

21.03.2024
Ct. 654
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 6337 of 2024

**Shila Roy (Saha)
-Vs-
The State of West Bengal & Ors.**

Mr. Partha Pratim Roy,
Mr. Sabrananda Sanyal

... for the petitioner

Mr. Susovan Sengupta,
Mr. Subir Pal

... for the State

Affidavit of service filed on behalf of the petitioner
is taken on record.

The petitioner by this writ petition has prayed for
an order for renewal of FPS licence being No.
20/Ranitala/SCL under the West Bengal Public
Distribution System (Maintenance and Control) Order,
2013 (hereinafter referred to as 'Control Order, 2013').

The father-in-law of the petitioner namely, Bishnu
Kumar Roy was the original FPS licence holder. On 4th
October, 2015, the said Bishnu Kumar Roy died leaving
behind Nirod Baran Roy, Aparna Banerjee and Parbati
Chatterjee as his legal heirs and representatives.
Subsequent thereto the grandson of the original FPS
licence holder namely, Rana Roy applied for grant of the
said FPS dealership in his favour on compassionate

ground. Since such application was not considered, said Rana Roy filed a writ petition being WPA 1447 (W) of 2018 (*Sri Rana Roy vs. The State of West Bengal & Ors.*). The said writ petition was disposed of on 26th June, 2018 as follows:

“Since the family has been defined under Clause 2(m) of the control order of 2013 and the writ petitioner not falling within the said definition, he cannot apply for such transfer of dealership on compassionate ground.

However, this order will not prejudice the right of the immediate family of the deceased being the writ petitioner’s father or uncle or other family members as defined under Section 2(m) to make such an application in accordance with law.”

Since at that point of time son’s spouse was not included in the definition of “*family members*” under Section 2(m) of Control Order, 2013, the petitioner being the daughter-in-law of the deceased licence holder could not apply for engagement of FPS dealership on compassionate ground. By notification dated 29th September, 2023, Section 2(m) of the Control Order, 2013 was amended and son’s spouse was also included within the definition of “*family members*”. After such amendment came into operation, the petitioner, being the daughter-in-law of the original FPS licence holder applied for her engagement as FPS dealership on compassionate ground. The petitioner was wholly dependent upon the Fair Price Shop business of the deceased and used to maintain her livelihood from such business. On such premise, she submitted an

application on 2nd February, 2024 for issuance of FPS dealership licence in her favour on compassionate ground. Since the application of the petitioner was not considered by the concerned authorities the petitioner has filed the present writ petition for appropriate relief for renewal of licence in her favour.

Mr. Partha Pratim Roy, learned advocate for the petitioner submits that by an order dated 26th June, 2018, this Court in WP 1447(W) of 2018 granted liberty to the other family members of the deceased licence holder to make application in accordance with law for grant of licence. After amendment on 29th September, 2023, the son's spouse of the original licence holder was also included within the definition of "*family members*" under Clause 2(m) of the Control Order, 2013 and accordingly, she made an application for grant of licence on compassionate ground in her favour, however, such prayer of the petitioner was not considered by the authorities. Relying on the decision of the Hon'ble Division Bench passed in *MAT 751 of 2022 (Sokhina Bibi vs Sahidur Rahaman @ Sahidur Islam & Ors.)* he submits that the amended Clause 2(m) of the Control Order, 2013 shall have retrospective operation since it is clarificatory, declaratory or explanatory in nature and introduced in order to remove doubts. The petitioner accordingly would be entitled to have appointment on compassionate ground being a family member, since her right relates back to the date of

death of the original licence holder. In light of his aforesaid submissions, he prays that the appropriate order be passed for consideration of the application of the petitioner for engagement of FPS dealership on compassionate ground.

In reply to the contentions raised on behalf of the petitioner, Mr. Susovon Sengupta, learned advocate for the State-respondents submits that amendment to the definition of “*family members*” in Clause 2(m) of Control Order, 2013 now includes son’s spouse within such definition. However, such amendment cannot entitle the petitioner to seek relief for appointment of FPS dealership on compassionate ground, since she was not included within the definition of “*family members*” on the date of death of the deceased licence holder. The petitioner by the present writ petition has sought for giving retrospective effect to amendment incorporated in Clause 2(m). Such amendment to Clause 2(m) if be given a retrospective effect would lead to a situation of withdrawal/cancellation of licence already granted to those persons who have been engaged after the FPS has fallen vacant upon death of the existing licence holder. Clause 20(vi) of the Control Order, 2013 provides that an application for appointment on compassionate ground should be made within a period of 90 days from the date of death of licensee. The petitioner till date has not submitted any application for grant of licence on compassionate ground and hence upon lapse of 90 days

of death of the licensee the right of the petitioner to have licence on compassionate ground has come to an end. The petitioner is leading her life without any financial hardship, since the death of licensee in the year 2015, and as such, she is not at all dependent on the income of the deceased. The engagement on compassionate ground is not as of matter of right. The facts involved in *Sokhina Bibi (supra)* is distinguishable since in the said case before the Hon'ble Court, the parties filed application for grant of licence on compassionate ground whereas in the case in hand, no such application has been filed in prescribed format by the petitioner. In view of his above submissions, he prays that the writ petition should be dismissed in *limini*.

Having heard learned advocates for respective parties, the only issue which has fallen for consideration is whether the petitioner, being the daughter-in-law (son's spouse), would be entitled to the benefit of the subsequent amendment on 29.09.2023 in the definition of Clause 2(m) which included son's spouse within the ambit of "*family members*" since the death of the original licence holder in the year 2015.

Previously, the grandson of the deceased licence holder namely Rana Roy filed an application for grant of licence on compassionate ground upon demise of the original licence holder on 4th October, 2015. Since the said application was not considered the said Rana Roy

filed a writ petition on 20th June, 2018 being WP 1447(W) of 2018. The said writ petition was disposed of on 26th June, 2018 holding that the grandson cannot apply for transfer of dealership on compassionate ground since he does not fall within the definition of family members under Clause 2(m) of the Control Order, 2013. However, it was noted that the order shall not prejudice the rights of other family members falling under Clause 2(m) of the Control Order, 2013 to make application in accordance with law. Neither on the date of death of the original licence holder in the year 2015, nor at the time when the said order was passed on 26th June, 2018 in the writ petition the petitioner, being the daughter-in-law (son's spouse), was included within the definition of "*family members*" under Clause 2(m) of Control Order, 2013. The petitioner claims that by the subsequent amendment in the definition of "*family members*" in Clause 2(m), she being the son's spouse has been included in the definition and her right to have licence on compassionate ground dates back from the date of death of the original licence holder since such amendment is applicable retrospectively.

In order to appreciate the aforesaid issue whether such subsequent amendment in Clause 2(m) which included son's spouse would have retrospective operation, it would be apposite to reproduce the principles laid down by the Hon'ble Supreme Court in ***Sree Sankaracharya University of Sanskrit & Ors.***

versus Dr. Manu & Anr. reported in **2023 SCC OnLine SC 640** as hereunder:

“52. From the aforesaid authorities, the following principles could be culled out:

- i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.*
- ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.*
- iii) An explanation/clarification may not expand or alter the scope of the original provision.*
- iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.”*

The question which falls for determination as to whether the amendment of Clause 2(m) of Control Order, 2013 dated 29th September, 2023 which includes “son’s spouse” as a family member was a clarification or whether it amended or modified the same. If the subsequent Control Order is declared to be in the nature of a clarification of the earlier Order, it may be made applicable retrospectively. Conversely, if the

subsequent amended Control Order is held to be a modification/amendment of the earlier Order, its application would be prospective as retrospective application thereof would result in withdrawal of vested rights which is impermissible in law.

The Hon'ble Supreme Court in *Sree Sankaracharya University of Sanskrit (supra)* clearly lays down that in order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.

Applying the aforesaid principles to the facts of the present case, it is seen that the subsequent amendment to the definition of “*family members*” in Clause 2(m) of Control Order, 2013 has included the “*son's spouse*” within its ambit. It is pertinent to note that the pre-amended Control Order, 2013 was neither vague or ambiguous nor it was impossible to reasonably interpret the provisions unless the amendment is read into it. Thus the subsequent amendment cannot be said as a clarification of the previous law. Therefore, such amendment cannot be made applicable retrospectively. The said amendment has substantially modified the

Control Order, 2013 extending the definition of “*family members*” and making “*son’s spouse*” eligible under such Order, which is intended to change the law and would apply prospectively.

The entitlement of grant of licence on compassionate ground arises on death of the original licence holder. Since on the date of death of the original licence holder the petitioner, being the son’s spouse, was not included within “family members” under Clause 2(m) of Control Order, 2013, she cannot take the benefit of a subsequent amendment, after 8 years of date of death of the original licence holder, which is applicable prospectively.

The decision of the Hon’ble Division Bench in *Sokhina Bibi (supra)* is factually distinguishable inasmuch as upon death of the original licence holder, her son applied for grant of dealership licence on compassionate ground. However, pending such application the applicant died and his widow applied for grant of licence in her favour on compassionate ground, which was allowed by the authorities. Such engagement was challenged and the Single Bench directed the authorities to consider the application of legal heirs and also held that the daughters-in-law not being a family member do not have chance to be considered for engagement on compassionate ground. The order of Single Bench was challenged in appeal. Whereas in case

in hand there is no application made in prescribed format by the petitioner till date.

In light of the above discussion, the writ petition being no. **WPA 6337 of 2024** stands dismissed along with all connected applications.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)