

02.05.2024
Court No. 3
S/L. No. 12
Sourav/
Suvayan

**FMA 30 of 2024
With
CAN 1 of 2023**

**Shubhankar Roy
Vs.
The State of West Bengal & Ors.**

*Mr. Ram Anand Agarwala
Ms. Nibedita Pal
Mr. Ananda Gopal Mukherjee
Ms. Sonam Ray*

... for the appellant.

*Mr. T. M. Siddiqui, Ld. AGP
Mr. Amrita Lal Chatterjee*

... for the State.

1. Though the matter has been listed under the heading "Application" the same is taken up for final hearing and disposal with consent by the learned Counsel for the parties.
2. Heard learned Counsel for the parties.
3. Perused the impugned order passed by the Hon'ble Single Judge.
4. The question giving rise to filing of the writ petition by the present appellant is denial of his appointment as a fair price shop dealer on compassionate ground on the death of his adoptive father, named, Ajoy Kumar Roy, who was the original licence holder. Late Ajoy Kumar Roy died on 15.01.2023.
5. It is not disputed that Clause 20(VI) of West Bengal Public Distribution System (Maintenance & Control) Order, 2013 provides for compassionate

- appointment to the family members as defined in Clause 2(m) of the aforesaid order. It is also not disputed that an adopted son comes within the family of the deceased licence holder.
6. The fact of the case is that the present appellant was adopted by late Ajoy Kumar Roy according to Hindu Customs and Rites for adoption and to that effect, a declaration was made on non-judicial stamp paper.
 7. When the application for compassionate appointment was filed by the appellant, it was rejected by Director, DDP&S on the ground that the appellant was not legally adopted son of the deceased licence holder, late Ajoy Kumar Roy and secondly, the appellant is an elected member of Kumar Ganj Block Panchayat Samity.
 8. Being aggrieved by the said order, the appellant moved this Court in WPA 21969 of 2023. By that time the appellant had already resigned from his membership of Kumar Ganj Block Panchayat Samity on January 2, 2023.
 9. The Hon'ble Single Judge held that whether the appellant is legally adopted son of late Ajoy Kumar Roy, the deceased licence holder or not is a disputed question of fact to be determined by the civil court. With the aforementioned observation, the writ petition was disposed of giving no relief to the present appellant.

10. We agree with the view expressed by the Hon'ble Single Judge that question of adoption being a disputed question of fact cannot be decided in a writ jurisdiction under Articles 226 and 227 of the Constitution of India and civil Court is the common law forum to give a finding on the same.
11. Here the question of adoption is not an issue. It is the averment of the appellant that he had been adopted by the deceased licence holder following Hindu Customs and Rites and to that effect a declaration was made on non-judicial stamp paper.
12. On our quarry, learned Counsel for the State submits that someone in the same village had filed a complaint before the Director, DDP&S to the effect that the appellant is not the legally adopted son of the deceased licence holder, late Ajoy Kumar Roy. It is settled in law that the adoption can be challenged by a competent contestant with competing right with the adopted child in a competent civil court but the adopted son is not required to go to the civil court in chase of the defendants to prove his adoption until it was challenged by somebody having competing interest in the property of the deceased or estate of the deceased.
13. If the adoption is needed or averred for the purpose like the present one it is to be accepted as it is and licence should have been issued to the

appellant on compassionate ground. After issuance of licence to the appellant, anybody who has right to challenge, may challenge the same question of adoption of the appellant in the civil court. But till any challenge is made to the adoption of the appellant it is to be accepted that he has been legally adopted by the deceased licence holder, late Ajoy Kumar Roy.

14. In view of our discussion (Supra) the impugned order as well as the order of the Director, DDP&S dated August 10, 2023 are set aside.
15. The respondents are directed to process the application of the appellant/petitioner in accordance with the 2013 Control Order within a period of two months hence.
16. Accordingly, the appeal being FMA 30 of 2024 along with the interim application being CAN 1 of 2023 is disposed of.

(Chitta Ranjan Dash, J.)

(Uday Kumar, J.)