

Form J(2)

**IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
Appellate Side**

**Present :  
The Hon'ble Justice Bibek Chaudhuri**

**WPA 15964 of 2023**

**Sri Dipak Kumar Khan  
Vs.  
The State of West Bengal & Ors.**

|                             |          |                                                                           |
|-----------------------------|----------|---------------------------------------------------------------------------|
| <b>For the petitioner</b>   | <b>:</b> | <b>Mr. Balailal Sahoo,<br/>Mr. Manoranjan Mahata</b>                      |
| <b>For respondent No.5.</b> | <b>:</b> | <b>Mr. Rudranil De,<br/>Mr. Aditya Bikram Mahata,<br/>Mr. Sahil Kabir</b> |
| <b>For the State</b>        | <b>:</b> | <b>Mr. Jayanta Samanta,<br/>Mr. Manas Kumar Sadhu</b>                     |
| <b>Judgement on</b>         | <b>:</b> | <b>19.07.2023.</b>                                                        |

**Bibek Chaudhuri, J.**

Affidavit of service be kept with the record.

The petitioner was granted fair price licence on 17<sup>th</sup> February, 2020 to run a fair price shop as a dealer. Sometimes in November, 2022, the petitioner became ill and physically incapacitated to run the business on account of severe knee pain. It is on record that the medical officer attached to a Government hospital, in the treatment

sheet directed the petitioner to stop carrying heavy materials or to perform normal daily works. In view of such matter, the petitioner

applied for converting the said proprietorship business of fair price shop to a partnership business by inducting one Aditya Khan, son of the brother of the petitioner as a partner. The Sub-Divisional Controller (Food and Supplies) of the concerned jurisdiction rejected the said application on the ground that the proposed partner does not come under the definition of family stated in Clause 2(m) of the Control Order of 2013. Subsequently, a registered partnership deed was executed on 17<sup>th</sup> November, 2022 by the petitioner Dipak Kumar Khan and his brother Ajoy Kumar Khan and the said partnership deed along with all relevant documents were placed before the concerned authority for conversion of proprietorship licence to the partnership licence. The said application was rejected on the ground that as per Clause 20 (VII) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 and its amendment vide notification 3034-FS dated 14<sup>th</sup> December, 2020, an individual dealer may be allowed to convert his business into partnership firm for the reason of his physical incapacitation and if and only if any family members of the licensee having no regular means of income is inducted as a partner and not otherwise. It is also observed that

“brother does not come under the definition of family members as per Paragraph 2(m) of the Control Order of 2013 and the amendment thereto.”

It is not in dispute that the original licensee namely Dipak Kumar Khan is a bachelor. He stays in the family of his brother Ajoy Kumar Khan. It is true that even in the notifications dated 14<sup>th</sup> December, 2020 and 11<sup>th</sup> April, 2022, ‘family members’ does not include full brother of an unmarried licensee. However, an individual licensee is permitted, by the Gazette Notification dated 14<sup>th</sup> December, 2020 amending sub-clause (VII) of Clause 26, to convert his proprietorship business into partnership firm for the reason of his physical incapacitation, or a licensee of a partnership firm shall have the option to induct a new partner or substitute the name of an existing partner. If such an application is filed the licensing authorities may, on an application made by the licensee in this behalf, allow him to do so with the approval of the State Government, if and only if, any of the “family member” of licensee having no regular means of income is inducted or substituted as a partner and not otherwise. Thus, the Control Order of 2013 which has been amended subsequently by a notification dated 14<sup>th</sup> December, 2020 permits a licensee to convert a proprietorship license business to partnership business but in such case, only the family member having no regular

income should be inducted as a partner and no other person can be inducted.

It is true that in the definition Clause of 'family member' brother of a bachelor hindu has not been inducted as a family member. This Court has given an anxious thought as to what will happen if the license is granted to a person who has not married and stays in the family of his brother in the event of conversion of a proprietorship license to a partnership license inducting his brother who does not have regular means of income.

In my considered view, under such circumstances, the State authority should take the aid of Schedule 1 of Hindu Succession Act where devolution of interest of an unmarried hindu male is codified.

It is needless to say that at the time of promulgation of Control Order of 2013 or during its amendment, the law makers could not visualize the incidents about the future course of action if the license granted to an unmarried hindu male dies intestate leaving behind some legal heirs as per Schedule I of the Hindu Succession Act, what will be the course of action if the legal heirs under Hindu Succession Act makes an application for compassionate appointment on the death of unmarried hindu male licensee. This Court is of the considered view that over the Control Order of 2013, as amended

time to time by the Administrative Authority, the Central Act will prevail.

In WPA No.11518 of 2021: Smt. Durga Das vs. State of West Bengal and Ors. decided on 2<sup>nd</sup> September, 2021 the question that came up for adjudication as to whether on the death of the licence holder who was an unmarried Hindu male, his sister who was a spinster, was entitled to be granted licence of fair price shop as member of the family. The Coordinate Bench gave reply to the above question in the following words:-

According to the provision of the Hindu Succession Act, 1956, the property of a male Hindu dying intestate devolves firstly upon the heirs specified in Class-I of the Schedule and if there is no heir in Class-I, then upon the heirs specified in Class II of the Schedule. In the instant case, the deceased does not have a Class I heir but has a Class-II heir in the form of sister, the petitioner herein.

The policy decision of the respondents is restricting the expression 'family members' only in respect of married members without taking into consideration the case of unmarried members appears to be a faulty and unbalanced one.

When the intention of the legislature is to confine the business within the family itself, prior to filling up the vacancy by declaring the same to be filled up by the open competition, then there is no reason

as to why a member of the family who was wholly dependent upon the income from the business will not be given a chance.

In view of such circumstances, the Principal Secretary, Food and Supplies Department, Government of West Bengal is directed to take up the cause as stated above by amending the definition of "family member" making the scope of the eligible legal heirs of a deceased or medically incapacitated unmarried hindu male licensee to bring his legal heirs to the fold of family member(s) in the definition of Control Order of 2013.

In the instant case, the respondent No.4 is directed to take up the matter afresh for consideration in the light of the observation made hereinabove.

For the reasons stated above, the order dated 6<sup>th</sup> April, 2023 passed by the Director, DDP & S is quashed.

Let a server copy of this order be communicated by the petitioner to the respondent No.4, DDP & S, Food and Supplies Department and the Principal Secretary, Food and Supplies Department for taking action as per the observation made hereinabove within 60 days from the date of this order.

In the meantime, the petitioner is permitted to continue with his dealership business in his individual capacity.

Until and unless the notification is amended, this order is restricted under the facts and circumstances of this case only.

The instant writ petition is, accordingly, **disposed of**.

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

**(Bibek Chaudhuri, J.)**

***Mithun De.  
A.R. (Ct).  
SI No.05.***