

30.11.2023

Ct. no.654

Sl. No.6

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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

W.P.A. 1057 of 2023

Probodh Kumar Bhattacharya & anr.
Vs.
The State of West Bengal & ors.

Ms. Nibedita Pal

Mr. Ananda Gopal Mukherjee

Ms. Sonam Ray

...for the petitioners

Mr. Sirsanya Bandopadhyay

Mr. Arka Kumar Nag

... for the State

This is an application under Article 226 of the Constitution of India filed by the petitioners for recording the name of petitioner no.2 in the M.R. dealership and kerosene oil dealership licences of the petitioner no.1 as a partner therein.

The brief fact of the case is that the petitioner no.1 is running a Fair Price Shop and Kerosene Oil dealership at Village & P.O. Basao, District Birbhim by virtue of licences issued under West Bengal Public Distribution System (Maintenance and Control) Order, 2013 (hereinafter referred to as Control Order, 2013) and West Bengal Kerosene Control Order, 1968 (hereinafter referred to as Control Order, 1968) issued by Sub-

Divisional Controller, Food and Supplies, Rampurhat, Birbhum which is still valid and subsisting. The petitioner no.1 is a bachelor and petitioner no.2 being his nephew resides with petitioner no.1 and is engaged in assisting petitioner no.1 in day-to-day functioning of the said dealerships since the petitioner no.1 is suffering from various ailments. Petitioner no.2 does not have any regular means of income. The petitioner no.1 desired to induct the petitioner no.2 in the aforesaid dealerships as a partner and accordingly, he filed application before the Sub-Divisional Controller, Food and Supplies, Rampurhat, Birhum, in the prescribed format. Though the Sub-Divisional Controller, Food and Supplies, Rampurhat, Birbhum conducted enquiry in respect of the aforesaid application but he failed to take any steps as regards induction of petitioner no.2 in the dealerships of petitioner no.1 as partner. Hence, this writ petition for appropriate order.

Ms. Nibedita Pal, learned Advocate for the petitioners submits that the petitioner no.2 is the nephew of petitioner no.1 and is a relative within the definition of '*relative*' under Clause 2(xa) of Control Order, 2013 and Clause 3(si) of Control Order, 1968, which includes family member and kin, therefore, he is entitled to be inducted as a partner in the dealerships of petitioner no.1. Further, petitioner no.2 has no regular income of

his own and since he looks after the day-to-day functioning of the dealerships of petitioner no.1 as such, there is no embargo to induct him as a partner in the dealerships of petitioner no.1. She further indicates that Clause 20(iii) of Control Order, 2013 and Clause 6(iii)(a) of Control Order, 1968 puts a bar on the petitioner no.2 to apply for a dealership licence since he falls within the definition of '*relative*' of the licensee and, therefore, if the petitioner no.2 is not allowed to be inducted as a partner in the dealership of petitioner no.1, it would amount to great deprivation. Moreover, Clause 20(iii) of Control Order, 2013 and Clause 6 (ii)(c) which provides for grant of licence to partnership firm does not debar a nephew from being a partner in the dealership. In light of her aforesaid submissions, she prays for necessary direction for inducting petitioner no.2 as a partner in the dealerships of petitioner no.1.

In reply to the contentions raised on behalf of the petitioners, Mr. Sirsanya Bandopadhyay, learned Advocate for the State-respondents submits that the *vires* of Clause 20(vii) and the definition '*family member*' in Clause 2(m) of Control Order, 2013 and Clause 3(l) of Control Order, 1968 has not been challenged in the present writ petition. Clause 20(vii)(b) clearly provides that a family member of a licensee having no regular means of income may be inducted or substituted as a

partner. The said clause does not include the term '*relative*'. Moreover, as because there is bar of a relative under Clause 20(iii) of Control Order, 2013 and Clause 6 (iii)(a) from applying for a licence does not automatically give right to the nephew, petitioner no.2, being a relative for getting inducted into the dealerships of petitioner no.1 as partner. Referring to the decision of this Court in ***W.P.A.5352 of 2022 with W.P.A. 25434 of 2022 (Sanjib Sinha versus The State of West Bengal & ors.)***, Mr. Bandopadhyay, learned advocate for State-respondents submits that the coordinate Bench of this Court in the aforesaid decision has held that the proposition of including a nephew in the definition of a '*family member*' is neither practicable nor is supported by any legal premise. In light of his aforesaid submissions, he prays that the writ petition is liable to be dismissed.

Having heard the learned Advocates for the respective parties the only issue that has fallen for consideration in the writ petition is whether the petitioner no.2 being a nephew could be inducted as a partner in the dealerships of petitioner no.1.

In order to appreciate the aforesaid issue it would be apposite to reproduce Clause 20(vii) of Control Order, 2013 and Clause 6(xii) of Control Order, 1968.

Clause 20(vii) of Control Order, 2013 is reproduced as under:

“(vii) Whenever–

- (a) an individual licensee opt to convert its business into partnership firm for the reason of his physical incapacitation, or*
- (b) a licensee of a partnership firm opt to induct a new partner or substitute the name of an existing partner,*

the licensing authorities may, on an application in Form C3 along with Annexure-I, requisite fee as prescribed in Schedule A and corroborative documents as per Checklist made by the licensee in this behalf, allow him to do so on examination of the enquiry report in Form L2 and comments of the SCF&S in Form M2, with the approval of the Director, if and only if any of the family member of licensee having no regular means of income is inducted or substituted as partner and not otherwise:

x x x

Provided further that –

- (A) x x x*
- (B) x x x*

Provided also that in case of death of an individual licensee, the eligible family member or members, as the case may be, may apply before the licensing authority, for running its business, either as an individual licensee or as the registered partnership firm, subject to the approval given by the Director, DDP&S in this behalf.”

Clause 6(xii) of Control Order, 1968 is reproduced hereunder:

“(xii) Whenever–

- (a) an individual licensee opts to convert its business into partnership firm for the reason of his physical incapacitation, or*
- (b) a licensee of a partnership firm opts to induct a new partner or substitute the name of an existing partner,*

the licensing authorities may, on an application made by the licensee on this behalf, allow him to do so with the approval of the State Government, if and only if any of the family member of licensee having no regular means of income is inducted or substituted as partner and not otherwise :”

Upon bare reading of the aforesaid provisions an individual licensee can opt to convert his business into partnership firm for reason of his physical incapacitation and the licensing authority, on his application, may allow him to do so if and only if any of the family member of licensee having no regular means of income is inducted or substituted as partner and not otherwise. Thus it culls out from the aforesaid provisions that only a family member can be inducted or substituted as a partner in the dealerships of individual licensee.

The State-respondent has filed report in the form of affidavit contending that petitioner no.2 being the nephew of petitioner no.1 is not entitled to be inducted in partnership with petitioner no.1 as petitioner no.2 does not come under the definition of family member under Clause 2 of the Control Order, 2013.

The term ‘*family member*’ under Clause 2(m) of Control Order, 2013 means as follows:

“(m) “*family member(s)*” means –

- (i) *spouse; or*
- (ii) *parents; or*

(iii) son (including son legally adopted before death or incapacitation); or
 (iv) widow of pre-deceased son; or
 (v) daughter (including daughter legally adopted before death or incapacitation, divorced daughter and widowed daughter),
 who is wholly dependent on the dealer or distributor at the time of death;”

Clause 3(l) of Control Order, 1968 defines ‘family member(s)’ as under:

“(l) “family member (s)” means–

- (i) spouse; or
- (ii) parents; or
- (iii) son (including legally adopted son before death or incapacitation); or
- (iv) widow of pre-deceased son; or
- (v) daughter (including legally adopted daughter before death or incapacitation);

who is wholly dependent on the dealer at the time of death;”

Thus, the aforesaid definitions of ‘family member’ in respective Control Orders do not include a nephew.

Ms. Pal, learned advocate for the petitioners urged that the term ‘relative’ in 2(xa) of Control Order, 2013 and Clause 3(si) of Control Order, 1968 includes ‘family member’ hence the nephew has a right to be inducted as a partner in the dealerships of individual licensee. The aforesaid contention of the petitioners cannot be accepted since the term ‘relative’ has never been used in Clause 20(vii) of Control Order, 2013 or Clause 6(xii) of Control

Order, 1968 which deals with conversion of individual licence into partnership. The provision clearly provides that a '*family member*' having no regular means of income only can be inducted as a partner.

Ms. Pal, learned Advocate for the petitioners has strenuously argued that Clause 20(iiiia) of Control Order, 2013 and Clause 6 (iii)(a) of Control Order, 1968 debars the petitioner no.2 being a relative of petitioner no.1 from applying for fresh licence and as such if petitioner no. 2 is not allowed to be inducted as a partner in the dealerships of petitioner no. 1, it would amount to great deprivation. Although such provision in the Control Order, 2013 and Control Order, 1968 debars petitioner no.2 from applying for fresh licence, yet such ground *ipso facto* does not give rise to entitlement of the petitioner no.2 to be inducted in the dealerships of petitioner no.1 as a partner overriding the grounds contained in Clause 20(vii) of Control Order, 2013 and Clause 6(xii) of Control Order, 1968. Referring to Clause 20(iii) of Control Order, 2013 and Clause 6(ii)(c) of Control Order, 1968 she has further argued that for fresh partnership there is no requirement that a person has to be a family member. In this regard, it is found that the present writ petition has not been filed for fresh licence of a partnership firm instead for inducting of a new person into the existing dealerships as partner. Therefore, such arguments

advanced on behalf of the petitioners do not stand to reason.

In light of the aforesaid discussions, since it is found that the petitioner no.2 does not come within the definition of '*family member*' as provided under Clause 2(m) of Control Order, 2013 and 3(l) of Control Order, 1968, he is not entitled to be inducted in the existing dealerships of petitioner no.1 as a partner. I find substance in the submission of Mr. Bandopadhyay, learned advocate for State-respondents relying on *Sanjib Sinha (supra)*.

For the aforesaid reason, the writ petition being **W.P.A. 1057 of 2023** stands dismissed.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)