
(2016) 03 CAL CK 0089
In the Calcutta High Court
Case No : W.P. 29272(W) of 2015.

Sudhir Kumar Pal and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Citation : (2016) 2 CalLT 386

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Debabrata Saha Roy, Pingal Bhattacharyya and Arindam Deb Roy, Advocates, for the Appellant; Susovan Sengupta and Sirsanya Bandyopadhyay, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Samapti Chatterjee, J. - Petitioners have filed the present writ petition for direction upon the respondent no. 1 to bring the petitioners no. 2 and 3, being the son and daughter-in-law of the petitioner no. 1, in his M.R. dealership business.

2. Mr. Saha Roy, learned Counsel appearing for the petitioners, submits that due to the illness of the petitioner no. 1, the petitioner no. 1 entered into a partnership deed with his son and daughter-in-law and that partnership deed was executed on 29th October, 2010 and thereafter on 12th November, 2010, petitioner no. 1 made the representation before the authority to incorporate the names of the son and daughter-in-law of the petitioner no. 1 in the licence of the M.R. distributorship of the petitioner no. 1. In the representation, petitioner no. 1 failed to submit all documents including filling up the form "A" application under Control Order, 2003. Therefore, an enquiry was conducted on 28th December, 2010 by the authority. Thereafter, since some discrepancies were pointed out by the Joint Director, Licence, DDP and S, therefore, the Joint Director, Licence, DDP and S, by letter dated 11th February, 2011, was directed by the District Controller, Food and Supply, Purba Medinipur, to remove the defects and submit

afresh. Thereafter, on 2nd March, 2011, a fresh partnership deed was executed between the petitioner no. 1 and his son and daughter-in-law and on 29th March, 2011, again enquiry was conducted and report was submitted by the concerned authority, thus, recommending the case of the petitioners and the District Controller, Food and Supply, Purba Medinipur, forwarded the same to the Joint Director, Licence, DDP and S. Thereafter, on 12th April, 2011, Joint Director, Licence, DDP and S forwarded the same to the Joint Secretary, Government of West Bengal, Food and Supply Department. Mr. Saha Roy, learned Counsel, further submits that on 16th November, 2011, Joint Director, Licence, DDP and S, forwarded the entire file to the Special Secretary, Government of West Bengal, Food and Supply Department. Mr. Saha Roy, learned Counsel, further submits that it is not grant of fresh licence. It is only the incorporation of the name of the partners in the existing licence. In support of his contention, Mr. Saha Roy, learned Counsel, draws my attention to the order passed in W.P. 22770(W) of 2007 on 10th August, 2010 appears at page no. 72 of this writ application. Some extracts of the said order dated 10th August, 2010 is quoted below:

"In this case prayer of the petitioner no. 1 was allowed by the respondent no. 4 after considering the enquiry report of the respondent no. 5. Therefore, his subsequent action to revert back the position prevailed prior to issue of the license in question cannot be sustained in law. I further find no substance in the submissions made by Mr. Chakraborty that the induction of two partners in the dealership amounts to appointment of a fresh dealer under the said control order.

The impugned order is thus set aside.

The respondent no. 4 is directed to issue the dealership license in question in favour of the petitioners within a period of six weeks from the date of communication of this order.

There will be, however, no order as to costs."

3. Mr. Saha Roy, learned Counsel, further submits that pursuant to the said order, induction of the partners in the existing licence was done by the authority. In support of his contention, Mr. Saha Roy, learned Counsel, relies on pages no. 77 to 84 of this writ application, which shows that induction of the partners in the existing distributorship business has been done time to time by the authority. Mr. Saha Roy, learned Counsel, also relies on a Government Order dated 14th September, 2010, issued by the Joint Secretary, Licence, Government of West Bengal, which is quoted below :

"To : i) Director, DDP and S,

Food and Supplies Dett.

Govt. of West Bengal.

ii) Director, Rationing,

Food and Supplies Deptt..

Govt. of West Bengal.

Sub : Partnership business in respect of Dealers and Distributors.

Sir,

I am directed to inform you that Government has been contemplating to adopt a clear principle in respect of partnership business for dealers and distributors. A draft guideline has been prepared which is under consideration of the Government.

However, in the meantime for disposal of huge pending proposals on it an interim decision has been taken which may be seen in the enclosed copy of the note sheet.

You are requested to dispose of the pending files accordingly.

Yours faithfully,

Joint Secretary to the Govt. Of West Bengal

Dated : 14th September, 2010"

Enclo.: - Copy of the note sheet

4. Mr. Saha Roy, learned Counsel, also relies on a Government Note. Some extracts of the Government Note is quoted below :

"Hence, till one accepted guideline is issued coupled with amendment of control orders, we may allow proposals for conversion of proprietorship business to partnership (specially among nearest kins) and vice versa without changing the basic character of F.P.S./Distributorship-business."

5. Mr. Saha Roy, learned Counsel, further submits that since prior to the year, 2010, there was no guideline in the Control Order, 2003, regarding inclusion of partners in the M.R. distributorship business, therefore, by the Government Note dated 2nd September, 2010 as well as order dated 14th November, 2010, decision has been taken by the Government for conversion of the proprietorship business to the partnership business amongst the nearest relations. Mr. Saha Roy, learned Counsel, further contends that petitioners' case should have been governed by the law prevailing at that point of time i.e. under Control Order, 2003, since the petitioner no. 1 has made application for induction of his son and daughter-in-law in this proprietorship licence thereby converting the same into a partnership licence. In support of his contention Mr. Saha Roy, learned Counsel, relies on a three Judges Bench decision reported in AIR 1990 SC 405 (P. Mahendran and Ors. v. State of Karnataka and Ors.) paragraph 9 which is quoted below :

"9. The above observations as relied by the Tribunal do not apply to the facts of the instant case as the advertisement issued by the Commission on 28-9-1983 was in accordance with the Recruitment Rules of 1976, validity of those Rules

was not in question. The Rule prescribing qualification was amended after four years of the advertisement, therefore, the law laid down in Ramkrishna Rao's case (AIR 1972 SC 2175) does not apply. The Tribunal committed error in ignoring the law laid down in Calton's case by placing reliance on the observations of this Court in Ramakrishna Rao's case. In our view the principles laid down in Calton's case, (AIR 1983 SC 1143), are fully applicable to the instant case."

6. Mr. Saha Roy, learned Counsel, also relies on a Division Bench decision reported in 2013(3) CHN 721 (Dist. Inspector of Schools Kolkata v. Abhijit Baidya) at paragraph 46 which is quoted below:

"46. In our opinion, by way of amendment/substitution of provisions, rights which have accrued cannot be taken away, that to with retrospective effect. A benefit that has accrued under the existing para 17(2) of ROPA 1990 cannot be taken away by an amendment with retrospective effect or by provisions as contained in substituted para 13 of ROPA 1998."

7. Mr. Saha Roy, learned Counsel, also relies on a Supreme Court decision reported in (2015) 7 SCC 412 (Canara Bank and Anr. v. M. Mahesh Kumar) at paragraphs 12, 15 and 17 which are quoted below :

"12. The main question falling for consideration is whether the Scheme passed in 2005 providing for ex gratia payment or the Scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent.

15. By perusal of the judgment in Jaspal Kaur Case, it is apparent that the judgment specifically states that claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

17. In Umesh Kumar Nagpal v. State of Haryana, while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that: (SCC p. 140, para 2)

"2?.. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the objet being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not

discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the statuts and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

8. In conclusion, Mr. Saha Roy, learned Counsel appearing for the petitioners, submits that the petitioner no. 1, being the existing distributor, applied for incorporation of the name of his son and daughter-in-law, on 12th November, 2010 and steps were taken under the prevailing Control Order i.e. Control Order, 2003, pursuant to the application of the petitioner no. 1 dated 12th November, 2010. Therefore, question of consideration of the petitioners' application under the new Control Order, 2013 does not and cannot arise.

9. Per contra, Mr. Sengupta, learned Counsel appearing for the State, submits that the petitioners' case ought to have been considered under the new Control Order, 2013 as no final decision has been taken by the Government in respect of the conversion of the petitioners' proprietary dealership licence into partnership licence. Mr. Sengupta, learned Counsel, further contends that being the position petitioners' case should be considered under Rule 23 of the Control Order, 2013, considering the same as new appointment. Mr. Sengupta, learned Counsel, further contends that no final decision has yet been taken by the Government in respect of the petitioners' application for inclusion of the names of his son and daughter-in-law in the existing proprietary dealership licence for conversion of the same into partnership licence. Therefore, the petitioners' case clearly falls under the purview of the Control Order, 2013 and not under the Control Order, 2003 as has been projected by Mr. Saha Roy, learned Counsel appearing for the petitioners. In support of his contention, Mr. Sengupta, learned Counsel, relies on the three Judges Bench decision of the Hon"ble Supreme Court reported in (2009)1 SCC 180 (Sethi Auto Service Station and Anr. v. Delhi Development Authority and Ors.), paragraph 12 which is quoted below:

"12. Per contra, Mr. A. Sharan, learned Additional Solicitor General, appearing for DDA, submitted that mere noting and proposals in the files of DDA did not result in creation of any right in favour of the appellants till a final decision was taken by the Vice-Chairman as the administrative head of DDA and the same was communicated to the appellants. It was also urged that in the absence of a final decision duly communicated to the appellants their claims had to be considered on the basis of the policies framed by DDA from time tot time and the relevant date for the said purpose would be the date when the Vice-Chairman took the final decision under the policy in vogue at that point of time. In support of the

proposition, reliance was placed on a decision of this Court in P.T.R. Exports (Madras) (P) Ltd. v. Union of India. A reference was also made to Howrah Municipal Corpn. v. Ganges Rope Co. Ltd. To contend that in view of the amendment of the guidelines, which had the statutory flavour, in June 2003, the so-called vested right to be considered under the 1999 guidelines, if any, also got nullified on account of the amended guidelines."

10. Therefore, finally Mr. Sengupta, learned Counsel, submits that the petitioners' case should be considered under paragraph 23 of Control Order, 2013 and not under the Control Order, 2003.

11. Considering the submissions advanced by the learned Counsel appearing for the respective parties and after perusing the records and the decisions relied on by the learned Counsel appearing for the respective parties, I find that admittedly the petitioners made application for induction of his son and daughter-in-law in his proprietorship dealership licence thereby converting the same into a partnership licence. Therefore, in my considered view, the existing proprietorship licence cannot be described as new vacancy which falls under paragraph 23 of the Control Order, 2013. It is also revealed from the record that earlier pursuant to the Hon'ble Court's order the department converted the proprietorship licence into a partnership licence by inducting some new persons in that licence which appears from page 77 to 83 of this writ application. I also cannot ignore the Government Note dated 2nd September, 2010 appears at page no. 86 and the Government Order dated 14th September, 2010 appears at page no. 85 where the Government has introduced a system to allow proposal for conversion of proprietorship business to partnership business specially among the nearest relations and vice versa without changing the basic character of fair price shop distributorship business. Therefore, in my considered view, this conversion of the proprietorship business into partnership business cannot be considered as a new vacancy as has been described by Mr. Sengupta, learned Counsel appearing for the State. I also not at all convinced with the submission of Mr. Sengupta, learned Counsel, that the petitioner's application should be considered under new Control Order, 2013 and not under the Old Control Order, 2003. In my considered opinion, the petitioner no. 1 applied for induction of the names of his son and daughter-in-law in the existing proprietorship business due to his illness and made application on 12th November, 2010. On the basis of that application, process was started under the Control Order, 2003 and not under the Control Order, 2013 as the process has already been started under Control Order, 2003 and the respondent authority without showing any reason was sitting tight from the year, 2011 till date, therefore, in my view, there is some substance in the submission of Mr. Saha Roy, learned Counsel appearing for the petitioners. Further, decision relied on by Mr. Sengupta, learned Counsel appearing for the State, has no manner of application in the present case in hand that the decision was delivered in respect of fresh grant of land and not in respect of the existing one and it also cannot ignore that in the said judgement there were some serious disputes raised about internal Government noting but on the contrary in the

present case specific recommendations have been made by the authorities and the matter was kept pending for only formal approval of the department of Food and Supply, Purba Medinipur, furthermore, in the present case no dispute has been raised about the recommendation of various competent authorities. Considering the facts as discussed above, I direct the respondent no. 4, District Controller of Food and Supply, Purba Medinipur, to take steps to issue partnership licence by incorporating the names of the petitioners no. 2 and 3, thereby converting the existing M.R. dealer proprietorship licence of the petitioner no. 1 within six weeks from the date of communication of this order.

12. With this direction, the writ petition is allowed.

13. There will be no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.