Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 28741 of 2026

M/s Kasturi Restaurant Private Limited & anr.
Versus
The Kolkata Municipal Corporation & Ors.

For the petitioner	:	Mr. Dibayan Kumar Banerji, Adv. Mr. Soham Kumar Mr. Abhrajit Roy Chowdhury
For the KMC	:	Mr. Piyush Chaturvedi, Sr. Adv. Mr. Bratin De, Adv.
Heard on	:	06.10.2026, 09.10.2026 & 12.10.2026
Judgment on	**:**	**12.10.2026.**

Raja Basu Chowdhury, J (Oral):

1. The present writ petition has been filed, inter alia, challenging the order dated 25th September, 2026 whereby the petitioners have been directed to close down the business activity run under the name and style of M/s Kasturi Restaurant Private Limited from 11A, Dover Lane, Ward No. 85, Borough VIII, KMC for reasons of violation of Section 435A of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the "said Act"). The petitioners claim that the petitioner No. 1 runs and operates one restaurant and an eating house under the brand name of M/s. Kasturi Restaurant which is located and operated from 11A, Dover Lane, P.S. Gariahat, Kolkata 700029. It

is also the petitioners' case that for running and operating a restaurant from the aforesaid premises, the petitioners had obtained all statutory licenses including the trade license (Certificate of Enlistment) issued by the respondent No. 1. A copy of the certificate of enlistment issued by the municipality by way of renewal which is valid till 31st March, 2027 has been placed before this Court and is taken on record. The petitioners claim that the petitioners had received several notices issued by the respondent authorities with regard to certain irregularities. According to the petitioners, though the petitioners were still ready and willing to submit appropriate response, however, due to certain intervening and unavoidable circumstances, the same could not be done. The order dated 25th September, 2026 was served on the petitioners and by such order, the petitioners have been directed to close down the business operations. Challenging the above order, the present writ petition has been filed.

2. When the matter was taken up for consideration, the learned advocate for the respondents had placed before this Court the show-cause notice dated 13th March, 2026 which inter alia, recorded that the respondents had ascertained that the Certificate of Enlistment for the business in question had in effect been granted contrary to Section 435A(1) read with Schedule VA of the said Act, and Clause 7 and Clause 12 of the Guidelines issued vide No. 725/MA/O/C-4/3R-4/2015 dated 28/08/2020, UD & MA, Government of West Bengal. It was thus, observed in the show-cause that the Certificate of Enlistment

for running the business was in violation of the provisions of the said Act and Guidelines framed thereunder, for which the petitioners were called upon to file a response and to show-cause as to why the same shall not be cancelled. The petitioners, however, did not file any response either to the show-cause dated 13th March, 2026 and 23rd March, 2026 or to the subsequent show-cause dated 11th August, 2026 excepting the representation dated 30th September, 2026. Records would reveal that a joint inspection was conducted by the KMC officials, the food safety officials and it was noted that the person responsible had failed to produce supportive documents regarding alleged establishment at the ground floor of the G+4 storied building at 11A, Dover Lane and a notice under Section 401 of the said Act has been served to the person responsible due to unauthorized construction and change of use. The same, however, records that on inspection, it was also observed that the petitioners were in custody of certain permissions and could not produce certain other permissions as detailed hereunder. (1) up to date FSSAI license which was displayed at a prominent place. (2) FBO applied for water test report but cannot produce water test report on inspection. (3) Date tags were found on prepared food items stored in the refrigerators. (4) Covered dustbin was found. (5) Segregated facility for storing vegetarian and non-vegetarian food items were evident. (6) No record of regular pest control activity were produced. (7) Sanitary condition of the kitchen was not at all satisfactory, walls and floor of the premises were found unclean.

Incidentally, this report was not served to the petitioners at any prior point of time and was only disclosed during the hearing.

3. The petitioners were, however, served with the order dated 25th September, 2026. Having regard to the above, the question that falls for consideration in the present writ petition is whether the petitioners' running business could be stalled and closed down on account of the provisions contained in Section 435A of the said Act. Admittedly, in this case, this Court observes that a Certificate of Enlistment has been issued in favour of the petitioners. It is not the case of the respondents that appropriate license had not been obtained by the petitioners for carrying out the business of eatery, at least the order passed by the respondents does not speak of the same. On this aspect, it would be relevant to note that Section 435 of the said Act creates a bar on non-residential use of a residential premise without permission from the municipal authorities/municipal licence. In other words, unless the municipality authorizes use of a residential building for a non-residential purpose, no such building can be used or utilized for such purpose. A perusal of Schedule V of the said Act read with Section 435, identifies the nature of business which is permissible and can be permitted to be used from a residential premises with the permission from the municipality. Eating house or a catering establishment is one such category of business or trade which is permissible. In the instant case, the petitioners claim to be running the business since 2019. It is not the case of the respondents that the petitioners had been running

such business without the permission of the municipal authorities. The only objection is in the petitioners' carrying out business operation is violation of Section 435A of the said Act. In this context, it would be relevant to consider that in identical terms, Section 421 of the said Act prohibits any person from carrying on the business of eating house without the specific permission of the Municipal Commissioner. The permission to be granted by the Municipal Commissioner is however, subject to the restrictions contained in Section 425 of the said Act as would corroborate from the proviso to sub-Section (1) of Section 421 of the said Act.

4. In the instant case, the statutory permissions required for running the business are already available and the same has also been identified by the respondents in course of their inspection as would morefully corroborate from the inspection report dated 11th August, 2026 which has been placed before this Court. The respondents also do not challenge the petitioners on the ground that the petitioners do not have requisite permission for running an eatery. Having regard to the above and noting that the Certificate of Enlistment identifies that the petitioners were dealing in food items, it necessarily follows that the petitioners had the permission of the Municipal Commissioner in accordance with the provisions contained in Section 421 of the said Act and was otherwise authorized to carry on business with the permission of the Commissioner in accordance with Section 435 of the said Act, for reasons whereof, the Certificate of Enlistment has been issued.

Incidentally, the grant of Certificate of Enlistment has been challenged having regard to clauses 7 and 12 of the Guidelines issued by the UD & MA, Government of West Bengal vide No. 725/MA/O/C-4/3R-4/2015 dated 28/08/2020 as would corroborate from the show-cause dated 13th March, 2026. To morefully appreciate the same, the relevant Clauses are extracted hereinbelow:

> *" xxx xxx xxx*
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> ***7.*** *No one shall apply for certificate in residential buildings against any hazardous profession, trade and calling involving use of explosive, gas etc. and wine/ liquor shops which are prohibited in residential buildings as per provision of section 435A. As per provision of section 435A, trade and commercial activities as specified in schedule VA are allowed only in such residential buildings which are located alongside major roads and maximum 45% of the total floor area of the building may be used for such trade & commercial purposes.*
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> *xxx xxx xxx*
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> ***12. Inspection:-*** *KMC Authority, if deem fit and proper, may conduct an inspection after issuance of new Certificate or renewal or after effecting any change/correction or closure of the business for carrying out the purposes of the Act. If it is found that the information/documents submitted by the CE holder at the time of making application are false/ /incorrect/inadequate/ not as per requirement/ misleading/forged or the CE holder is found to have violated relevant provisions of the Act, the certificate will be cancelled forthwith. Also, payments made thereof in the form of all kinds of fees will not be refunded. The CE Holder may also be liable for prosecution and punishment under the Indian Penal Code,*

1860 and/or any other law applicable thereto for furnishing false information/forged document.

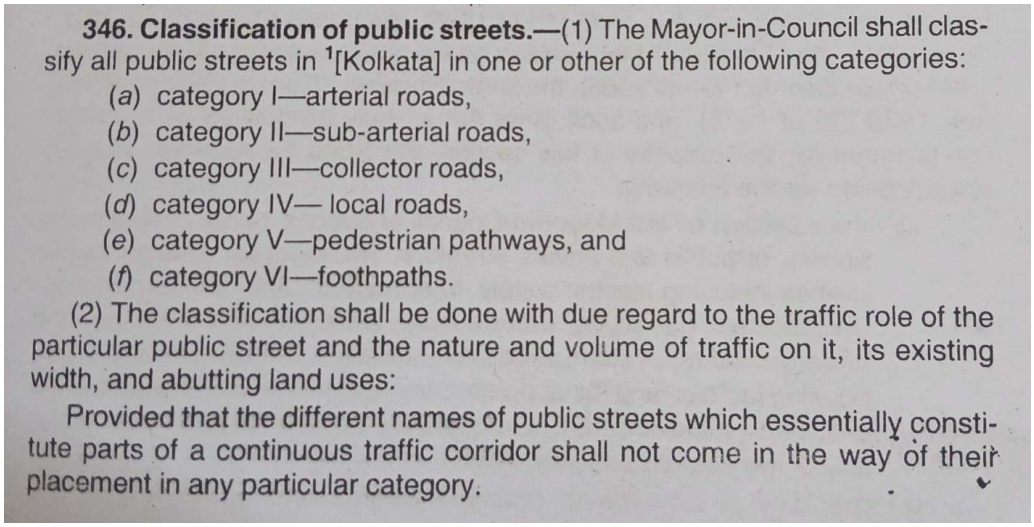
xxx xxx xxx"

5. Clause 7 of the aforesaid Guidelines provides that none shall apply for certificate in a residential building against any hazardous profession, trade and calling involving use of excessive gas etc. and wine liquor shop which are prohibited in the residential building as per the provisions of Section 435A of the said Act. The same goes on to add as per the provisions of Section 435A, trade and commercial activities as specified in Schedule VA are allowed only in residential building which are located alongside major roads and maximum 45% of the total floor area of the building may be used for such trade and commercial activities. From the aforesaid Clause being Clause 7, it would clearly appear that carrying on business from the residential premises even alongside a major road is not a bar. The restriction is limited to use of maximum 45% of the total floor area of the building and that the same should not be non-hazardous. Without entering into the controversy as to whether by the above order a prohibition on carrying on trade and business can be introduced by a guideline without statutory backing, at this stage, I find that it is nobody's case that the nature of business carried on by the petitioners is a hazardous one, at least the order does not spell out the same.

6. Be that as it may, one other important aspect must be discussed. Unlike Sections 421 and 435, Section 435A does not create any

embargo on any person carrying on trade or business without the permission of the municipality. As such, if a permission is already accorded in terms of Section 421 or Section 435 of the said Act, such permission cannot be negated by reasons of Section 435A of the said Act, as the same does not have any overriding effect on other provisions of the said Act. In any event, Section 435A was inserted by Section 15 of the Kolkata Municipal Corporation (Amendment) Act, 2014 in the principal Act by a notification published in the Kolkata Gazette on 9th January, 2015. As would appear from the above, the same was inserted to allow trade or business alongside major road and not to prohibit the same. Sub-section (2) of Section 435A in fact seeks to regularise the persons carrying on trade or business from residential premises alongside major road. Above section was not intended to stop running business but to regulate the same.

7. Further, Section 2(71) of the said Act defines public street which means and includes a road. In terms of Section 343(5) of the said Act, the Municipality is obliged to maintain a register and include the names of public street. Section 346 of the said Act deals with classification of all public street. The same requires classification to be done with due regard to traffic role of a particular public street, the nature and volume of traffic on it, its existing width and abutting land uses. To morefully appreciate the manner in which the above classification has been made, Section 346 of the said Act is extracted hereinbelow:



346. Classification of public streets.—(1) The Mayor-in-Council shall classify all public streets in [1][Kolkata] in one or other of the following categories:

(*a*) category I—arterial roads,

(*b*) category II—sub-arterial roads,

(*c*) category III—collector roads,

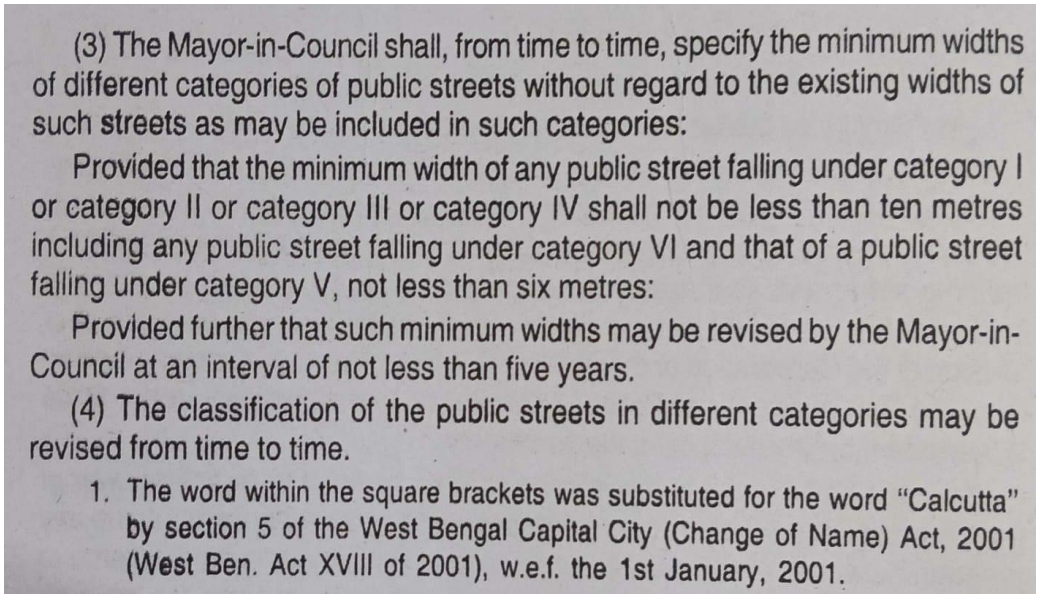
(*d*) category IV— local roads,

(*e*) category V—pedestrian pathways, and

(*f*) category VI—foothpaths.

(2) The classification shall be done with due regard to the traffic role of the particular public street and the nature and volume of traffic on it, its existing width, and abutting land uses:

Provided that the different names of public streets which essentially constitute parts of a continuous traffic corridor shall not come in the way of their placement in any particular category.



(3) The Mayor-in-Council shall, from time to time, specify the minimum widths of different categories of public streets without regard to the existing widths of such streets as may be included in such categories:

Provided that the minimum width of any public street falling under category I or category II or category III or category IV shall not be less than ten metres including any public street falling under category VI and that of a public street falling under category V, not less than six metres:

Provided further that such minimum widths may be revised by the Mayor-in-Council at an interval of not less than five years.

(4) The classification of the public streets in different categories may be revised from time to time.

1. The word within the square brackets was substituted for the word "Calcutta" by section 5 of the West Bengal Capital City (Change of Name) Act, 2001 (West Ben. Act XVIII of 2001), w.e.f. the 1st January, 2001.

8. Nothing has been disclosed in the order dated 25th September, 2026 or before this Court to demonstrate that the street in front of the petitioners' restaurant at 11A, Dover Lane falls under category I, II or III above or whether the same is only a local road under category IV. Nothing has also been identified by the municipality as to which road can be construed as a major road. In the said Act or rules framed thereunder *major road* has not been defined. There are no regulations

or rules framed to identify which particular road is a major road in the city of Kolkata, at least nothing has been placed before this Court. In my view, the municipality cannot as per its whims and fancies pick and choose a particular residential premises and hold that the restriction is limited to such premises.

9. This apart, one other important aspect also needs to be considered. The order impugned has been passed by the Assistant License Officer who under the scheme of Section 421 of the said Act is otherwise not competent to assume the role of the Municipal Commissioner without any delegated authority. At least, nothing has been placed before this Court by the municipal authorities to demonstrate that the Municipal Commissioner's power had been conferred upon the Assistant License Officer (GHU) to decide on the same. No show-cause notice under Section 421 of the said Act had either been issued.

10. In the facts noted hereinabove, the order passed on 25th September, 2026 which appears to be perverse and mechanical exercise of authority, cannot be sustained. The same is accordingly set aside, leaving it open to the municipal authorities to take steps in accordance with law, if so advised.

11. All consequences shall follow.

12. The writ petition accordingly stands disposed of.

(Raja Basu Chowdhury, J.)

Sayandeep
A.R. (Court)