

S/L 304
27.04.2022
Court No.24
SD

WPA 6832 of 2022

Archana Karan
Vs.
State of West Bengal & Ors.

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Subhankar Das

...for the Petitioner.

Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag

...for the State.

Mr. Apurba Kumar Datta
Mr. Kuntal Banerjee

...for the Respondent Nos.7 & 8.

Mr. Falguni Bandyopadhyay
Ms. Sreetama Neogi
Ms. Riya Ballav

...for the Respondent No.9.

The petitioner happens to be the widow of a pre-deceased son of a licensee. The case of the petitioner is that the licensee executed a deed of partnership with the petitioner for converting the proprietorship business to a partnership one in the year 2011.

The deceased licensee, that is, Kishori Mohan Karan made an application before the respondent authorities to incorporate the name of the petitioner as partner in his business. The same was, however, not proceeded with by the parties for the reasons best known to them.

The husband of the petitioner expired on June 2, 2015 and the father-in-law of the petitioner expired on February 16, 2020. After the death of her father-in-law, the petitioner applied before the respondent authorities praying for

issuance of licence in her favour as she did not have any independent source of income. But as the widow of the deceased licensee also made an application for grant of Fair Price Shop licence in her favour, accordingly, the licence was issued in favour of the widow. Prior to issuance of licence, an opportunity of hearing was given to the petitioner.

The petitioner's grievance is that the fate of the hearing was not communicated to her prior to issuance of the licence in favour of the widow. After the ration shop was opened, the petitioner came to learn about the issuance of licence in favour of the widow.

The petitioner contends that the widow is nearly 81 years of age and is suffering from various old age ailments. It is not possible for her to independently run the business. The widow is taking the aid and assistance of her son and married daughter for effective running of the business.

The petitioner apprehends that the widow may opt for transfer of the licence in favour of her children jointly or separately.

According to the petitioner, the son of the widow and the married daughter of the widow are very well-placed off and especially the son has got a very lucrative business. The petitioner apprehends that the widow may take a chance to circuitously transfer the licence in favour of her son or her married daughter, depriving the petitioner who happens to be the widow of the pre-deceased son of the licensee and does not have any source of income.

The learned advocate representing the State respondents submits that the widow was issued the licence in accordance with the provisions of the Control Order 2013 and there was no requirement of obtaining any no objection certificate or consent of the other family members prior to the issuance of licence in her favour.

It has further been submitted that the writ petition has been filed on mere apprehension of the petitioner that the present licensee will transfer the licence in favour of her son or daughter. It has been submitted that it is permissible in law for a licensee to opt for any of the family members for running the business. The petitioner does not have any legal right to oppose the issuance of licence in favour of a person who has been opted for by the licensee.

From the submissions made on behalf of the parties, it appears that though the deceased licensee, Kishori Mohan Karan executed a deed of partnership in 2011 for incorporating the name of his daughter-in-law, that is, the petitioner herein as partner of the business, but for some reasons whatsoever he did not proceed with the same from 2011 till his death in the year 2020.

After the death of the licensee Kishori Mohan Karan, his widow, the private respondent no.7 herein, applied for licence and the same was issued in her favour. Though the petitioner also applied for grant of licence in her favour, but as the law permits engagement on compassionate ground of the spouse without obtaining the no objection certificate

from the other family members, accordingly, the respondent authorities thought it fit to grant the licence in favour of the widow rather than in favour of the widow of the pre-deceased son of the licensee.

According to Control Order, 2013, in case a vacancy arises out of incapacitation on medical grounds then the applicant is not required to furnish no objection from the other family members provided, the ex-licensee because of his/her being incapacitated, has opted for the applicant. Such a situation has not yet arisen in this case.

The licence has presently been issued in favour of the widow on March 25, 2022 and the same is valid till December 31, 2022. If occasion so arises, that the present licensee opts for transferring the licence in favour of any of her son or married daughter and the person who has been opted for is not eligible to be issued the licence in accordance with law, then it will be open for the petitioner to raise objection before the respondent authority at that point of time.

If any objection with the above allegation is filed before the respondents, the same shall be considered by the concerned authority strictly in accordance with the provisions of law, after giving an opportunity of hearing to all the necessary parties.

At the present, it is not possible for the Court to pass any order restraining the respondents from incorporating the name of the daughter or the son of the licensee on mere

apprehension and on the basis of the submission of the petitioner that they have got sufficient means of income.

In view of the above, no relief can be granted to the petitioner in the instant case. The petitioner may take step as and when occasion as mentioned hereinabove arises.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Amrita Sinha, J.)