

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 5245 of 2015

CAN 1 of 2022

Sangbaran Kundu

Versus

State of West Bengal & Ors.

For the petitioner : Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Subhankar Das
Mr. Neil Basu
Mr. Sankha Biswas
.....Advocates

For the State : Mr. Susovan Sengupta
Mr. Subir Pal
.....Advocates

Heard lastly on : 10.02.2023

Judgment on : 10.05.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for quashing of the Memo Bearing Number 816/1(4)/FA/IJ/MR-

40/2009 dated 10.11.2009 issued by the Director, DDP & S, F & S Department, West Bengal.

2. Learned counsel for the petitioner submits as follows. The petitioner's father and uncle, jointly as partners, had been granted M.R. Distributorship license under the name and style of M/S. G.C. Kundu & D.N. Kundu. On 30.09.1991, after death of the petitioner's father and uncle, the petitioner and his cousin brother namely, Pradipta Kundu had jointly been granted M.R. Distributorship license on compassionate ground under the same name and style. In 1999, due to medical ground, the petitioner temporarily retired from the said distributorship business and his cousin brother namely, Pradipta Kundu was granted distributorship license as sole proprietor under the same name and style of M/S. G.C. Kundu & D.N. Kundu. On 06.03.2004 Pradipta Kundu, who was bachelor, died only at the age of 38 years. On 14.05.2005, the brother of late Pradipta Kundu namely, Prasun Kundu on his behalf and on behalf of his sister Smt. Meghna Kundu being the only legal heirs of Late Pradipta Kundu applied for grant of distributorship license in favour of the petitioner, enclosing therein prescribed application, submitted by the petitioner. On 20.05.2008, the Sub-Divisional Controller (F & S), Ranaghat instructed the Area Inspector, Ranaghat, Block – I to enquire and submit report. 20.10.2010 the Area Inspector, Ranaghat, Block – I, after conducting enquiry, submitted report recommending the petitioner's prayer. On 10.11.2008 the Sub-Divisional Controller (F & S), Ranaghat sought police verification report. On 23.12.2008, the Superintendent of Police, D.E.B., Nadia submitted report,

saying that nothing could be found against the petitioner. On 30.04.2009, the petitioner submitted reminder. On 27.05.2009, a demand justice submitted. On 04.08.2009, relying on the G.O. dated 28.05.1996, this Court passed an order directing the Director, DDP & S to take a decision on the prayer of the petitioner. On 10.11.2009 the Director, DDP & S, rejected the petitioner's prayer, relying on a subsequent G.O. dated 18.11.2004. The resultant vacancy notice on the subject location, arose due to death of cousin brother of the petitioner, was notified on 01.09.2022. Since the Hon'ble Court by its order dated 04.08.2009, passed in W.P. 764 of 2009, quoting a Government Circular dated 28.05.1996, directed the Director, DDP & S to consider the prayer of the petitioner, the Director, DDP & S could not reject the prayer of the petitioner relying on a subsequent circular dated 18.11.2004. It was settled principle of law that the law prevailing on the date of occurring vacancy i.e, the date of death of the Distributor/Dealer, shall govern the application for compassionate appointment and since in the instant case petitioner's bachelor cousin brother being the M.R. distributor died on 06.03.2004 and at that material point of time Government Circular dated 28.05.1996 was operating/prevaling in the field, which extended the benefit of compassionate appointment to the next kin of the deceased dealer/distributor, the petitioner being the cousin brother of the bachelor distributor with NOC from all the legal heirs of the deceased distributor was very much entitled to get distributorship license on compassionate ground. It was the existing practice and the State policy also that K. Oil license and

distributor license shall be given to the same persons for conveniences of the consumers to lift their both the allotted quota of K. Oil and ration articles from the same shop. The Circular/G.O's, which was prevailing on the date of occurring vacancy i.e., date of death of the dealers/distributors, shall only be taken note of at the time of considering application for compassionate appointment. Reliance was placed on 2016 (4) WBLR (Cal) 161, Arvind Gupta Versus State of West Bengal & Ors. This judgment has been upheld by the Hon'ble Division Bench and the said Division Bench judgment has been relied on by another Division Bench in AIR 2016 (Cal) 251, Matadin & Anr. Versus State of West Bengal & Ors. The SLP filed by the State against the Division Bench judgment was dismissed with cost. The decision in 2007(2) SCC 481 supported the case of the writ petitioner. The petitioner's prayer for compassionate appointment shall be considered within the periphery of the law, prevailing on the date of death of his cousin brother i.e, the Circular dated 28.05.1996, which extended the benefit of compassionate appointment to the next of kin of the deceased dealer/distributor. The resultant vacancy notice on the subject location, arose due to death of cousin brother of the petitioner, dated 01.09.2022, should be quashed and/or set aside.

3. Learned counsel for the respondents submitted as follows. No perversity was found in the decision making process of the concerned State respondent. Even if any executive instruction vide Memo No. 418 F & S/5A-25/93 dated 28.05.1995 issued by the then Deputy Director, DDP & S, Food & Supply Department, Government of West Bengal regarding procedure for

appointment of MR Distributor/dealer on compassionate ground was at all applicable so far the purported writ petition was concerned, the writ petitioner herein under no circumstances could claim such executive instruction to be applicable in his favour in view of the fact that, first, in the said executive instruction it transpired that the vacancy arising out of death or resignation of the distributor/dealer had to be filled up by appointing the husband/wife/son/daughter or next Kin of the deceased/resigned dealer, if otherwise found suitable and such appointment should be granted after observing all other formalities. But, the order dated November 10, 2009 passed by the then Director, DDP & S, Food & Supply, Government of West Bengal, made it clear that the writ petitioner herein admitted the fact that he was not the legal heir of Late Pradipta Kundu, the erstwhile proprietor of MR Distributorship Firm namely, M/s. Gobinda Chandra Kundu and he was a Government agent of Kerosene Oil at Ranaghat, which itself suggested that he was not dependent upon the said deceased MR Distributor at the time of his death and as such, there was no ground for giving appointment in his favour under the compassionate ground. Secondly, even if assuming but not admitting that the next kin of the deceased/resigned dealer was entitled to get appointment in place of the deceased person i.e. MR Distributor and such wording was there in the said Scheme i.e., 28.05.1996 then such scheme was to be held as arbitrary and contrary to the Article 14 and Article 16 of the Constitution of India because next kin had a wide connotation so as to establish perpetuity in the case of appointment under the compassionate ground and the Hon'ble Apex Court in 2007(2) SCC 481 held

that such wording led to perpetuity in the case of appointment under compassionate ground and the same was contrary to the Article 14 and Article 16 of the Constitution of India and as such, order dated November 10, 2009 issued by the then Director, DDP & S, Food & Supply Department, Government of West Bengal was not a valid one.

4. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. First, it appears that the death of the distributor in respect of whose business the petitioner is seeking appointment on compassionate ground occurred on 06.03.2004. The application for compassionate appointment however was made only on 14.05.2005, after a delay of more than a year. This fact itself goes against the petitioner in his venture to obtain such compassionate appointment.

6. Government largesse is to be available equally to all. Otherwise, the same would violate the principles of Articles 14 and 16 of the Constitution of India. A compassionate appointment is only an exception to such appointment or engagement. In the present context, it is meant to be a means by which the family of the erstwhile dealer or distributor would be able to tide over the immediate crisis. If an applicant for such compassionate appointment makes an application after a passage of more than a year, then it would raise serious questions about the need of the applicant and the dependence of the applicant on such dealer or distributor.

7. It is true that the petitioner's prayer for compassionate appointment should be considered, as per the law that was prevailing at the death of the

erstwhile dealer, in the present case, the death of the petitioner's cousin brother. It appears that at the relevant time the circular dated 28.05.1996 was in operation which extended the benefit of compassionate appointment to the next of kin.

8. However, as would be appear from the impugned order, it was an admitted position that the present petitioner was a government agent of Kerosene oil at Ranaghat. This clearly suggests that the petitioner was not dependent on the said MR Distributor at the time of his death. Therefore, the petitioner could not have applied for compassionate appointment in respect of the distributorship of his cousin brother.

9. It is a different thing that often PDS distributorship and the distributorship for SK oil are granted together to the same individual. But, that does not militate against the finding that the petitioner was not dependent on the erstwhile distributor at the time of the latter's death.

10. It will be a futile exercise to see whether the earlier circular dated 28.05.1996, which is no longer in existence, was constitutionally valid or not especially vis-a-vis permitting and arguably expansive "next of kin" term to claim compassionate appointment, especially in view of the above referred grounds regarding the petitioner's ineligibility for claiming such compassionate appointment.

11. In view of the above discussions, this Court finds no merit in the writ petition.

12. Accordingly, the same is dismissed. The connected application also stands disposed of.

13. However, there shall be no order as to costs.

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

(Jay Sengupta, J.)

Later:

Learned counsel for the petitioner prays for a stay of this order.

The prayer is considered and is rejected.

(Jay Sengupta, J.)