

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Hon'ble Justice Chitta Ranjan Dash
AND
Hon'ble Justice Partha Sarathi Sen

F.M.A. 1394 of 2019
With
CAN 1 of 2019 (Old No: CAN 6393 of 2019)

Pradip Kumar Adhikary
Vs.
State of West Bengal & Ors.

For the Appellants : Mr. Biswanath Chakrabarti, Adv.,
Mr. Krishnendu Bera, Adv.
For the State: Mr. Susovan Sengupta, Adv.,
Mr. Manas Kumar Sadhu, Adv.

Last Heard on: : 24.04.2023

Judgment on. : 19.05.2023

PARTHA SARATHI SEN, J. : –

1. In this appeal the appellant/writ petitioner has challenged the order of dismissal dated 02.04.2019 as passed in WP No. 23150(W) of 2018. In the said writ petition as filed by the writ petitioner the communication dated 12.10.2018 as issued by the respondent no. 3 herein communicating the decision of the Food and Supplies

Department to the respondent no. 4 herein rejecting the writ petitioner's application for appointment as a FPS Dealer on compassionate ground has been assailed.

2. For effective disposal of the instant appeal, the facts leading to the filing of the aforementioned writ petition before the Hon'ble Single Bench is required to be dealt with in a nutshell. Before the Hon'ble Single Bench it was the case of the writ petitioner that originally One Makhan Lal Adhikary since deceased, the father of the appellant/ writ petitioner was a fair price shop dealer at Panchla, District Howrah and after his death in the year 2006 Smt Ashima Adhikary, also since deceased being the widow of the original fair price shop dealer and the mother of the present appellant was granted the said dealership on compassionate ground under the provision of West Bengal Public Distribution System (Maintenance and Control) Order, 2003 (hereinafter referred to as 'the said Control Order, 2003' in short).
3. Before the Hon'ble Single Bench, it was the further case of the present appellant/ writ petitioner that after the death of mother of the present appellant, two other brothers of the present appellant namely; Kumtal Adhikary and Ujjal Adhikary on 09.1.2008 with the consent of the other surviving legal heirs of the deceased Ashima Adhikary applied for appointment of the aforesaid dealership on compassionate ground in accordance with the provisions of the said Control Order, 2003.

4. Before the Hon'ble Single Bench it has been stated on behalf of the writ petitioner that even after filing of the aforesaid application for compassionate appointment, no action was taken by the respondent/ authorities till August 2010 and on 12.08.2010 the respondent no.5 herein informed the aforementioned applicants namely; Kuntal Adhikary and Ujjal Adhikary that sub inspector of Food and Supplies Department had reported that the applicants were not interested in the said dealership and accordingly the applicants were directed to inform the respondent No. 5 within 7 days as to whether the said applicants were at all interested to run the said fair price shop or not.
5. It has been contended further by the writ petitioner/ appellant that thereafter by a letter dated 23.08.2010, the said applicants in writing informed about their willingness in running the said fair price shop.
6. Before the Hon'ble Single Bench it has also been contended that inspite of issuance of such letter and inspite of furnishing all documents on 23.3.2012 as called for, the respondents authority sat tight over the matter and did nothing in respect of the said application as submitted by the said two brothers of the appellant namely; Kuntal Adhikary and Ujjal Adhikary.
7. Before the Hon'ble Single Bench it was the further case of the writ petitioner that sometimes in August 2016, the appellant came to know that in the mean time West Bengal Urban Public Distribution

System (Maintenance and Control) Order, 2013 (hereinafter referred to as the 'said Control Order of 2013') has come into effect whereby and whereunder the previous Control Order of 2003 has been repealed and as per the provisions of 2013 Control Order there is hardly any scope to grant licence jointly and accordingly finding no other alternative the present appellant on 17.08.2016 made a fresh application for grant of licence in respect of the said fair price shop on compassionate ground in the prescribed form together with requisite fees.

8. Before the Hon'ble Single Bench it is the further case of the writ petitioner that by issuing a letter dated 10.10.2017 the respondent no.5/authority had asked the present appellant to submit NOC in the form of affidavit from all the legal heirs of her deceased mother and accordingly on 26.10.2017 such NOCs were submitted. According to the present appellant thereafter the respondent/ authorities took up the matter for inspection pertaining to the application as made by the appellant and on completion of necessary enquiry the respondent no.2/authority rejected the application of the appellant on the ground of delay in processing the application for appointment on compassionate ground which has been communicated to the writ petitioner by the respondent no.4 vide its communication dated 12.10.2018.
9. Before the Hon'ble Single Bench the said communication dated 12.10.2018 of the respondent no. 4 has been assailed which was

however turned down by the Hon'ble Single Bench giving rise to the present appeal.

10. In support of the instant appeal learned advocate for the appellant/writ petitioner at the very outset draws attention of this Court to the provision of Clause 23 of the 'Control Order of 2003', Clauses 16 and 39 of the 'Control Order of 2013'. Attention of this Court is also drawn to the impugned order as passed by the Hon'ble Single Bench. It is contended on behalf of the appellant/writ petitioner that on conjoint perusal of the clause 23 of the 'Control Order of 2003' and clause 16 of the 'Control Order of 2013' it would reveal that in the Control 'Order of 2003' there existed no time limit for making application by the legal heirs of the deceased dealer for compassionate appointment which is however present in clause 16 of the 'Control Order of 2013' wherein it has been specially provided that the time limit for making an application for appointment on compassionate ground is 30 days from the date of death of the dealer.

11. It is submitted further on behalf of the appellant/petitioner that the alleged delay is directly attributed to in-action on the part of the respondent/authorities since in the event the respondent/authorities took appropriate decision in respect of the application for compassionate appointment in the name of his two brothers namely; Kumtal Adhikary and Ujjal Adhikary prior to promulgation of the 'Control Order of 2013' (since they have

received all documents pertaining to compassionate ground on 23.03.2012 there could have no occasion on the part of the appellant to apply for compassionate ground afresh on 17.08.2016. It is thus submitted on behalf of the appellant/writ petitioner that the respondent/authorities should not be permitted to take advantage of their own fault. It is further argued on behalf of the present appellant/writ petitioner that on account of the aforesaid in-action or non-action on the part of the respondent/authorities, the present appellant/writ petitioner had to apply afresh for compassionate appointment after the promulgation of the 'Control Order of 2013' i.e. on 17.08.2016 and the same should be considered as a continuing action as initiated by his two brothers namely; Kumtal Adhikary and Ujjal Adhikary and thus the benefit of Saving Clause being Clause 39 of the 'Control Order of 2013' may be extended in favour of the present appellant. Learned advocate for the appellant/writ petitioner thus submits that it is a fit case for allowing the instant appeal by setting aside the order impugned thereby directing the respondent/authorities to issue compassionate appointment in favour of the present appellant/writ petitioner.

12. Per contra, Mr. Sengupta, learned advocate for the State/respondents while supporting the impugned judgement contended that since the present appellant applied for compassionate appointment on account of his mother's death only

on 17.08.2016 i.e. much after coming into effect of the 'Control Order of 2013', the respondent/authorities are justified in holding that such application for compassionate appointment is hopelessly time barred in view of Clause 16 of the 'Control Order of 2013'. It is further submitted by Mr. Sengupta that the present appellant/writ petitioner is not entitled to get the benefit of Clause 39 of the 'Control Order of 2013'. Mr. Sengupta thus submits that it is a fit case for dismissal of the instant appeal.

13. On perusal of the entire materials as placed before us and after giving due consideration over the submissions of the learned advocates for the contending parties, it appears to us that undisputedly the other two brothers of the present appellant applied for appointment on compassionate ground on 09.01.2008 and that after thorough enquiry as made by the respondent-authorities the said two brothers of the present appellant/writ petitioner were asked to communicate their willingness with regard to such appointment on compassionate ground and they were further asked to submit their documents which was actually submitted on 23.03.2012. In course of hearing learned advocate for the State/respondents could not justify as to what prevented the respondent/authorities to dispose of the application of the two brothers of the present appellant prior to promulgation of 'Control Order of 2013' and on the contrary sufficient materials have been placed before us to substantiate that on account of in-action and/or

non-action on the part of the respondent/authorities the present appellant found no other alternative but to apply for appointment on compassionate ground singly on 17.08.2016 in view of clear bar of the 'Control Order of 2013' in granting appointment on compassionate ground in favour of two persons conjointly.

14. In further considered view of us since the delay on the part of the present appellant/writ petitioner, if there be any, in submitting his application for appointment on compassionate ground cannot be attributed to the present appellant/writ petitioner since such delay occurred on account of in action and/ or non-action of the respondent/authorities in processing the application for compassionate appointment of his two brothers namely; Kumtal Adhikary and Ujjal Adhikary. From the entire series of transaction it also appears to us that submission of the application by the present appellant on 17.08.2016 for his appointment on compassionate ground is actually a continuous process which occurred on account of the death of the mother of the appellant/writ petitioner and the same started on 09.01.2008 when the appellant's two other brothers namely; Kumtal Adhikary and Ujjal Adhikary jointly made application on compassionate ground as per the previous provisions of 'Control Order, 2003'. It further appears to us that since the right to get appointment on compassionate ground of the present appellant accrued on account of the death of the mother of the present appellant when 'Control

Order of 2003' was in force, such right of the present appellant is sufficiently protected under Clause 39 of the 'Control Order of 2013'.

15. In view of the discussion made hereinabove we thus find that the application for appointment of the present appellant on compassionate ground as submitted on 17.08.2016 is not at all time barred under the 'Control Order of 2013' and accordingly the instant appeal deserves to be allowed.
16. In view of such, the instant appeal being F.M.A 1394 of 2019 succeeds. Consequently the impugned order dated 02.04.2019 as passed in WP 23150(W) of 2018 is hereby set aside.
17. Consequently the respondent no.5 being Sub-Divisional Controller (Food and Supplies) Howrah, Food and Supplies Department of West Bengal is hereby directed to issue compassionate appointment in the name of the present appellant as per prevailing Control Order in respect of fair price shop dealer at Panchla, District Howrah which stood in the name of the mother of the present appellant Ashima Adhikary, since deceased upon compliance of all the formalities by the present appellant within a month from the date of communication of this order.
18. With the aforementioned observation the instant appeal is disposed of.
19. All interim applications, if there be any, stand also dismissed.

20. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)