

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 19063 of 2022
Usuf Biswas
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. T. Hossain
.....Advocate

For the State : Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag
.....Advocates

For the respondent no. 5 : Mr. Debajyoti Basu
.....Advocate

Heard lastly on : 18.05.2023

Judgment on : 16.11.2023

Jay Sengupta, J:

1. This is an application under article 226 of the Constitution of India, inter alia, praying for direction upon the respondent authorities not to give effect to the purported memo No. 2063 dated 10.06.2022 issued by the Deputy Director (License), Government of West Bengal, Food and Supplies

Department and to quash the memo No. 2063/FMR/13L-34/14(Part) dated 10.06.2022.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. The petitioner challenged the purported order vide Memo No.2063 dated 10.06.2022, whereby the Deputy Director (License) informed that the Director DDP & S had approved on 06.06.2022 the proposal for engagement of respondent No.5 as FPS dealer on compassionate ground at village. Hazarpur, Post- Kuli, P.S.- Farakka, under Jungipur Sub-Division in place of her deceased brother-in-law late Rathindra Das as a special case to save the distress family and however, it was made clear that this case should not be shown as a precedence. Rathindra Nath Das, the erstwhile MR Dealer who had passed away on 19.04.2021 and the vacancy of MR Dealer was created. It is admitted fact that Aparajita Das, wife of Rathindra Nath Das died on 21.07.2017 before his death. As they remained issueless, there was no family member and dependent of them. As a result whereof, the vacancy of said MR Dealer as was created was required to be filled up from the eligible intended persons as per the provisions of West Bengal Public Distribution System (Maintenance and Control) Order 2013 as amended time to time. The petitioner was one of the eligible intended participants in the engagement process of MR dealer, but due to back door arrangement and engagement of respondent No.5 as MR Dealer on compassionate ground as special case the intended eligible persons including your petitioner were deprived of from participating in the engagement process. The said Namita

Das, respondent No.5 did not come within the purview of dependent or family members as per provision of law. Upon an application of the respondent Nos.5, the respondent No.4 requested the Chief Inspector (F & S) Jangipur to conduct an enquiry as regard to her financial capacity and other criteria as required for engagement as MR Dealer in place of compassionate ground. The Chief Inspector (F & S) Jangipur, Murshidabad submitted his enquiry report dated 15.11.2021. The said report was placed before the respondent authority. The respondent authority, after due consideration of the enquiry report by a Memo No. 710/FMR/13L-34/14 (Part) dated 10.03.2022 issued by Dy. Director License Dtc of DD P& S informed that the Director DDP&S had rejected the prayer of Smt. Namita Das for engagement as FPS dealer on compassionate ground in place of her deceased brother-in-law late as the applicant did not come under the purview of "Family member" as defined in the WBPDS(M&C) Order, 2013 as amended from time to time. He was therefore, requested to proceed for declaration of the resultant vacancy of FPS at Village Hazarpur, P.O. Kuli, P.S. Farakka, under Jangipur Sub-Division. After issuance of such memo as stated herein above the intending candidates including your petitioner were ready to participate in the engagement process of said M R Dealership. The respondent authorities, however, without declaring such vacancy of FPS at Village - Hazarpur, P.O.- Kuli, P.S.- Farakka under Jangipur Sub-Division on all a sudden the Depty Director (License) Dtc of DDP&S issued another Memo Vide No.2063 dated 10.06.2022 and thereby informed that the Director, DDP&S had approved on 06.06.2022 the proposal for engagement of Smt.

Namita Das (Respondent No.5) as FPS Dealer on compassionate ground in place of her deceased brother-in-law late Rathindra Nath Das as special case to save the distress family and however, it was made clear that this case should not be shown as a precedence. It appeared from the said order of such engagement memo that said Smt. Namita Das (respondent No.5) was engaged on the basis of same proposal vide Memo No.270(E)/DCFS/MSD/2022 dated 27.01.2022 which was rejected earlier by the Memo Vide No.710/FMR/131-34/14 (Part) dated 10/03/22. It was also crystal clear from the purported Memo of engagement of respondent No.5 that the earlier Memo dated 10.03.2022 was not withdrawn and/or cancelled. The respondent authority however, reviewed the earlier decision beyond the provisions of law. The action of the respondent authority was completely contrary to the well settled principle "Nemo Judge in causa sua". In the instant case the Director had become a judge of his own cause and reviewed the earlier decision beyond the provision of law. The engagement of the respondent No.5 was approved when she was in service such as Sahayika of Shishu Sikha Kendra against the provision of law. To rectify such action the respondent authority advised her to resign from the said post of Sahayika of Shishu Sikha Kendra. Accordingly, a proceeding was drawn up for resignation of respondent No.5. As per the provision of law the respondent No.5 was not eligible in case of direct engagement of M R Dealer as she was an employee being "Mukhya Sahayika" of Shishu Shikha Kendra under establishment of local self Government having a lump sum honorarium more than Rs.10,000/- per month. She was therefore, not in a

distressed condition so that case of the respondent no.5 could be considered as special case.

3. Learned counsel appearing on behalf of the State respondents submitted as follows. The Petitioner claimed to be an eligible candidate for M.R. Dealership at Village Hazarpur, P.O. Kuli, P.S. and Block Farakka, under Jangipur Sub-Division, of Murshidabad District (hereinafter referred to as the said area). One Rathindra Nath Das was the FPS License Holder, being License No.: MUR-JNGP-FRK-WB033387332 of the said area. The said Rathindra Nath Das died on 19.04.2021 and on being communicated about the death, the Respondent No. 4 vide Memo dated 20.04.2021 tagged the beneficiaries to the nearest FPS Shop. The said Rathindra Nath Das, at the time of his death, was a widower and was not blessed with any offspring. Within 45 days of the death of the said Rathindra Nath Das, on 20.06.2021, the Private Respondent namely Smt. Namita Das, the Sister-in-Law of the deceased dealer applied in Form C for the FPS Dealership License on compassionate ground. Ashoke Kumar Das, the only brother of the deceased dealer Rathindra Nath Das and the husband of the Private Respondent, also died on 19.04.2021. Both brothers died of COVID-19 infection on the same day. Since the Private Respondent lost both her husband and her brother-in-law on the same day, there was no other living bread-earning member left for the Private Respondent to depend upon. The survival of the Appellant solely depended on her engagement as FPS Dealer, on compassionate ground. Pursuant to the said Application of the Private Respondent, on 15.11.2021 an enquiry was held by the Chief Inspector (Food and Supplies),

Jangipur. In view of the said Enquiry, a Report was prepared by the said Chief Inspector (Food and Supplies), Jangipur in which it was clearly mentioned that the Private Respondent was a helper at (Sishu Siksha Kendra (hereinafter referred to as "S.S.K.") Centre of her Village. The Report also clearly indicated that the Private Respondent was the Sister-in-Law of the deceased dealer. However, only on humanitarian grounds, the case of the Private Respondent had been recommended for consideration for approval. Consequently, on 10.03.2022, the application of the Private Respondent was rejected by the Deputy Director (License), vide Memo dated 10.03.2022, as Sister-in-Law was not included in the definition of family within the meaning of the Clause 2(m) of the WBPDS Control Order 2013. On 26.05.2022, the Private Respondent applied for reconsideration of her application for FPS Dealership on compassionate ground. Subsequent thereto on 10.06.2022, the Deputy Director (License) considered the application of the Private Respondent to be a special case to save the distressed family, which was put to unforeseen loss of life due to the COVID-19 Pandemic. Accordingly, on 21.07.2022, the FPS License was issued in favour of the Private Respondent on the compassionate ground, in terms with the decision of the department vide Memo dated 10.06.2022. At the time of issuing the FPS License in favour of the Private Respondent, the Respondent No. 4 satisfied itself that the Private Respondent had duly resigned as the Helper of S.S.K. by conducting an enquiry. Thus, the allegations made in the Writ Petition that the Private Respondent was a solvent person did not hold any merit. The State Respondents had

considered the case purely on the basis of the extraordinary, peculiar and unforeseen scenario, which appeared to be the deadly COVID-19 Pandemic. The action of the Welfare State in a sympathetic manner was not a general rule but was an exception and was restricted to the peculiar circumstances as laid down herein above. The paramount consideration for the Respondent had been to ensure that the only surviving member of the deceased dealer's family did not suffer any financial hardship. Giving appointment, on compassionate ground to members of the deceased employee's family who did not per se come under the purview of the terms "dependent" as per the extant rules and policies was not completely unheard of, under exceptional circumstances. The Hon'ble Apex Court in the decision rendered in the case of MD. ZAMIL AHMED V. STATE OF BIHAR AND OTHERS reported in (2016) 12 SCC 342, held that the appellant being the only close relative of the deceased could be given an appointment in the circumstances prevailing in the family and it was also observed that the decision taken by the State as a welfare State to help the family of the deceased at the time of the need of the family was appropriate. The Hon'ble Supreme Court affirmed that in peculiar circumstances even though a person who did not come under the definition of dependent under the extant rules and policies could be given an appointment on compassionate ground and the paramount consideration for the state would be to alleviate the financial hardship of the surviving members of the deceased family. Furthermore, the Private Respondent had left her previous post as a Helper of S.S.K. for getting appointed as an FPS dealer and the Respondents had accordingly engaged the Private

Respondent as an FPS Dealer considering the extraordinary and unforeseen loss which she has suffered due to COVID-19 Pandemic. Thus, setting aside the appointment of the Private Respondent would not only amount to interference in the policy decision taken by the Respondent for the welfare of a deserving citizen but would also amount to double jeopardy for the Private Respondent as she would not be able to join back at her previous post of Helper of S.S.K. after her resignation being accepted more than 1 year ago. The Hon'ble Supreme Court in *Manuelsons Hotels Private Limited V. State of Kerala and others* reported in (2016) 6 SCC 766 held that promissory estoppel can be the basis of an independent cause of action in which detriment did not need to be proved. Similar issue had been dealt with by the Hon'ble Supreme Court of India in *Union of India V.V.F Limited and Another* reported in (2020) 20 SCC 57. Lastly, the Writ Petitioner did not have any indefeasible right either to claim to declaration of vacancy or be appointed as an FPS dealer in the said vacancy as the new vacancy after the demise of the erstwhile FPS Dealer Rathindra Nath Das was never notified. Thus, no right whatsoever accrued in favour of the Petitioner. The Petitioner was trying to unsettle a decision taken by a Welfare State to alleviate the acute hardship suffered by the Private Respondent due to the death of both the bread earners of her family on the same day. Moreover, at one hand the petitioner said that the petitioner was an unemployed youth and had thus filed the writ petition and on the other hand affirmed the writ petitioner describing himself to be occupied with a business.

4. Learned counsel appearing on behalf of the respondent no. 5 submitted as follows. Under Article 38 of the Constitution of India the State had a duty in its governance to secure a social order for the promotion of welfare of the people. Fundamentally, it was the duty of the State not only to secure and protect its people but also to ensure that its welfare shall effectively reach to its people in the form of a social order. The Hon'ble Supreme Court in (2015) 5 SCC 813 considered the object and the objectives of Welfare State and upheld the maxim *salus populi suprema lex ie*, welfare of the people was the supreme law. The Hon'ble Supreme Court stated that a Welfare State was one, which sought to ensure maximum happiness of maximum number of people living within its territory. A welfare State must attain to provide all facilities for a decent living, particularly to the poor, the weak, the old and the disabled. Articles 38 and 39 of the Constitution of India provide that the State must strive to promote the welfare of the people of the State specially of those of the young, the old, the women and the relatively weaker sections of the society. The happiness of the people was the ultimate aim of a Welfare State and a Welfare State would not qualify as one unless it strived to achieve the same. The Supreme Court in (2016) 12 SCC 342 held, in effect, that in a special facts and peculiar circumstances, the State could be justified in its action even there being a minimal departure to the prescribed rules. The principle of compassionate appointment was well settled to be an exception to the prescribed laws and in a particular facts and circumstances there could be no wrong for the State being a welfare one to treat a particular case as a special one in its peculiar nature on totality of

circumstances and to curve out according to the need to justify its action for an exceptional case of an exceptional rule to mitigate the hardship of the people. There could be no denial to the admitted facts that said Rathindranath had no near ones while he died other than said Namita and her two daughters and who were not only his dependence qua relatives but also to be construed as of the family members of the said Rathindranath in a broader sense considering the special and particular facts. Article 14 of the Constitution even though prohibited class legislation but not reasonable classification. A person dependent would be one who for his survival was entirely dependent on the earning of a person, in respect of whom, if he/she be appointed, was likely to take care of the members of the family by his/her earning. It was permissible for the State to categorise persons to be comprised in 'depended family member however, in the exercise of making such categorisation, care must be taken to ensure that no class of dependents was excluded without there being a plausible justification. The exclusion, if challenged, must pass the test of reasonable classification. Reference could be made to 2017 SCC Online Cal 13121. The full bench of this Hon'ble High Court recorded that the law relating to the compassionate appointment was seen as a task of the executive to decide as a matter of policy how best it could be framed for catering to the need of those in mind. In 2023 SCC Online Cal 362 the Hon'ble Division Bench of this Court while considering the scope and aspect of the 'compassionate appointment", considered that the question of dependency should bear a different connotation, from a question of arranging somehow for own survival. The

doctrine of promissory estoppel would be attracted because the Respondent No. 5 had altered its position relying on the assurance of the Respondent Authorities by issuing her resignation to the Gram Panchayat.

5. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

6. At the outset one needs to explore the question of locus of the present petitioner to move the writ petition. As vacancy was never notified, he had no occasion to apply for dealership. Therefore, strictly speaking, the petitioner had no indefeasible right to challenge the compassionate appointment of another person as a dealer. This is not a Public Interest Litigation either. This Court cannot pander to the covetous fancies of the petitioner who, without any accrued right, wants to set at naught a benefit of compassionate appointment given to a co-villager on extremely exceptional and unfortunate circumstances.

7. On merits, it is an admitted position that as the respondent no 5 did not come within the ambit of a family member, she was not eligible for compassionate appointment for the dealership on the death of her brother-in-law who was a widower and had no children. However, the sad and special circumstances intervening were that the whole family depended on the income of the erstwhile dealer and during the height of Covid – 19 pandemic on 19.04.2019 both the erstwhile dealer and his brother, who was the husband of the respondent no 5, died from Covid19.

8. Although initially the prayer of the private respondent was turned down, subsequently the same was allowed upon review as a one-off exception considering the extremely unfortunate circumstances and the plight of the respondent no 5.

9. The State has rightly placed reliance on the decision of the Hon'ble Supreme Court in Md Zamil Ahmed (supra). Thus, granting compassionate appointment in exceptional circumstances to members of the family who are not coming strictly within the purview of 'dependent' is not unheard of.

10. The paramount consideration for granting Government largesse should be the welfare of the State and its people and the grounds should not prima facie be unfair or whimsical or capricious.

11. In fact, the action of the respondent authorities in the rarest of rare cases as delineated above is quite in keeping with the provisions of Articles 38 and 39 of the Constitution of India.

12. Acting as a Sahayika at a Sishu Siksha Kendra is surely not the kind of employment that can rival running an FPS dealership. Besides, there is an element of promissory estoppel coming in as the respondent no 5 had resigned from such job on being considered for the dealership.

13. In view of the above discussions, I find no merit in the writ petition.

14. Accordingly, the same is dismissed.

15. However, there shall be no order as to costs.

16. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

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