

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 16837 of 2019
Ranjit Kumar Keshri & Ors.
Versus
State of West Bengal & Ors.

For the petitioner : Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharya
Mr. Subhankar Das
.....Advocates

For the State : Mr. Susovan Sengupta
Ms. Munmun Tewary
.....Advocates

Heard lastly on : 17.04.2023

Judgment on : 26.09.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India, inter alia, praying for directions upon the respondent authorities to cancel and withdraw the purported order dated 20.06.2019 issued by the Principal Secretary, Department of Food and Supplies, Government of West Bengal and to allow the petitioners to reconstitute the firm and grant MR Distributorship licence in favour of the said reconstituted firm.

2. Learned counsel appearing on behalf of the petitioners submitted as follows. On 01.04.1993 a partnership deed was executed amongst the petitioners' predecessors in interest namely, Harikishan Prasad, Haridwar Prasad and Rajendra Prasad, all since deceased, under the name and style of "M/s. Shipujan Ram Ram Tapashya Prasad". The partnership firm was granted M.R. Distributorship license in Malda Town under English Bazar P.S. in the District of Malda. Clauses 15 and 16 of the said partnership deed stipulated that on death and retirement of partner/partners, surviving/existing partners should continue to run the distributorship business and the heirs of the deceased partner or the nominee of retiring partner should be permitted to join the partnership. On 14.08.2009 Haridwar Prasad died, leaving behind no legal heirs. Two existing partners had been running the distributorship. On 01.04.2010 partnership firm was reconstituted amongst the family members and the legal heirs of the existing partners. On 22.11.2010 a prayer was submitted for granting license in favour of the reconstituted partnership firm. All required documents were furnished. Enquiry was conducted and report was submitted by the Chief Inspector (F & S), Malda, recommending the prayer. The Sub-Divisional Controller (F & S), Malda also recommended the prayer. The District Controller (F & S), Malda forwarded the file to the Director, DDP & S with strong recommendation. On On 18.07.2011 Rajendra Prasad died. On 11.10.2011 the Director, DDP&S recommended and approved the prayer and sought for formal approval from the Government in F & S Department. On 08.11.2011 Harikishan Prasad died. The Secretariat kept the file

pending. On 08.08.2013 the Control Order, 2013 came into force in place of the 2003 Control Order. On 20.06.2014 the District Controller (F &S), Malda instructed the firm to submit fresh proposal under the Control Order, 2013. The communication dated 20.06.2014 was never forwarded to the petitioners and only in the affidavit-in-opposition filed by the State in previous writ petition, the communication dated 20.06.2014 came to light. On 23.03.2018 the Dy. Director (License), DDP & S instructed the District Controller (F & S), Malda to declare vacancy of M.R. Distributorship in place of the said distributorship. On 12.09.2018 the petitioners moved a writ petition being W.P. No. 5478 (W) of 2018. On 20.06.2019 the Principal Secretary, F & S Department rejected the petitioners' prayer. On 26.08.2019 challenging the rejection order, the instant writ petition was filed. Reconstitution of partnership firm, once approved by all competent authorities, subsequently could not be rejected by the State, relying on a subsequent Control Order, which was not in force at the time of submission of application and approval/recommendation by all competent authorities. During the lifetime of all the partners, since reconstitution had taken place and submitted before the Licensing Authority for incorporation of the names of the incoming partners of reconstituted firm in the distributorship license, on the subsequent death of the retired partners during pendency of the consideration of the reconstitution, such prayer could not be rejected on the ground of death of retired partners. Since upto the level of Directorate, DDP & S, prayer for reconstitution was approved, prior to coming into force of the 2013 Control Order, invoking provisions of the said Control Order, 2013 for

rejection of prayer was not sustainable. Reliance was placed on the saving Clause 42 of the Control Order, 2013. The present case was not coming under the purview of compassionate appointment. Rather, it came under the purview of reconstitution of partnership firm, governed under Sections 31 and 32 of the Partnership Act, 1932. The prayer of the petitioners should be considered in terms of clauses 15 and 16 of the partnership deed dated 01.04.1993. Keeping the matter pending for an indefinite period without any reason and subsequent rejection by taking recourse to a new Control Order were in no way sustainable in the eye of law. It was the settled principle of law that the wrongdoers could not take advantage of their own wrong. From a perusal of the order impugned dated 20.06.2019, it would appear that the Principal Secretary, F & S Department ultimately rejected petitioners' prayer on presumption and assumption and without any definite cause, which was not sustainable in the eye of law. The Control Order, 2003 which was prevailing at the date of submission of application, should only be taken note of at the time of considering application for reconstitution of the partnership firm. In 2016 (4) WBLR (Cal) 161, Arvind Gupta versus State of West Bengal & Ors., a Single Bench judgment was upheld by the Division Bench and the said Division Bench judgment was relied on by the other Division Bench in Matadin's Case, AIR 2016 (Cal) 251 (unreported judgment of the Division Bench, relying on Division Bench judgment of Arvind Gupta Case). An SLP filed by the State against the Division Bench Judgment was dismissed with cost. In the present case application for reconstitution of firm was submitted on 22.11.2010, while all the existing partners were alive

and such prayer had been recommended by all competent authorities and ultimately, the Director, DDP & S also approved the same on 11.10.2011. Then matter was kept pending by the Secretariat for more than 2½ years without any reason and ultimately, only on coming of the new Control Order, 2013, a direction was given for submission of fresh application under the new Control Order, 2013 (came into force w.e.f. 08.08.2013), only on 20.06.2014. Reliance was placed on 2007 (11) SCC 447, Kusheshwar Prasad Singh versus State of Bihar.

3. Learned counsel appearing on behalf of the respondents submitted as follows. It was a fact that pursuant to the solemn order dated November 13, 2018 passed in W.P. No. 5478 (W) of 2018 (Ranjit Kumar Keshri & Ors. Versus The State of West Bengal & Ors.), the then Principal Secretary, Food and Supplies Department, Government of West Bengal, gave an opportunity of hearing to all the stakeholders including the representative of the writ petitioners therein on June 20, 2019 and after hearing the submissions made by the writ petitioners therein and upon going through the relevant records, the then Principal Secretary was pleased to pass an order. Challenging such order of the then Principal Secretary, Food & Supplies Department, Government of West Bengal, the instant purported writ petition being W.P.A. No. 16837 of 2019 was filed before this Hon'ble Court, inter alia, on the alleged ground of not allowing the writ petitioner herein to reconstitute the Firm despite fulfilment of all the eligibility criteria and recommendation by all authorities. Originally the distributorship licence was granted in favour of the partnership firm M/s. Shipujan RamRam

Tapashya Prasad consisting of the then partners namely, Harikishan Prasad, Haridwar Prasad and Rajendra Prasad. After the demise of Haridwar Prasad on August 14, 2009, a proposal for transfer of licence was received from and on behalf of the said partnership firm on November 22, 2010 which was reconstituted with effect from April 29, 2010 comprising of the following partners - Sri Ranjit Kumar Keshri, S/o. Rajendra Prasad Keshri (Share 33%); Sri Soumen Keshri, grandson of Harikishan Prasad (Share 33%); Sri Bishal Keshri, S/o. Suresh Prasad (Share 17%), and Smt. Kabita Keshri, wife of Ranjit Kr. Keshri (Share 17%). It was pertinent to mention that when such proposal for reconstitution of the said firm was being made before the concerned authority of the Food & Supplies Department, Government of West Bengal, the other two existing partners namely, Harikishan Prasad and Rajendra Prasad survived on the date of such application and the said partnership firm was allowed to continue their business of distributorship under English Bazar Police Station in the district of Malda. Such proposal for reconstitution of the said firm was not approved by the competent authority of the Food & Supplies Department, Government of West Bengal. Moreover the other two existing partners as stated above died in the meantime and as per the terms and conditions incorporated in the said licence of the said firm as well as by taking into account of the statutory provisions incorporated in the Control Order, 2013, the said firm became non-existent. In other words, the same amounted to dissolution of the said partnership firm and as such, nobody other than the licensee was entitled to claim the right to operate such licence being issued in favour of

the said partnership firm at the material point of time. The cause of action which arose at an earlier point of time with regard to proposal for reconstitution of the said partnership firm when two other partners were alive, did not survive after demise of two other partners of the said partnership firm and as such, the concerned authority of the Food & Supplies Department, Government of West Bengal was powerless to approve such reconstituted firm and to issue a licence in the name of the said firm in terms of law. A liberty was given to the writ petitioners herein to apply afresh against the vacancy of the MR distributorship business at English Bazar, Malda. The dissolution of the said partnership firm in terms of paragraph 26 of the West Bengal Public Distribution System Control Order 2013, was one of the reasons for declaring of vacancy at the self-same location of the distributorship business in terms of law.

4. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. For a proper adjudication of the lis, it is necessary to enumerate the following admitted and relevant facts. On 01.04.1993 a partnership deed was executed amongst the petitioners' predecessors in interest namely, Harikishan Prasad, Haridwar Prasad and Rajendra Prasad, all since deceased, under the name and style of "M/s. Shipujan Ram Ram Tapashya Prasad". The partnership firm was granted MR Distributorship licence in Malda Town. Clauses 15 and 16 of the said partnership deed stipulated that on the death and the retirement of the partner/partners, surviving/existing partners would continue to run the distributorship licence and the heirs of

the deceased partners or the nominee of the retiring partner should be permitted to join the partnership. On 14.08.2009 Haridwar Prasad died, leaving behind no legal heirs. On 01.04.2010 the partnership firm was reconstituted. On 22.11.2010 the firm made a prayer for grant of licence. Enquiry was conducted and report submitted. SDC (FMS) also recommended the prayer. The District Controller forwarded the file to the Director DDP & S. However, on 18.07.2011 the said Rajendra Prasad also passed away. On 11.10.2011 the Director DDP & S sought an approval from the Government. At this stage, on 08.11.2011 the other surviving partner of the original firm namely, Harikishan Prasad died. On 08.08.2013 the Control Order of 2013 came into force. On 20.06.2014 the District Controller instructed the firm to submit a fresh proposal under the new Control Order. On 12.09.2018 the petitioners moved a writ petitioners being WP No. 5478 (W) of 2018. Thereafter, on 20.06.2019 the Principal Secretary rejected the petitioner's prayer. Challenging such rejection order the instant writ petition was filed.

6. It is pertinent to mention that the litigation at hand concerning the rights of dealers and provisions for granting licence to a reconstituted firm would not only be governed by the Partnership Act 1932, but also by the relevant Control Orders governing the field of essential commodities.

7. It is quite unfortunate indeed that the prayer for reconstitution of the firm and grant of fresh licence remained pending for sometime. Subsequently, this Court passed a judgment mandating that the decision making has to be done within a stipulated time. However, it is not the

position of law that if the petition is kept pending beyond a particular point of time, the application shall be deemed to have been allowed.

8. What is more significant in the instant case is that during pendency of the petitioners' application, all the surviving partners of the original partnership firm having the distributorship licence had passed away. After the demise of the last of those partners, the firm would be deemed to have become non-existent vis-a-vis the distributorship licence. No one other than the licensee was entitled to claim the right to operate such licence. Therefore, the cause of action that arose at an earlier point did not survive after the demise of the surviving partners of the firm.

9. In spite of this and possibly in view of the peculiar facts of the case, the concerned authority of the Food and Supplies Department did not just turn down the petitioner's prayer for reconstitution of firm and carrying on with the same licence, but also granted a liberty to the writ petitioners to apply a fresh against the vacancy of the MR Distributorship business at English Bazar, Malda.

10. According to the respondent authorities, the effective dissolution of the said partnership firm in paragraph 26 of the Control Order of 2013 was one of the reasons that prompted declaration of vacancy at the self-same location of the Distributorship business.

11. In view of the above discussions, I do not find any merit in the present application.

12. Accordingly, the writ petition is dismissed.

13. However, there shall be no order as to costs.

14. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)