

24.7. 2024
item No.9
n.b.
ct. no.24

WPA 28717 of 2023

Sandip Agarwal
Vs.
State of West Bengal & Ors.

Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das,
Mr. Neil Basu,
Mr. Sankha Biswas
..... for the petitioner.
Mr. T.M. Siddiqui,
Mr. Amrita lal Chatterjee
.... For the State.

The present petitioner applied for FPS dealer on April 20, 2023 on compassionate ground in place of deceased father namely, Naresh Agarwal in respect of FPS-2858. The concerned authority in processing the application has accepted no objection from other legal heirs of the deceased FPS owner; on scrutiny, it appears that the documents regarding possessional right over the shop cum go down were not submitted by the applicant. The present petitioner was offered personal hearing and ask for production of the document for his possessional right. The petitioner could not produce the said documents. Thus, his prayer for engagement of FPS dealer on compassionate ground against the said FPS was rejected by the impugned order dated 28.11.2023.

It is the case of the present petitioner that the grandfather of the present petitioner, namely, Binodilal Agarwala was the erstwhile FPS dealer of the same FPS and ran the business on rented accommodation. During the running of such FPS business, the grand father of the petitioner received a letter from his erstwhile landlord, namely, Ajit Kumar Sen with a direction not pay the rent to his son as there is a civil case pending. In response to such letter, the grandfather used to deposit the rent at the office of the Rent Controller. Subsequently, the said landlord Ajit Kumar Sen passed away. Thereafter, the grandfather could not pay the rent with the office of the Rent Controller. However, an affidavit was sworn before the Judicial Magistrate, Alipore by the said grandfather of the petitioner contending, inter alia, all facts and was submitted to the concerned authority with a positive fact that the said ration shop was possessed by the grandfather and he is running the ration shop without paying any rent as the landlord has expired. The concerned authority has accepted the affidavit and the FPS licence was renewed time to time.

Binodilal Agarwala expired on 24.9.2011. Thereafter, the father of the present petitioner, namely, Naresh Agarwal has also applied for the FPS dealership on compassionate ground at the place of Binodilal Agarwala. The prayer of the Naresh Agarwal was considered and allowed by the concerned authority. In response to his

prayer the FPS licence was issued in favour of the father of the petitioner on compassionate ground. The father of the petitioner also sworn affidavit before the concerned Judicial Magistrate contending, inter alia, the same fact that they are possessing the ration shop without paying any rent to the owner due to the pendency of the title suit before the Court competent jurisdiction. The said affidavit was duly accepted by the concerned authority and the FPS licence was renewed time to time.

The father of the petitioner, namely, Naresh Agarwal expired on January 22, 2023 and the present petitioner applied for the licence of the said FPS dealership on compassionate ground in place of deceased father. He also submitted specific application in terms of the Control Order along with affidavit contending inter alia, the same fact that they are possessing the same shop room and due to pendency of the title suit, the rent could not be paid to the landlord. The authority concerned had turned down his prayer on the ground that no possessional document was placed along with application. Now, the instant writ petition was preferred before this Court for seeking necessary relief.

Initially, the prayer of the present petitioner was considered by this Court and one interim order was passed in favour of the petitioner.

Learned advocate for the petitioner submits that the impugned order passed by the authority concerned is

unreasonable and it cannot be allowed. He further submits that the grandfather and father of the petitioner were allowed to continue the FPS licence by the strength of the said affidavit. The fact was well-known to the concerned authority. Now, they suddenly cannot change their stand. He further submits that no objection as required by the provisions of Control Order is in respect of the legal heirs of the deceased FPS dealer. But the Control Order does not require any no objection from landlord. He further submits that to tackle the situation, the Government of West Bengal has issued a circular on July 31, 2003 contending, inter alia, that the FPS dealer has to swear an affidavit to the fact that if in case of an order of ejectment by a competent court directing the FPS dealer to vacate the premises, the appointment so made would be liable to be placed under suspension.

Mr. Saha Roy argued that in terms of the said circular, the present petitioner has sworn affidavit before the concerned Judicial Magistrate. He submits that there is no specific provision in the control order to deny the prayer of the present petitioner. So, he prayed for necessary order.

Learned counsel Mr. Amrita lal Chatterjee appearing on behalf of the State submits that the application for engagement of FPS dealer on compassionate ground was dealt with by part III of WBUPDS(M & C) Order, 2013. By the said part, it has been directed that the application has

to be submitted in form “A-1a”, under Schedule “H-1” the form was appended. In such form, part VI requires the particulars of possession of shop-cum-godown. In point 24, the rental possession was sub-categories as follows:

“24. Rental Possession:

- a. Name(s) of owner(s) of the premises:*
- b. No. and date of execution of registered lease/tenancy deed:*
- c. Period of lease/tenancy under registered agreement deed:*
- d. Whether expressly rented/leased for FPS as per deed.”*

Mr. Chatterjee, learned advocate submits that the authority is duty bound to follow the concerned control Order 2013. It is directives of the control order that the document regarding the rental possession has to be furnished by an applicant, who filed an application on compassionate appointment; as the petitioner could not furnish such document. Thus, the prayer was correctly rejected by the concerned authority after giving appropriate opportunity of hearing.

Mr. Chatterjee, learned advocate further submits that the concerned authority has given several opportunity to the petitioner to submit the documents, as the petitioner failed to submit the document, his prayer was not considered.

In response to the circular dated 31.7.2003, Mr. Chatterjee submits that the circular cannot override the directives of the statute itself. In support of his contention he cited a Judgment of Hon’ble Supreme Court in **Nova Ads Vs. Metropolitan Transport Corporation & Ors.**

reported in **(2015) 13 SCC 257**. By placing the said argument and the observation of the Hon'ble Supreme Court Mr. Chatterjee submits that the prayer of the present petitioner cannot be considered.

Heard the learned advocates, perused the petition as well the annexures thereof. The only issue involved in this matter is that whether in the particular case, when one FPS shop is running since more than 30 years by the strength of an affidavit sworn by the FPS dealer regarding his possessional right over the FPS shop, whether he can be thrown out when a new application was filed on compassionate ground.

Let me considered the directives of the statute itself Part III of the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013, deals with the application for compassionate appointment. The clause 16(c) and (e) of the said Control Order requires the no objection from the legal heirs of the deceased FPS licence holder. Form A1a mentioned about the possession of shop-cum-godown. In perusing the serial no.24 of the said form, it appears that it requires (i) name of the owner of the premises, (ii) number and date of execution of registered deed period of lease, and (iii) whether it is expressly rented or leased for FPS.

This Form does not require any no objection or any particular document from the concerned landlord. This Form requires the nature of possession used by the FPS

dealer. So, it is quite unreasonable to ask for one no objection certificate from the landlord in processing an application for compassionate appointment. Furthermore, the situation may be visualise in either way, if any dispute arose between the co-owners of the landlord, it is quite reasonable that no co-owner would be ready to forward a no objection when a civil case is pending for eviction.

At this juncture, the Government has think necessity to issue the circular dated July 31, 2003.

“It has been represented on behalf of a number of AR dealers that the legal heirs of deceased ARs who have applied for appointment AR on compassionate ground are being asked to produce ‘no objection’ from the landlord of the shop premises. As a result, they are reportedly being put to avoidable hardship.

The matter has now been carefully examined and it is hereby ordered that henceforth in course of processing the application for appointment of an AR on compassionate ground, the enquiring officer need not insist upon the legal heir of the deceased AR to produce a ‘no objection’ from the landlord or the existing AR Shop premises.

An undertaking in the form of an affidavit if any however, be obtained from the applicants affirming that in case of a court order ejecting him or directing him to vacate the premises in question, the appointment so made would be liable to be placed under suspension.”

It appears that the present petitioner has sworn affidavit before the Judicial Magistrate containing the requirement of the circular dated 31.7.2003. It is quite open and clear and was never denied by the concerned authority that the present petitioner or his father or his grandfather was never in possession over the said FPS shop. Only the fact arises that there was civil suit pending between the co-owner of the landlord. Thus, it appears to me that prevailing situations is more appropriate to fit with the circular dated 31.7.2003, which can very well answer the present situation.

In deciding the issue that whether a circular can override the statute; it appears to me that in the cited case **Nova Ads(Supra)**, the concerned State authority of Chennai has formed a statute for Provisions to build, operation and maintenance of certain bus shelter; the agreement for that purpose required to be executed between the contractor/company and the authority, which can be valid for one year and may be renewed every year for next nine years. Violating the said statute, the agreement was executed by the concerned authority with the contractor company for 12 years by the strength of a circular. In that situation, the Hon'ble Supreme Court has held that the rules and regulations or notification framed or issued by the concerned authority cannot override the statute. The fact situation in the cited case, is quite different in the present case so, it is distinguishable.

In this present case, the statute is silent about the circumstances to be the possessory right of MR dealer is at stake due to the pendency of the civil suit between landlord. On this situation, I think it necessary that the circular has answered the same quite correctly, more over, it is not contrary to the statute. If a circular is explanatory and not contrary to the statute, the authority concern must adhere to the circular, if situation arise. In that situation, the observation by the concerned authority and the impugned order for not allowing the present petitioner to carry on the business and ask for the no objection from the concerned landlord is appears to me unreasonable and arbitrary in terms of the circular dated 31.7.2003.

Under the above observation, it appears to me that the impugned order passed by the concerned authority is not justifiable and the same is set aside.

The authority concerned is directed to issue the FPS licence in favour of the present petitioner according to law, within three weeks from the date of passing of this order in terms of circular dated 31.7.2003.

Thus, the instant writ petition is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)