

APO/98/2024
IA NO:GA/1/2024
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SHALIMAR CHEMICAL WORKS PRIVATE LIMITED
VS
THE KOLKATA MUNICIPAL CORPORATION AND OTHERS

BEFORE :
THE HON'BLE JUSTICE DEBANGSU BASAK
And
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI
Date : 5th November, 2024

Appearance :

Mr. Ayan Banerjee, Adv.
Mr. Somnath Banerjee, Adv.
Ms. Debjani Sengupta, Adv.
For appellant
Mr. Alak Kr. Ghosh, Adv.
Mr. G.C. Das, Adv. For KMC

The Court : Affidavit of service filed in Court today is taken on record.

The appeal is at the behest of the writ petitioner and directed against the order dated May 17, 2024 passed in WPO No.441 of 2024 refusing to pass interim order.

Learned advocate appearing for the appellant submits that, the appellant applied for grant of trade licence.

Corporation demanded Solid Wastes Management fees as a pre-condition for grant of trade licence. She submits that, the issue is as to whether grant of trade licence can be withheld on the ground of non-payment of Solid Wastes Management fees or in other words whether the Corporation can demand Solid Wastes Management fees as a pre-condition for grant or renewal of trade licence was considered by the Co-ordinate Bench in APOT No.55/2024. Such appeal was disposed of by an order dated February 13, 2024. She submits that, similar order may be passed in the present appeal.

Corporation authorities are represented.

Learned advocate appearing for the Corporation submits that, the issue as to whether, Corporation is entitled to other fees laviabile should be kept open.

We are concerned with the issue as to whether, Corporation can demand Solid Wastes Management fees as a pre-condition for grant/renewal of trade licence or not. No such issue, apparently was decided albeit at prima facie level by the Co-ordinate Bench on February 13, 2024 passed in APOT/55/2024.

The operative portion of such order is as follows:-

"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.

In response to the query of the Court as to whether Corporation preferred any Special Leave Petition against the order dated February 13, 2024 passed by the Co-ordinate Bench or not, learned advocate appearing for the Corporation answers in the negative.

In such circumstances, we grant similar relief to the appellant before us as the appellants of APOT/55/2024 as they stand on the same footing.

We are informed that the writ petition is still pending.

Consequently, we direct that, till the disposal of the writ petition, there will be order directing KMC to consider the application of the appellant 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 KMC does not renew the certificate of enlistment, it shall not take any coercive step against the appellant till the disposal of the writ petition by the learned Single Judge.

We also reiterate the same clarification as that of APOT/55/2024.

APO/98/2024 along with all connected applications are disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)

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