

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 12277 of 2015

IA No. CAN 1 of 2018 (Old No. CAN 4056 of 2018)

Sri Alok Mondal

Versus

The State of West Bengal & Ors.

Mr. Ram Anand Agarwal

Ms. Nibedita Pal

Mr. Ramesh Chandra Dhara

Mr. Ananda Gopal Mukherjee

Mr. Sanjib Bandypadhyay

Ms. Sonam Roy

.....For the Petitioner

Mr. Susovan Sengupta

Mr. Subir Pal

.....For the State-respondents

Heard on : 23.02.2022

Judgment on : 07.04.2022

Krishna Rao, J.: The writ petition is directed against the order passed by Sub-Divisional Controller (F & S), Midnapur Sadar dt. 12.05.2015 wherein

the request of the petitioner for grant of FPS license on compassionate ground is rejected.

The grandfather of the petitioner, Dulal Chandra Modal was the dealer of the ration shop at Sipoy Bazar, Midnapore, Kotwali, Paschim Medinipore. After the death of the grandfather of the petitioner, the license was transferred in the name of his son Ashoke Kumar Mondal who was the father of the petitioner. The father of the petitioner died on 11.12.2014. The death of the father of the petitioner was duly reported to the Sub-Divisional Controller (F & S) on 12.12.2014. After the death of the father of the petitioner, the ration card of the shop of the father of the petitioner was tagged with the nearby M.R. dealer. On 08.05.2015, the petitioner had made an application to the respondent authorities for grant of the FPS license on compassionate ground on account of the death of his father. By a communication dt. 12.05.2015, the Sub-Divisional Controller (F & S) had informed the petitioner that the request of the petitioner is rejected on the ground that the petitioner has not submitted the application within stipulated period according to the provisions of Clause 20 (vi) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013. In spite of rejection of the request of the petitioner, the petitioner had again made a representation for issuance of license of FPS dealer on compassionate ground on account of the death of his father but the same was also rejected on the ground of delay.

The Counsel for the petitioner relied upon the judgment passed by the Hon'ble Division Bench of this Court in MAT No. 1019 of 2018 (Bakul Rani

Patra –Vs- State of West Bengal & Ors.) dt. 24.06.2020 and submitted that in the said case there was a delay for submitting an application for issuance of license on compassionate ground and the Hon'ble Division Bench held that eight months delay in making the application was not at all uncondonable delay and directed the respondents to consider the application for grant of dealership on compassionate ground. The Counsel for the petitioner submits that in the instant case, the father of the petitioner died on 11.12.2014 though on the very next day the petitioner has intimated the death of the father but subsequently on 08.05.2015 i.e. within five months, the petitioner had made an application for issuance of license on compassionate ground and thus the case of the petitioner is squarely applicable in the case referred above.

Per contra, the Counsel for the respondent submitted that the father of the petitioner expired on 11.12.2014 but the petitioner has submitted an application on 08.05.2014 for grant of license of M.R. dealership on compassionate ground i.e. much after the stipulated period as provided under Clause 20 (vi) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013. The Counsel for the respondent further submitted that as per the notification for engagement of dealer on compassionate ground, an application along with Form "C" as provided in Annexure I with requisite fee is to be submitted within sixty days from the date of occurrence of the vacancy but the petitioner failed to submit the same within the stipulated time.

The Counsel for the respondents further submitted that the respondent authorities have rejected the request of the petitioner in accordance with law as provided under Clause 20 (vi) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013. The Counsel for the respondent relied upon the judgment reported in (2017) 5 CHN (Cal) 4 (Faizul Karim -Vs- State of West Bengal & Ors.). The Ld. Counsel for the respondent submits that the Hon'ble Division Bench of this Court in the above case has held that the Provision of Clause 20 (vi) is mandatory in nature and as such the applications filed by the petitioner after the period of 60 days is not condonable.

Considered the rival submissions of the parties, the documents available on record and the judgment referred by the parties.

Admittedly, the petitioner had made an application for grant of license of FPS dealer on 08.05.2015 i.e. after about five months from the date of the death of his father. The respondent authorities have rejected the request of the petitioner in terms of Clause 20 (vi) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013.

Clause 20 (vi) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 reads as follows:-

- “vi) **Engagement on compassionate grounds :-** In case of vacancy arising out of death or in case of incapacitation on medical ground, subject to satisfaction of the authority, of any existing dealer, such vacancy shall not initially be notified. Prayer of any of the family members of the deceased/incapacitated dealer having no regular means of subsistence, will be considered with preference on compassionate ground provided such prayer along with formal application in Form “C” along with annexure I

with requisite fee is submitted within 60 days from the occurrence of such vacancy.”

The respondents have relied upon the judgment passed by the Division Bench of this Court reported in (2017) 5 CHN (CL4) wherein the Hon’ble Court has held as follows:-

“14. In case he does so his application is to be considered subject to satisfaction of the authority. The words “such vacancy shall not initially be notified” have been used in the Clause 20 Sub-clause (vi) as an exception to the mandatory provision for considering the application on prefaced basis appointment of member of the family of the deceased on compassionate ground. This exception does not follow the normal mode of appointment of kerosene oil dealer. Hence, except the exception, the provisions of clause 20 (vi) are mandatory in nature.”

In the said judgment, the mother of the writ petitioner died on 03.07.2014 and the writ petitioner moved an application on 25.04.2015 i.e. more than ten months.

The judgment relied by the petitioner passed in MAT No. 1019 of 2018 (Bakul Rani Patra -Vs- State of West Bengal & Ors.), the son of the petitioner died on 06.01.2016 and she has applied for grant of dealership on compassionate ground on 09.06.2016 i.e. after the period of six months. The Hon’ble Division Bench while deciding the issue held as follows:-

“It is a settled principle of law that a scheme for compassionate appointment has to be applied strictly. To avail of the benefit of the scheme an applicant has to satisfy its requirements. There is no scope of any extra sympathy or compassion than what is provided in the scheme. But every stipulation in the scheme is subject to interpretation. In this case, the scheme is contained in the Control Order which is a piece of delegated legislation. The provision regarding the time limit within which an application for compassionate

appointment can be received by the government is also subject to interpretation.

The interpretation required in this case is whether the application of the appellant filed on 27th September, 2016 more than 8 months after the death of her son could be received? On consideration of two Control Orders, the intention of the legislature seems to be plain that the time limit of 60 days was for the purpose of preventing undue delay in the presentation of claims or in other words the purpose was to invite claim as expeditiously as possible. This is so because a vacancy in the dealership arises immediately on the death of a dealer. If the dealer's family is in financial distress he has a right to obtain the dealership. Otherwise it is offered to the public. It is the responsibility of the government to allot the dealership through a selection process, after the death of a dealer. Before doing so the right of the family of the deceased to avail of the compassionate appointment scheme has to be availed of and dealt with as expeditiously as possible. In my opinion, that is why, the time limit, on a purposive and fair interpretation of the Control Order. In appropriate cases the government retains the right to extend the time limit.

In this case, the applicant is the widow of the original dealer and mother of the last holder of the dealership licence. The intense grief which the appellant suffered, was a valid excuse, for not having made the application in time. I do not think eight months' delay in making the application was at all an uncondonable delay. Moreover, the respondents have not till date started a selection process for this dealership.

In those circumstances, it was not proper on the part of the respondents to have rejected the application of the appellant on the ground of delay. The learned judge has also made an error of judgment in treating the time limit of 60 days for making the application as mandatory and any delay uncondonable.

For the reasons given above, I set aside the judgment and order dated 16th August, 2018."

In the judgment (supra) one of the Hon'ble Judge though had agreed with the findings of the Hon'ble brother Judge but had made a separate findings, inter alia :-

“A modified ration dealership does not belong to *res extra commercium*. It is not merely a liberty granted to a citizen. It is a means of earning a livelihood given to him, but under strict conditions which amount to regulations. These regulations are in the public interest since they regulate the sale and distribution of necessities to the people at large. Therefore, the same partakes of the same welfare nature of activity which the State is supposed to perform in other spheres. While performing a welfare function, I completely agree with His Lordship my Learned Brother, the State cannot maintain double standards, of having a mandatory time limit in case of one Control Order of 2013, and none at all in case of another Urban Control Order of 2013, operating in the same field but in a different geographical area. Normally, whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow, as was held in the case of *Sharif-ud-din--v--Abdul Gani Lone* reported in AIR 1980 SC 303. Where however, the executive gives a certain period within which a specified act is to be performed, but extends such time expressly or by necessary implication (the latter is the case here) the original period cannot be enforced with the same rigour, since the rigour has already been relaxed. That is why the 2013 Urban Control Order has assumed importance - once it is appreciated that there is no time limit in such control order, for certain areas, demanding that there be a mandatory time limit for applying for compassionate appointment in other areas, becomes an exercise by which the State denies citizens equal treatment before the law and equal protection of the laws. That would of course be in violation of [Article 14](#) of the Constitution of India, and if we were to hold that the time limit in one case is mandatory and in the other case there is no time limit, then we would also have to hold that the said mandatory provision is *ultra vires* [Article 14](#) of the Constitution of India. Because of this alone, the interpretation proposed by His Lordship, my Learned Brother, harmonizes the discordant notes sounded by a bureaucracy too busy generating control orders to assess their impact inter se and that is why I also hold that the time limit of 60 days in the Control Order of 2013 is directory and not mandatory and the delay in making an application for compassionate appointment can be condoned if sufficient grounds are made out.”

In the case of *Faizul Karim -Vs- State of West Bengal & Ors*, the Hon’ble Division Bench has only considered the West Bengal Public Distribution System (Maintenance and Control) Order 2013, and before the

Hon'ble Court, Urban Order, 2013 was not placed and there was no occasion to the Hon'ble Court to deal with Urban Order, 2013.

In the case of Bakul Rani Patra -Vs- State of West Bengal & Ors. (Supra), their Lordships have considered both Control Orders and found that in Urban Control Order, 2013 no time limit is prescribed. Their Lordships have held that the State cannot maintained double standards, of having a mandatory time limit in case of one Control Order of 2013, and none at all in case of another Urban Control Order of 2013 operating in the same filed but in different geographical area. Their Lordships further held that the time limit in one case is mandatory and in the other case there is no time limit and thus the mandatory provision is ultra vires under Article 14 of the Constitution of India.

In the case reported in (2017) 5 CHN (Cal) 4 (Supra), their Lordships have not considered the Urban Control Order, 2013 and only considering the Control Order, 2013 held that the provisions of Clause 20 (vi) are mandatory in nature and thus this Court has no other option but with great respect to hold that the judgment reported in (2017) 5 CHN (Cal) 4 is no more hold good in the field after the judgment passed in the case of Bakul Rani Patra -Vs- State of West Bengal & Ors.

In view of the above, the communication dt. 12.05.2015 issued by the Sub-Divisional Controller (F & S) is set aside and quashed.

The respondent authorities are directed to consider the application of the petitioner for grant of dealership on compassionate ground within a period of six weeks from the date of communication of the order.

WPA No. 12277 of 2015 with IA No. CAN 1 of 2018 (Old. NO. CAN 4056 of 2018) are disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)