

(1996) 06 CAL CK 0019
In the Calcutta High Court
Case No : F.M.A.T No. 3915 of 1995

The Chairman, Khardah Municipality and Another APPELLANT
Vs
Annapurna Bakery and Another RESPONDENT

Date of Decision : 05-06-1996

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 202, 203
Constitution of India, 1950 — Article 226
West Bengal Municipal Act, 1993 — Section 118, 119, 120, 123, 19

Citation : (1997) 1 CALLT 32

Hon'ble Judges : Satyabrata Sinha, J; Satya Narayan Chakrabarty, J

Bench : Division Bench

Advocate : Amit Kumar Roy, Sadananda Ganguly and Koushik Roy, for the Appellant; A.P. Sircar and Debjani Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—This appeal is directed against a judgment and order dated 26.9.95 passed by N.K. Batabyal, J. in C.O. No. 19502(W)/95 whereby and whereunder the said learned Court allowed the Writ application filed by the writ petitioner-respondent No. 1.

2. The respondents No. 1 is a proprietary concern.

3. One Smt. Minakshi Ghosh filed a writ application, inter alia, for issuance of a writ of or in the nature of mandamus directing the respondents to grant her an enlistment certificate in terms of the provision of West Bengal Municipal Act, 1993 (hereinafter referred to as "the said Act"). According to the petitioner, she is a tenant in respect of premises No. 14, Rahara Bazar at Rahara, P.S. Khardah, District North 24-Parganas on a monthly rental of Rs. 400/- and had installed necessary machinery for manufacturing the bakery products. The said unit is a small-scale industrial unit. The petitioner applied for licence for manufacturing and selling articles of food and also for trade licence. The appellant No. 1-Municipality supplied application form for grant of professional certificate for

enlistment and for trade licence to the petitioner which was duly submitted on 10.10.94 together with the prescribed fees therefor. According to the writ petitioner in terms of the provision of the said Act the authorities were bound to grant a certificate of enlistment or reject the same within 30 days; but as despite expiry of the said period no certificate was granted, the said writ petition was filed. The appellants in their affidavit-in-opposition before the learned trial Judge, inter alia, stated that the said application of the petitioner was not accompanied by requisite plan and other relevant documents and thus the same was not taken into consideration. However, in the affidavit-in-reply the writ petitioner stated that the application was rejected on extraneous consideration. A supplementary affidavit had been filed annexing therewith various documents and wherein it was, inter alia, stated that all requisite documents were supplied.

4. The learned trial Judge having considered the provisions of Sections 118 and 119 of the West Bengal Municipal Act, 1993 as also the provision of Sections 202 and 203 of the Calcutta Municipal Corporation Act, Inter alia, held that right to carry on business is a fundamental right and thus, the appellant-municipality could not have withheld grant of enlistment certificate. The writ petition was allowed on the aforesaid finding.

5. By an order dated 25.3.96 this court stayed the operation of the said Judgment subject to the conditions stated therein which read thus:--

"(1) The concerned authority of the appellants shall give an opportunity of hearing to the writ petitioner/respondent and pass an appropriate order in terms of Section 119 of the West Bengal Municipal Act, 1993. A copy of the said order should be produced before this court;

(2) In the event, the appellants find that the respondent is otherwise entitled to obtain the trade licence, the same may be granted in its favour, without prejudice to the rights and contentions of the parties as regards title. However, it goes without saying that the appellants shall be entitled to consider as to whether the writ petitioner is in possession of the premises in question, or not and fulfils other conditions for carrying on business."

6. Pursuant to the said observations, the petitioner was granted an opportunity of hearing and an order was passed on 6.4.1996 again rejecting the said application.

7. Mr. Sadananda Ganguly, the learned Counsel appearing on behalf of the appellants. Inter alia, submitted that the provisions of Sections 118 and 119 of the West Bengal Municipal Act, 1993 confer a wide power on the Municipality in granting or refusing the certificate. According to the learned, counsel, the writ petitioner did not have any legal right to obtain a certificate. The learned Counsel contends that as the Municipality can grant a certificate subject to the restrictions and conditions as laid down u/s 386(1)(c) of the said Act and further in view of the provisions contained in Sections 430 and 431 thereof as the Municipality is answerable to the State for its conduct, the impugned orders must

be held to be legal inasmuch as the lands upon which the factory is situated belongs to the Appellant No. 1 itself and further the writ petitioner could not produce the necessary certificates required under the Air (Prevention & Control of Pollution) Act, 1974 and West Bengal Fire Services Act. The learned counsel further submitted that the learned trial Judge committed an illegality in pronouncing the Judgment without notifying the parties there-about and thus, the said Judgment is a nullity. In this connection learned counsel had produced before us the Cause List dated 25.9.95 and 26.9.95 to show that on either of the two days, the said case was not listed.

8. Mr. A.P. Sircar, the learned Counsel, appearing on behalf of the respondent submitted that it is now a settled law that enquiry contemplated under the said Act has a limited scope and thus, the question of title which is pending consideration in a Civil Suit cannot be the subject matter of any enquiry. He submitted that for the purpose of carrying out a business, other licences may be necessary but for that, a certificate of enlistment cannot be denied inasmuch as such certificate of enlistment is granted for a limited purpose. The learned counsel submitted that no licence is required by the petitioner under the Air (Prevention and Control of Pollution) Act as well as under the Fire Services Act and thus, it is not open to the appellants to reject the petitioner's application on those grounds.

9. Before the learned trial Judge the only contention which was raised is that the appellant No. 1 has title in respect of the premises in question. However, the appellant No. 1 in its order dated 6.4.1996, Inter alia, held that Shyamalesh Ghosh whose tenant the petitioner claims herself to be, was not competent to create any tenancy in respect of the premises in question as he was himself an unauthorised occupier. It was further held that the rent receipt filed by the Writ petitioner was a collusive document. It was further held that Shyamalesh Ghosh never applied before the Municipality for using the said premises for commercial purposes and thus, no certificate for enlistment can be granted in favour of the petitioner. It was held that even if installed by the petitioner requires 45 Kgs. of wood and after the same is set on fire the same would create pollution in and around the locality, for which no protection had been taken in consultation with the Pollution Control Board. Such an act would cause tremendous nuisance or health hazards to the pollution of the adjoining locality. It was further held that even a fire licence is required from the competent authority.

10. The question which arises for consideration in this application is the scope of the provisions of Sections 118 and 119 of the West Bengal Municipal Act which read thus:-

" 118. 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 ten, as may be determined by the Board of Councillors at a meeting:

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.

119. 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."

11. Section 120 of the said Act imposes an obligation to obtain such a licence within a period of six months from the date of coming into force of the Act. Section 123 deals with advertisement. The said provisions occur in Part-IV which deals with Municipal Taxes and Application fee. Chapter XI, which comes within the purview of the said part deals with Application fee and other taxes; sub heading "A" whereof deals with Profession, Trades or Callings.

12. There is no direct authority as regards the construction of the said provisions. Sections 199 and 200 of the Calcutta Municipal Corporation Act, 1980 read thus:-

"Section 199. Every person engaged in any profession, trade or calling in Calcutta as mentioned in Schedule IV shall be liable to pay to the Corporation a tax at the rate mentioned in the said Schedule:

Provided that the payment of such tax 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 200. (1) Every person liable to pay tax u/s 199 shall obtain a certificate of enlistment from the Municipal Commissioner.

(2) Every person required to obtain a certificate of enlistment shall, within ninety days from the date of coming into force of this Act, or if he was not engaged in any profession, trade or calling on the date, within ninety days of his becoming liable to pay tax or within ninety days of his becoming liable to pay tax at a rate higher or lower than the one mentioned in his certificate of enlistment, apply for a certificate of enlistment or a revised certificate of enlistment, as the case may be, to the Municipal Commissioner in such form as may be specified by the Corporation.

(3) The Municipal Commissioner shall, after making such enquiry as may be necessary and within thirty days of the receipt of the application, grant him such certificate, if the application is in order. The application, if it is not in order, shall be rejected.

(4) The Municipal Commissioner shall mention in every certificate of enlistment the amount of tax payable by the holder thereof in accordance with Schedule IV and the date by which it shall be paid, and such certificate shall serve as a notice of demand for purposes of Section 217.

(5) Where a person liable to enlistment wilfully falls to apply for such certificate within the period referred to in Sub-section(2), the Municipal Commissioner may, after giving him a reasonable opportunity of being heard, impose upon him a penalty (***) for such each day of default

(6) Where a person liable to enlistment has given false information in any application submitted under this section the Municipal Commissioner may, after giving him a reasonable opportunity of being heard, impose upon him a penalty not exceeding one thousand rupees."

13. Although in the said Act, there does not appear to be any provision for imposition of tax or profession, trade or calling but there exists a ban on advertisement in any form, other than advertisement in newspapers, as also tax as advertisement. A person carrying on business has to put up an advertisement in one form or the others.

14. This Court in a number of decisions has held that the scope of the provision of Sections 199 and 200 of the Calcutta Municipal Corporation Act is limited. Reference in this connection may be made to Venode Kumar Jalan v. Calcutta Municipal Corporation reported in 1987(1) Cal L T 333, Abdul Rashid Vs. Calcutta Municipal Corporation and others, , Federation of Traders Organisation of West Bengal and Anr. v. State of West Bengal and Anr. (Matter No. 3346/93) disposed of on 27th June, 1994 and in the matter of: USG Financial Services (Put.) Ltd. and Anr. v. The Calcutta Municipal Corporation and Anr. reported in 1994(2) Cal LT 160.

15. Sections 118 and 119 are in pari meterla of Section 200 of the Calcutta Municipal Corporation Act. In USG Financial Services Pvt. Ltd. and Anr. v. The Calcutta Municipal Corporation and Anr. reported in Calcutta Law Times 1994(2) HC 160 having taken, into consideration the aforementioned provisions, and a division bench decision of this court in Abdul Rashid Vs. Calcutta Municipal Corporation and others, and Venode Kumar Jalan v. Calcutta Municipal Corporation reported in Calcutta Law Times 1987 HC 333, it was held:

"The scheme and purport of the Act clearly envisages that a certificate of enlistment has to be obtained only by a person who is liable to pay tax. An application for obtaining certificate of enlistment is to be filed within a period of ninety days from the date when a person has become liable to pay tax. It is, therefore, clear that a certificate of enlistment is not necessary to be obtained before a person starts his profession, trade or calling either in a premises or without a fixed place of business. Thus, while a person files an application for grant of certificate of enlistment, the same must be held to be for a limited purpose. Only because a certificate of enlistment is granted, the same does not

mean that a licence is granted in his favour to carry on business. The right of a person to carry on a particular type of business or the question as to whether the business carried on by him in the premises in question is in violation of other provisions of the Calcutta Municipal Corporation Act or other law for the time being in force, is de hors the said provisions. It is true, that Section 3 of the Section 200 of the Act contemplates holding of an enquiry but a bare perusal of the said provisions leaves no manner of doubt that such enquiry is required to be held for a limited purpose, i.e. Inter alia, for the purpose as to whether the contents of the application are correct or not. In my opinion, enquiry contemplated under Sub-section 3 of Section 200 of the Act does not envisage a detailed enquiry and particularly enquiry relating to legality or validity of the right of the person applying for grant of certificate of enlistment or otherwise. Sub-sections 4 and 5 of Section 200 contain a penal provision which also indicate that an application for grant of certificate of enlistment is required to be filed so as to enable the concerned applicant not to invite the penal provisions as contained therein. In this view of the matter, in my opinion, despite the grant of certificate of enlistment it would be appropriate for the authorities of the Calcutta Municipal Corporation to take suitable action as against a person who has violated other provisions of the Act. Similarly, a landlord or for that matter or any other person who has objection to the petitioners" carrying on any business in the premises in question will not be debarred from so doing before a proper forum only because a certificate of enlistment has been granted."

16. In Federation of Traders Organisation of West Bengal and Anr.(supra) Altamas Kabir, J. followed Abdul Rashid's case despite an amendment made in Section 199 of the Calcutta Municipal Corporation Act and held that a certificate of enlistment cannot be denied on the ground that the applicant had been unable to prove the tenancy in the premises where he allegedly carried on the business. It was further held that in view of amendment in Sub-section (2) of Section 200 a person is not obliged to file in the form provided by the Corporation inasmuch as such forms required various informations which in some cases may amount to nullify the pronouncement of the Division Bench in Abdul's case (supra) inasmuch as therein the division bench clearly held that certificate of enlistment cannot be linked up with the question of tenancy and/or incidence thereof. The said decisions apply in all fours to the instant case.

17. Grant of a certificate of enlistment does not decide any question of title. Such a question of title has to be raised before the appropriate forum and grant of such certificate would not have any value in a proceeding requiring adjudication on the question of title. Proviso appended to Section 118 clearly states that such enlistment would not absolve such person from any liability to take out licence under the said Act or any other law for the time being in force.

18. Section 118 merely requires a person to obtain a certificate of enlistment before he can carry on business.

19. It is true u/s 119, the Executive Officer or in his absence an officer

authorised function as Executive Officer is entitled to make such enquiry but the terminologies used in the said provision clearly state that a certificate of enlistment has to be granted within 30 days from the receipt of the application and rejection thereof is permissible only if the same is not in order.

20. It is now well known that the provisions of a statute have to read as a whole. The power of rejection of application is, therefore, limited i.e. only in the event the application is not in order which in absence of any prescribed rule would mean an application which does not clearly give details of the nature of business, the locale thereof and other relevant facts. The enquiry contemplated u/s 119 must, therefore, be held to have a limited scope and in our opinion, keeping in view the decision of the Division Bench in Abdul Rashid (supra), such an enquiry cannot extend to the question of the right of the person to hold the premises under a valid title of tenancy or similar such question. It is also not necessary for the concerned authority to consider as to whether carrying on such business would require other licences under the other statutes or not particularly in a case where a person praying for grant of certificate of enlistment denies or disputes the fact that he is required to obtain such a certificate. It goes without saying that if he violates any other statute he makes himself liable thereunder. However, the authorities under the Act are entitled to see as to whether the applicant by carrying on any business would be violating essential conditions of the said Act or not. It goes without saying that an applicant is also bound to have licences if so required even under the other provisions of the West Bengal Municipal Act.

21. The learned trial Judge, in our opinion, has rightly held that the question of title is irrelevant. Furthermore, the very fact that such a certificate of enlistment is required to be granted within 30 days of the receipt of the application u/s 118 of the said Act clearly excludes a detailed enquiry in view of the fact that such a certificate of enlistment does not absolve the applicant from any liability to take out any licence thereunder or any other law for the time being in force.

22. In a case of this nature, the Municipality also can grant such certificate of enlistment without prejudice to its rights and contentions.

23. It is also interesting to note that although in the order impugned before the learned trial Judge the only ground was that Sri Shyamalesh Ghosh is not entitled to create any tenancy but in the order dated 6.4.1996 passed in terms of this court's order dated 15.3.1996 various grounds had also been taken although it was clearly stated by this Court in its aforementioned order that the, writ petitioner should be granted licence if it is otherwise entitled thereto.

24. The contention of Mr. Ganguly to the effect that the scope of enquiry u/s 119 cannot be said to be a limited inasmuch as if two applications are filed for carrying on business on the self-same land, the question of title may be required to be gone into, is stated to be rejected. The said question is hypothetical in nature. So far as the submission of Mr. Ganguly that in the instant case Section 386(1)(c) is attracted cannot also be accepted in view of the fact that no such

consideration had been laid down in terms of Section 119 of the said Act. Section 386(1)(c) cannot be stretched to the restriction and conditions laid down under a licence required to be obtained under other Acts. So far as the submission of Mr. Ganguly with reference to Sections 430 and 431 of the said Act is concerned the same has also no force. Different duties and functions of the Municipality are laid down under the said Act.

25. In fact in terms of Section 430 of the said Act, the Municipality was required to dispose of the petitioner's application within the period prescribed therein.

26. Section 431, in our opinion, also has no application. It may be true that in terms of Section 201, Item Nos. 11 and 15 of the 2nd Schedule appended to the said Act a licence in terms thereof may be required to take out a licence thereunder. It may be noticed that there exists a similar provision in Sections 116 and 117 of the Calcutta Municipal Corporation Act. But as indicated hereinbefore, proviso appended to Section 118 clearly states that the writ petitioner would not be absolved from taking any such licence if necessary under the said Act or under any other Act.

27. Thus, the said provision would not stand in the way of construction of Sections 118 and 119 in the light of the provision of Sections 199 and 200 of the Calcutta Municipal Corporation Act

28. So far as the submission of Mr. Ganguly to the effect that the judgment was not pronounced by the learned trial Judge after giving notice is concerned, there is no doubt that in terms of Rule 1 of Order 20 of the Code of the Civil Procedure, the court was required to pronounce a Judgment on a day fixed for that purpose of which due notice is to be given to the parties or their pleaders. The object of the provision as to notice in this rule is to enable the parties to conform to the adjective law in respect of periods of limitation enacted or periods during which conditional payments are prescribed, as for instance, in matters of pre-emption or the making of final or preliminary decrees. The judgment was communicated by the writ petitioner to the appellant. Knowledge of pronouncement of such Judgment, in our opinion, would be the date of Judgment so far as the appellants are concerned. In fact on the aforementioned ground this court has already condoned the delay in filing this appeal. Furthermore, as indicated hereinbefore, even another opportunity had been granted by this Bench to pass a fresh order and the matter has been heard on merits and thus, we are unable to accept the contention of Mr. Ganguly that the Judgment passed by the learned trial Judge is a nullity.

For the reasons aforementioned this appeal is dismissed subject to the observations made hereinbefore, but in the facts and circumstances of this case there will be no order as to costs.

Satya Narayan Chakrabarty, J.

29. I agree.