

(2009) 06 CAL CK 0053

In the Calcutta High Court

Case No : G.A. No. 1565 of 2008 with A.P.O. No. 108 of 2008 W.P. No. 1035 of 2007

Kolkata Municipal Corporation and Another

APPELLANT

Vs

All Bengal Rickshaw Union and Others

RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:

Citation : (2009) 06 CAL CK 0053

Hon'ble Judges : Md. Abdul Ghani, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Judgement

1. This appeal is against a judgment and order of learned trial Judge, dated 16th October, 2007, by which the learned trial Judge, after discussion in details, ordered ultimately as follows:

The Corporation is directed to proceed to consider only those applications received by it in accordance with law and in the light of the observations contained above and to pass appropriate orders on all the applications as early as possible but positively within six weeks from date of receipt of a copy of this judgment and order.

2. The petitioners applied for renewal of enlistment for operating cycle van, cycle rickshaw and hand pulled cart etc. Therefore, the petitioners prayed for issue of a writ of or in the nature of Mandamus commanding the respondents to grant licence in favour of the members of the petitioners. Admitted position was that the Corporation Authority did not take any decision on their applications? whether renewal, as prayed for, should be granted or not. Before the learned single Judge, argument was advanced by both the parties as to justifiability or unjustifiability of granting or refusing enlistment. Learned trial Judge has discussed the matter in great detail.

3. Having heard the learned advocates for the parties and going through the petition, we find that the Corporation had not taken any decision at all. According

to us, the writ Court cannot take decision at the first instance on a subject which is essentially taken by the statutory and executive authority. The writ Court can only scrutinize the decision taken by the executive authority within the parameter of power of judicial review. The writ Court should not go into great detail as to the justifiability or unjustifiability with regard to the issue of renewal of enlistment.

4. Probably that is why the learned trial Judge ultimately did not grant any relief with regard to issuance of certificate of enlistment, rather directed the Corporation Authority to decide the same in accordance with law. The learned trial Judge, at the same time, directed the Corporation to follow the observations recorded by His Lordship. In our view, these two directions are self-contradictory. While a freehand is given for consideration by the Corporation Authority, on the one hand, it is asked to follow the observations and findings of the learned trial Judge on the other hand is simply inappropriate. The learned trial Judge also considered the applicability and non-applicability of various laws and implication thereof in that connection. According to us, the learned trial Judge has not left any thing for decision or the Corporation Authority to make. But ultimately the learned trial Judge concluded that it has to be decided by Corporation.

5. In view of the aforesaid situation, we think the order of the learned trial Judge has to be reframed for meaningful purpose. We, therefore, modify the order of the learned trial Judge in the manner as follows:

The Corporation, in terms of the direction of the learned trial Judge, shall proceed to consider only those applications received by it in accordance with law.

However, the remaining direction of following observations of the learned trial Judge is set aside.

6. We make it clear that the discussion and observation vis-?-vis the findings of the learned trial Judge should not be influencing factor upon the Corporation Authority while deciding the matter. However, we give liberty to the writ petitioners/respondents to place their arguments before the authority concerned as they may be advised.

7. Since the matter is pending so the time for consideration has to be extended as impugned order is modified by us, accordingly consideration has to be completed within four months from the date of receipt of certified copy of the order. All points are kept open. Needless to mention that this hearing must be given upon service of prior notice.

8. The appeal and the application accordingly stand disposed of.

All parties are to act on a signed xerox copy of this order upon putting in requisition for drawing up and completion of the order and for obtaining certified copy thereof.