

05.12.2022
S/L. No. 3
Court No.12
Suvayan/
Sourav

MAT 1555 of 2022
With
IA No: CAN 1 of 2022
With
IA No: CAN 2 of 2022

Swapna Maujmdar
Vs.
The State of West Bengal & Ors.

Mr. Srijib Chakraborty
Mr. Parashar Baidya
Mr. Atanu Banerjee

...for the appellant.

Ms. Sutapa Sanyal
Ms. Susmita Saha

...for the respondents

In re: CAN 2 of 2022

Having heard the learned Counsel for both the parties the delay of 108 days in filing the appeal is condoned subject to payment of cost of Rs. 2,000/- to the Calcutta High Court Bar Association within a week.

Accordingly, interim application CAN 2 of 2022 is disposed of.

In re: MAT 1555 of 2022
With
IA No: CAN 1 of 2022

1. Heard Mr. Srijib Chakraborty, learned Counsel for the appellant and Ms. Sutapa Sanyal, learned Counsel for the State.

2. Since the matter is stated to be covered by the earlier decision of this Court, we are taking of this matter for hearing and final disposal at the threshold.
3. The father of the present appellant (writ petitioner) who was Fair Price Shop dealer died on 11.07.2022 leaving behind him his widow, two married daughters, one unmarried daughter and one son. After the death of the original Fair Price Shop dealer, his widow applied for compassionate appointment under Sub-clause VI of Clause 20 of West Bengal Public Distribution System (Maintenance and Control) Order, 2013 ('2013 Order', in short). While her application was being processed, she (mother of the present appellant) also died. Thereafter, the present appellant who is the unmarried daughter of the original Fair Price Shop dealer applied for being appointed as Fair Price Shop dealer on compassionate ground. In her application she had annexed document to show that her brother was not dependant on her father and she was the only dependant on her late father.
4. The Hon'ble Single Judge rejected the claim of the appellant on the ground that she has failed

to furnish the required No Objection Certificate from his brother. The writ petition was disposed of on 04.05.2022.

5. This court in the case of Gurupada Das vs. State of West Bengal and Others (2022 SCC Online CAL 2260: AIR 2022 CAL 331) taking into consideration Sub-clause VI of Clause 20 of the 2013 Control Order read with Clause 2(m) of the said order has specifically held that the family members should be dependant on the original Fair Price shop dealer and if such family member is independent of the original Fair Price Shop Dealer then No Objection Certificate from them is not required. This Court also framed the guidelines as to what to be followed by the Sub-Divisional Controller, Food and Supplies in conducting the enquiry.
6. Learned Counsel for the appellant submits that the present case is squarely covered by the decision of this Court in the aforesaid case of Gurupada Das (Supra).
7. Ms. Sutapa Sanyal, learned Counsel for the State submits that there being a specific order in the writ petition to the effect that the Sub-Divisional Controller to conclude the steps taken for filling up the vacancy strictly in accordance

with 2013 Control Order, the vacancy might have been filled up in the meantime and the petitioner on the other hand has applied for another location, i.e., Udaypur near Fulia Station though his father was original Fair Price Shop dealer of Fulia Belemath location. It is submitted by her that the appellant having acquiesced with the order passed in the writ petition has applied for a different location in the meantime and also did not disclose that fact in the appeal and she cannot approbate or reprobate at the same time when her application for Udaypur near Fulia Station is pending.

8. Be that as it may, it is not disputed that the present case of the appellant for compassionate appointment under Sub-clause VI of Clause 20 of the 2013 Control Order is covered by the judgment of this Court in the case of Gurupada Das (Supra). Further it cannot be said that only because the appellant has applied for a different location her entitlement for compassionate appointment in respect of Fair Price Shop dealer for the location Fulia Belemath is in any way frustrated. Regard being had to the facts and submissions and dictum of the Court in the case of Gurupada Das (Supra), we remand the matter

to Sub-Divisional Controller, Food and Supplies, Ranaghat in the District of Nadia, i.e., respondent No. 5 for disposal of the appellant's application vide Annexure P – 8 to the writ petition within a period of three months from the date of receipt of the certified copy of this order in the light of the decision rendered in the case of Gurupada Das (Supra).

9. In the meantime, the vacancy of Fulia Belemath location shall not be dealt with if not already filled up. If the vacancy has already been filled up, appropriate step be taken to consider the application of the appellant for any other location.
8. Accordingly, MAT 1555 of 2022 along with interim application CAN 1 of 2022 are disposed.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)