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ORDER SHEET
WPO No.794 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

K. K. SAHA & CO. PRIVATE LIMITED & ANR.
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 19th April, 2023.

Appearance:
Mr. S. Sengupta, Adv.
Mr. Somnath Dutt, Adv.
Mrs. Subhra Das, Adv.
..for the Petitioners.

Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
... for KMC.

The Court:- Private respondents could not be served.

The petitioners are aggrieved by the order dated 20.01.2023 passed by the Municipal Commissioner, Kolkata Municipal Corporation allegedly in compliance of the direction passed by the Hon'ble Division Bench of this Court in APOT/164/2022 with WPO/452/2022.

The Hon'ble Division Bench mentioned two issues on which a finding ought to have been returned by the Municipal Commissioner. First, the place from where the Corporation authorities would collect the garbage from the activities in the Hatibagan market, and second, the charges payable by the petitioners for removal of the garbage.

It appears that the Municipal Commissioner has only mentioned that as per calculation on the basis of the budget scheduled rates and charges of the Kolkata Municipal Corporation, the dues of the petitioners from April, 2016 till March, 2021 to the tune of Rs.61,59,397/- will be payable and the petitioners have been directed to pay the amount within a fortnight.

Petitioners submit that the order is a non-speaking and non-reasoned one. The rate chart according to which the calculation has been arrived at by the Municipal Commissioner is not disclosed. The place from where the garbage is to be collected is also not mentioned. Prayer has been made for setting aside the impugned order.

Learned advocate representing the Corporation opposes the prayer of the petitioners. It has been submitted that the charges have been calculated on the basis of the scheduled rates and charges of the Corporation relating to removal of garbage. The petitioners are intentionally and deliberately not paying the charges for removal of garbage and are delaying the matter. The Corporation has to incur heavy expenditure for removal of the garbage on daily basis.

It appears that the petitioners, in terms of the order passed by the Hon'ble Division Bench, paid a sum of rupees five lakh only in September 2022. Thereafter, the petitioners have not paid a single farthing on account of garbage removal charges. The Hon'ble Division Bench required answer on two counts from the Municipal Commissioner.

The Municipal Commissioner has omitted to give answer to the first query raised by the Court, i.e., the place from where the garbage is to be collected.

With regard to the second query a calculation sheet pursuant to which the figure of Rs.61,59,397/- was arrived at was forwarded to the petitioners in November, 2022. The petitioners filed an objection to the same in December, 2022. The final order passed by the Municipal Commissioner does not mention anything with regard to the objection raised by the petitioners apropos the calculation forwarded. The Municipal Commissioner ought to have returned a finding upon consideration of the objection raised by the petitioners on both the issues directed to be decided by the Hon'ble Division Bench.

It appears that the impugned order was passed on the day the petitioners were unable to remain present. The private respondents never participated in the hearing.

In view of the above, for ends of justice the Court thinks it fit to set aside the order passed by the Municipal Commissioner and remand the matter back to the Municipal Commissioner for fresh consideration upon giving reasonable opportunity of hearing to all the necessary parties from the stage when the order was passed on 20.01.2023. The Municipal Commissioner shall take into consideration the objection filed by the petitioners on 12.12.2022 and final order shall be passed by the Municipal Commissioner at the earliest, but positively within a period of eight weeks from the date of communication of this order.

As it appears that the petitioners have not paid anything on account of the garbage removal charges after the initial payment made by the petitioners in terms of the Hon'ble Division Bench's order, accordingly, as an interim measure, petitioners are directed to deposit a sum of rupees ten lakh only on ad hoc basis within a fortnight from the date of communication of this order.

The Municipal Commissioner is directed to pass final order in terms of the direction passed by the Hon'ble Division Bench on 15.09.2022 read with the order dated 21.09.2022.

Writ petition stands disposed of.

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

(AMRITA SINHA, J.)