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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/55/2024
WITH
WPO/1870/2023
IA NO: GA/1/2024

CALCUTTA HOTELS, GUEST HOUSES AND RESTAURANTS OWNERS
ASSOCIATION AND ORS
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
AND

The Hon'ble JUSTICE PARTHA SARATHI SEN

Date : February 13, 2024.

Appearance:
Mr. Saptansu Basu, Sr. Adv.
Mr. Ayan Banerjee, Adv.
Mrs. Vijaya Bhatia, Adv.
Mr. Ganesh Prasad Shaw, Adv.
...for appellant.

Mr. Alok Kr. Ghosh, Adv.
Mr. S. Nayak, Adv.
Ms. T. Dasgupta, Adv.
...for K.M.C

The Court:- By consent of the parties, the appeal and the connected application are taken up together for hearing.

Affidavit of Service filed in Court today be kept with the record.

An order dated January 19, 2024, interim in nature, in the sense that the writ petition is still pending before the learned Single Judge, passed in WPO 1870 of 2023, is the subject matter of challenge in this appeal at the instance of the writ petitioners.

The writ petitioners carry on the business of running a lodging house. They made an application for renewal of the certificate of enlistment under Section 199 of

the Kolkata Municipal Corporation Act, 1980 (in short “KMC Act”). Their short grievance is that the Kolkata Municipal Corporation Authorities are saying that such certificate of enlistment will not be renewed until the writ petitioners pay the applicable amount on account of Solid Waste Management Charges under Section 333 of the KMC Act. In other words, according to the writ petitioners, the Kolkata Municipal Corporation Authorities are wrongfully contending that payment of the Solid Wastes Management Charges is a pre-condition for renewal of the certificate of enlistment.

With the aforesaid grievance, the writ petitioners approached the learned Single Judge. The learned Judge observed that “prima facie, the Court is not convinced with the submission made on behalf of the Corporation that the levy can be made at the time of renewal of the certificate of enlistment, but keeping in mind the greater public interest involved in the matter for which the Corporation is levying the charges for cleaning the Municipal Solid Wastes that is generated every day in the hotel/ restaurants/ eating houses, hospitals, shopping malls, multiplexes, nursing homes, pathological labs, diagnostic center etc, the Court is not inclined to allow the interim relief sought for by the petitioners.” The learned Judge observed that the writ petitioners may pay the amount demanded by the Kolkata Municipal Corporation on account of Solid Wastes Management Charges without prejudice to their rights and contentions and such payment shall abide by the result of the writ petition.

Being aggrieved, the writ petitioners have come up by way of this appeal.

Mr. Basu, learned Senior Advocate representing the appellants/writ petitioners, drew our attention to Sections 199, 333 and 189 of the KMC Act. He submitted that Section 199 cannot be read in a manner so as to make payment of Solid Wastes

Management Charges a *sine qua non* for grant of renewal of enlistment certificate, unlike Section 189(5), where the Authorities can refuse mutation unless all arrears of property tax are paid by the applicant for mutation. Mr. Basu, learned Senior Advocate wanted to rely on certain decisions of this Court in support of his contention. We do not think the same is necessary at this stage.

Mr. Ghosh, learned Counsel for the Kolkata Municipal Corporation says that a policy decision has been taken by Kolkata Municipal Corporation linking payment of Solid Wastes Management Charges with grant or renewal of certificate of enlistment. He further tells us that the Corporation has also constituted a forum for redressal of grievance that a person may have in respect of demand for Solid Wastes Management Charges. Further, in any event, the appellants have not produced the permission under Sections 421 and 425 of the Kolkata Municipal Act which is required for running establishments like a lodging house. He says that even if Kolkata Municipal Corporation renews the certificate of enlistment in favour of the appellants, without requisite permission under Sections 421 and 425, they will not be able to carry on business. Mr. Ghosh, submits that in view of the linking of payment of Solid Wastes Management Charges with renewal of certificate of enlistment, as a policy measure, Kolkata Municipal Corporation may not renew the certificate of enlistment until payment of Solid Wastes Management Charges but since the learned Judge will be finally deciding whether the aforesaid linkage is legally sustainable or not, Kolkata Municipal Corporation may not take any coercive measure against the appellants.

We are *prima facie* of the view, on a reading of the relevant Sections of the KMC Act as referred to above, that there is no warrant for making payment of Solid Wastes Management Charges a pre-condition for renewing certificate of enlistment. We have

noticed the difference in language between Section 199 and Section 189(5) of the Kolkata Municipal Act. Section 189(5) makes it clear that payment of arrear property tax would be a pre-condition for grant of mutation in favour of an applicant. No such pre-condition appears to be there in Section 199 as regards payment of Solid Wastes Management Charges. However, as we say, this is purely a prima facie finding. Since the writ petition is pending before the learned Single Judge, we request the learned Single Judge to decide the issue finally upon exchange of affidavits.

Till the disposal of the writ petition, there will be an order directing Kolkata Municipal Corporation to consider the application of the appellants for renewal of certificate of enlistment without insisting on payment of Solid Wastes Management Charges as a pre-condition for renewal of certificate of enlistment. In case, Kolkata Municipal Corporation does not renew the certificate of enlistment, it shall not take any coercive steps against the appellants till disposal of the writ petition by the learned Single Judge.

We further clarify that if Kolkata Municipal Corporation grants renewal of the certificate of enlistment without insisting on payment of Solid Wastes Management Charges, even then, the appellants naturally will not be entitled to carry on business without obtaining other necessary permissions whether under Sections 421 or 425 or any other provision of the KMC Act. All points are left open for being decided by the learned Single Judge including the point of maintainability of the writ petition raised by the Kolkata Municipal Corporation.

Since, we have not called for affidavits, the allegations made in the application are deemed not to have been admitted by the respondents.

On the request made by the learned Advocates for the parties, we extend the time for the respondents in the writ petition to file Affidavit-in-Opposition by four weeks from date i.e. March 12, 2024. Reply, thereto, if any, be filed within three weeks thereafter i.e. April 2, 2024.

The parties would be at liberty to mention the matter before the learned Single Judge upon completion of affidavits or upon expiry of the time granted for exchange of affidavits.

The appeal and the connected application are accordingly disposed of.

(ARIJIT BANERJEE, J.)

(PARTHA SARATHI SEN, J.)

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