

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate side

PRESENT:

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

MAT 751 OF 2022
with
CAN 1 of 2022

Sokhina Bibi
vs.
Sahidur Rahaman @ Sahidur Islam & Ors.

For the Appellant	:	Mr. Kalyan Bandopadhyay, Sr. Adv. Mr. Ram Anand Agarwala, Adv. Ms. Nibedita Pal, Adv. Mr. Ananda Gopal Mukherjee, Adv. Ms. Sonam Ray, Adv.
For the Respondent No. 1	:	Mr. Timir Baran Saha, Adv. Mr. Syed Nazmul Hossain, Adv. Mr. Musarraaf Alam, Adv. Mr. Syed Ali Afzal, Adv. Ms. Susmita Gorai, Adv. Ms. Afrin Nihar Mondal, Adv.
For the State	:	Mr. Suman Sengupta, Adv. Mr. Sambuddha Dutta, Adv.
Heard on	:	13.09.2022, 19.12.2022, 19.01.2023, 23.03.2023, 19.05.2023 & 04.01.2024
Judgment on	:	15.03.2024.

CHITTA RANJAN DASH, J.:-

1. The private respondent before Hon'ble Single Bench has impugned the Judgement dated 04.05.2022 passed in WPA 21347 of 2021. The petitioner therein is the respondent no.1 in the present appeal.

2. Facts relevant for disposal of this appeal are as follows:

(i) Ajinur Bewa was issued with M.R. dealership license relating to kerosene and other controlled products on compassionate ground on death of her husband.

(ii) Said Ajinur Bewa died on 20.10.2017 leaving behind 8 (eight) legal heirs i.e. 4 (four) sons and 4 (four) daughters. Late Isab Nabi (died on 31.05.2020) was the husband of present appellant. Present respondent no.1, Sahidur Rahaman @ Sahidur Islam is one of the brothers of Late Isab Nabi. Except these two persons other 6 (six) legal heirs are non-parties to the litigation.

(iii) On death of Ajinur Bewa, Isab Nabi (late husband of the present appellant) filed an application in accordance with the provisions contained in the West Bengal Public Distribution System (Maintenance and Control) Order 2013 ('2013 Control Order' for short). While the said application was under process, Isab Nabi died leaving behind the present appellant, two minor sons and one minor daughter.

(iv) On death of Isab Nabi, the present appellant being his widow applied for grant of M.R. dealership license in her favour on compassionate ground. The competent authority of the Food and Supply Department on consideration of her application issued offer letter and license in her favour.

2.1. The present respondent no.1 being aggrieved filed the writ petition mainly on following grounds:

(a) No license having been issued in favour of Isab Nabi before his death, the vacancy created relates back to the death of Ajinur Bewa (mother of the present respondent no.1 and mother-in-law of present appellant).

(b) In absence of No Objection Certificates by other legal heirs license could not have been issued in favour of the present appellant as the vacancy cannot be held to be one created on death of Isab Nabi (appellant's husband).

(c) The appellant being not a member coming within the definition of family as defined in paragraph/Clause 2(m) of 2013 Control Order, license could not have been issued in favour of her on compassionate ground in contravention of Clause (vi) of Clause/paragraph 20 of the said order.

3. It was contended before Hon'ble Single Bench by present appellant being the private respondent that as Isab Nabi, husband of the present appellant died when his application was under process, the authorities concerned thought it proper to

issue license in favour of the appellant and there is no illegality in such action of the authority. It was further contended by the appellant before Hon'ble Single Judge that as the legal heirs had issued No Objection in favour of Isab Nabi, late husband of the appellant, relinquishing their rights for issuance of license in favour of any of them on compassionate ground, they cannot retrace back now to deny the benefit to the widow of Isab Nabi.

4. Ld. Counsel for the State contended before Hon'ble Single Judge that the vacancy for compassionate appointment is to relate back to the death of Ajinur Bewa and the present appellant being not a family member within the definition under Clause/paragraph 2(m) of the relevant Control Order her claim of grant of license on compassionate ground cannot be accepted.

5. Hon'ble Single Judge after hearing learned Counsel for the parties at length held thus :

(i) Had the license been formally issued in favour of Isab Nabi, then on his death his widow (present appellant) would have got an opportunity to be considered for engagement on compassionate ground.

(ii) The vacancy in the present case relates back to the death of the recorded licensee, Ajinur Bewa and not Isab Nabi.

(iii) The present appellant being the daughter-in-law and not being a "family member" as per Control Order, 2013 do not have a chance to be considered for

engagement on compassionate ground on the death of her mother-in-law.

5.1. On the basis of finding as aforesaid Hon'ble Single Judge allowed the writ petition and directed the respondent authority to consider the application for engagement on compassionate ground, if any, filed by the heirs of the deceased recorded licensee, Ajinur Bewa in accordance with law.

6. Mr. Agarwala, learned Counsel for the appellant does not at all impugn the Judgement of Hon'ble Single Judge on facts. He submits that in view of decision of this Court in the case of ***Gurupada Das Vs. State of West Bengal & Ors., (MAT 842 of 2022, disposed of on 05.08.2022)***, the present respondent no.1 should have satisfied the Court to the limited extent that he was wholly dependant on his late mother, Ajinur Bewa, at the time of her death and that he had no independent source of income. Secondly, it is submitted by Mr. Agarwala, learned Counsel for the appellant that vide Gazette Notification dated 13.12.2022 "daughter-in-law" has already been included as a family member in the definition in Clause/paragraph 2(m) of 2013 Control Order. According to Mr. Agarwala, learned Counsel for the appellant, any amendment which is explanatory in nature and is made/passed to supply an obvious omission or to clear up doubts, is always retrospective in operation. To substantiate such contention. Mr. Agarwala relies on a decision of this Court passed by a Hon'ble Single Bench in the case of ***Mallika Daskarmakar Pal Vs. The State of West Bengal & Ors., [WPA 23173 of 2023 (disposed of on 29.09.2023)]*** and rulings of Hon'ble the Supreme Court in ***State of Bihar & Ors. Vs. Ramesh Prasad Verma through L.R.s [(2017) 5***

Supreme Court Cases 665]; Sankaracharya University of Sanskrit & Ors. Vs. Dr. Manu & Anr. [2023 SCC OnLine SC 640].

7. Mr. Saha, learned Counsel for respondent no.1 on the other hand reiterates his submissions made before Hon'ble Single Bench and submits that the amendment placed now before this Court bringing "daughter-in-law" within the fold of family under Clause/paragraph 2(m) of 2013 Control Order has no applicability to the present case. It is further submitted by him that the mandatory provision of Clause/paragraph 20 having been contravened and no objection from other legal heirs having not been obtained by the appellant the issuance of license in favour of her is not sustainable in the eye of law.

7.1. Learned Counsel for the State in view of the amendment brought-on-record supports submission of Mr. Agarwala and submits that the amendment is mere explanatory and it has retrospective effect. It is further submitted by him that had the amendment brought any procedural change or any penal provision, consideration would have been different.

8. Clause 2(m) has undergone change after amendment vide Gazette Notification dated 13.12.2022. In sub-Clause (iv) of Clause 2(m) the words "widow of pre-deceased son" has been substituted by "son's spouse". Cursory reading of the entire provision relating to definition of family in Clause 2(m) along with sub-Clause (vi) of Clause 20 of 2013 Control Order, it is clear that provision of compassionate engagement as M.R. dealer to a particular class of persons as defined in Clause 2(m) is available from the date of coming into force of the 2013 Control Order. The substitution of "widow of pre-deceased son" in sub-Clause (iv)

of Clause 2(m) by the words “son’s spouse” is only a clarification to overcome a situation that we are faced with in the present case.

9. A son who was wholly dependant on the original recorded licensee of the M.R. dealership had the right to be considered for compassionate engagement on the death of the original recorded licensee but if such a son for any reason not within his control dies, after the death of the original recorded licensee, his spouse was completely debarred from claiming engagement on compassionate ground. Sub-Clause (iv) of Clause/paragraph 2(m) originally provided compassionate engagement to widow of pre-deceased son. That expression i.e. “widow of pre-deceased son” has been substituted vide Gazette Notification dated 13th December, 2022 by the expression “son’s spouse”. The later expression brought in 2022 not only includes the spouse of a pre-deceased son or a son who has died after the death of original recorded licensee but also the spouse of a son who is still alive. A limited expression that was there originally in 2013 Control Order has been broadened by bringing the amendment in 2022.

10. We may think of a situation here where the son of the original recorded licensee of the M.R. dealership for any reason is incapacitated during the life time of his father or mother or otherwise debilitated by any disease or accident and his spouse is the only helping hand for his up-keep and well-being then in that case also such a helpless spouse shall have the right to claim engagement on compassionate ground. If all the aforesaid facts are taken into consideration, we do not have any doubt in our mind that the amendment brought in 2022 by substituting “son’s spouse” in place of “widow of pre-deceased son” is a mere

clarification/explanation to make the expression occurring earlier more broad-based and practical.

11. A clarificatory/explanatory or declaratory amendment are usually retrospective in nature. In our view, we are supported by Judgement of Hon'ble Supreme Court in ***Zile Singh Vs. State of Haryana, (2004) 8 SCC 1 : AIR 2004 SC 5100; CIT Vs. Gold Coin Health Food (P) Ltd., 2008 (9) SCC 622; State of Bihar & Ors. Vs. Ramesh Prasad Verma through L.R.s, (2017) 5 Supreme Court Cases 665; Sankaracharya University of Sanskrit & Ors. Vs. Dr. Manu & Anr., 2023 SCC OnLine SC 640***; and Judgement of this Court in ***Mallika Daskarmakar Pal Vs. The State of West Bengal & Ors., WPA 23173 of 2023 (disposed of on 29.09.2023)***.

12. The aforesaid proposition has been so well-settled that we do not wish to burden our Judgement by referring to other rulings in the same vein. Suffice is to say that any legislation or instrument having the force of law, if clarificatory, declaratory or explanatory in nature and purport, in order to supply an obvious omission or to clear up doubts qua any prior law, retrospective operation thereof is generally intended.

13. Applying this test in the absence of any indication to the contrary either in the original 2013 Control Order and the amending provision of 2022 and especially in view of our discussion *supra* we are of the unhesitant view that the amendment brought in 2022 so far as Clause/paragraph 2(m) is concerned is retrospective in operation and the appellant shall be entitled to the benefit of the same.

14. Coming to the second question of absence of No Objection Certificate by other legal heirs including present respondent no.1, we find that no other legal heir except respondent no.1 is in litigation so far as issuance of license to the appellant is concerned. They are also not parties to the present litigation.

15. A cursory reading of the definition contained in paragraph/Clause 2(m) of 2013 Control Order makes it clear that the most important word in the definition is the words “wholly dependent”. If any of the family members was not dependent on the deceased recorded licensee on the date of his or her death, his or her no objection is not at all necessary for consideration of issuance of license in favour of the legal heir who has applied in proper form along with proper fees. If any of the person specified in Clause/paragraph 2(m) are asserted to be wholly dependent on the original recorded license, they have to show the facts proving their dependency and they only are required to file no objection. In the case of **Gurupada Das** *supra* we have dealt with the aforesaid aspect in detail.

16. Now coming to the present case, respondent no.1 has not denied that he had not given No Objection to his deceased brother, Isab Nabi. But he has tried to make out a case of good faith of joint dealership with Isab Nabi for which he had filed another writ petition which could not be concluded logically on account of death of Isab Nabi.

17. Taking a cue from our discussion *supra* when we perused the writ petition, we found that there is no averment in the writ petition to show that the present respondent no.1 was wholly dependent on her late mother, Ajinur Bewa on the date of her death on 20.10.2017. Such a writ petition cannot be held to be

maintainable as respondent no.1 as petitioner has failed to show the most important ingredient of “**whole dependence**” on the original recorded licensee (i.e. his mother) in respect of MR dealership on the date of her death. It is pertinent to mention here that every litigation has some moot point which the Court derives from the statute governing the rights and liability of the parties. So far as “No Objection Certificate” occurring in paragraph/Clause 20(vi) of 2013 Control Order is concerned this Court in **Gurupada Das**’s case in detail has discussed this aspect of dependence *vis-a-vis* No Objection Certificate. We reiterate here that any person referred to in Clause/paragraph 2(m) of 2013 Control Order cannot come forward to litigate after issuance of license in favour of any other person in that class on the sole ground that he has not given “No Objection” to grant of license to that person. He has to specifically aver and prove by documentation in the writ petition that like the other person in favour of whom license has been granted, he was “wholly dependent” on the deceased recorded licensee of the M.R. dealership. These pleadings being absent in the writ petition in the present case, the respondent no. 1 could not have questioned the issuance of license in favour of the appellant without any valid grounds as per our discussion *supra*.

18. Accordingly, the impugned order passed by Hon’ble Single Judge is set aside. The appeal is thus allowed.

19. There shall be, however, no order as to costs.

20. In view of the Judgement, CAN 1 of 2022 is also disposed of.

21. Pronounced in open Court on this day i.e. 15th day of March, 2024.

22. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Partha Sarathi Sen, J.)

(Chitta Ranjan Dash, J.)