

25.06.2024
SL No.21
Court No.24
Ali

WPA 10502 of 2023

**Nitish Das
Versus
State of West Bengal & Ors.**

Mr. Rabiul Islam, Adv.
Mr. Raju Mondal, Adv.
Sk. Jayed Hossain, Adv.

...for the petitioner.

Mr. Suman Sengupta, Adv.
Mr. Sambuddha Dutta, Adv.
Mr. Prodyut Kumar Das, Adv.
Mr. Sanatan Panja, Adv.

..... for the State.

Mr. Anjan Bhattacharyya

...for the respondent No.7.

The present writ petitioner challenges the issuance of licence of M.R. Dealer (Fair Price Shop) in favour of respondent No. 7 on compassionate ground.

The brief fact of the case is that one Tulsi Rani Das was a M.R. Dealer of the concerned Fair Price Shop. She expired on 25.07.2017. After her demise one of his son, namely, Niranjana Das being engaged at M.R. Dealer in place of her mother on compassionate ground. The said Niranjana Das also expired on 23.04.2021. Thereafter, the licence was issued in favour of widow of the said Niranjana Das i.e. respondent No. 7 on 11th of November, 2022.

It is the contentions of the learned advocate for the petitioner that the licence in favour of the

present respondent No. 7 is illegal in the eye of law. The respondent No. 7 being daughter-in-law cannot be termed as a “family member” in terms of the Control Order. So, she is debarred for file an application for being engaged as a M.R. Dealer in place of her mother-in-law.

It is the positive case of the present petitioner that he never issued any NOC in favour of either Niranjana Das or in favour of respondent No. 7.

He further argued that no notice was served upon the present petitioner by the concerned authority before issuing the licence. The licence issued by the present respondent authority is illegal in the eye of law. So, the licence is required to be cancelled.

Learned advocate appearing on behalf of the respondent No. 7 used affidavit against the writ petitioner. It is the contention of the respondent No. 7 that after demise of Late Tulsi Rani Das, her husband Niranjana Das applied for the M.R. Dealership licence on compassionate ground. The dealership was granted in favour of Niranjana Das on 25.08.2021. During that period Niranjana Das was expired on 23.04.2021, thereafter, the present respondent No. 7 submitted her application on 27.04.2021.

It is the further case of the present respondent No. 7 that the respondent authority had called the personal hearing of all the legal heirs of Late Tulsi Rani Das but the present petitioner never appeared before the concerned authority in the said hearing. The authority after considering the entire materials and the documents has issued the licence in her favour.

It is the argument on behalf of the respondent No. 7 that, the respondent No. 7 is the widow and “family member” of deceased licence holder Niranjana Das in terms of the Control Order. It is the positive argument of the respondent that the application of Niranjana Das was materialized during that period while the Niranjana Das had been expired. The entire process has been concluded before the demise of Niranjana Das. Accordingly, an intimation was issued in his favour on 25.08.2021. He submits that there is no illegality to issue licence in favour of respondent No. 7.

It is the further case of the respondent No. 7 that the present petitioner has no locus standi to file the instant writ application. He submits that the petitioner never filed any application before the concerned authority to have a licence on the compassionate ground. Moreover, he never appeared

before the concerned authority on the dates of hearing.

In the affidavit-in-opposition the respondent No. 7 annexed several correspondences regarding the issuance of notice in favour of legal heirs of Late Tulsi Rani Das.

Learned advocate appearing on behalf State submits that the State has submitted a report in the form of affidavit containing, inter alia, the present petitioner has no locus standi to file the instant writ petition. He further submits that the writ petition can only be used as a shield not as a sword. The present petitioner has no substantive right in this case as and he has never applied for a M.R. Dealer on compassionate ground. He submits that the present petitioner is thus debarred to challenge the act of the Government authorities when he never appeared before the Government authority on several hearing.

It is the positive case of the State that the concerned authority has tried every possible means to contact the writ petitioner and provide him opportunity to represent himself but, he knowingly avoided the process of law by not acknowledging the notice of hearing.

It is the positive case of the State no rules have been violated in this case.

Heard the learned advocates, perused the writ petition along with annexures and the affidavit and report used by the respondents.

Tulsi Rani Das was a M.R. Dealer, after her death one of her son, namely, Niranjan Das applied for licence on compassionate ground. The fact suggests that the application of Niranjan Das was proceeded considerably and it was concluded by an intimation dated 25.08.2021 that the proposal for engagement of Niranjan Das as FPS Dealer on compassionate ground was approved by the concerned authority. In the mean time, the said Niranjan Das expired on 23rd of April, 2021. The respondent No. 7 in the mean time, has applied for the dealership on compassionate ground on 27th of April, 2021.

In considering the entire matter the State authority has issued notice in favour of all the legal heirs of deceased original M.R. dealer Late Tulsi Rani Das. It appears that the several notices were served upon the present petitioner through the office of the concerned State respondent; but it is also true that the writ petitioner never appeared before the concerned authority and responded to in any of the notice for personal hearing. Finally, on 4th of April, 2022 the present petitioner was also called for personal hearing but he did not turn up.

The State authority has obtained the report from the local authority who informs them that present petitioner runs a shop and he is financially sound.

Considering the entire materials placed before them. The authority has issued the licence in favour of respondent No. 7 on 14th of November, 2022.

Apparently, the issuance of licence in favour of respondent No. 7 being daughter-in-law is not tenable in the eye of law but the prevailing circumstances of the present case suggested that the authority concerned had tried to decide the issue in the year 2022 and asked for personal hearing of all concerned including present petitioner. So while the concerned State authority is deciding the issue, at the time, one decision was actually taken in favour of deceased Niranjana Das i.e. the husband of the present respondent No. 7.

Furthermore, it appears that in deciding the issue the State authority has not committed any error though the licence apparently issued in favour of daughter-in-law but actually records shows that the licence was issued in favour of the widow of deceased Niranjana Das. When the authority deciding the issue in the year 2022, the respondent No. 7 is

the widow of the deceased son of original M.R. dealer.

However, in this writ petition the petitioner has not sought for any relief in respect of his substantive right and the writ petitioner only tried to cancel the licence issued in f avour of respondent No. 7.

Considering the all aspects it appears to me that the writ petitioner has lost his chance when he chooses not to appear before the concerned authority on personal hearing.

At this juncture, I find no merit to entertain the prayer of the present petitioner.

Accordingly, the application being **WPA 10502 of 2023** is considered and disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)