

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 5352 of 2022
With
WPA 25434 of 2022
Sanjib Sinha
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Debabrata Saha Roy, Mr. Pingal Bhattacharyya, Mr. Subhankar Das, Mr. Neil Basu, Mr. Sankha BiswasAdvocates
For the State in WPA 5352/2022	:	Mr. Bibek Jyoti Basu, Ms. Anima Das ChakrabortyAdvocates
For the State in WPA 25434/2022	:	Mr. T.M. Siddique Ms. Sukla Das ChandraAdvocates
For the State on behalf of Ld. AG in WPA 25434/2022	:	Mr. Sirsanya Bandopadhyay Mr. Arka Kr. Nag
Heard lastly on	:	10.02.2023
Judgment on	:	11.05.2023

Jay Sengupta, J.:

1. W.P.A 25434 of 2022 is an application under Article 226 of the Constitution of India, inter alia, praying for a declaration that the definition clause 2 (m) of the West Bengal Public Distribution System (Maintenance and control) Order 2013, as amended vide notification dated 14.12.2020, was ultra vires Articles 14, 19 (1) (g) and 21 of the Constitution of India, to include nephew in this definition of clause 2 (m) of the said Control Order and to cancel and withdraw the memo bearing e-File No: DDDPS – 32013 (II)/298/2022-MBD SEC-DDPS issued by the Director, DDP & S and the memo bearing No: 1209/1(2)/FMR/13L-35/M PART dated 06.04.2022 issued by the Deputy director (License), Directorate of DDP & S . Whereas, W.P.A 5352 of 2022 was filed earlier by the petitioner seeking appropriate reliefs. But, during pendency of it, the respondent authorities rejected the prayer of the petitioner vide memo dated 06.04.2022. The two applications were, therefore, taken up for hearing together. A decision in W.P.A 25434 of 2022 would finally govern the earlier W.P.A 5352 of 2022.

2. Learned counsel for the State submitted as follows. The father's brother (uncle) of the petitioner Alope Kumar Sinha, since deceased, was a fair price shop-cum-K. Oil Dealer. The petitioner's father died long back. Alope Kumar Sinha was altogether a bachelor and he had been residing with the family of petitioner's father, since deceased, and the entire joint family was fully dependent upon the income of the said Dealership business and after death of Alope Kumar Sinha there was no other source of income of the said joint family. Due to old age and had been suffering from various

diseases, Late Alope Kumar Sinha executed a Will on 24.04.2021, stating therein that after his death his F.P. Shop-cum-K. Oil Dealership license shall be borne by the petitioner. For last 6/7 years the petitioner had been running the said dealership business under the guidance and assistance of his ailing uncle, since deceased, as joint family business. The petitioner submitted application in the prescribed form, enclosing therewith all required documents and NOCs from other legal heirs of Late Alope Kumar Sinha (all were nephew and nieces, since there was no other legal heirs) to get the dealership licenses on compassionate ground. On 27.10.2021, SDC (F&S), Kandhi after conducting enquiry through Inspectors, F & S, forwarded the file to the District Controller (F & S), Murshidabad with his recommendation. Since no further step was taken, petitioner filed WPA 5352 of 2021 on 24.03.2022. During pendency of the said writ petition, prayer of the writ petitioner was rejected by the Dy. Director (License), DDP & S on 06.04.2022 on the ground father's brother did not come within the purview of the family member. The petitioner filed supplementary affidavit in WPA 5352 of 2022, enclosing rejection order dated 06.04.2022. Amrita Sinha, J passed interim order in WPA 5352 of 2022, restraining respondents from filling up the vacancy. The interim order has been extended time to time and the same still existed. 2013 Control Order had been amended on 14.12.2020. In Clause 2(d) (xa) (iii) brother's son had been defined as 'relative', who were not entitled to make application for dealership. Brother's son had not been included as 'family member' to get dealership license on compassionate ground. A married daughter was also not included in the

definition of 'family member'. Sekhar B. Saraf (J) by passing an order on 02.09.2021 in WP 449 of 2019 (Anjana Modak versus State of West Bengal & Ors.), directed the State to include married daughter within the definition of 'family member'. Following such order, the State Government issued notification on 15.01.2020, including married daughters within the definition of 'family member'. By delivering a judgment on 02.09.2021, Amrita Sinha, J directed the State to consider the cases of brother and sisters as 'family member' in the light of the observation made in the said judgment. Following such judgment dated 02.09.2021, State Government issued a notification on 17.09.2021 including brother and sister of a bachelor Dealer as 'family members'. Since in the previous writ petition being WPA 5352 of 2021, order of cancellation of petitioner's prayer was not under challenge, present writ petition had been filed challenging the order of cancellation dated 06.04.2022. All present infrastructure including shop-cum-godown as per prescription, bank balance, especially experience to run dealership business that too consumers were costumed with the present dealership, so granting dealership to the petitioner shall also be convenient to the consumers. Section 8 of the Hindu Succession Act, 1956 with no uncertain term suggested that if there was no first class legal heir then class ii legal heirs (brother's son) should be entitled to get benefit of the deceased. In the present case there were no class i legal heir of the deceased dealer and all remaining other class-ii legal heirs of the deceased dealer had given 'NOC' in favour of the petitioner. At least on two occasions, 'Definition' clause of the Control Order, 2013 had been amended, including married

daughters and brother and sisters as family member of the deceased dealer in terms of the judgment of this Court, so it could not be said that the Control Order, 2013 is untouchable. Submission of the State was that Clause 2(xa) of the amended provisions of the Control Order, 2013 was not under challenge in the writ petition and only Clause 2(m) of the Control Order, 2013 was under challenge in the writ petition. The petitioner's submission was that the brother's son of a bachelor dealer, from whose earning, joint family members maintained their livelihood, could not be deprived to get the dealership license on the death of such bachelor dealer and clause 2 (m) of the Control Order, 2013 was required to be amended accordingly. The State relied on paragraph 12 and 13 of a decision, reported in (2009) 13 SCC 600. First of all, said judgment dealt with the service matter. Paragraph 12 of the judgment said only that compassionate appointment was not a matter of right, but para 13 stated that if any scheme was there the same must be followed. So far paragraphs 17 and 18 of the judgment reported in 2011 (14) SCC 752 were concerned, there was no mandatory provision to provide employment to the family member of the deceased employee, but in the regular selection process, relative of the deceased employee might be given some priority.

3. Learned counsel appearing on behalf of the respondents No. 1 to 5 submitted as follows. The petitioner claimed to be the nephew of one Alope Kumar Sinha, who was a Fair Price Shop cum Kerosene Oil Dealer at Raghunathpur under the Kandi Sub-Division in the District of Murshidabad. The said Alope Kumar Sinha died on 7th May 2021 and the

petitioner on 5th July 2021 made an application for a grant of both Fair Price Shop Dealership License and Kerosene Oil Dealership License on compassionate grounds in place of the deceased Alope Kumar Sinha. Under the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 as well as the West Bengal Kerosene Control Order, 1968, only a family member of the deceased/incapacitated dealer, who did not have any regular means of income, might be considered for the dealership on the compassionate ground if he/she made his/her application in a proper format. The petitioner's application for compassionate appointment in place of his deceased uncle Alope Kumar Sinha was rejected by the respondent authorities as the petitioner claimed to be the nephew of the late Alope Kumar Sinha and 'nephew' did not come within the purview of the 'family member (s)' as defined in the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 as well as the West Bengal Kerosene Control Order, 1968. As per Clause 2(m) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013, the word "family member (s)" meant –

- (i) Spouse; or
- (ii) Parents; or
- (iii) Son (including legally adopted son before death or incapacitation); or
- (iv) Widow of a pre-deceased son; or
- (v) Daughter (including legally adopted son before death or incapacitation, divorced daughter and widowed daughter); or who was wholly dependent on the dealer or distributor at the time of death.;

As per clause 2(xa) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013, the word “relative” included the family members and the following kin –

- (i) Son’s spouse, son or daughter;
- (ii) Daughter’s spouse, son or daughter;
- (iii) Brother’s spouse, son or daughter;
- (iv) Sister’s spouse, son or daughter;
- (v) Parent’s brother or sister;
- (vi) Spouse’s brother or sister;

The petitioner had only challenged the vires of the amended Clause 2(m) of the 2013 Control Order i.e., the definition of a family member. He did not challenge the vires of the amended Clause 2(xa) of the 2013 Control Order which defined the term relative and hence, the scope of this petition should only be limited to ascertaining the validity of amended Clause 2(m) of the 2013 Control Order which defined family member. Be that as it may, the contentions of the petitioner at paragraphs 29, 36, 38, 42 and 43 of the petition were not true. Clause 20(iiiia) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 debarred any person whose relative already had a dealer or distributor or wholesaler license. However, Clause 20(iiiia) did not create any bar for the petitioner for applying in respect of any of the vacancies for the fair price shop as none of the relatives of the petitioner had an existing dealer or distributor or wholesaler license. The petitioner’s apprehension that he would be debarred from participating in respect of any of the vacancies was ill-founded as the FPS and SK Oil

dealership license of Late Alope Kumar Sinha had ceased to exist after his demise and thus, the petitioner was not in any way debarred from participating in any of the subsequent vacancies by dint of Clause 20(iiiia) of the 2013 Control Order. That the Hon'ble Supreme Court in paragraphs 12 and 13 of the decision rendered in the case of State of Chhattishgarh versus Dhirjo Kumar Sengar reported in (2009) 13 SCC 600 had, inter alia, held that appointment on the compassionate ground should not be granted as a matter of course. The Hon'ble Apex Court in this case held the nephew of the deceased employee, ineligible for the grant of compassionate appointment. Furthermore, the Hon'ble Supreme Court once again in paragraphs 17 and 18 of the decision rendered in the case of Kandarpa Sarma Versus Rajeswar Das, reported in (2011) 14 SCC 752 held that a joint family could be considered to be a family only when they were sharing a common residence and common mess. To give an extended meaning to mean any 'nephew' would also be inappropriate for the word 'nephew' was a very vague expression for it could include not only nephew being the son from the own brother, but it could also be nephew being the son not only from the sister but being the son of even from the cousin brothers or sisters. It was difficult to give such a wide meaning to the expression 'family'. Inclusion of the vague terms nephew or niece in the definition of a family member would thereafter seriously jeopardise the genuine cases of compassionate appointment in future as under Clause 20(vi) of the 2013 Control Order, the applicant in addition to his/her application for compassionate appointment in the proper format was also required to

submit the “No Objection” from all the other family members in the form of an affidavit to be sworn before a Magistrate. Thus, extending the definition of ‘family member’ to include ‘nephew’ and ‘niece’ will make the entire process cumbersome as the applicant will have to run from pillar to post for getting the ‘no objection’ of all his/her distant relatives. Decisions rendered in WPO No. 449 of 2019 (Anjana Modak Versus State of West Bengal and Ors.) and in WPA 11518 of 2021 (Smt. Durga Das Versus The State of West Bengal and Ors) did not favour the case of the petitioner herein as in those cases the question of including ‘nephew’ in the definition of ‘family member’ did not arise. Though in paragraph 35 of the writ petition the petitioner had canvassed the point that as per the provisions of the Hindu Succession Act, 1956, the brother’s son is a Class-II heir, but in the second paragraph at page 11 of the judgment rendered in WPA 11518 of 2021, this Hon’ble Court consciously specified that the Court was not ad-idem with the submission of the petitioner that all Class II heirs were to be considered for compassionate engagement and only the case of full-blooded relationship was required to be taken into consideration for a compassionate appointment if otherwise eligible. Therefore, as per the observation made by the Hon’ble Court in WPA 11518 the case of the petitioner who claimed to be the nephew of the deceased dealer and was thus a Class-II heir was not required to be considered for compassionate appointment. Also, as per the observations contained in the second paragraph at page 11 of the judgment rendered in WPA 11518 of 2021 the impugned provision being Clause 2(m) of the 2013 Control Order also stood the test of vires on the touchstone of

Constitutionality. A conjoint reading of paragraphs 13, 22 and 23 of decision rendered in *State of Chhatisgarh versus Dhirjo Kumar Sengar* reported in (2009) 13 SCC 600 would clarify the mandate of the Hon'ble Apex Court which had categorically stated that a Succession Certificate did not confer any right on the certificate holder. The certificate holder only became a trustee entitled to distribute the amounts, payable to the deceased, to his heirs and legal representatives. On the death of a dealer, a person could not seek engagement on compassionate grounds by dint of being a Class II legal heirs of the deceased dealer. It appeared that the petitioner was claiming the engagement on compassionate grounds as a matter of inheritance which was not permissible in law and had been deprecated by the Hon'ble Apex Court in numerous decisions on the issue of compassionate appointment. Lastly, unless it is proved that the amended Clause 2(m) of the 2013 Control Order harbours an extreme vice of arbitrariness or irrationality, it must be presumed to be constitutional.

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

5. It is an admitted position that the petitioner being the nephew of the petitioner is not entitled to compassionate appointment in respect of fair price shop cum kerosene oil dealership as per the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 as a nephew or a brother's son does not come within the definition of a family member.

6. Merely because a married daughter and a brother and a sister have subsequently been brought within the definition of a family member, it does not necessarily mean that a nephew too has to be brought within its fold.

7. First, the usual closeness of relationship that can be associated with a daughter, married or unmarried, or a brother or a sister may not be comparable to that with a nephew. Secondly, the class of heirs as contained in the Hindu Succession Act would not govern the subject as, among other things, a dealership is not a heritable property.

8. Moreover, as was rightly pointed out by the respondents, in WPA 11518 of 2021, this Court consciously specified that the Court was not *ad idem* with the submission of the petitioner that all class II heirs were to be considered for compassionate engagement and only the case of full-blooded relationship was required to be taken in to consideration for compassionate appointment.

9. Nephew could mean a brother's son or a sister's son or a cousin's son or could extended to even more distant relations. It is indeed quite a vague term. Reliance is placed on *Kandarpa Sarma (supra)*.

10. Besides, an unduly expansive definition of a family member would create enormous problems for a genuine claimant as he then has to take no objection certificates from so many others and the respondent authorities also have to go on spending sleepless nights to find out whether those others were also eligible or whether their no objections are genuine.

11. Thus, the proposition of including a nephew in the definition of a family member is neither practicable nor is supported by any legal premise.

12. In view of the above discussions, I not find any merit in this application.

13. Thus, the writ petition being W.P.A 25434 of 2022 is dismissed. W.P.A 5352 of 2022, accordingly, stands disposed of. However, there shall be no order as to costs.

14. Urgent certified copy of the order shall be supplied to the parties, if applied for.

(Jay Sengupta, J.)

S.M