

**HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 11760 of 2019

**Suman Kumar Singha
Versus
The State of West Bengal & Ors.**

For the petitioner	:	Mr. Ranjit Jaiswal Mr. Parthasarathi Chakraborty ...Advocates
For the State	:	Mr. Susovan Sengupta Mr. Subir Pal ...Advocates
For the respondent no.6	:	Mr. P.S. Deb Barman Mr. Golam Mohiuddin Ms. Puja Mondal ... Advocates
Heard on	:	09.01.2023 & 10.01.2023
Judgment on	:	10.01.2023

JAY SENGUPTA, J:

This is an application under Article 226 of the Constitution of India praying for a direction upon the concerned authorities to rescind, cancel and/or withdraw the purported memo bearing No.822/SCFS/R'hat/18 dated 03.10.2018 issued by the Sub-Divisional Controller, Food & Supplies, Rampurhat, Birbhum.

Learned Counsel appearing on behalf of the petitioner submits as follows. The petitioner's uncle, since deceased, was a fair price shop-cum kerosene oil dealer. On 12.01.2009, the said dealer made an application for transfer of his licence in favour of the petitioner as he was suffering from

illness. He made another such application on 27.07.2009. On 20.07.2012, the Sub-Divisional Controller, Food & Supplies, Rampurhat, forwarded the entire file to the Director, Dte. of D.D.P. & S (F&S) for obtaining approval. However, the petitioner passed away on 19.07.2018. Till then, the application made by the said dealer had not been disposed of by the concerned authority. Accordingly, the petitioner made an application for engagement on compassionate ground on 20.07.2018. He made another application on 27.08.2018. By an order dated 19.11.2018, the Sub-Divisional Controller (F&S), Rampurhat forwarded the rejection of the petitioner's prayer for appointment on compassionate ground. It appears that in the meantime, the respondent no.6, who was actually working as maidservant at the house of the said M.R. dealer, claimed appointment in place of the M.R. dealer on compassionate ground. She further falsely claimed that she was the widow of the said M.R. dealer. Reliance is placed on a letter written by the M.R. dealer trying to nominate the present petitioner to run the business where it was categorically mentioned that the petitioner was not married. Since the petitioner was a bachelor and as such, had no family members belonging to Class-I heirs under the Hindu Succession Act, the petitioner would fairly be treated as an heir and hence, a family member as he belonged to the Class-II heirs under the Hindu Succession Act. Secondly, the application made by the erstwhile M.R. dealer was not disposed of in time. Therefore, the cause of action would continue and the petitioner ought to get benefit of such nomination.

Learned Counsel appearing on behalf of the respondent no.6 submits as follows. 'Nephew' does not fall within the definition of 'family member' under 2(m) of the Control Order of 2013. Therefore, there is no question of the petitioner being granted compassionate appointment. So far as the purported nomination of the M.R. dealer during his lifetime is concerned, the same had spent its force as it was not disposed of by the authority concerned. So far as the respondent no.6 is concerned, she has been recommended for the said dealership on compassionate ground as she could prima facie show that she was the widow of the former M.R. dealer. The petitioner has not made any independent application for appointment on compassionate ground in proper form.

Learned Counsel appearing on behalf of the State submits as follows. As has been submitted by the learned Counsel for the respondent no.6, a nephew cannot claim to be a family member so as to become entitled to appointment on compassionate ground. So far as the alleged nomination made by the M.R. dealer during his lifetime is concerned, the same has no value now as the petitioner has passed away. On this, reliance is placed on the decision of a Division Bench of this Court passed on 05.08.2022 in the case of **Gurupada Das Vs. State of West Bengal and others** in **M.A.T. 842 of 2022 with I.A. CAN 1 of 2022**.

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

It is quite evident that a 'nephew' does not fall within the purview of a 'family member' as per 2(m) of the Control Order, 2013. The law on compassionate appointment in respect of the Control Order in question would have to be governed as per the Scheme and provisions of law pertaining to the same and not as per the Hindu Succession Act. In any event, a licence to run such a shop is not a heritable property.

Secondly, the purported nomination of an M.R. dealer during his lifetime can only operate during his lifetime. As no decision was taken on the same during the lifetime of M.R. dealer, the same would not have any value thereafter. This has been made amply clear by a Division Bench of this High Court in the case of **Gurupada Das (supra)**.

The question of entitlement of the respondent no.6 to the M.R. dealership in question need not be gone into in this application. A process is already on and the respondent authorities would be free to deal with the same.

Therefore, so far as the present application is concerned, this Court does not find any merit in this application.

Accordingly, the writ petition is dismissed.

However, there shall be no order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Jay Sengupta, J)