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ORDER SHEET
APOT/462/2023
With
WPO/1856/2023
IA No.GA/1/2023
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

ADITYA BIRLA FASHION AND RETAIL LIMITED
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
AND
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 27th December, 2023.
(Vacation Bench)

Appearance :
Mr. Biswaroop Bhattacharya, Adv.
Mr. Soumava Mukherjee, Adv.
Mr. Subhankar Chatterjee, Adv.
..for the appellant.

Mr. Alak Kumar Ghosh, Adv.
Mr. Subhrangsu Panda, Adv.
..for K.M.C

The Court: The affidavit of service filed in Court today be kept with the record.

The point for adjudication in this appeal is whether the learned Single Judge, by order dated 20th December, 2023, could hold that it would be open for the petitioner to pay the charges without prejudice to its rights and contentions and subject to the result of the writ petition. The charges as mentioned in the said order relate to claim under Section 333 of the Kolkata Municipal

Corporation Act, 1980 (hereinafter referred to as the Act) that is, the charge which the Municipal Commissioner 'may' impose upon premises used for trade or retail shop or market, for removal of the solid waste.

Mr. Bhattacharya, learned Advocate for the appellant, submits that his client was not liable to pay such charges in the absence of any amendment to the law, and especially as no other circular or notification was in place in this regard. Mr. Bhattacharya further submits that on the basis of a Circular dated April 24, 2023, issued by the Mayor, such demand was raised. The learned Judge, upon perusal of such Circular had passed the order directing payment, without prejudice to the rights and contentions.

The petitioner is aggrieved because the Pantaloons stores, which are operating throughout Kolkata, are now functioning without any Certificate of Enlistment and the petitioner is apprehending that in the festive season, their business could be shut down by the Kolkata Municipal Corporation on account of non-payment of the charges and for non-renewal of the Certificate of Enlistment. It is submitted that whenever the store wanted to make payment through online mode, a drop-down would appear on the screen, instructing clearance of charges under Section 333 of the said Act. Without clearing such charges, the petitioner was not being able to move forward through the online process, for renewal of the Certificate of Enlistment.

Mr. Ghosh, learned Advocate appearing on behalf of the Corporation submits that no order, prejudicial to the rights and contentions of the petitioner, has been passed by the learned Single Judge. Rather, the petitioner has been given an option to pay. The petitioner cannot by any stretch of imagination, continue to run a business, without the Certificate of Enlistment. Mr. Ghosh submits that Section 199 of the Act is the enabling provision for renewal of Certificate of Enlistment. Such provision does not, itself, allow a shopkeeper or a retailer to continue to violate other provisions of law. Removal of garbage and solid waste, which is left lying around in the commercial premises during the course of business, was a mandate of law and must be followed by all businessmen.

Having considered the contentions of the parties, this Court finds that Section 333 of the said Act provides that the Municipal Commissioner may, if he thinks fit, impose charges for removal of the solid waste on any factory, shop, workshop or market place etc. A perusal of Section 199 of the said Act, indicates what compliances are necessary for renewal of the Certificate of Enlistment. Requirement to pay the charges for removal of solid waste is not an ingredient of Section 199 of the Act. However, these issues will have to be decided by Her Lordship and Her Lordship has already kept the matter returnable for adjudication.

It does not also, prima facie, appear to this Bench that the Corporation had either included payment of such charge in the statute or by way of any notification, in case of garment shops. It is also our, prima facie, view that there has to be an application of mind and an informed decision of the authority while levying such charge upon the petitioner. There has to be a finding on inspection, that garbage and solid waste had not been removed by the petitioner. The Schedule of Business-wise Rates, Taxes, Fees for the year 2022-23, which deals with the amount to be paid for renewal of the Certificate of Enlistment by any shop situated over an area of 1000 sq.ft. and above, does not include any payment under Section 333 of the Act.

Under such circumstances, we are of the view that the issues discussed hereinabove, shall be decided by Her Lordship and the Corporation shall not take any coercive steps in respect of the business, before the adjudication of such issues by Her Lordship. The order impugned is modified to the above extent.

With the above observations, the appeal along with the application is disposed of.

(SHAMPA SARKAR, J.)

(APURBA SINHA RAY, J.)

SN/spal