
(2005) 11 CAL CK 0001
In the Calcutta High Court
Case No : Writ Petition No. 15370 (W) of 2005

Layeeque Ahmed Akhtar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

West Bengal Municipal (Finance and Accounting) Rules, 1999 — Rule 80, 81, 82
West Bengal Municipal Act, 1993 — Section 118, 119

Citation : (2006) 1 CHN 634

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Mrityunjay Goswami, S.P. Ghosh and Debabrata Karar, for the Appellant; Amal Krishna Saha and Sankar Biswas for respondent No. 2, Umesh Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—The refusal to grant certificate of enlistment to the petitioner vide communication, dated 15th July, 2005 issued by the Chairman, Garulia Municipality, is under challenge in this writ petition.

2. The petitioner applied for grant of certificate of enlistment before the concerned Municipal Authority on 22nd April 2005. The prayer for grant of such certificate of enlistment in favour of the petitioner was refused by the concerned Municipal Authority vide annexure "P-3" to the writ petition on the ground that without production of the consent letter of the landlord, the Municipal Authority is unable to issue the necessary certificate of enlistment (trade licence) to the petitioner.

3. The petitioner is a tenant in respect of one shop room at T. D. Banerjee Street, Garulia, P. S. Noapara, Dist. 24-Parganas (North) under the respondent No. 3. Petitioner wants to carry on a business in the said shop room and as such he applied for grant of certificate of enlistment before the Municipal Authority. Such prayer was refused by the Municipal Authority for the reason as aforesaid.

4. Mr. Mrityunjay Goswami, learned Advocate appearing for the petitioner, submitted that rejection of the petitioner's prayer for grant of certificate of enlistment on the ground as contained in Annexure "P-3" to this writ petition, is absolutely illegal, as the ground for rejection is contrary to the provision as contained in Sections 118 and 119 of the West Bengal Municipal Act, 1993.

5. Mr. Goswami further submitted that the legality of the possession of the petitioner in respect of the premises where the petitioner intends to carry on business, cannot be considered by the Municipal Authority under the scheme as provided for grant of certificate of enlistment under Sections 118 and 119 of the said Act. According to Mr. Goswami, the Municipal Authority exceeded its jurisdiction by rejecting the petitioner's prayer for grant of certificate of enlistment on the ground of non-production of the consent letter from the landlord.

6. The petitioner thus prayed for quashing of the impugned notice and further for issuance of the direction upon the Municipal Authority for grant of certificate of enlistment to the petitioner.

7. Mr. Singh, learned Advocate, appearing for the landlord (respondent No. 3 herein), submitted that though the said respondent does not dispute the tenancy of the petitioner in respect of the said room under the said respondent but still then the purpose of letting of the said shop room to the petitioner as claimed by the petitioner was disputed by the said respondent.

8. Mr. Singh further submitted that the room where the petitioner intends to carry on business was in fact let out to the said petitioner for residential purpose and not for carrying on any business and as such, the Municipal Authority was justified in refusing to grant the certificate of enlistment in favour of the petitioner in the tenancy held by the petitioner for residential purpose.

9. Mr. Singh further submitted that if residential user is allowed to be converted into a commercial user by grant of such certificate of enlistment to the petitioner by the Municipal Authority, the valuation of the said premises will be increased creating additional liability upon the respondent No. 3 for payment of rates and taxes of the said premises at a higher rate, i.e., at the commercial rate. Accordingly, Mr. Singh supported the action of the Municipal Authority which is impugned in this writ petition.

10. Mr. Amal Krishna Sana, learned Advocate, appearing for the Municipal Authority, justified the municipal action by drawing my attention to Rules 81 and 82 of the West Bengal Municipal (Finance and Accounting) Rules, 1999 and the form prescribed under the said rules for issuance of the certificate of enlistment. It is mentioned in the prescribed form that the applicant is required to produce the consent letter of the landlord amongst various other documents for grant of such certificate of enlistment.

11. Thus, Mr. Saha submitted that since production of such consent letter of the

landlord is a condition precedent for grant of such certificate of enlistment under the aforesaid rules, the Municipal Authority did not commit any illegality in rejecting the petitioner's prayer for grant of" certificate of enlistment on the ground as communicated in the order impugned.

12. Heard the learned Advocates of the respective parties. Considered the materials on record.

13. The only question which has cropped up before this Court for answer is as follows :

Whether production of the consent letter of the landlord/owner is a condition precedent for grant of certificate of enlistment to an applicant or not ?

14. The said question is no longer a res integra in view of the earlier decisions of this Hon'ble Court (i) in the case of Venode Kumar Jalan v. Calcutta Municipal Corporation and Ors. reported in 1987 (2) CHN 219, (ii) in the case of U.S.G, Financial Services Put, (Ltd) and Anr. v. C. M. C. and Anr. reported in CLT 1994(2) HC 160 and (iii) in the case of Abdul Rashid v. Calcutta Municipal Corporation reported in 1991(1) CHN 100, wherein it was uniformly held, by considering the similar corresponding provision under the Calcutta Municipal Corporation Act that inquiry contemplated under the corresponding provision of the said Act does not envisage a detailed inquiry and particularly any inquiry relating to legality or validity of the right of the person applying for grant of certificate of enlistment or otherwise. It was further held therein that in view of a penal provision contained in the scheme of the said Act for carrying on any trade, profession or business without taking certificate of enlistment, the applicant is required to obtain such certificate of enlistment before commencing his trade, profession or business for avoiding the attraction of such penal provision against him.

15. It is, however, true that despite grant of certificate of enlistment it would be open to the Authorities of the Calcutta Municipal Corporation to take suitable action against the person who violated other provisions of the said Act. It is equally true that the landlord who has objection to the petitioner's carrying on any business in the said premises, is not precluded from taking any step against the petitioner before the appropriate forum and in the event of the landlord, viz., the respondent No. 3, proposes to initiate any proceeding against the tenant for the alleged illegal conversion of the user of the said premises, he may do so in accordance with law and the issuance of such certificate of enlistment will also not stand in the way of initiation of any proceeding by the landlord against the petitioner.

16. Mr. Saha, however, tried to impress upon this Court that the principles as laid down in those line of decisions have no application in the facts of the instant case as the Calcutta Municipal Corporation Act and/or the rules framed thereunder do not contain a similar provision as contained in the West Bengal Municipal (Finance and Accounting) Rules, 1999 which provides for production of such

consent of the landlord as a condition precedent for grant of such certificate of enlistment.

17. I, however, do not find any substance in such submission of Mr. Saha as no rule can be framed by the State dehorning statute. The main provision contained in the statute regarding grant of certificate of enlistment does not provide for any inquiry to be made regarding the legality and validity of the right of the person applied for grant of certificate of enlistment in respect of the premises where the applicant intends to carry on business. Section 118 of the said Act provides that every person engaged or intending to be engaged in any profession, trade or calling in a municipal area as specified in Schedule 1, either by himself or by an agent or by a representative shall obtain certificate of enlistment from the prescribed authority under the said Act.

18. On the plain reading of the said provision it is apparent that a mandate is given under the said provision to any person either engaged or intending to be engaged in any profession, trade or calling in a municipal area as specified in Schedule 1, is required to obtain certificate of enlistment. At the time of consideration of the application for grant of certificate of enlistment of any applicant, the Municipal Authority is only required to consider as to whether the person is engaged or is intending to be engaged in any profession, trade or calling in the municipal area, as specified in Schedule 1 or not.

19. The Rules referred to by Mr. Saha also does not contemplate such an enquiry regarding the legality and/or validity of the right of the applicant in the premises where the petitioner intends to carry on such business. It is however true that the application form prescribed under the said rules, provides for production of consent letter from the landlord. But since such an enquiry is neither contemplated under the Act nor prescribed under the rules, the requirement of production of such landlord's consent as mentioned in the prescribed form is redundant and/or surplus age. The relevant provision of the Act and the rules framed thereunder is set out hereunder :

Section 118. Certificate of enlistment for profession, trade and calling.--Every person engaged or intending to be engaged in any profession, trade or calling in a municipal area as specified in Schedule I, either by himself or by an agent or representative, shall obtain a certificate of enlistment or get the same renewed annually, as the case may be, from the Executive Officer of the Municipality or, in his absence, from the officer authorised to function as the Executive Officer upon presentation of an application together with such application fee, not exceeding rupees one thousand and five hundred as may be determined by the Board of Councillors by regulations:

Provided that such enlistment or renewal thereof shall not absolve such person from any liability to take out any licence under this Act or any other law for the time being in force.

Section 119. Grant of certificate of enlistment. --The Executive Officer or, in his

absence, the officer authorised to function as the Executive Officer shall, after making such enquiry as may be necessary and within thirty days of the receipt of the application u/s 118, grant him a certificate of enlistment if the application is in order, or shall reject the application if it is not in order.

Rule 80. No person other than the Executive Officer or in his absence, the officer authorised by the Chairman-in-Council in this behalf shall receive any application from any person for obtaining a new Certificate of Enlistment for profession, trade and calling or getting the same renewed annually.

Rule 81. The application for such Certificate of Enlistment is to be made in the prescribed form to be available from the Municipal office on payment of rupees twenty-five, in the case of municipal areas included in Group A rupees twenty, in the case of municipal areas included in Group B, rupees fifteen, in the case of municipal areas included in Group C, rupees ten, in the case of municipal areas included in Group D, and rupees five, in the case of municipal areas included in Group E. Form J may be used for this purpose.

Rule 82. The Certificate of Enlistment for profession, trade and calling shall be issued annually under the signature of the Executive Officer or in his absence, the officer authorised in this behalf in Form 24 on payment of the application fee, not exceeding rupees five hundred only, as may be determined by the Board of Councillors at a meeting.

20. Thus, the Municipal Authority should limit its inquiry with regard to the aforesaid requirement of the said provision and nothing else. If that be so, then despite a provision being made under the prescribed form for production of landlord's consent, the Municipal Authority cannot refuse to grant certificate of enlistment to the petitioner who intends to be engaged in a trade within the municipal area for non-production of such landlord's consent letter.

21. In view of the aforesaid pronouncement in the above noted decisions, this Court has no other alternative but to hold that the Municipal Authority exceeded his jurisdiction by rejecting the petitioner's prayer for grant of certificate of enlistment on the ground of non-production of the landlord's consent.

22. Since it has already been held in the aforesaid pronouncements of this Court that the legality and validity of the right of the person applying for grant of certificate of enlistment cannot be considered by the Municipal Authority at the time of grant of certificate of enlistment to the applicant, the impugned order cannot be maintained.

23. Accordingly, the impugned order of rejection of the petitioner's prayer for grant of certificate of enlistment, as contained in Annexure "P-3" to this writ petition stands quashed.

24. The Municipal Authority is, thus, directed to issue certificate of enlistment to the petitioner positively within two weeks from the date of compliance of the necessary formalities by the petitioner in this regard.

25. The application, thus, stands allowed with the aforesaid observations.

26. There will be, however, no order as to costs,

27. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.