

15.03.2022
Item No.06
Crt. No.11.
KB

MAT 247 of 2022
with
IA No. CAN 1 of 2022
with
IA No. CAN 2 of 2022
with
IA No. CAN 3 of 2022

(Via Video Conference)

Md. Samsuzzoha
-Vs-
Abdul Muktar & Ors.

Mr. Pratip Kumar Chatterjee
... For the Appellant.

Mr. Susovan Sengupta
Mr. Subir Pal
... For the State.

Mr. Debabrata Saha Roy
Mr. Neil Basu
... For the Writ Petitioner/Respondent.

In Re : CAN 3 of 2022.

Party/parties is/are represented in the order of
their name/names as printed above in the cause title.

On behalf of the appellant, Mr. Chatterjee,
Learned Counsel, appears and places the application for
condonation of delay.

The application for condonation of delay is
numbered as CAN 3 of 2022.

Affidavit-of-Service is filed in Court today and be
kept with the record.

Heard the parties.

Cause shown for condonation of delay is found to be sufficient.

Delay stands accordingly condoned.

The appeal along with its other connected applications being CAN 1 of 2022 and CAN 2 of 2022 being respectively applications for stay of operation of the order impugned and for Leave to Appeal stand accordingly regularised and are accordingly brought on board.

CAN 3 of 2022 stands thus **disposed of**.

In Re : MAT 247 of 2022
with
CAN 1 of 2022
with
CAN 2 of 2022

The appellant submits that he was not made a party to the writ petition being W.P.A. No. 71 of 2022. The writ petition stood disposed of by the order of the Hon'ble Single Bench dated 13th January, 2022 and such order is impugned in this appeal.

Mr. Chatterjee points out that the writ petition was filed by his father and one of his brothers. It has been, *inter alia*, disposed of by the Hon'ble Single Bench with a direction upon the Respondent No.4 in the writ petition, i.e. the Sub-Divisional Controller (Food & Supplies), Kandi, Murshidabad, to decide the

representation of the petitioner No.1/the father praying for re-constituting the Fair Price Shop-cum-Kerosene Dealership of the writ petitioner No.1 from sole proprietorship to a partnership by inducting the writ petitioner No.2, i.e. other son and brother of the present appellant as a partner.

Mr. Chatterjee submits that the prayer for re-constituting the partnership is violative of the provisions of Clause 20(e) of the Amended Public Distribution System (Maintenance and Control) Order, 2013 (for short the 2013 Control Order). It is submitted that the licence can be converted into a partnership only if the family member(s) proposed to be inducted or substituted as a partner(s) is/are is without a regular means of income.

Mr. Chatterjee submits that the writ petitioner No.2 in this appeal, has a regular source of income and such requires to be brought to the notice of the concerned Sub-Divisional Controller. It is further submitted that the Deed of Partnership is doubtful inasmuch as there are discrepancies connected to the age of the writ petitioner No.1/the father.

Accordingly, the appellant prays for leave to file this appeal and, on the appeal being adjudicated, a right of hearing before the concerned Sub-Divisional Controller.

Both Mr. Saha Roy, Learned Counsel appearing for the writ petitioners/the Respondent Nos. 1 and 2 to this appeal and Mr. Sengupta, Learned State Counsel, rely on the provisions of Section 20(e) of the Amended 2013 Control Order and submit that a legal duty is cast upon the Sub-Divisional Controller to ascertain all facts connected to the application for re-constituting the Dealership in terms of the amended provisions.

The allegation of the appellant that the writ petitioner/the Respondent No.2 in this appeal has an alternate source of income is an issue which falls within the obligation cast upon the Sub-Divisional Controller in terms of Section 20(e) (*supra*).

Mr. Saha Roy submits that the challenge to the Deed of Partnership will not lie before the Sub-Divisional Controller because the appellant is required to seek his remedy before the Learned Civil Court.

Mr. Sengupta, Learned State Counsel, submits that having regard to the clear provisions of the amended Section 20(e) of the 2013 Control Order, the appellant does not have an inherent right of hearing.

Having heard the parties and considering the materials placed, this Court is of the view that the decision making process directed to be performed by the concerned Sub-Divisional Controller in terms of the order

of the Hon'ble Single Bench can be better achieved in the event the appellant is also granted a right of hearing before the Sub-Divisional Controller at the time of deciding the issue.

Accordingly, the Sub-Divisional Controller, Kandi, Murshidabad is directed to afford an opportunity of hearing to the appellant with production of documents, if any, while acting in terms of the Order dated 13th January, 2022 passed by the Hon'ble Single Bench.

It is made clear that all points are left open to be decided by the Sub-Divisional Controller.

Since affidavits are not invited, all other allegations are deemed to be denied.

MAT 247 of 2022 with **CAN 1 of 2022** with **CAN 2 of 2022** stand accordingly **disposed of**.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)