

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 10630 of 2023

Md. Arob

-Vs-

State of West Bengal &Ors.

For the Petitioner: Ms. Nibedita Pal, Adv.

Heard on: 19 July, 2023.

Judgment on: 04 August, 2023.

BIBEK CHAUDHURI, J. : –

1. This instant writ petition is filed by one Md. Arob, the grandson of one deceased Murteza Bibi, who was the owner of a Fair Price Shop dealership, praying for a declaration, considering him as entitled to be recognized within the definition of "family member" under West Bengal Public Distribution System (Maintenance and Control) Order, 2013 and subsequently, issue a writ of Mandamus commanding the respondent authorities and each of them to grant M.R. Dealership licence on compassionate ground in favour of the petitioner.

2. Murteza Bibi was running a fair price shop dealership at Block - Rampurhat-II, Village Shilgram, P.O. Chandpara, P.S. Margram, Birbhum, Pin - 731241 by virtue of a licence issued under the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 (hereinafter referred to as the "2013 Order"). Murteza Bibi had four

daughters and one son and all four daughters were married and were residing at their respective matrimonial homes whereas the son was living with his wife and children along with his mother in the same house and the said fair price shop was the only source of livelihood for the whole family. The said son, Nura Ala, died during the lifetime of his mother Murteza Bibi, on 02.11.2003, leaving behind his widow, one daughter and two sons. However, his widow remarried leaving the daughter and sons with their grandmother.

3. Since Murteza Bibi's only son died, she brought up the eldest grandson, the writ petitioner, as her adopted son and the petitioner also remained with Murteza Bibi as her adopted son. Murteza Bibi continued to survive with the children of her predeceased son through the income derived from the said dealership and married off her granddaughter. In the course of time, the petitioner, who all along resided with Murteza Bibi, started to assist in the functioning of the dealership being the only source of livelihood for the family. Murteza Bibi died on 03.05.2022, leaving behind the petitioner and his younger brother as her survivors and her other legal heirs, being four married daughters and one married granddaughter.

4. After the demise of Murteza Bibi the petitioner, who was living in the same mess, performed all the rituals of the deceased as her adopted son and subsequently made an application to the licensing authority on 06.06.2022 in the prescribed format. The petitioner obtained no-objection certificates from all the legal heirs of Late Murteza Bibi including his

married sister and younger brother and also from his biological mother, who remarried leaving her children with Murteza Bibi and submitted the same with his application before the licensing authority for grant of the dealership on compassionate ground in his favour. Since the application of the petitioner was not considered by the licensing authority, the petitioner moved a writ petition, being WPA No. 8088 of 2022 but because of some incurable defects, prayer for its withdrawal with liberty to file afresh was made and this Hon'ble Court, by an order dated 12.12.2022, allowed the same.

5. The petitioner argues that being the son of the pre-deceased son of the deceased licensee, he was brought up by the licensee as her adopted son with all love and affection and was all along living in the same mess and dependent on the income of the said dealership and was a family member in true perspective. Since the petitioner's application for appointment on compassionate ground was kept pending by the SCFS, the petitioner on 21.03.2023, made a representation through his Learned Advocate before the Secretary, who is the ultimate authority, requesting him to look into the petitioner's matter compassionately, who being the son of a pre-deceased son, was living in the same mess and was totally dependent on the income of the said dealership but the said representation has been kept pending by the Secretary, Food and Supply Department, Government of West Bengal, the respondent no.2.

6. The petitioner argues that he should be granted a license on compassionate ground under Clause 20 (vi) of the WBPDS Control Order,

2013 as he had satisfied all the criteria and submitted no-objection certificates from all the other surviving members of the deceased license holder and is a 'family member' of the deceased. Under Clause 2(m) of 2013 Order, family member' means:

- (i) Spouse
- (ii) parents,
- (iii) son (including son legally adopted before death or incapacitation); (iv) widow of predeceased son
- (v) daughter (including daughter legally adopted before death or incapacitation, divorced daughter and widowed daughter), who is wholly dependent on the dealer or distributor at the time of death.

He argues that he is the son of a predeceased son of the deceased licensee, brought up by the deceased licensee with all love and care as her adopted son and the petitioner all along assisted her in the day-to-day functioning of the said dealership being dependent on the income of the said dealership and was living in the same mess and in the premises. Therefore, he is entitled to be considered as a family member of the deceased licensee and cannot be deprived of getting an appointment on compassionate ground.

7. He argues, the word 'Family' under Section 4 of the Partition Act inter alia includes a group of persons related in blood who live in one house under one head or management and that it is not restricted to a body of persons, who can trace their descent from a common ancestor. The definition of the "family member" under the 2013 Order is

restricted to certain relations and the authorities must make a reasonable classification, which has a nexus with the object sought to be achieved while choosing the categories of persons who will be considered as family members to come within a zone of consideration for grant of appointment on compassionate ground. The petitioner, being the grandson of the deceased licensee and being related by blood, lived in one house and was completely dependent on the income from the said dealership and the bar under the 2013 Order a grandson, being not recognized within the definition of a "family member" has caused serious prejudice to the petitioner.

8. Next, the Learned counsel for the petitioner argues that while defining "relative" in Clause 2 (xa) of the 2013 Order, the definition includes "family members" and the following kin:

- (i) son's spouse, son or daughter;
- (ii) daughter's spouse, son or daughter;
- (iii) brother's spouse, son or daughter;
- (iv) sister's spouse, son or daughter;
- (v) parent's brother or sister;
- (vi) spouse's brother or sister.

The said clause 2(xa) of 2013 Order, while defining "relative" includes the "family members" whereas the clause 2(m) of 2013 Order while defining "family member" does not include the "relative" only to deprive the relative from getting dealership under 2013 Order. Classification must be found on intelligible differentia which distinguishes persons grouped together

from others who are left out of the group. Secondly, the differentia must have a rational connection with the object sought to be achieved. By not including the grandson and granddaughter within the classification of “family member” under the 2013 Order, the object of the compassionate appointment cannot be achieved and hence, the grandson and granddaughter should be considered within the classification of family members to achieve the object of compassionate appointment.

9. The respondents were not present during the argument, therefore, this Court proceeds to give the following judgment and after hearing the arguments of the petitioner, this Court is of the opinion that the petitioner, Md. Arob, should be granted a license for the M.R. Dealership according to Clause 20 (vi) of the WBPDS Control Order, 2013.

10. Clause 20 (vi) of the 2013 Control Order reads as follows:

Engagement on compassionate grounds: In case of vacancy arising out of death or in case of incapacitation on medical ground, subject to satisfaction of the authority, of any existing dealer, such vacancy shall not initially be notified. Prayer of any of the family members of the deceased / incapacitated dealer having no regular means of subsistence, will be considered with preference on compassionate ground provided such prayer along with formal application in Form 'C along with annexure I with requisite fee is submitted within 60 days from the occurrence of such vacancy.

While applying, the applicant shall have to furnish “No Objection” from other family members in the form of an Affidavit executed before a 1st Class Magistrate except in the following cases (a) if the applicant be the spouse of the deceased licensee, (b) if the ex-

licensee, because of his / her being incapacitated / infirm has opted for the applicant.

Therefore, according to Clause 20 (vi) in order to be granted a license, in case of a vacancy arising out of death, the member of the family praying for such vacancy to be fulfilled must not have a regular means of subsistence and must furnish a no-objection certificate from all the other members of the family. In this instant case, there is no doubt as to the fact that the original license holder had passed away and the petitioner had furnished a no-objection certificate from all the other successors/surviving family members of the deceased. The issue is whether the petitioner is a “family member” under Clause 2(m) of the Control Order of 2013.

11. As argued by the petitioner, he falls under the definition of “relative” under Clause 2 (xa) being ‘son’s son’, i.e., the grandson of the deceased, but does not fall under the definition of “family member” under Clause 2(m), which only includes the spouse, parents, son and daughter of the deceased. Therefore, going strictly by the definition, the petitioner would not be a “family member” of the deceased and thus would not be eligible for the license on compassionate ground. But, the scheme for compassionate appointment is a beneficial legislation which has been enacted for providing financial aid to the family of the deceased. The Fair Price Shop is the only source of income of the family and the authority should consider the case of the petitioner for engagement. The manner in which the term “family members” has been described in Clause 2(m) of

the Control Order, 2013, excludes many such heirs who are eligible to be included.

12. In a judgement by Hon'ble Supreme Court in **Brij Mohan Lal vs. Union of India** reported in **(2012) 6 SCC 502**, it was held that if a policy framed by the Government is against any Statute or the Constitution or runs contrary to the philosophy behind the provisions or if the same is dehors the provisions of the Act or legislations the Court can interfere in the policy of the State. In **Smt. Durga Das v State of West Bengal, in WPA No.11518 of 2021**, the Hon'ble Amrita Sinha, J. of this Court held that:

“The intention of the legislature is very clear from the provision relating to engagement on compassionate ground. The vacancy which arises on account of death of any existing dealer is not required to be initially notified. The legislature intends that the family members of the deceased dealer having no regular means of subsistence will be considered with preference for grant of license to continue with the dealership. The very purpose of extending this facility is particularly for the reason that a set-up is already in place from where the ration items are supplied to the consumers. The consumers at the same time are not required to switch over from one dealer to the other on account of the death of the dealer.

In the opinion of the Court the relationships as mentioned in Clause 2(m) are incomplete and the same needs to be relooked. The case of bachelors and spinsters are also required to be taken into consideration at the time of framing such policy by the State. The policy decision should be in public interest and taken objectively to meet a certain purpose. The policy of keeping the dependent family

members of the deceased in the form of brothers and sisters out of the purview of the definition of family members is an arbitrary one. Such constricted approach is definitely not in line with the objective of the scheme.”

13. The grandmother of the petitioner was the original license holder of the FPS dealership. If her son had been alive, after her death, he would have been eligible to be the licensee of the dealership and after his death, the petitioner would be eligible to be the licensee as he would automatically come under the definition of “family member”, being the son of the deceased. But unfortunately, the father of the petitioner passed away much before his grandmother, the original license holder, and therefore, this problem has arisen where he is not included in the definition of ‘family member’. This Court is of the opinion that it is extremely unfair that the petitioner be denied the license in spite of him being the blood-relative of the original license holder, his grandmother, because of a limitation posed by the definition of “family member”. Moreover, all the other family members have no objection to the petitioner getting the license as evident from the no-objection certificates. Therefore, the Court finds no reason as to why the petitioner should be denied the license.

14. The Fair Price Shop is the only source of livelihood for the petitioner and his family and he has been involved in the day-to-day activities of the shop since his grandmother was alive. This policy of engagement on compassionate ground is in furtherance of welfare legislation of the State

and therefore, someone should not be denied this right because the definition of “family members” is exhaustive.

15. For the reasons stated above, this instant writ petition is allowed.

There shall, however, be no order as to costs.

(Bibek Chaudhuri, J.)