

18.02.2022
SL No. 159
Court No. 24
(P.M)

WPA 20912 of 2018

**Sayed Manjarul Islam & Ors.
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Sagar Bandyopadhyay,
Mr. Soma Kar Ghosh,
Mr. Abhishek Banerjee
... for the petitioners.

Mr. Susovan Sengupta,,
Mr. Subir Pal
... for the State

Leave granted to the learned advocate-on-record of the petitioners to rectify the description of the respondent No. 5 in the cause title of the writ petition.

The petitioners are aggrieved by the impugned communication dated 11th July, 2018 by the Sub-Divisional Controller, Food and Supplies, Chanchal whereby the prayer of the petitioners, being the widow and the two sons of the deceased dealer, for grant of M.R. dealership license on compassionate ground was rejected on the ground of not being permissible as per Paragraph 20(vii) of the W.B.P.D.S. (M&C) Control Order, 2013 with subsequent amendment.

Paragraph 20(vii) of the Control Order, 2013 mentions that dealership run by any individual person shall not be allowed for inclusion of any partner(s). In the case of induction of new partner or

substitution or exclusion of an existing partner, in an existing partnership license, the same may be considered on merit subject to the provisions of the Indian Partnership Act, 1932 as amended from time to time.

In the instant case, the deceased dealer ran the business as a proprietorship. The heirs of the deceased never applied for running the business as a partnership firm. They applied for running the business jointly, as a single unit, without changing the nature and character of the business from proprietorship to partnership.

Paragraph 20(vi) of the Control Order, 2013 lays down the provisions for engagement on compassionate ground. It states that, in case of vacancy arising out of death such vacancy shall not initially be notified. Prayer of any of the family members of the deceased dealer having no regular means of subsistence, will be considered with preference on compassionate ground.

In the instant case, prayer was made by the widow and two sons of the deceased dealer for grant of license in their names jointly. The respondent authorities erroneously mistook the said application as an application for changing the nature of the business from proprietorship to partnership, which is not the case at hand. The heirs of the deceased

dealer jointly applied for getting the dealership in their name, as a single unit.

Reference has been made to the definition of the terms 'dealer' appearing in paragraph 2(h) of the 2013 Control Order. The term 'dealer' has been defined as a person and includes association of persons or a registered Cooperative Society or a Corporation or a Company or a registered Self-Help Group or any other legally constituted body in whose name a shop has been licensed to distribute and sell public distribution commodities to ration card holders under the Public Distribution System (PDS).

From the definition of the term dealer, it appears that it is not necessary that only one individual member of the deceased can file an application for being granted the license on compassionate ground. One or more heirs of the deceased can always file an application for being granted license, not necessarily, as a partnership but as joint dealers of the dealership.

The department of Food and Supplies, Government of West Bengal by a notification published in the Kolkata Gazette Extraordinary on 16th December, 2020 made certain amendments in the Control Order, 2013. It has been notified that in case of death of individual licensee, the eligible family member or members, as the case may be, may apply

before the licensing authority, for running its business, either as an individual licensee or as the registered partnership firm, subject to the approval given by the State Government in this behalf.

As it appears that the provision for grant of license to the eligible family members of the deceased has already been incorporated in the 2013 Control Order by way of the amendment made in the year 2020, accordingly it is open for the respondents to consider the application of the petitioners in accordance with the current amendment that has been published by the State.

In view of the above, the impugned communication dated 11th July, 2018 is accordingly set aside and quashed.

The Sub-Divisional Controller, Food and Supplies, Chanchal is directed to reconsider the application filed by the petitioners for engagement on compassionate ground in accordance with the latest amendment of the Control Order, 2013, for grant of license in their favour jointly as a single unit. Steps shall be taken at the earliest but positively within a period of twelve weeks from the date of communication of a copy of this order.

The said respondent shall afford an opportunity of hearing to the petitioners and all other interested parties, if required.

The said respondent shall pass a reasoned order and communicate the same to all the parties immediately thereafter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)