
(2006) 04 CAL CK 0045
In the Calcutta High Court
Case No : Writ Petition No. 24538 (W) of 2005

Md. Taslim

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-04-2006

Acts Referred:

Calcutta Municipal Corporation (Amendment) Act, 1988 — Section 199
Calcutta Municipal Corporation Act, 1980 — Section 199
Constitution of India, 1950 — Article 19(1)

Citation : AIR 2006 Cal 192 : (2006) 2 CALLT 359

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Kashi Kanta Mokra, Bhaskar Prasad Baisya and Subhashis Bandopadhyay, for the Appellant; Alok Kumar Ghosh and Swapan Kumar Debnath for KMC and S.K. Golam Gous, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—Inaction on the part of the authorities of the Kolkata Municipal Corporation for not considering the petitioner's prayer for grant of certificate of enlistment for profession trade and calling u/s 199 of the Kolkata Municipal Corporation Act, 1980, has been complained of by the petitioner in this writ petition.

2. The petitioner wants to set up a medical shop under the name and style of M/s. Hussein Pharmacy at premises No. 1, N. Satgachi, Kolkata-39, for carrying on retail business of selling medicine from the said Shop. The petitioner applied for grant of certificate of enlistment for profession, trade and calling u/s 199 of the said Act before the respondent No. 4 on 9th September 2005. The petitioner has also deposited a sum of Rs. 3,000/- towards the application fees in the Reserve Bank of India on 8th September 2005.

3. The landlady of the proposed medicine shop has also granted "no-objection" certificate to the petitioner for setting up the said business therein.

4. The petitioner claims that he has complied with all the necessary formalities in connection with his prayer for grant of certificate of enlistment u/s 199 of the said Act. But the Municipal authority has neither granted the said certificate of enlistment to the petitioner nor refused to grant the same to the petitioner till date. As a result thereof, the petitioner is unable to set up his business.

5. Under such circumstances, the petitioner filed this writ petition inter alia praying for issuance of direction upon the Municipal authority for issuing the certificate of enlistment to the petitioner forthwith.

6. Such prayer of the petitioner was opposed by the Municipal authority which tried to justify its inaction by shifting its responsibility to the Government of West Bengal, Department of Municipal Affairs. The Municipal authority in its affidavit filed in connection with this writ petition, stated that the Municipal authority could not consider the petitioner's prayer for grant of certificate of enlistment due to the objection raised by the State Government on account of enlistment of the name of the petitioner as "State suspects" under SLB Head 17 with category C in the State Suspect List under green war book, June 2004, West Bengal. Several letters were exchanged between the Municipal authority and the State Government in this regard.

7. It appears from the said correspondences that the said suspect list was prepared by the Home Political Secret Department of the Union of India. Ultimately the Municipal Commissioner of Kolkata Municipal Corporation was informed by the Joint Secretary to the Government of West Bengal by his letter dated 16th December 2005 that the Municipal Commissioner may consider the sound integrity of the prospective licensee in case of issuing licence for carrying out a business in its jurisdiction. The said communication has been disclosed by the Municipal authority in its affidavit in opposition at page 20 thereof. The Municipal authority, thus, made an attempt to justify its inaction by showing state interference in this regard.

8. Mr. Moitra, learned Senior Advocates, appearing on behalf of the petitioner, submitted that Section 199 of the Kolkata Municipal Corporation Act, 1988, authorised the Municipal Commissioner to consider the petitioner's prayer for grant of certificate of enlistment within 30 days from the date of submission of the application.

9. Mr. Moitra further submitted that the Municipal Commissioner being the authority prescribed under the law for such consideration has to apply its own independent mind for the generation of genuine satisfaction regarding the fulfilment of the requisite condition for grant of certificate of enlistment in favour of the petitioner. Mr. Moitra further submitted that the mind of the concerned authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or other. Mr. Moitra further contended that since the discretion to grant or not to grant vests absolutely on the Municipal Commissioner, its discretion should be shown to have not been

affected by any extraneous consideration.

10. In support of such submission, Mr. Moitra placed strong reliance on a decision of the Hon''ble Supreme Court in the case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat,

11. Mr. Moitra, thus, contended that since the absolute discretion to grant or not to grant such certificate of enlistment vests on the Municipal Commissioner, the presence of the Union of India is not necessary for the present purpose. Mr. Moitra submitted that in view of the aforesaid decision of the Hon''ble Supreme Court, the Municipal Commissioner is required to consider the petitioner's prayer for grant of certificate of enlistment independently and without being influenced by the communications made between the State Government and the Municipal authority.

12. Mr. Moitra further submitted that the petitioner was absolutely unaware of inclusion of his name in the suspect list. Mr. Moitra contended that in any event inclusion of the name of the petitioner in the suspect list cannot take away the petitioner's right to live and/or to carry on his trade and/ or business and/or profession. Mr. Moitra also contended that even if the petitioner is found to be guilty for any offence whatsoever, then the concerned authority may proceed against the petitioner for awarding punishment in accordance with law, but withholding the grant of certificate of enlistment for the said reason, cannot be justified by showing finger at the State Government or the Union of India.

13. Mr. Moitra further relied upon a Division Bench decision of this Hon''ble Court in the case of Abdul Rashid Vs. Calcutta Municipal Corporation and others, to show the nature of inquiry which can be made by the concerned authority u/s 199 of the said Act in connection with an application for grant of certificate of enlistment to an applicant.

14. Mr. Moitra ultimately submitted that since the petitioner has complied with all the necessary formalities for grant of certificate of enlistment in his favour, the Municipal authority ought not to have withheld the grant of such certificate of enlistment in favour of the petitioner.

15. Mr. Ghosh, learned Advocate, appearing for the Municipal authority, opposed such prayer of the petitioner by submitting that since Corporation acts under the supervision of the Government of West Bengal through its Department of Municipal Affairs, the Corporation could not ignore the instructions given by the State Government from time to time in connection with the petitioner's prayer for grant of certificate of enlistment.

16. Mr. Ghosh submitted that since the State Government was opposing the grant of such certificate of enlistment to the petitioner on the ground that the name of the petitioner was included in the suspect list, the Municipal authority could not consider the petitioner's prayer for grant of trade licence.

17. Mr. Ghosh contended that under such a situation Union of India, Home,

Political Secret Department should be made a party to this writ petition so that the entire dispute can be resolved in the presence of Union of India. In support of such submission, Mr. Ghosh relied upon a decision of the Hon''ble Supreme Court in the case of Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar,

18. Mr. Ghosh also submitted that if this Hon''ble Court directs the Municipal authority to consider the petitioner's prayer for grant of the certificate of enlistment, Municipal authority will consider such prayer of the petitioner, notwithstanding the communication made by the State Government to the Municipal authority as aforesaid.

19. Heard the learned Advocates of the parties. Considered the materials on record.

20. The reasons for which the petitioner's prayer for grant of certificate of enlistment was not considered by the Municipal Commissioner so long, has already been narrated above.

21. Let me now consider as to whether the Municipal authority was justified by not considering the petitioner's prayer for grant of such certificate of enlistment on account of the reasons as disclosed by the Municipal authority in its affidavit in opposition.

22. Section 199 of the Kolkata Municipal Corporation Act, 1980 vests exclusive discretion upon the Municipal Commissioner either to grant or not to grant the certificate of enlistment in favour of an applicant. Such unfettered discretion which is given to the Municipal Commissioner cannot be controlled and/or restricted by any extraneous authority which has no statutory recognition. The decision which was cited by Mr. Moitra in the case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, really helps this Court to resolve in dispute involved in this writ petition. Paragraph 19 of the said decision which is relevant for the present purpose is set out hereunder:

19. Since the validity of sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as, also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.

23. In view of the principles as laid down by the Hon''ble Supreme Court in the aforesaid citation, this Court directs the Municipal Commissioner to consider the petitioner's prayer for grant of the certificate of enlistment independently by ignoring the communications made by the State Government to the Municipal authority in this regard.

24. Such consideration must be made by the Municipal Commissioner positively within a period of four weeks from the date of communication of this order. The concerned respondent is also directed to intimate his decision to the petitioner within a week thereafter.

25. In the event, the Municipal Commissioner decides not to grant the certificate of enlistment in favour of the petitioner, the Municipal authority is required to supply the reasons for such refusal in the order, If the Municipal Commissioner decides to grant certificate of enlistment in favour of the petitioner, such certificate of enlistment should be granted to the petitioner within a week from the date of compliance of the necessary formalities by the petitioner in this regard.

26. While considering the petitioner's prayer for grant of certificate of enlistment, the Municipal authority may hold an enquiry in the light of the decisions of this Hon''ble Court in the case of Abdul Rashid Vs. Calcutta Minicipal Corporation and others, as well as in the case of Layeeque Ahmed Akhtar Vs. State of West Bengal and Others,

27. Since the petitioner's right to carry on business cannot be taken away merely because of enlistment of his name in the Suspect List, the concerned authority will consider the merit of the petitioner's application independently and without being influenced by the instructions given by the State Government or the Central Government in this regard. Imposition of unreasonable restriction to carry on any business or trade by a citizen is violative of Article 19(1)(g) of the Constitution of India. (See Rashid Ahmed Vs. The Municipal Board, Kairana, As such, the petitioner's right to carry on trade or business cannot be curtailed by the State Government or by the Central Government simply because of inclusion of his name in the Suspect List. Since inclusion of the name of the petitioner in the Suspect List is an extraneous consideration for the present purpose, the presence of the Central Government which included the petitioner's name in the Suspect List, is not necessary for adjudication of the dispute involved in the writ petition.

28. Needless to mention here that this order will not prevent the State Government or the Central Government from taking any legal action which may be deemed necessary to be taken against the petitioner for any offence allegedly committed by him.

29. The writ petition, thus, stands allowed. There will be, however, no order as to costs.

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