

07.03.19  
Item No. 18  
Court No. 15  
Krishnendu

W.P. No. 115 (W) of 2019

In re: An application under Article 226 of the Constitution of India filed on 04.01.2019;

And

In re: Vijai Shree Pvt. Limited

- Versus -

Howrah Municipal Corporation & Ors.

Mr. Sadananda Ganguly

Mr. Debasis Nandi

Mr. Pushan Kar

Mr. Abhishek Banerjee

Mr. Sagnik Majumdar

For the Petitioner

Mr. N.C. Bihani

Mr. Ankit Sureka

For the H.M.C.

Affidavit of service filed by the petitioner be kept on record.

The present writ petition has been preferred primarily praying for the following relief:

- (a) A writ of and/or in the nature of Mandamus directing the respondents to issue Certificate of Enlistment of Profession, Trade and Calling to petitioner under section 102 of the said Act.

Records reveal that the matter was heard and an order was passed on 29<sup>th</sup> January, 2019. In the said order it was observed that the Howrah Municipal Corporation (in short, HMC) is required to consider an application for grant of enlistment of certificate or renewal thereof on the parameter whether the applicant thereof carrying on business or intending to carry on business and no other consideration is relevant for the purpose of such enquiry.

For such enquiry HMC is not required to embark upon an enquiry as to whether or not there exists due permission under sections 190 and 191 of the said Act of 1980 or not.

In course of hearing today, Mr. Bihani, learned advocate appearing for the HMC has produced before this Court a demand notice for certificate of enlistment for the year 2018-19. A perusal of the said demand notice reveals that a fee of Rs.500/- under section 102 of the said Act of 1980 has been charged together with a fee of Rs.30,000/- under section 190 and a penalty amount of Rs.250/-. Let a copy of the said demand notice be kept on record.

Mr. Ganguly, learned senior advocate appearing for the petitioner submits that for issuance of certificate of enlistment under section 102 of the said Act of 1980, the authorities can only charge the fee for such certificate.

He contends that the order dated 29<sup>th</sup> January, 2019 has not been appealed against by the HMC and the directions contained in the same bind the parties to the present proceedings and a matter decided at one stage of proceeding cannot be reagitated at subsequent stage. In support of such contention, reliance has been placed upon a judgment delivered in the case of *Bank of Baroda - Vs- Fishco*, reported in *AIR 1975 Cal. 225*.

The contention of Mr. Ganguly that for issuance of certificate of enlistment under section 102 of the said Act of 1980, the authorities can only charge the fee for such certificate stands supported by the earlier order of this Court. The demand of Rs.30,000/- under section 190 of the said Act of 1980 and penalty of Rs.250/- is, thus, not sustainable and the said demand is, accordingly, set aside.

The petitioner is directed to pay the amount of Rs. 500/- to the municipal authorities within a period of two weeks from date. Upon receipt of such payment, the competent authority of HMC shall issue the certificate of enlistment of profession, trade and calling to

the petitioner under section 102 of the said Act of 1980 within a period of two weeks thereafter.

It is, however, made clear that in the event of any violation of the provisions of sections 190 and 191 of the said Act of 1980, the authorities of HMC would be at liberty to take appropriate proceedings against the petitioner, in accordance with law.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties upon compliance of all necessary formalities.

**(Tapabrata Chakraborty, J.)**