

05.11.2024
SL No.22
Court No.24
Ali

WPA 24760 of 2024

**Bela Saha @ Bela Rani Saha
Versus
The State of West Bengal & Ors.**

Mr. Piush Chaturvedi,
Md. Hafiz Ali,
Mr. Debojyoti De
.....for the petitioner.

Mr. Debabrata Saha Roy,
Mr. Poingal Bhattacharyya,
Mr. Subhankar Das
...for the private respondent.

Mr. Sirsanya Bandopadhyay,
Mr. Ritesh Kr. Ganguly
.....for the State.

One Biswanath Saha is a MR Distributor at Burdwan Block under Kandi sub-Division in the District of Murshidabad.

He married with the petitioner, subsequently, the said Biswanath Saha entered into the extra marital affairs with another lady and out of said extra marital affairs, one girl child, namely, Smt.Pinki Saha was born. Biswanath Saha filed one suit for divorce against the present petitioner which was dismissed by a competent court of law. Respondent No. 6 (Biswanath Saha) has submitted one application with the authority concerned for approval of conversation of MR Distributorship of respondent No. 6 from sole proprietorship to partnership (with partners Shri Biswanath Saha and Smt. Pinki Saha) in the name & style of

“Biswanath Saha & Others” on the ground of incapacitation. The authority concerned has approved the said proposal for constitution of the partnership firm by issuing the impugned Memo dated 25th July, 2024. Challenging the said Memo the present petitioner being the wife of Biswanath Saha has filed the instant writ petition.

Learned counsel for the petitioner submits that the impugned Memo dated 25th July, 2024 is liable to be quashed on the ground that the said Memo was issued in contravention of the provisions of Clause 20(vii)(a) of the WBPDS (M&C) Order, 2023, as well the authority concerned had passed the impugned Memo without properly gone through the annexure-I along with form C-3 as required under the said Control Order.

Learned counsel for the petitioner further argued that the Pinki Saha who is the daughter of second marriage of Biswanath Saha cannot actually come under the definition of family as enumerated under Clause 1-(m) of the WBPDS (M&C) Order, 2023.

He further submits that the annexure requires one undertaking by the family members which if properly made, cannot be accepted on behalf of Smt. Pinki Saha.

Learned counsel for the petitioner further argued that Pinki Saha being the daughter of an invalid marriage cannot be inducted as a partner of the business of Biswanath Saha. He prayed for quashing of the memo dated 25th July, 2024.

Learned counsel appearing on behalf of the private respondent submits that the definition of family has been amended by Notification dated 29th September, 2023, wherein the daughter was included as family member of the dealer or distributor. He further submits that if it is proved, not admitted, that the Pinki Saha is daughter of an invalid marriage, then also her status as a daughter cannot be denied. He further submits that according to the provisions of Section 16 of Hindu Marriage Act the daughter, whether illegitimate, can have the right over the properties of the parents.

In support of his contentions he cited a decision of Hon'ble Apex Court passed in ***Civil Appeal No. 2844 of 2011 in Ranasiddappa & Anr. Versus Mallikarjun & Ors.***

Learned counsel for the private respondent further submits that the authority concerned has taken the decision on the proper application of Biswanath Saha and converted the sole distributorship licence in the name of partnership licence. The decision of the authority concerned

cannot be challenged on the baseless ground. He prayed for dismissal of the instant writ petition.

Learned counsel appearing on behalf of the State respondent submits that the petitioner himself admitted that Smt. Pinki Saha is admittedly a daughter whether (legitimate and illegitimate). He submits that the authority concerned has considered the prayer of the sole distributor and after thorough inspection and after complying with the formalities laid down in the provisions in the Control Order, has converted the sole proprietorship to the partnership business. The status of Pinki Saha as a daughter cannot be challenged at this juncture. He further submits that the authority cannot subjected to determine the right of the daughter whether legitimate or illegitimate to issue a licence as, a licence is not a property.

Heard the learned counsel perused the impugned Memo dated 25th July, 2024. The issue involved in the instant writ petition is that whether the authority concerned has acted illegally by converting the sole proprietorship MR distributorship business to a partnership business. It appears that on the prayer of Biswanath Saha (sole distributor) on the ground of incapacitation the business was converted to the partnership with a partner, namely, Smt. Pinki Saha. The fact shows

that Biswanath Saha initially married with the petitioner, thereafter he developed a relationship with another lady, out of that extra marital affairs that the Pinki Saha was born. So, it is true that Pinki Saha is a daughter of Biswanath Saha of his second wife. It is fact that the relation or marriage of the Biswanath Saha with his second wife may be void but the status of Pinki Saha be a daughter, whether legitimate or illegitimate, cannot be denied.

The definition of family has been expanded by virtue of Notification dated 29th September, 2023 by virtue of such amendment the family includes- **“(vii) daughter (including daughter illegally adopted before death or incapacitation, divorce daughter and widow daughter)”**. So, admittedly the daughter is included in the family. According to the provisions of Clause 20 (vii)- Whenever

“(a) An individual licensee opt to convert its business into partnership firm for the reason of his physical incapacitation, or (b).....the licensing authorities may, [on an application in Form C3 along with Annexure-I, requisite fee as prescribed in Schedule A and corroborative documents as per Checklist made by the licensee in this behalf, allow him to do so on examination of the enquiry report in Form L2 and comments of the SCF & S in Form M2, with the approval of the

Director,] if and only if any of the family member of licensee having no regular means of income is inducted or substituted as partner and not otherwise”.

On plain perusal of the said clause it appears that a family member of a licensee having no regular means of income can be inducted as a partner in an individual licence if the licensee opt to convert its business into partnership firm for the reasons of his physical incapacitation.

In the present case, Biswanath Saha applied for transfer of his business into partnership firm with Pinki Saha who admittedly, a daughter (legitimate or illegitimate) of Biswanath Saha. Nothing has been placed with this record to show that Pinki Saha had another means of income. The only ground of challenged by the petitioner is that Pinki Saha being an illegitimate daughter cannot override his right over the legitimate daughter. It appears to me that the challenged of the writ petitioner is not inconsonance with the provisions of Clause 20 (vii)(a) of the WBPDS (Maintenance & Control) Order, 2013. It further observed that the concerned authority has acted according to the provisions of law in converting the sole proprietorship business to partnership business only inducting Pinki Saha (being a family member) as a partner of said partnership concerned.

Considering the above aspects, I find no justification to entertain the instant writ petitioner.

Hence the instant writ petition being meritless is hereby dismissed 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.)