

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

W.P.A. 22204 of 2022

Sanjib Kumar Pal
Vs.
The State of West Bengal & Ors.

For the petitioner	Mr. Basudev Rakshit
For the State respondent	Mr. Susovan Sengupta Mr. Abdus Salam

Heard on : 28.09.2022.

Judgment on : 28.09.2022.

Jay Sengupta, J.

This is an application praying for direction upon the respondents to withdraw and/or revoke and/or rescind the impugned order of rejection of the proposal for engagement of the petitioner as Fair Price Shop Dealer on compassionate ground as contained in the Memo No. 2553/FMR/13L-44/14 (Part) dated 25.07.2022.

Learned counsel appearing on behalf of the petitioner submits as follows. On 19.10.1966, a M.R. Shop license was issued to one Niranjana Pal, since deceased. He died on 26.10.2021. On 10.01.2022, the petitioner applied for engagement as a dealer being a near relation. On 25.02.2022, the petitioner was called on for personal hearing on 03.03.2022, when he appeared. On 17.05.2022, the District Controller (F & S), Bankura sent a proposal for engagement of the petitioner as dealer on compassionate ground to the respondent no.2. However, on 25.07.2022, the respondent no.2 rejected the proposal for engagement of dealer. On 06.09.2022 the order of rejection was communicated to the petitioner. Although initially the petitioner had applied for appointment on compassionate ground being a nephew of the deceased MR dealer, subsequently he took up a stand that he was also the adopted son of the petitioner since he had performed the last rights. First, the respondent no.2 erred in rejecting the application of the petitioner merely because he could not be treated as the adopted son of the said dealer. Secondly, as it appeared from the definition of 'family member' and 'relative' as contained in the amendments to the West Bengal Public Distribution System (Maintenance & Control) Order, 2013, a nephew would come within the definition of "relatives". At the same time, it has been mentioned therein that a relative would include family members and others. Now,

the provisions regarding compassionate appointment as contained in the Control Order of 2013 give out that a family member of the deceased having no regular means of subsistence would have the right to be considered for engagement on compassionate ground. Therefore, the petitioner being a nephew, thus a relative of the MR dealer, can also apply on the ground of compassionate appointment because a relative would be included in the ambit of a 'family member'.

Learned counsel appearing on behalf of the State submits as follows. A relative as defined in sub-clause (xa) of clause (d) of paragraph 2 of the Control Order of 2013 only defines 'relative' in an inclusive manner, which is supposed to include family members and the 'following' kin. A nephew of a dealer would obviously be treated as a kin. Therefore, he would be treated as a 'relative'. However, that does not bring him within the scope of a 'family member' as defined in sub-clause (m) of clause (c) of paragraph 2 of the said Control Order. Moreover, the petitioner had been changing the stand as to his status in respect of the dealer. He applied as a nephew, but subsequently he claimed to be the adopted son of the dealer. However, he could not produce any document to substantiate his subsequent claim. Therefore, his application was rightly rejected by the respondent no.2.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the writ petition.

The petitioner's argument that since he is a nephew of the deceased MR dealer and thus, a 'relative' would bring him within the definition of a 'family member' is absolutely fallacious. From a plain reading of the definition, it is abundantly clear that while all family members would be included within the scope of 'relative', all relatives would not come within the ambit of 'family member'. A nephew comes within the definition of 'relative', but not 'family member'. So, the petitioner cannot sustain a claim to the dealership on compassionate on this score.

Moreover, the respondent no.2 rightly held that there was no document to show that the petitioner was the adopted son of the dealer.

Therefore, I do not find any merit in this case.

Accordingly, the writ petition is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)