
(2018) 10 CAL CK 0066
In the Calcutta High Court
Case No : Writ Petition No.19247 (W) Of 2018

Subir Bhowmick @APPELLANT@Hash State of West Bengal & Ors

Date of Decision : 11-10-2018

Acts Referred:

West Bengal Municipal Corporation Act, 1993 — Section 118, 119, 201
Kolkata Municipal Corporation Act, 1980 — Section 199, 199(2), 200
West Bengal Municipal (Finance and Accounting) Rules, 1999 — Rule 80, 81, 82, 83, 84

Citation : (2018) 10 CAL CK 0066

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Saptangsu Bose, Mir Anuruzzaman, Soumen Bose, Dipanwita Banerjee

Final Decision : Disposed Off

Judgement

DEBANGSU BASAK, J.

The petitioner seeks a direction upon the Municipality to renew the Certificate of Enlistment existing in favour of the petitioner. Learned Advocate

appearing for the petitioner submits that, the Municipality did not consider the application for renewal of the Certificate of Enlistment. The Municipality

is insisting upon production of documents which are not required. He relies upon 2017 Volume 1 Calcutta High Court Notes (Cal) page 123

(Harvinder Singh v. Kolkata Municipal Corporation) and submits that, the disputes if any between a land lord and a tenant or payment of property tax

is of no consequence in considering an application for renewal of Certificate of Enlistment. He relies upon 2008 Volume 4 Supreme Court Cases page

720 (Government of Andhra Pradesh & Ors. v. P. Laxmi Devi (Smt.)) in support of his contentions.

Learned Senior Advocate appearing for the Municipality submits that, the Municipality is governed by the provisions of the West Bengal Municipal

Corporation Act, 1993 read with West Bengal Municipal (Finance and Accounting) Rules, 1999. He relies upon Section 118 and 201 of the Act of

1993 and Rule 81 of the Rules of 1999 and submits that, the petitioner is required to apply under Form J as provided in the Schedule to the Rules of

1999. Form J requires the documents specified therein to be produced along with the application. Such documents not being produced by the petitioner,

the Municipality is not in a position to consider the application for the renewal of the Certificate of Enlistment. He submits that, the form has statutory

force. He relies upon 2006 Volume 1 Calcutta High Court Notes page 634 (Layeeque Ahmed Akhtar v. State of West Bengal & Ors.) and submits

that, the same did not consider Section 201 of the Act of 1993. He relies upon an unreported decision of the Division Bench rendered in AST 216 of

2012 dated October 4, 2012 (Indu Bhusan Bhattacharya & Anr. v. Swarup Kumar Saha) and submits that, compliance with Form J is

mandatory. In his usual fairness, he submits that the judgment and order dated October 4, 2012 in Indu Bhusan Bhattacharya & Anr. (supra) is under

review.

The petitioner claims to be the sole proprietor of "Bastra Niketan" and carrying on business at 66, Barhans Fartabad, Garia Boral Main Road,

Kolkata - 700 084. It is within the municipal limits of Rajpur Sonarpur Municipality. The petitioner complains that, its application for renewal of

Certificate of Enlistment for the year 2018-2019 has not been considered and decided upon by the Municipality. The petitioner claims that, Certificate

of Enlistment was initially issued to the petitioner in 1996 and that, the same was renewed from time to time.

Grant and consideration of an application for issuance or renewal of Certificate of Enlistment are governed by Sections 118 and 119 of the Act of

1993 and Rules 80, 81 and 82 and along with Form J in the Rules of 1999. The Municipality contends that, Section 201 also has a role to play. Sections

118, 119 and 201 of the Act of 1993 and Rules 80, 81 and 82 along with Form J of the Rules of 1999 are as follows:-

"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 under

Section 118, grant him a certificate of enlistment if the application is in order, or shall reject the application if it is not in order. Section 201. Licence to

be obtained for use of premises for non-residential purposes."(1) No person shall use or permit to be used any premises for any of the non-

residential purposes as mentioned in Schedule II without or otherwise than in conformity with a licence granted by the Chairman in this behalf on such

terms and conditions as may be determined by regulations.

(2) The Board of Councillors shall determine by regulations a scale of fee to be paid for the issue of licence in respect of premises used for non-

residential purposes under sub-section (1) :

Provided that no such fee shall exceed five hundred rupees per month in respect of any premises 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.

The West Bengal Municipal (Finance and Accounting) Rules, 1999.

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(printed number)

FORM J

(Under rule 81)

Application for certificate of enlistment.

The West Bengal Municipal Act, 1993.

[See section 118]

(To be filled up in block letters)

Ward no.....

Year

To

The Executive Officer,

..... Municipality / Notified Area Authority / Industrial Township.

P.O.

District

Sir,

I/We hereby apply for a new/renewal of certificate of enlistment for carrying on Trade, Profession and Callings as stated below:-

1. Name(s) of the applicant :.....
2. Name of Firm or Company :.....
3. Date/Expected date of commencement of business :.....
4. Residential address of the applicant :.....

5. Address of the place of business : Holding No. _____

Where trade/profession/calling is Carried on including its Rent/ Annual Valuation
Ward No. _____..

_____.Municipality.

Rent / A.V. Rs. _____

6. Nature of Trade/Profession/Calling.

_____. ..

7. (a) Address of Workshop, if any.

_____. ..

(b) Address of Godown, if any.

_____. ..

8. Particulars of immediate preceding Year's certificate of enlistment Under
section 118 in case of Renewal

_____. ..

9. Additional information, if any. _____
_____..

I/We solemnly declare that :-

(1) There is no litigation/Court case in my/our above mentioned premises where
I/ we are conducting business;

(2) All information and statements as made above are true to my/our knowledge
and belief. The West Bengal Municipal (Finance and Accounting)

Rules, 1999.

(3) Taxes/Fees under all other sections of the West Bengal Municipal Act, 1993
has been cleared by me/us.

I/We pray for issue/renewal of Certificate of Employment for the year _____
_____.on payment of requisite application fee. Yours faithfully,

Date _____

_____. ..

Signature of the applicant (s) With office seal.

N.B. Documentary evidence in respect of the following is to be submitted:-

A. In case of Company,-

the delinquent, as may be permitted by law. The same will not detain the Executive Officer from dealing with the application for grant or renewal of Certificate of Enlistment. Enquiry under Section 119 is limited to the issue, whether the applicant is carrying on business, trade or calling or is intending to do so. If the answer to such issue is in the affirmative, the Executive Officer is required to grant or renew the Certificate of Enlistment as the case may be.

Form J does not enlarge or diminish the scope of enquiry that the Executive Officer is required to do. Form J is the application contemplated in

Section 118. An applicant is required to make an application under Section 118. The format of such an application is provided in Form J. Form J

requires few documents to accompany it. An applicant may or may not have all the documents envisaged in Form J to accompany it. Absence of any

or all the documents, ipso facto, may not result in the application being denied consideration or the same to result in rejection. Upon receipt of the

application under Form J the authority designated under Section 119 will make the enquiry on the issue as to whether the applicant is carrying or

intending to carry on any business, trade or calling. If the result of such an enquiry is in the affirmative, it is required to grant the Certificate of

Enlistment or renew it, as the case may be.

The scope of enquiry under Section 118 of the Act of 1993 was considered in Layeeque Ahmed Akhtar (supra). It took into account provisions of

Section 118 of the Act of 1993 and Rules 80, 81 and 82 of the West Bengal Municipal (Finance and Accounting) Rules, 1999. Section 201 of the Act

of 1993 was not placed before it. Indu Bhusan Bhattacharya & Anr. (supra) was also not placed before it for consideration. It considered the issue,

whether production of consent letter of the landlord/owner is a condition precedent for grant of Certificate of Enlistment to an applicant or not. It

relied upon three reported judgments of the Calcutta High Court namely, 1991(1) CHN 100 (Abdul Rashid v. Calcutta Municipal Corporation), 1994(2)

Cal LT 160(M.S.G. Financial Services Pvt. Ltd. & Anr. v. CMC & Anr.) and 1987(2) CHN 219 (Venode Kumar Jalan v. Calcutta Municipal

Corporation & Ors.).

Vinode Kumar Jalan (supra), Abdul Rashid (supra), USG Financial Services (P) Ltd. (supra) and Harvinder Singh (supra) considers the scope of

enquiry under Section 199 of the Kolkata Municipal Corporation Act, 1980 prior to its amendment by virtue of the Calcutta Municipal Corporation

(Amendment) Act, 1992. The Act of 1992 deleted Section 200 and introduced Section 199 into the Act of 1980 with retrospective effect from April 1,

1990. Section 199 of the Act of 1980 deals with Certificate of Enlistment for profession, trade and calling. Sub-section (2) of Section 199 requires the

Municipal Commissioner to either grant or reject the application for Certificate of Enlistment or the renewal thereof, after making such enquiry as may

be necessary. Vinode Kumar Jalan (*supra*) is of the view that, the scope of enquiry does not enable the Municipal Commissioner to decide any

question of title to an immoveable property. Abdul Rashid (*supra*) is of the view that, a businessman carrying on or intending to carry on business

within the limits of Kolkata Municipal Corporation acquires a right to a Certificate of Enlistment, incurs a liability to pay tax and that, the Corporation

has no right to refuse the certificate or tax. USG Financial Services (P) Ltd. (*supra*) is of the view that, enquiry contemplated does not envisage a

detailed enquiry and particularly enquiry relating to legality and validity of the right of the applying Harvinder Singh (*supra*) is of the view that, if a

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

The authorities noted above are of the consistent view that, the only enquiry required to be undertaken is whether the applicant is carrying on or

intending to carry on any business, trade or calling within the Municipal limits. Indu Bhusan Bhattacharya (*supra*) does not lay down anything to the

contrary. It requires an application to be made. Such is the requirement of statute. Indu Bhusan Bhattacharya & Anr. (*supra*) interpreted the word

“enquiry” appearing in Section 119 read with Section 118 of the Act of 1993 relating to enlistment of any trade or profession and calling. It

notices Sections 118 and 119 of the Act of 1993. It takes into account Rule 80, 81, 82, 83 and 84 of the West Bengal (Finance and Accounting) Rules,

1981. In the facts of that case, the petitioner did not file any application seeking Certificate for Enlistment in the prescribed Form “J” before the

Executing Officer of the Municipality. Indu Bhusan Bhattacharya & Anr. (*supra*) cannot be read to have held that, the documents stated in Form J of

the Rules of 1981 are required to be mandatorily produced and that, absence of such documents accompanying the application under Form “J”

would be fatal to its consideration. It requires an application to be made under Form â??Jâ?? for consideration by the Executive Officer of the Municipality.

â??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 surplusage.

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.â??

P. Laxmi Devi (Smt.) deals with the scope of judicial review in respect of fiscal or taxing statutes or in case of economic measures. It is of the view

that, if a law in a higher layer in the hierarchy clashes with the law in the lower layer, the former will prevail. The applicability of the ratio decided

therein, in the facts of the present case, is not understood.

In the facts of the present case, the Executive Officer of the Municipality is directed to consider and decide the application of the petitioners, in

accordance with law. He will decide the same within 4 weeks from the date of

communication of this order. The Municipality will not take any coercive measure against the petitioner for absence of Certificate of Enlistment for a period of 4 weeks thereafter, if the application is rejected. W.P.

No. 19247(W) of 2018 is disposed of accordingly. No order as to costs. Urgent certified website copies of this judgment and order, if applied for, be made available to the parties upon compliance of the requisite formalities.