

17.11.2022
S/L. No. 5
Court No.12
Suvayan/
Sourav

FMA 1926 of 2018
With
IA No: CAN 1 of 2017 (Old No. CAN 7761 of 2017)

Anima Mondal
Vs.
State of West Bengal & Ors.

Mr. Mrinal Kanti Ghosh

...for the appellant.

Heard Mr. Mrinal Kanti, learned Counsel
appearing for the appellant.

None is present for the State.

Perused the impugned order passed by Hon'ble
Single Judge in WP 14623 (W) of 2017.

Admittedly, the petitioner was engaged as a Fair Price Shop dealer. On 18.10.2006 she submitted an application for leave on the ground of treatment of her husband. The leave sought for being granted the ration cards coming within the scope of fair price shop of the appellant were tagged with the nearest M.R. Dealer by order dated 31.10.2006. Subsequently, on her return, the appellant submitted application on 02.05.2007 for resumption of her dealership. Such application of the appellant was not at all processed by the authority concerned. The appellant was, thus, obliged to approach this Court by filing a writ petition being WP 9129 (W) of 2007. The said writ petition was, however, dismissed for non-prosecution.

Ultimately, by the impugned order (Annexure P-12) to the writ petition, the application of the appellant for resumption of licence was rejected on the ground that the licence of the appellant has not been renewed after 31.12.2012. The prayer of the appellant in the writ petition has been negatived on the ground that since the appellant did not take any initiative for renewal of her licence by submitting application online under 2013 Control Order, the order passed vide Annexure P-12 is justified under the law.

Learned Counsel for the appellant takes us through Annexure P-8 which is a letter written by the Sub-Divisional Controller (F & S) and Ex-Officio Assistant Director, Diamond Harbour, 24 Parganas (South) to the Director, Department of Food and Supplies (respondent No. 2). From that letter it is found that the licence of the appellant was renewed upto 31.12.2012. She had also submitted renewal application of her licence online but that was not accepted. Taking note of all the developments, the Sub-Divisional Controller (F & S) in Annexure P-8 proposed for according necessary approval to resume the M. R. dealership to the appellant.

From the aforesaid material, we find that the appellant has diligently performed part of her duty on returning from her leave. Since 2007, she is running

from pillar to post for resumption of her dealership. At that time, 2003 Control Order was in vogue. While the matter was still under process, 2013 Control Order came into force.

When there is no allegation against the appellant regarding smooth running of the Fair Price Shop by her and when she acted *bona fide* to take leave without taking resort to managing the Fair Price Shop by proxy, the dealership should have been resumed on her application filed on 02.05.2007. The Government should not have sat over the matter without any action and now it is not expected from the Government to come forward with a contention that after the coming into force of 2013 Control Order, the resumption of licence in favour of the appellant is not possible. The appellant also tried her best to file application online for renewal of her licence after 31.12.2012 but in vain because the online application submitted by the appellant was not accepted by the system.

Taking into consideration all the aforesaid facts, we dispose of the appeal with the observation that the appellant shall file a representation before the Director of Food and Supplies (respondent No. 2) within three weeks from today giving all the details. On filing of such application/representation, the same shall be disposed of by respondent No. 2 taking into

consideration the letter of Sub-Divisional Controller (F & S) at Annexure P-8 to the writ petition and the development that took thereafter. If any other person has been appointed in place of the appellant under 2013 Control Order he/she should also be noticed and all the parties shall be given proper opportunity of hearing. The application/representation of the appellant shall be disposed of on merit in accordance with law within a period of four months from the date of filing of the representation.

It is needless to mention here that the appellant having run the Fair Price Shop and having acted *bona fide* in filing application in time for resumption of her dealership precedence should be given to her for engagement as a Fair Price Shop dealer as far as practicable, if not in the same place, then any nearby place.

The impugned order passed in WP 14623 (W) of 2017 is set aside and appeal being FMA 1926 of 2018 along with interim application being CAN 1 of 2017 (Old No. CAN 7761 of 2017) are, accordingly, disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)