

82 12.7.2022
Sc Ct. no.12

MAT 1153 OF 2021
with
I. A. No. CAN 1 OF 2021

Humayun Kabir

Vs.

The State of West Bengal & Ors.

Mr. Malay Bhattacharyya
Mr. Subhrajyoti Ghosh.

... For the Appellant

Mr. Suushovan Sengupta
Mr. Manas Kumar Sadhu.

... For the Respondents

Heard Mr. Malay Bhattacharyya, learned counsel for the appellant and Mr. Sushovan Sengupta, learned counsel for the respondents.

The order dated 23rd September, 2021 passed by the Hon'ble Single Judge in WPA 3823 of 2021 is impugned in this appeal. The facts relevant for disposal of the appeal run thus :

The mother of the appellant/petitioner was an M.R. Dealer under the Sub-Divisional Controller, Food & Supplies, Ratua – II, Malda. She expired on 11th April, 2008. On 7th May, 2008 an application was filed before the Sub-Divisional Officer, Food & Supplies, Malda praying for engagement of the present appellant/petitioner being a legal heir on compassionate ground. The application bears an endorsement of the Inspector (Food & Supplies), Ratua – II, Malda in favour of the appellant/petitioner.

From the narration of facts it is also found that on 1st December, 2008, the present petitioner along with his elder brother Mohammad Akramul Haque applied for an M.R. Licence on compassionate ground on partnership basis. On the basis of the said application, the authority concerned heard the matter but the matter was closed as consensus could not be there between the two brothers. Again on 25th October, 2010 both the aforesaid brothers applied to get an M.R. Licence on compassionate ground. Again hearing was conducted. But the applications could not be processed further as there was no consensus again between the proposed partners. On 22nd March, 2012 for the third occasion the appellant/petitioner and his brother applied for running of the M. R. business jointly on partnership basis. This time also, the application could not be processed further for want of consensus between them.

The appellant/petitioner filed a writ petition being number W.P. 24802 (W) of 2014 (Mohammad Akramul Hoque & Anr. -vs.- The State of West Bengal & Ors.) with a prayer as submitted by the learned counsel for the appellant/petitioner in the writ court for allowing them to run the business on partnership basis. The said writ petition stood dismissed for default by an order dated 2nd February, 2015.

On 27th January, 2017 the present appellant/petitioner applied in his individual capacity to obtain a new licence as a sole M. R. Dealer on compassionate ground being the legal heir of his deceased mother. The said application having been rejected, the present writ petition has been filed.

On perusal of the order it is found that the writ petition has been dismissed on the following grounds :

1. The petitioner failed to comply with the provisions of law i.e. sub-Clause (vi) of Clause 20 of the 2013 Control Order while applying for issuance of a licence on compassionate ground as he had not attached to the application the required 'No Objection' certification from the other legal heirs.
2. During the course of hearing on 24th May, 2018, admittedly the petitioner failed to produce any document in support of his stand that the application by him was made in May, 2008.
3. Though it is strenuously submitted by the petitioner that the other legal heirs have no objection to his appointment as an M. R. Dealer, the other legal heirs have not been impleaded as party respondents in the instant writ petition.

4. The respondents have tried to take a call on the claim of the appellant/petitioner time and again but it has failed every time for want of consensus amongst the legal heirs.
5. Once the application was made for running the business on partnership basis along with the brother, the appellant/petitioner has waived his right for running the business individually on the basis of subsequent application. Having held thus the Hon'ble Single Judge has dismissed the writ petition.

It is submitted by Mr. Malay Bhattacharya, learned counsel for the appellant/petitioner that the application of the petitioner filed on 27th January, 2017 having been rejected on 12th March, 2018 on the ground of delayed filing of the application on compassionate ground, the impugned order be set aside and an opportunity be given to the appellant/petitioner to apply afresh for consideration of his prayer inasmuch as there is no time limit in 2003 Control Order for application on compassionate ground.

We are of the view that the death of the original M. R. Dealer happened in the month of April, 2008, the last application which was impugned in the writ petition was filed on 27th January, 2017. By that time, 2013 Control Order had already come into force prescribing

the time limit of sixty days for filing application for appointment on compassionate ground after death of an M. R. Dealer.

Even otherwise, within a reasonable time of the death of an M. R. Dealer, any application for compassionate appointment should be filed because there has been a provision in the Control Order not to fill up vacancy till appointment on compassionate ground. Public should not be allowed to suffer at large for eternity depending on the wish of the legal heir to apply for compassionate appointment on his sweet will.

In the line of observation of the Hon'ble Single Judge – if the appellant/petitioner applies in response to any fresh advertisement, his application shall be considered along with others in accordance with law.

Taking into consideration the reasoning advanced by the Hon'ble Single Judge and our observation (supra), we do not find any merit in the appeal and the same is accordingly dismissed but without costs.

Accordingly the connected application being I.A No. CAN 1 of 2021 also stands dismissed.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Chitta Ranjan Dash, J.)

(Aniruddha Roy, J.)