
(2021) 02 CAL CK 0006
In the Calcutta High Court
Case No : WPA No. 10088 Of 2020

Kishor Ghosh

APPELLANT

Vs

Chandernagore Municipal Corporation & Ors

RESPONDENT

Date of Decision : 19-02-2021

Acts Referred:

West Bengal Municipal Corporation Act, 2006 — Section 141, 282(2) 385

Citation : (2021) 02 CAL CK 0006

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : R. N. Chakraborty, Amrita De, Kishore Dutta, Sumita Shaw,
Debabrata Chatterjee

Final Decision : Disposed Of

Judgement

Amrita Sinha, J

The petitioner is carrying on business of selling sweets under the name and style of M/s. Sweet Corner at premises being holding no. 1 ward

no. 18, Chandernagore Municipal Corporation, P.O. and P.S. Chandernagore, District Hooghly. The petitioner claims to be a lawful tenant of

the said premises.

The Commissioner of the Chandernagore Municipal Corporation issued a notice on 28th August, 2020 directing the petitioner to show cause as to why

his trade and calling shall not be shut down with immediate effect and/or appropriate action shall not be initiated under Section 385 of the West Bengal

Municipal Corporation Act, 2006, as amended. The charge against the petitioner was that he was engaged in trade at the aforesaid holding for the last

three years without obtaining a valid trade enlistment certificate.

The petitioner submitted his show cause on 14th September, 2020. A hearing was conducted by the Chandernagore Municipal Corporation on 15th

October, 2020 and an order has been passed by the Commissioner. The said order is impugned herein.

In the order dated 15th October, 2020 it has been mentioned that the petitioner was running the business unlawfully without having proper and valid

certificate of trade enlistment under Section 141 of the West Bengal Municipal Corporation Act, 2006, as amended. The said business was being run

from a building, construction of which has not yet completed and completion certificate was not issued in respect of the said building.

The Commissioner directed the petitioner to shut down the trade/business in the nomenclature and style of "Sweet Corner" in the premises of

holding no. 1, ward no. 18 within seven days after service of the copy of the aforesaid order, failing which appropriate action would be taken.

The petitioner is aggrieved by the same.

The petitioner claims to have visited the office of the respondent authorities for obtaining the certificate for enlistment, but the application for issuance

of the certificate of enlistment was allegedly not accepted on the ground of non-payment of property tax. The petitioner expressed his willingness to

pay the apportioned property tax in respect of the portion occupied by him in the said premises.

As the application for enlistment was not accepted by the respondent authorities the petitioner forwarded the application for obtaining the certificate of

enlistment through registered post on 18th November, 2020.

The petitioner has prayed for issuance of a writ of mandamus to recall, rescind, cancel and/or quash the impugned order dated 15th October, 2020 and

a further order restraining the respondent authorities from taking coercive action on the basis of the aforesaid impugned order.

The primary contention of the petitioner is that the respondent authorities have illegally and arbitrarily not issued the certificate of enlistment in his

favour relying upon extraneous consideration. It has been submitted that non-assessment of the property tax of the premises in question should not be

a ground for non-granting the certificate of enlistment to carry on business in the said premises. It has further been submitted that the Corporation is

taking discriminatory stand in respect of the traders carrying on business in the

said premises. According to the petitioner the Corporation has issued certificate of enlistment in respect of other traders in the said premises but intentionally and deliberately did not issue the certificate of enlistment in his favour.

The petitioner relies upon the decision delivered by an Honâ??ble Division Bench of this Court in the matter of Asian Leather Ltd. & Anr. â??vs-

Kolkata Municipal Corporation & Ors. reported in 2007(3) CHN 476 on the issue that the Corporation has no power to do anything unless those powers are conferred on it by the statute which creates it.

The petitioner also relies upon the judgment delivered by this Court in Harvinder Singh â??vs- Kolkata Municipal Corporation & Ors. reported in

2017(1) CHN 123 wherein the Court held that if a trader has a stated place of business, the municipal authority will not enquire into any dispute with regard to the property and enlist him as a trader.

The petitioner further relies upon the judgment delivered by this Court in the matter of Subir Bhowmick â??vs- State of West Bengal & Ors. reported

in 2018(5) CHN 404 wherein the court held that the only enquiry required to be undertaken for the purpose of issuance of certificate of enlistment is

whether the applicant is carrying on or intends to carry on any business, trade or calling within the municipal limits. The scope of enquiry does not

enable the Municipal Commissioner to decide any question of title of an immovable property.

The learned Advocate General representing the Chandernagore Municipal Corporation submits that as per the provisions of law, a businessman or a

trader is bound to perform or carry on his business upon obtaining a certificate of enlistment. Reliance has been placed on Section 141 of the West

Bengal Municipal Corporation Act, 2006 which clearly lays down that every person engaged, or intending to be engaged in any of the profession,

trades and callings as specified in Schedule II, in any area within the jurisdiction of the Corporation, either by himself or by an agent or representative,

shall obtain a certificate of enlistment from the Commissioner or the officer authorized, upon presentation of an application, together with such

application fee.

The respondents submit that the petitioner was carrying on his business, for the last three years, without obtaining any certificate of enlistment from

the Corporation. The same being contrary to the aforesaid provision of law a show cause notice was issued. The cause shown by the petitioner was

not acceptable by the Corporation and accordingly order was passed on 15th October, 2020.

The respondents submit that the petitioner not only violated the provision of Section 141 of the Act but also violated the provision of Section 282(2) of

the said Act which mentions that no person shall occupy or permit to be occupied, any such building, or use, or permit to be used, any building or a part

thereof, affected by any such work, until permission has been granted by the Commissioner in this behalf in accordance with the rules and regulation

made under the Act.

It has been submitted that the petitioner has not made any prayer for issuance of a certificate of enlistment in his favour for all these years as he was

aware that he was not entitled to carry on business from the said building, construction of which was yet to be complete and completion certificate not

issued by the Corporation till date.

The respondents pray for dismissal of the writ petition.

The matter is taken up for hearing at the â??motionâ?? stage, by consent of the parties, and disposed of in the manner appearing herein below.

From the order impugned it appears that there are two charges against the petitioner. First, carrying on business without a proper and valid trade

enlistment certificate from the Corporation and second, using and occupying a building under construction, in respect of which completion certificate

has not been issued.

The petitioner has been directed to shut down his business within seven days failing which appropriate action would be taken. There is no document

annexed to the writ petition to controvert the charges levied against the petitioner. The petitioner has not denied the allegation that completion

certificate has not been issued in respect of the said premises, neither has he denied the allegation of not possessing a valid and proper certificate of

enlistment. In fact, the petitioner has himself admitted that he was carrying on business from the said premises, which in turn implies that the petitioner

was indeed carrying on business without a trade enlistment certificate, from a building which does not have a completion certificate.

The order impugned mentions that the petitioner has referred to a trade

enlistment certificate for the year 2017-18 relating to manufacture of sweets at holding no. 779, Nandipara Road Bye Lane, in Ward no. 21 of the Chandernagore Corporation. Admittedly, the petitioner failed to produce any document permitting him to carry on business from holding no. 1, ward no. 18 of the Corporation.

Section 141 of the WBMC Act, 2006 permits carrying on business, trade and calling only upon obtaining the certificate of enlistment from the

Corporation. Admittedly, the petitioner does not possess the certificate of enlistment permitting him to carry on business. That being so, the action of

the Corporation in taking steps against the petitioner, for carrying on business, in violation of the provisions of law, cannot be faulted.

It would be worthwhile to refer to the decision of Harvinder Singh (supra) wherein the court held that whenever the nature of the trade or business

demandes that it should be carried out from a place of business, the trader should possess such a place to the satisfaction of the municipal authority. If

the trader has a settled place of business, the municipal authority will not enquire into any dispute with regard to the property, and enlist him as a

trader. The petitioner herein does not possess any place to the satisfaction of the Corporation.

Section 282(2) of the WBMC Act, 2006 bars use and occupation of any building or part thereof, until permission has been granted by the

Commissioner. No permission has been granted by the Commissioner to occupy and use the building in question.

As regards submission made by the petitioner that the Corporation has permitted others to run business from the said premises, it is settled law that

negative equality cannot be claimed as a matter of right. A person is not entitled to claim benefit of an erroneous action of the respondent authority.

The Ld. Advocate General has however submitted, on instructions, that steps are being taken in respect of all the traders who are carrying on

business illegally from the said premises.

The submission of the petitioner that the Corporation is not entitled to make any enquiries regarding title, property tax dues etc. at the time of

consideration of the application for issuance of the certificate of enlistment, it appears, that the said stage has not yet come. The petitioner has merely

annexed a copy of an application made by him for issuance of the certificate of

enlistment, which was allegedly sent

through post on 18th November, 2020, that too, without the prescribed fees. The Court is not apprised of the fact whether the said application for

enlistment has at all been considered by the respondents.

According to Section 141(2) of the aforesaid Act the Corporation is to make an enquiry and within 30 days from the receipt of the application, either

grant or reject the application. From the track report annexed to the writ petition it seems that the application was received by the Corporation on 21st

November, 2020 and the petitioner has rushed to the Court by filing the instant writ petition on 2nd December, 2020. The Corporation is well within its

right to consider the application within 30 days.

As the application of the petitioner is presumably pending consideration at the end of the respondents, the Court refrains from entering into the

arguments made by the petitioner with regard to the nature of the enquiries that the Corporation may make for the purpose of consideration of the

application. The same will amount to pre-judging the issue.

The Ld. Advocate for the petitioner has submitted in Court that the officers of the Corporation have put a pad lock on the door of his shop room

and all his utensils and belongings are lying inside. It has been submitted that the petitioner requires the above items for use elsewhere. The

respondents have not referred to any provision of law which permits confiscation of the aforesaid articles if the business is carried on without a

certificate of enlistment, in a premises which does not have a completion certificate. Accordingly, it will be open for the petitioner to apply before the

Corporation for return of the said articles. In the event such an application is made, the Corporation shall consider the same at the earliest but

positively within a period of fourteen days from the date of receipt of the application, and if there is no impediment in law, then the Corporation shall

permit the petitioner to take back his articles, on the date and time fixed for the same.

Apart from the above, it does not appear that any further relief can be granted to the petitioner in the instant case.

WPA No. 10088 of 2020 is disposed.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.