

02
19.09.2023
mb/TN

High Court at Calcutta
In the Circuit Bench at Jalpaiguri

MAT 151 of 2023
IA No: CAN 1 of 2023

Sanjeeb Saha and another
-Vs.-
Papiya Saha and others

Mr. Bikramaditya Ghosh,
Ms. Supriya Singh
...for the appellants

Mr. Kishore Dutta,
Mr. Avrojoyti Das,
Mr. Kushal Chatterjee,
Ms. Pratusha Dutta Chowdhury,
Mr. Rajdeep Das
....for the respondent no.1

Mr. Subir Kumar Saha,
Ms. Bedashruti Bose
....for the State

Mr. Raja Saha,
Mr. Subham Chanda
....for the SJDA

Mr. Deborshi Dhar
....for the Siliguri
Municipal Corporation

- 1.** On consent of parties, the appeal and application are taken up for hearing together.
- 2.** The present stay application has been filed in connection with an appeal which has been preferred against two successive orders dated August 21, 2023 and August 22 of 2023 passed in W.P.A No. 704 of 2023.

3. By the first order, the police was directed to close the concerned guest house, which was being run by the present appellants and to report back the matter the next date. In the next order, it was recorded that a report had been submitted. The learned Trial Judge further went on to observe that the guest house shall not be opened until further order is given by the writ court.
4. Learned counsel for the appellants argues that the premise of the impugned orders was that the licence for running the petitioners' guest house was issued in the name of dead persons. However, it is argued that there were several previous rounds of litigation, which ultimately culminated in an order dated June 08, 2023 passed by a learned Single Judge in W.P.A. No. 1196 of 2021.
5. In the said order, it was observed, *inter alia*, by the learned Single Judge that admittedly on March 31, 2020, the Siliguri Municipal Corporation had issued licence in the joint names of Namita Saha, Surja Saha, Subodh Saha and Uttam Saha but not in the name of

Sanjeeb Saha, though Sanjeeb Saha had made an application for grant of licence in terms of the deed of partnership dated April 01, 2017. The said deed of partnership, apparently, was a deed of reconstitution of partnership, whereby the present appellants became the partners of the firm.

6. The learned Single Judge went on to observe that Sanjeeb Saha, who was one of the partners, had applied for grant of licence but the Corporation in a routine manner had issued the licence in the name of four persons named therein without considering the application filed by the petitioners and, as such, it cannot be said that only the petitioners are responsible for the licence being issued by the Corporation in the name of dead persons.
7. In such view of the matter, the order impugned before the learned Single Judge, whereby the licence was cancelled, was set aside. The Commissioner, Siliguri Municipal Corporation was directed to consider the case of the petitioners afresh in terms of the application filed by

Sanjeeb Saha on the dates as mentioned therein. The said exercise has not yet been completed, it is argued, although all the relevant papers are lying with the Siliguri Municipal Corporation.

8. It is argued that such aspect of the matter was never considered by the learned Single Judge while passing the impugned orders. As of today, it is argued, that the petitioners have been submitting the relevant documents regarding running of the guest lodge, including the list of boarders, to the police authorities. It is further contended that valid licences are subsisting in the name of the petitions, annexed at page-144 as well as page-145 of the present application.
9. Learned senior counsel appearing for the writ petitioners in the court below, who are also respondents herein, argues that the present appellants do not have a Sarai licence and other requisite documents which are required for the purpose of running a guest house. It is further alleged that the documents annexed at pages-144 and 145 of the

present stay application pertain to a different address. Moreover, it is argued that the same is an auto-generated document having no evidentiary value.

10. Learned counsel appearing for the Siliguri Municipal Corporation submits that the system of the concerned web portal, which is maintained by the State Government, is that a permanent certificate of enlistment is auto-generated as and when an application for the same is made. However, he relies on the disclaimer at the bottom of the said certificate which shows that the document is auto-generated as per data submitted by the applicant in online procedure and the authority may verify the documents /credentials from the CE holder, if so deemed fit.

11. It is further argued that the appellants themselves had sought time for filing relevant documents in the hearing before the Siliguri Municipal Corporation and, as such, it is not the fault of the Corporation that the hearing could not be concluded pursuant to the direction of the learned Single Judge.

- 12.** Upon hearing learned counsel for the parties, we are of the opinion that as of today, the last prevailing order operating in the field, apart from the impugned orders, is the order dated June 8, 2023 passed by the learned Single Judge in WPA No. 1196 of 2021. In terms of the said order, the Commissioner, Siliguri Municipal Corporation was to complete the process of deciding on the application pending at the behest of the present appellants for grant of licence to the appellants.
- 13.** Ideally, the said process ought to have been completed by now. However, there is allegation and counter-allegation between the Corporation and the appellants as regards the reason for the delay in completing the same. Be that as it may, the purpose of justice would suffice if the Corporation gives a hearing to the appellants and the writ petitioners before the trial court and decides the said issue at the earliest. Upon fruition being arrived at on such count, it would be open to the present appellants to make appropriate

prayers for running the guest house before the writ court.

- 14.** Insofar as the arguments regarding the appellants not being in possession of any Sarai licence, we find that although the appellants' application for renewal of Sarai licence is pending, the appellants are justified in arguing that the penalty for contravention of the the Sarais Act, 1867 is merely imposition of penalty. Only upon three convictions on such count, the persons concerned would be disqualified from keeping Sarais (lodging houses). Hence, mere pendency of the appellants' application for sarai licence may not be a bar to the appellants running the guest house.
- 15.** The predicament here is that the licence, vide order dated June 08, 2023, had set aside the order of cancellation of licence issued in the name of the deceased partners of the partnership firm, who were the erstwhile partners, but the hearing on the issuance of fresh licence has not yet been concluded. Hence, as of today, the situation is that the cancellation of the previous licence in the

name of the dead persons is not there, whereas the appellants do not have a fresh licence to run the guest house. As observed earlier, the said predicament can be removed by conclusion of hearing and the Municipal Corporation taking a decision on such count.

16. However, we do not find any infirmity on the face of the order impugned herein, since the learned Single Judge was *prima facie* justified in stopping the functioning of the guest house, as the now-existing licence of the said guest house stands in the name of dead persons and no fresh licence has yet been issued to the appellants.

17. In such view of the matter, MAT 151 of 2023 along with IA No: CAN 1 of 2023 are disposed of without interfering with the impugned orders.

18. However, the Siliguri Municipal Corporation shall give a fresh opportunity of hearing to both the present appellants and the writ petitioners in the connected writ petition and decide on the pending applications of the appellants for issuance of a licence in the name of the

reconstituted partnership firm where the present appellants are the partners. Such exercise, it is expected, shall be concluded within a fortnight from date. A report regarding the outcome of the same shall be placed by the Municipal Corporation before the learned Single Judge who will take up the writ petition next on the returnable date.

19. Liberty is granted to the present appellants to apply before the concerned learned Single Judge who takes up the writ petition for hearing, praying for an order of modification of the orders which are impugned herein and for running the said guest house, in view of the changed circumstances, which will arise upon the Siliguri Municipal Corporation deciding on the pending application of the appellants for issuance of licence in their name.

20. It is expected that the writ petition will be disposed of at the earliest. The writ petition be placed before the concerned learned Single Judge having determination to take up the matter in

the second week of the upcoming Circuit of Jalpaiguri.

- 21.** Liberty is granted to the appellants to add the omitted parties, who are substantially represented by the present respondents, by carrying out necessary corrections to the cause title of the memorandum of appeal as per the prayer of learned counsel for the appellants during the course of the day.
- 22.** There will be no order as to costs.
- 23.** Urgent certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)