

(2023) 06 CAL CK 0032

In the Calcutta High Court

Case No : WPA No. 1131 Of 2017, CAN 3 Of 2023

Bamacharan Singha

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 16-06-2023

Acts Referred:

Hindu Succession Act, 1955 — Section 8

Citation : (2023) 06 CAL CK 0032

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Sayan Sinha, Adil Naser, Aniruddha Ganguly, Soham Kumar

Final Decision : Allowed

Judgement

Bibek Chaudhuri, J

One Rathindra Nath Singha was a licensee of fair price shop of village Banagram within Jalandi Gram Panchayat in the district of Birbhum. During his lifetime on 8th March, 2011 he made an application stating, inter alia, that he is unmarried and living with the family of his brother Bamacharan Singha. It is also stated in the said application addressed to the Sub-Divisional Controller, Food & Supplies (Bolpur, Birbhum) that as a result of various ailments he became incapacitated to run the said fair price shop and requested the authority to change/transfer the licence of F.P.S. in the name of his brother Bamacharan. Subsequently, on 17th June, 2011 the said licensee had expired. On 29th August, 2011 the present petitioner filed an application in appropriate form for granting licence of F.P.S. which stood in the name of his unmarried elder brother in favour of him. The said application was filed along with an affidavit of one Krishna Singh being the sister of Rathindra Nath, since deceased and Bamacharan. The concerned authority who has been arraigned as respondent No.5 failed to dispose of the said application filed by the petitioner till 27th November, 2013. When it is informed by him that other legal heirs have not submitted any 'no objection' certificate in favour of the present petitioner and, therefore, as per direction of the District

Controller, Food & Supplies (Birbhum), respondent No.4 the petitioner was directed to submit 'no objection' certificate duly affirmed by the other legal heirs. The petitioner had complied with the said requirement also. Subsequently on 20th April, 2014 the respondent No.5 informed the petitioner that his file was returned again as per order of the respondent No.4 dated 28th March, 2014 with a direction to the petitioner to resubmit his application in connection with his prayer for issuance of F.P.S. license on compassionate ground following the West Bengal Public Distribution System (Maintenance and Control) Order, 2013.

Being aggrieved against the said letter and decision of the District Controller as communicated by the Sub-Divisional Controller, Food & Supplies vide letter dated 24th April, 2014 the petitioner has filed the instant writ petition.

Be it mentioned here that before filing of the writ petition the petitioner was informed that as per control order of 2013 a brother of a deceased F.P.S. dealer cannot be regarded as a family member as defined in Clause 2 (m) of West Bengal Public Distribution System (Maintenance and Control) Order 2013 and, therefore, the application of the present petitioner cannot be allowed.

Though this day when the matter is taken up for hearing, the State respondents are not represented by their learned advocate. However, on the previous occasion, i.e., 17th February, 2023 the Sub-Divisional Controller affirmed an affidavit in the form of a report in compliance of the order passed by this Court on 13th February, 2023 stating, inter alia, that the petitioner cannot be regarded as a member of the family within the meaning of Clause 2 (m) of the Control Order of 2013 and secondly the Sub-Divisional Controller asked the petitioner on 27th November, 2013 to submit 'no objection' certificate from all the family members of ex F.P.S. dealer which he failed inasmuch as the original F.P.S. dealer had a brother who predeceased the original F.P.S. dealer. According to the Sub-Divisional Controller 'no objection' certificate of the legal heirs of the said predeceased brother of the original F.P.S. dealer is required to be filed by the present petitioner.

In course of argument it is submitted by the learned advocate for the petitioner that prior to promulgation of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 the control order of 2003 used to operate in the field. Clause 19 (ii) of the said Control Order, 2003 states:-

"In case of vacancy arising out of death incapacitation on medical ground of any existing dealer, such vacancy shall not initially be notified. The prayer of the legal heirs will be considered with preference on compassionate ground provided required minimum qualifications are fulfilled. If out of other legal heirs, only one legal heir is the claimant he is to submit 'no objection' of other legal heirs along with his prayer." (Emphasis supplied)

Thus, 2003 Control Order is absolutely clear that preferential treatment would be given in respect of grant of F.P.S. licence on compassionate ground amongst the legal heirs of the deceased or permanently incapacitated F.P.S. dealer. 2013

Control Order, on the other hand, provides a specific provision of engagement on compassionate ground in clause 20 (vi) which runs thus:-

"20(vi)(a): In case of death or in case of incapacitation on medical ground subject to satisfaction of the authority, of any existing dealer, prayer of any family members of the deceased/incapacitated dealer having no regular means of income may be considered on compassionate ground...."

Thus, in the control order of 2013 the term legal heir has been replaced by the term family members. Clause 2(m) of the Control Order of 2013 defines "family members".

"(i) Spouse; or

(ii) Parents; or son

(iii) (Including son legally adopted before death or incapacitation);

or widow of predeceased son;

or 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. "

The learned advocate for the petitioner submits that when the present petitioner filed application for grant of licence on compassionate ground in the year 2011, the control order of 2003 used to operate in the field. As per the said control order any legal heir of the licensee of F.P.S. dealership on his death or medical incapacitation was entitled to file an application for grant of licence on compassionate ground.

In support of his contention he refers to a judgment passed by a Co-ordinate Bench of this Court in Rajib Debnath versus State of West Bengal and Others reported in (2020) 4 Cal LT 327. In the said report of the Co-ordinate Bench, the Hon'ble Judge considered the decision of this Court in Matadin versus State of West Bengal (AIR 2016 Cal 251), Tarun Kumar Bhunia versus State of West

Bengal decided on 27th October, 2017 in W.P. No. 15796 (W) of 2017 and Samar Das versus State of West Bengal reported in (2014)5 CHN 499 (Cal).

In the said report also the question as to whether control order of 2003 or 2013 should be considered as the initial application for grant of licence on compassionate ground was filed by the petitioner when the control order of 2003 which was in force came for decision. This Court held in Rajib Debnath (supra) in paragraph 14 as hereunder:-

"14. The dictum laid down in Matadin (supra) has been affirmed by both the Division Bench of this Court as well as the Supreme Court wherein, such special leave petition was dismissed with costs imposed on the State Respondents. Therefore, the dictum in Matadin (supra) has therefore attained finality and can be considered the correct view of law on this point. This Court had therefore,

subsequently relied on Matadin (supra) in Tarun Kumar Bhunia (supra) in a similar lis as well. The learned Single Judge in the unreported judgment had held:

"Since the application was filed by the petitioner during the period of time when the State Control Order of 2003 was in force and since the delay in conclusion of hearing took place due to negligence on the part of the State respondents, I am of the view that the application of the petitioner should be considered in accordance with the provisions of the State Control Order of 2003."

Thus, State Authority failed to appreciate that at the time of initial application the control order of 2003 remained in force. The original licence holder was a bachelor. He used to stay in the family of the present petitioner. As per the Hindu Succession Act the brother of a deceased person died intestate falls under clause (ii) heir as per Schedule ii(3).

As per Section 8 of the Hindu Succession Act if there is no heir of class (i) then the right of any property of a Hindu male died intestate shall devolve upon heirs being relative specified in clause (ii) of the Schedule. When the decision has a proper devolution of interest, it will not go to the widow and son of a predeceased brother of the licensee. Following the principle of the Hindu Succession Act and control order of 2003, the petitioner is entitled to get the licence of F.P.S. dealership of his deceased holder brother namely Rathindra Nath Singha as the said Rathindra Nath Singha died on 17th July, 2011 and the application of the petitioner on compassionate ground was filed on 29th August, 2011.

In view of the above discussion, instant writ petition is allowed on contest. The Sub-Divisional Controller, Food & Supplies Department is directed to issue licence in the name of the petitioner in respect of F.P.S. dealership on compassionate ground of village Banagram (Jalandi Gram Panchayat in the district of Birbhum) within a period of 30 days from the date of communication of this order.

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

The instant writ petition is, thus, disposed of.

All the connected applications are also disposed of.