

SUPREME COURT OF INDIA

Kolkata Municipal Corp.

Vs.

KERBS & CIE (I) Ltd.

C.A.No.272 of 2009

(S.H. Kapadia and Aftab Alam JJ.)

16.01.2009

ORDER

1. Leave granted.

2. From the impugned judgment of the Division Bench of the Calcutta High Court affirming the decision of the learned Single Judge, these appeals are filed by the Kolkata Municipal Corporation. The learned Single Judge has struck down Section 275(1)(aa) of the *Kolkata Municipal Corporation Act, 1980*. Against the said decision, number of Writ Appeals were filed by the Corporation. It appears from the impugned decision that at one stage, the matter stood adjourned on the ground that the State had agreed to amend the law. However, that did not materialize. By a cryptic order, the Division Bench has stated that they have perused the judgment and they did not find any scope for interference in the order of the learned Single Judge.

3. We are of the view that in matters involving constitutionality, it would not be open for the High Court to dismiss Writ Appeals on such cryptic grounds.

4. In the circumstances, we set aside the impugned judgment of the Division Bench and we restore A.P.O.No.233 of 2003 and other Appeals to the file of the Kolkata High Court. We direct the High Court to expeditiously hear and dispose of the said appeals in accordance with law.

5. At this stage, learned counsel appearing for the Corporation states that the Corporation prays for stay of the judgment given by the learned Single Judge. We cannot grant such a prayer particularly when we are setting aside the impugned order passed by the Division Bench. However, it would be open to the Corporation to move the Division Bench in the pending Appeals for interim relief, if so advised.

6. Civil Appeals are, accordingly, allowed with no order as to costs.