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ORDER SHEET
WPO No.635 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MISS RENU SHAW & ANR.
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:30th March, 2023.

Appearance:
Mr. Asit Baran Raut, Adv.
Mr. Tuhin Subhra Raut, Adv.
Mr. Gautam Das, Adv.
Ms. Ishita Raut, Adv.
...for Petitioners.

Mr. Alak Kumar Ghosh, Adv.
Mr. Swapan Kumar Debnath, Adv.
...for KMC.

Mrs. Tapati Samanta, Adv.
..for the State.

The Court:-The allegation of the petitioners is that the private respondents are carrying on business of running sweetmeat shop at premises no. 23, Banamali Sarkar Street, Kolkata-700005 under Ward No.9, Borough - I of the Kolkata Municipal Corporation. The said business is being run without obtaining any licence and permission from the respective authorities.

With the aforesaid allegation, the petitioners approached this Court by filing an earlier writ petition being WPO No.633 of 2019. The said writ petition was disposed of by the Court on 21.02.2022 directing the respondent authority to determine whether the sweetmeat shop is being run upon obtaining a proper certificate of enlistment from the Kolkata Municipal Corporation or not.

In compliance of the direction passed by the Court, a hearing was conducted by the Licensing Officer and an order was passed on 29.04.2022. Both the parties were represented by their learned advocates in the hearing. The Licensing Officer allowed an opportunity to the private respondents to file an application for obtaining certificate of enlistment in their favour as per the prevailing norms with proper documents.

Petitioners allege that till date no application has been filed by the private respondents for obtaining the licence and the business is being run without any licence at all.

Learned advocate appearing for the petitioners refers to Section 441 of the Kolkata Municipal Corporation Act, 1980 and Section 31(1) of the Food Safety and Standards Act, 2006. It has been submitted that the said business is being run by using kerosene oil and diesel which are highly inflammable substances and there is a high risk for causing fire.

None of the private respondents accepted service of the writ petition initially. Thereafter, direction was passed upon the concerned police station to serve copy of the writ petition upon the private respondents. Accordingly, private respondents were served. Today, none represents the private respondents at the time of hearing.

Learned advocate representing the Kolkata Municipal Corporation submits that an opportunity was granted to the private respondents for filing application but application has not been filed. Accordingly, necessary direction may be passed by the Court restraining the private respondents from continuing with the business.

It has been admitted by the learned advocate representing the Corporation that a licence is required for running the business in question. It has been submitted that apart from the licence from the Corporation, other licences/ permissions from the Fire Department and the police are required.

It appears from the submissions made on behalf of the parties that the private respondents are running the business of food items without necessary permission and licence from the concerned authorities.

According to Section 441 of the Kolkata Municipal Corporation Act, 1980 if the Municipal Commissioner is of the opinion that any premises is being used for non

residential purpose without a municipal licence, he may stop the use of any such premises for any such purpose for a specified period by such means as he may consider necessary.

Section 31[1] of the Food Safety and Standards Act, 2006 mentions that no person shall commence or carry on any food business without licence.

In the present case the private respondents are carrying on business of food items without any licence at all. The same is impermissible in law.

In view of the above, the Municipal Commissioner is directed to invoke the power conferred in Section 441 of the Kolkata Municipal Corporation Act, 1980 and take steps to stop the business as the same is being run contrary to the provisions of law.

It will be open for the Commissioner to take the assistance of the local police station for the purposes of implementing the order to stop business. If any request is made before the police station, then necessary assistance shall be provided.

Steps shall be taken in the matter at the earliest but positively within a period of eight weeks from the date of communication of this order.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)