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**(1985) 05 CAL CK 0021**  
**In the Calcutta High Court**  
**Case No : C. R. No. 6975 (w) of 1977**

M/S. Car-Fil and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 17-05-1985

**Acts Referred:**

Calcutta Municipal Act, 1951 — Section 423(1), 426(a)

**Citation :** 89 CWN 825

**Hon'ble Judges :** P.K. Mukherjee, J

**Bench :** Single Bench

**Advocate :** Dilip Bose and B. Bhattacharjee, for the Appellant;

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## Judgement

Paritosh Kumar Mukherjee, J.—The petitioner Nos. 2 to 4 are the partners and the petitioner No. 1 is the partnership firm under the name and style "Car-Fil" situated at 170, Sarat Bose Road, Calcutta dealing as an agent of M/s. Burma Shell Oil Storage and Distributing Co. of India Ltd. The petitioners' grievance inter alia, was that the District Conservancy Department, District No. IV of the Corporation of Calcutta, without complying with the provisions of section 423(1) of the Calcutta Municipal Act, 1951, straight away purported to take action under the provisions of section 426(a) of the said Act and thereby on the basis of the inspection assessed removal charges of the domestic refuse from the petitioner's petrol pump at the rate of Rs. 300/- per, month. Mr. Dilip Bose, learned Advocate, appearing with Bhudeb Bhattacharya, submitted that the Corporation of Calcutta certainly has the power to impose such levy for removal of the refuse, if actually there is any such refuse, but before that, it is incumbent upon the Corporation to see that the petitioners have been given liberty to remove the same and in case the petitioners fail to discharge their obligations and then and then only the power u/s 426(a) could be exercised by the Corporation of Calcutta.

2. In the instant case, the writ petitioners having Trade Licence for running the petrol pump and service Station at premises No. 170, Sarat Bose Road are entitled to carry on business, without any hindrance and disturbance from any

quarters, particularly from the Corporation of Calcutta. When a notice u/s 426(b) of the Calcutta Municipal Act 1951, was served upon the petitioners, the petitioners had objected to the said notice against such imposition of special charges for removal of trade refuse in respect of the said petrol pump operated by petitioners in terms of the said section.

3. In the objection petition the petitioners stated categorically that there could not be any question of dumping any refuse, as there was no refuse at all as the petrol pump had a water line with 400 lbs pressure per sq. ft., which, when used, leaves nothing but water. In spite of the aforesaid objections being filed, the District Conservancy Department, District IV of the Corporation of Calcutta by letter dated November 17, 1977 had reduced the rate of charge from Rs. 100/- to Rs. 50/- per month.

4. After service of the notice demanding justice on December 17, 1977 the petitioners moved the present writ petition before this Court and on December 20, 1977 obtained a Rule and interim order, which was subsequently extended from time to time.

5. The Rule was made ready as regards service on November 15, 1978 and at one stage of the proceeding during the hearing of the application on February 7, 1978, Mr. Tapas Chandra Roy appeared for Respondents Nos. 2 to 5, that is the Corporation of Calcutta, but no memo of appearance could be found in the record. Even no one appeared on behalf of the Respondents at the time of hearing when the matter was heard for two days.

6. In the circumstances stated above, the allegations made in the writ petition remain altogether controverted.

7. In view of the clear provisions of sections 423 and 426 of the Calcutta Municipal Act, in my opinion, the Respondent Corporation of Calcutta is not competent to proceed in accordance with the provisions of section 426(b) of the said Act, without taking recourse to the provisions of section 423 of the said Act and without giving the petitioner any opportunity to remove the refuse. Although in the present case, there was no refuse, according to the petitioners.

8. The Rule is accordingly made absolute.

9. Let a Writ in the nature of Certiorari issue setting aside the impugned order dated June 10|18th, 1977, issued by the District Conservancy Officer, District IV and also Annexure "H", that is the order dated November 17, 1977 issued by the said Officer. Let a consequential writ in the nature of Mandamus also issue directing the respondents not to give effect or further effect to the said order. There will be no order as to costs.