

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

W.P.A. No. 18261 of 2017

Rajib Debnath
Versus
The State of West Bengal & Ors.

For the Petitioner

: Mr. Debabrata Saha Roy, Adv.,
Mr. Pingal Bhattacharya, Adv.,
Mr. Subhankar Das, Adv.,
Mr. Neil Basu, Adv.

For The State Respondents

: Mr. Amitesh Banerjee, Adv.,
Mr. Tarak Karan, Adv.

Last Heard on : December 7, 2020

Judgment on : 18.12.2020

Shekhar B. Saraf, J.:

1. *Apropos* this writ petition no. 18261(W) of 2017, I had the opportunity to extensively hear the matter on February 13 of this year, with the directions that note of arguments be filed by both parties to this *lis*. In spite of the matter being adjourned for three weeks, a period of lull ensued owing to the disruption caused by the novel coronavirus pandemic and the lockdown that was imposed nationwide on March 24, 2020. When this Court reconvened on

December 7, 2020 and the matter was taken up for consideration, the hearing stood concluded in the matter.

2. The facts of this case, in so far as they are material to this writ petition, is circumscribed within a narrow compass and is encapsulated as follows:

- a) The late grandmother of the petitioner, Smt. Usharani Debnath was appointed as a ration dealer, being Fair Shop No. 7, by the pertinent authority under the Krishnanagar Sub-Division. The petitioner is the son of the pre-deceased son of the deceased ration dealer as named above.
- b) For reasons attributable to old-age and multiple illnesses, the deceased grandmother of the petitioner during her lifetime made a representation dated April 8, 2010 requesting the Sub-Divisional Controller (F&S), Krishnanagar (hereinafter referred to as Respondent No. 5) to transfer the aforesaid dealership (comprising licenses for both the fair price shop as well as kerosene oil) in favour of the petitioner.
- c) Based on this representation dated April 8, 2010, the Respondent No. 5 directed the Inspector (F&S) to proceed with an enquiry and submit a report on the same. Based on such enquiry, a report was submitted which favourably recommended such transfer of dealership to the petitioner. Thereafter, the entire case file was forwarded to the District Controller (F&S) (hereinafter referred to as Respondent No. 4) for a

favourable recommendation which was in turn transferred to the Director DDP&S (hereinafter referred to as Respondent No. 3).

- d) Despite the completion of all the requisite formalities by the grandmother of the petitioner, no further action was taken by the respondent authorities. Therefore, the petitioner's grandmother preferred another representation dated December 31, 2012 which was received by the office of the Respondent No. 5, yet again seeking the transfer of both licenses in favour of the petitioner.
- e) However, during the pendency of both these representations, the petitioner's grandmother passed away on April 22, 2014. Pending consideration of both the representations dated April 8, 2010 and December 31, 2012, the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 (hereafter "2003 Order") was repealed and was superseded by the promulgation of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 (hereafter "2013 Order").
- f) The petitioner made a fresh application under the provisions of the 2013 Order based on instructions received from the Respondent No. 5. While the petitioner's case did not fall within the purview of the 2013 Order and attracted the 2003 Order, an application in the prescribed format dated April 28, 2014 under the 2013 Order was submitted by the petitioner in continuation of the representations dated April 8, 2010 and December 31, 2012.

- g) After the expiry of six years from the date of the original representation that was filed on April 8, 2010 and not to mention the multiple representations which went answered, the Respondent No. 3 issued a memo no. 799(2) FMR/13 L-63/2014 (Part-I) dated February 17, 2016 to the Respondents Nos. 4 and 5, stating that the engagement of the petitioner could not be considered on compassionate grounds as the applicant/petitioner's degree of relationship with his grandmother did not fall under the purview of "family member" as defined under Clause 2(m) of the 2013 Order.
- h) The Respondent No. 5 vide memo no. 305/SCF&S/KGR/16 dated March 30, 2016 explained in detail the reason for the applicant's case for consideration under compassionate appointment as only three legal heirs survived on date, which was inclusive of the petitioner. The Respondent No. 5 also clarified that the petitioner's mother and brother had both furnished No-Objection Certificates in favour of the petitioner, making this case suitable for consideration by the Respondents.
- i) Additionally, based on an RTI query filed by the petitioner seeking to know the status of his application, the Respondent No. 5 vide memo no. 634/SCF&S/KGR/2017 dated June 9, 2017 intimated that the petitioner could not be considered for appointment on compassionate grounds as the applicant's degree of relationship with his grandmother

did not fall under the purview of “family member” as defined under Clause 2(m) of the 2013 Order.

j) Aggrieved by the persistent delay in the consideration of the representations dated April 8, 2010 and December 31, 2012 and the subsequent rejection which was erroneously processed by relying on the 2013 Order as opposed to the 2003 Order which was applicable in this case, the petitioner invoked this Court’s writ jurisdiction under Article 226 of the Constitution of India challenging the propriety of the memo no. 634/SCF&S/KGR/2017 dated June 9, 2017.

3. Mr. Saha Roy, the learned counsel for the petitioner has argued that the petitioner’s deceased grandmother had made the representations dated April 8, 2010 and December 31, 2012 seeking the transfer of both her licenses in favour of her grandson, the petitioner, on medical grounds much prior to the implementation of the 2013 Order which had come into force on August 8, 2013. Mr. Saha Roy also argued that since provisions of the then 2003 Order was applicable to the petitioner’s case, the delay caused by the indolence of the respondents in processing the above representations should not result in adverse consequences for the petitioner.
4. As regards the specificity of the 2003 Order which Mr. Saha Roy claims is applicable to process the petitioner’s claim for compassionate appointment, the same was permissible under the amended notification to the 2003 Order issued on March 28, 2005. Mr. Saha Roy has placed his reliance on the Supreme Court judgments of **Sathyaprema Manjunath Gowda –v-**

Controller of Estate Duty, Karnataka reported in **1997 (10) SCC 684** and **Bhanwar Singh –v- Puran** reported in **(2008) 3 SCC 87** to showcase the petitioner was a **‘legal heir’ by virtue of being a son of a pre-deceased son**, specifically a “Class-I legal heir” as regards the amended notification dated March 28, 2005.

5. Mr. Saha Roy had also submitted that since Respondent Nos. 4 and 5 had originally recommended the transfer of the relevant licenses in favour of the petitioner, the petitioner’s subsequent application dated April 28, 2014 submitted under the provisions of the 2013 Order, that too based on instructions received from the Respondent No. 5, must be considered as the continuation of the previous representations dated April 8, 2010 and December 31, 2012.
6. Mr. Saha Roy had placed his reliance on the decisions of this Court reported in **AIR 2016 Cal 251, Matadin & Anr. –v- State of West Bengal & Ors.**, an unreported Division Bench decision of this Court in FMAT 1257 of 2016 dated September 19, 2016 in **State of West Bengal & Ors. –v- Matadin & Anr.**, a judgment dated October 27, 2017 in W.P. No. 15796(W) of 2017 (**Tarun Kumar Bhunia –v- State of West Bengal & Ors.**) and **Samar Das –v- State of West Bengal** reported in **2014 (5) CHN (Cal) 499** in support of his argument that such applications for compassionate appointment need to be considered under the 2003 Order, if submitted, before the coming into force of the 2013 Order.

7. *Per contra*, Mr. Banerjee, the learned counsel for the State Respondents has sought to argue that as soon as the petitioner had submitted a fresh application under the 2013 Order on April 28, 2014, the 2013 Order was squarely attracted and based on the definition of “family members” as specified under clause 2(m) of the 2013 Order, the petitioner’s case was liable to be rejected as the degree of the relationship shared between the petitioner and his deceased grandmother was not covered under clause 2(m) of the 2013 Order.

8. Mr. Banerjee, the learned counsel for the State Respondents, has also relied on the following judgments of the Supreme Court reported in ***V. Sivamurthy -v- State of Andhra Pradesh*** reported in ***(2008) 13 SCC 730***, ***State Bank of India -v- Raj Kumar*** reported in ***(2010) 11 SCC 661***, ***Teri Oat Estates (P) Ltd -v- U.T. Chandigarh and Others*** reported in ***(2004) 2 SCC 130***, ***Bhawani Prasad Sonkar -v- Union of India*** reported in ***(2011) 4 SCC 209*** and ***Life Insurance Corporation of India -v- Asha Ramchhandra Ambekar*** reported in ***(1994) 2 SCC 718***, dealing with the scope and contours of compassionate appointments and have argued that as such matters are a subject of public policy, such decisions are confined within the domain of the executive branch of the State and sympathy alone would not be a ground for such consideration.

9. I have heard the learned counsels appearing on behalf of the respective parties and perused the materials placed on record.

10. Therefore, the question that needs to be considered is if the petitioner's fresh application under 2013 Order can be considered as a continuation of the former representations initially submitted under the 2003 Order?
11. At the very onset, is it clarified that it is not in dispute that the petitioner's grandmother had submitted representations dated April 8, 2010 and December 31, 2012 requesting the Respondent No. 5 to transfer both the licenses of the fair price dealership on compassionate appointment, in favour of the petitioner. It is also not in dispute that the Respondent No. 5 had initially recommended such transfer under the provisions of the 2003 Order.
12. From thereon, the delay in processing the transfer of the dealership to the petitioner in terms of the 2003 Order can unmistakably be attributed to the callous and negligent conduct of the State Respondents. While the representations dated April 8, 2010 and December 31, 2012 remained in a state of pendency given such negligent conduct, in the interregnum, the 2003 Order was superseded by the 2013 Order.
13. A Learned Single Judge of this Court, while considering a similar *lis* under the West Bengal Urban Public Distribution System (Maintenance and Control) Orders of 2003 and 2013, and had held in ***Matadin*** (*supra*) reported in **AIR 2016 Cal 251**:

“It is not in dispute that the petitioner no.1 had submitted his application dated June 6, 2013, i.e. prior to the date when the said Control Order, 2013, came into operation with effect from August 12, 2013, having no retrospective effect either expressly or by necessary implication of any of its provision. **The said Control Order, 2003, was in force at the time of submitting the above application of the petitioner. Therefore, in**

view of the settled principles of law as decided in the matter of A.A. Calton (AIR 1983 SC 1143) (supra), the aforesaid application of the petitioner No.1 should not have been considered under the said Control Order, 2013. The impugned order was bad in law due to the above reason.”

Emphasis supplied.

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.”

15. While clearly clause 2(m) of the 2013 Order, *inter alia*, specifies “family members” meaning the spouse, dependent parents, dependent sons and daughters for the purpose of considering engagement as Dealers/ Distributors on compassionate ground, such definition is not the sole criterion for rejecting the petitioner’s fresh application dated April 28, 2014, which was submitted under the 2013 Order.

16. A learned Single Judge of this Court, seized of a similar matter in **Samar Das –v- the State of West Bengal**, bearing **W.P. No.34215(W) of 2013** and vide its judgment dated February 19, 2014, the Court had observed:

“8. Evidently, with regard to engagement on compassionate ground, the applicant under paragraph 20(vi) of the 2013 Order, “while applying” has to furnish “No objection” from other family members in the form of an affidavit except in cases “(a) if the applicant be the spouse of the deceased licensee,” or “(b) if the ex-licensee, because of his/her being incapacitated/infirm has opted for the applicant”. In the instant case the applicant while applying has to demonstrate that the “ex-licensee” had “opted for the applicant” as he was incapacitated or infirm. There is no dispute that on 21st August, 2006 the father of the petitioner, an ex-licensee, being incapacitated had opted for transfer of licence in favour of his son, the applicant. The petitioner now “while applying” on 13th August, 2013 is seeking to have the benefit of the 2013 Order. **Since, under paragraph 20(vi), engagement on compassionate ground is a beneficial scheme, accordingly it has to be interpreted.** Hence as the father of the petitioner, an ex-licensee, being incapacitated had opted for transfer of licence in favour of the petitioner, and **the petitioner having acquired a right, under paragraph 20(vi) has sought the benefit under exception “(b)” under paragraph 20(vi) of the 2013 Control Order, the application filed on 13th August, 2013 has to be considered accordingly. As the ex-licensee had opted for transfer of licence in favour of the petitioner, and the petitioner is seeking the benefit under Clause 20(vi), the private respondents are estopped from raising objection as any other interpretation would defeat the very purpose of the scheme as enumerated in paragraph 20(vi). The argument on behalf of the State that the option had lapsed with the repeal of the 2003 Order cannot be accepted as the State had kept the matter pending since 2006 for no fault on the part of the ex-licensee or the petitioner and as appointment has to be on compassionate ground.**”

Emphasis supplied.

17. Therefore, while the original representations dated April 8, 2010 and December 31, 2012 were submitted in accordance with the then 2003 Order which did not reach finality, the correct approach of the respondent authority should have been to transpose these former representations and the new application dated April 28, 2014 under exception (b) of paragraph 20(vi) of

the 2013 Order. The Respondent No. 5 should not have mechanically quoted the definition of family members stated in clause 2(m) of the 2013 Order to reject the application dated April 28, 2014 but should also have relied on exception (b) of paragraph 20(vi) of the same Order as the 2013 Order is a code in itself.

18. As the Court in **Samar Das** (*supra*) had noted, engagement on compassionate ground under paragraph 20(vi) is a beneficial scheme which has to be interpreted accordingly. I, therefore, find favour with Mr. Saha Roy's submission that the application dated April 28, 2014 must be considered as a continuation of the previous representations dated April 8, 2010 and December 31, 2012.
19. The precedents quoted by the learned counsel for the State Respondents, to my mind doesn't assist their case given the clear line of precedents, *inter alia*, **Matadin** (*supra*), **Tarun Kumar Bhunia** (*supra*) and **Samar Das** (*supra*) that establishes a legitimate claim of the petitioner.
20. Accordingly, the impugned memo no. 634/SCF&S/KGR/2017 dated June 9, 2017 issued by the Respondent No. 5, which rejected the petitioner's case for grant of the dealership on compassionate appointment, to my mind reeks of arbitrariness and clearly displays a non-application of mind by the Respondent No. 5. As a result, the petitioner who has been vigilant of his rights post the demise of his grandmother, has not been accorded a fair consideration.

21. As the House of Lords had set the limits of the exercise of judicial review in

***Chief Constable of the North Wales Police –v- Evans*¹:**

“...the function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law....the purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court...

Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.”

“Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.”

(Emphasis supplied)

22. For the reasons stated above and in the interest of justice, I hereby set aside the impugned memo no. 634/SCF&S/KGR/2017 dated June 9, 2017 which was issued by the Respondent No. 5.

23. In normal circumstances, the recourse would have been to remit the matter back to the Respondent No. 5 to reconsider the application filed by the petitioner *apropos* of his appointment on compassionate grounds after granting an opportunity of hearing to him, giving due regard to all the relevant documents submitted by the petitioner for taking a fresh decision uninfluenced by the impugned memo dated June 9, 2017. Yet, what must not be overlooked is the fact that more than a decade has passed by since

¹(1982) 2 All ER 141 (HL); (1982) 1 WLR 1155

the original representation dated April 8, 2010 was first made by the petitioner's grandmother and the respondent authorities subjected the petitioner's subsequent representations to astounding lethargy and non-application of mind.

24. Therefore, I hereby direct that the petitioner be granted the appointment on compassionate grounds *apropos* the fair price shop license and kerosene oil license issued in favour of his deceased grandmother within two weeks from the date of communication of this order. If in case the authorities have proceeded in declaring a vacancy of the dealership based on the impugned order dated June 9, 2017, such declaration of vacancy also stands quashed.
25. This writ petition stands disposed of.
26. Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)

Later

Mr. Amitesh Banerjee prays for a stay of the order; considered and rejected.

(Shekhar B. Saraf, J.)