 45(2) and Rule 49 of the West Bengal Municipal (Building) Rules, 2007 with regard to requirement of minimum width of means of access in respect of a new building.

(b) The ingress and engress (sic) of the said hospital i.e. approach road to the said hospital has been shown from the land of the Railway Department without any no-objection form the

appropriate authority of the Railway Department.

(c) Details of number of beds, type of hospital, details of type of treatment, number of beds arrangement in the room, Number of operation theatre, number of male ward, number of female ward etc. has not been shown in the application for sanction of a building plan.

The Board of Councillors further decided that in the event the petitioner, Sri Satyabrata Pal, Secretary, Sonarpur Club Samannay Sammilani submit the building plan in accordance with the law, the said building plan will be considered as early as possible in accordance with the law.”

The learned advocate representing the petitioner submits that absence of “no objection” from the Railway Department which has been raised under ground no.(b) while refusing the application of the petitioner for sanctioning building plan is not required.

Having perused aforesaid three grounds on which application of the petitioner for sanctioning building plan has been rejected, this Court is at a loss how number of beds, type of hospital, details of type of treatment, beds arrangement in the room and number of operation theatre would be relevant

consideration for sanctioning building plan as prayed for by the petitioner for construction of hospital. The learned advocate of the municipality is also unable to point out any statutory provision which empowers municipality to examine these parameters.

On perusal of aforesaid ground (c) it seems that Court is considering the objection of Medical Regulatory Body. Since petitioner has approached the municipality for sanction of building plan in order to house a hospital the plan is required to be considered taking into consideration whether the authority of the upcoming hospital can be permitted to construct in terms of the submitted plan in order to house such hospital. Therefore, the details which have been narrated in ground (c) does not appear to be germane in dealing with application of the petitioner for according sanctioned plan.

However, it appears that there is substance in the contention raised under ground (b) by the Municipality wherein it has been stated that the approach road which would connect the hospital with the outside falls within the jurisdiction of Railway Department and “no objection” till date has not been granted by the Railway Department. This

appears to be relevant consideration in the matter of sanctioning plan by the Municipality in order to house a hospital as prayed for by the petitioner.

Until and unless such “no objection” from Railway Department is obtained consideration of the application for sanction of building plan for housing the hospital is not possible.

Accordingly, the petitioner is granted leave to approach the concerned authority of Railway Department for obtaining “no objection”. If such “no objection” is granted by the Railway Authority it will be open to the petitioner to approach the Municipality for sanction of building plan in order to house the proposed hospital.

If petitioner approaches the Municipality with “no objection” of the Railway Department seeking sanction of building plan the same shall be considered by the Municipality in accordance with law.

In absence of “no objection” from Railway Department, this Court is not expressing its view on the validity of the ground for refusal as contained under ground (a) of the impugned order dated 29th May, 2014 since such consideration at present would be an academic exercise though this Court is inclined to express its view on ground (c)

since same appears to be ex facie bad.

With the aforesaid observations and direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)