

Court No. 24
21.12.2021
(Item No. 225)
(AB)

W.P.A. 18950 of 2021
(via video conference)

Santi Kumar Ghosh & Ors.
VS
The State of West Bengal & Ors.

Mr. Timir Baran Saha
..... For the petitioners
Mr. Susovan Sengupta
Mr. Subir Pal
..... For the State

The petitioner No. 1 is a licensee of a Fair Price Shop. He was carrying on his business as a proprietorship concern. Due to his ill health he intends to incorporate his wife and nephew (brother's son) as partners of his business.

The petitioners relying upon the Government notification dated 14.12.2020 made application for conversion of the proprietorship concern to a partnership firm on the ground of physical incapacitation of the licensee.

The application of the petitioners were rejected on the ground that the relation "nephew" does not fall under the definition of family member and accordingly the application could not be accepted.

The petitioners rely upon the notification dated 14.12.2020 which contains the amendments to the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 wherein by way of amendment certain relationships have been added in the definition of "family member" and "relative". The

relation brother's son has been included in the definition of relative.

According to the amended Control Order, a person holding a license of distributor or wholesaler in his name or person whose relative already has a distributor or wholesaler license is not entitled to apply for a license of a distributor.

The amended Control Order further mentions that the licensing authority may, on an application made by the licensee, allow him to convert the individual license to a partnership firm 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.

The expression used in the aforesaid clause mentions that a 'family member' may be substituted as partner.

The definition of family member as mentioned in the amended Control Order does not contain the relation brother's son. Brother's son has been included in the definition 'relative' in the said amended Control Order.

The learned advocate for the petitioners stresses upon the fact that according to the amended Control Order, 'relative includes family members' and

as such, brother's son should be considered for being inducted as partner in the partnership firm.

The Court is unable to accept such contention of the petitioners.

The amended provision makes it clear that the expression 'relative includes family members'. The same does not imply that family members include the relatives. Brother's son being a relative cannot be considered as a family member of the licensee.

Accordingly, the Court does not find any infirmity in the order rejecting the application of the petitioner no. 1 for inducting his brother's son as partner in the business.

It will be open for the petitioners to file appropriate application to induct any family member as partner(s) in the business in accordance with the provisions of the Control Order as amended.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)