

12-09-2023
ct no. 13
sl. no. 6
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F.M.A. No. 690 of 2023
With
CAN 3 of 2023
Chandra Prova Puglia
-Versus-

State of West Bengal & Ors.

Mr. Kalyan Kumar Bandyopadhyay, Id. Sr. Adv.
Mr. Debabrata Saha Ray,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das

...for the appellant

Mr. T.M. Siddique,
Ms. Sukla Das Chandra

...for the State

Mr. Ram Anand Agarwala,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee,
Ms. Sonam Ray

...for the added respondent

1. The instant appeal is directed against the judgement and order dated April 6, 2023, passed by the learned Single Judge of this Court in W.P.A. No. 21220 of 2022 (Chandra Prova Puglia Vs. The State of West Bengal & Ors.).
2. The brief facts of the case are that, since the year 1966 the original M.R. Distributor for Sainthia Municipality in the District of Birbhum was one Mal Chand Chhajer (now deceased). Due to his ill-health, his daughter/the writ petitioner, who claimed to have assisted her father in running the distributorship, applied for

transfer in her name with the consent of the other legal heirs, in the year 2008.

3. The petitioner's father died on July 21, 2014. On March 2, 2016, the petitioner's mother, Tara Devi Chhajer, was allotted the distributorship on compassionate grounds. For all intents and purpose, therefore, the claim of the petitioner for transfer of the distributorship from her late father, came to an end.
4. After the death of her mother on October 25, 2016, the petitioner allegedly re-applied within 27 days, on a piece of paper, for transfer of the distributorship on compassionate grounds in her name from that of her late mother. The application was neither in any format nor was it accompanied by any application fees.
5. Mr. Bandyopadhyay, learned Senior Counsel for the appellant would argue that the petitioner could not have put in the application fees without formal consent of the authorities. He would also argue that certain documents of the petitioner were pending consideration even as on April, 2014.
6. Be that as it may, this Court has serious reservations about treating the said application as one for compassionate employment under paragraph 26 Sub-Clause 6 of the West Bengal

Public Distribution (Maintenance and Control) Order, 2013.

7. Vacancy notices dated 12th July 2018 and 7th January 2019 were issued, which were ultimately cancelled and withdrawn vide notification dated 13th August 2019. It is the case of the petitioner that her original application dated November 21, 2016 was kept pending consideration. It is wholly ununderstood as to why such application, if at all valid, could at all be treated as pending for being revived later.
8. Another controversy was proceeding on the side. Prior to March 7, 2017, a married daughter was entitled to seek appointment on compassionate ground on account of the death of a distributor under the Control Order of 2013.
9. By a notification dated March 7, 2017, the Government changed its policy and disallowed a married daughter from applying for distributorship on compassionate ground. The said order came to be interfered with, and quashed and set aside on September 19, 2019, by a Single bench of this Court in W.P. No. 449 of 2019.
10. The petitioner claims to have applied on 22nd February 2021 afresh for compassionate

appointment as a Distributor in place of her deceased mother who died on 25th October 2016. The said application made after 4 years of the death of the mother was itself illegal and barred.

11. However, the District Controller, Birbhum addressed a communication dated 6th July 2021 to the Deputy Director (Licence), DDP & S, Calcutta, seeking instructions as to how the petitioner's application which was made afresh on February 22, 2021 ought to be treated. The said application, according to the District Controller, had fulfilled all the requirements.
12. Mr. Bandyopadhyay would argue that once a District Controller found the petitioner's subsequent application dated February 22, 2021 in order and in accordance with law, the respondent authorities were duty bound to process the same and could not raise any objection as regards eligibility or otherwise. It is also argued that by that time, the earlier notification of the State Government dated 2017 debarring the married daughters from applying for distributorship on compassionate ground, was already quashed.
13. It appears to this Court in no uncertain term that the appellant seems to have misunderstood

the object and purpose of appointment and transfer of distributorship on compassionate ground. The Court's mind is also not free from doubt that the appellant may have construed that an M.R. Distributorship under the Control Order of 2013, is a heritable one.

14. It is now well-settled that compassionate engagement or transfer of distributorship on compassionate ground, essentially pre-supposes that the family of the deceased distributor would be rendered to penury if the distributorship is not transferred to another family member. The process involves the assessment of the financial condition of the family. The petitioner appears to be surviving extremely well since 2016, i.e., from the date of death of the mother till 2021. It is not possible for the State in the year 2021 to assess the financial conditions of the appellant's family in the year 2016.
15. There is and should have been a presumption that the family was otherwise well off and did not require any compassion, much less a transfer of distributorship on compassionate ground, 5 years after the death of the original distributor.
16. For the reasons indicated above, inter alia, and those by the learned Single Judge, this Court

cannot find fault with the non-consideration of the petitioner's application dated 22nd February 2021 for transfer of M.R. Distributorship from her late mother's name.

17. Hence, F.M.A. 690 of 2023 fails and is hereby dismissed.
18. In view of the above, CAN 3 of 2023 shall also stand dismissed.
19. There shall be no order as to costs.
20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)