

Court No. 2
03.4.2024
(Item No. 3)
(AB)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 2729 of 2022

Ila Sarkar
VS
The State of West Bengal & Ors.

Mr. Jagriti Mishra
Ms. Mrinmoyee Das
..... for the petitioner
Mr. Subir Kumar Saha
Mr. Momenur Rahman
.... For the State

This is the second round of writ litigation as submitted by Mr. Jagriti Mishra, learned counsel appearing for the petitioner. The petitioner claimed to have married with the deceased dealer of a **Fair Price Shop**, namely, **Akhil Chandra Sarkar**, since deceased, who died on **September 27, 2020**, as would be evident from the death certificate being **Annexure P-1** at **page 24** to the writ petition. The petitioner admits that, during subsistence of the first marriage of the said dealer, the petitioner got married with him and ultimately the wife of the dealer, namely, **Smt. Swapna Sarkar** (since deceased) died. It is significant to note that, the writ petitioner has not made out a case of any dissolution of marriage or divorce between the dealer and the said Smt. Swapna Sarkar (since deceased) neither any evidence has been placed in this regard. It is also significant to note that, the date of the marriage between the deceased

dealer and the petitioner has not been disclosed. Equally the date of death of Smt. Swapna Sarkar (since deceased) has also not been disclosed.

In the said factual matrix the petitioner claimed to be the lawful second wife and spouse of the deceased dealer. The petitioner claims licence to run the Fair Price Shop which belonged to the deceased dealer, on compassionate ground. The issue was referred before the respondent No. 3 for its decision.

The respondent No. 3 by its impugned decision dated **July 28, 2022, Annexure P-6** at **page 102** to the writ petition rejected the claim of the petitioner with the following observation and reasons:

“with reference to above, the undersigned is to inform him that the Director, DDP&S has rejected on 19.07.2022 the application of Smt. Ila Sarkar for engagement as FPS Dealer on compassionate ground as she cannot be regarded as a family member of the deceased dealer since her marriage with Late Akhil Chandra Sarkar was contracted during subsistence of his 1st marriage and thus the 2nd marriage is void as per Sec. 5 of the Hindu Marriage Act, 1955.”

The petitioner has challenged the said impugned decision through this writ petition.

Mr. Jagriti Mishra, learned counsel appearing for the writ petitioner refers to **Clause 20** which provides for **Engagement of Dealer** from **The West Bengal Public Distribution System (Maintenance &**

Control) Order, 2013 ((for short, the said Control Order). He submits that, by virtue of the said Control Order the State has adopted a policy for granting dealership licence for Fair Price Shop on compassionate ground. The relevant provision provides that, in the event, *inter alia*, death of the existing individual dealer, unless any of his/her family members is found suitable for engagement on compassionate ground as per **Sub-clause (vi)**, the resultant vacancy has to be notified by the Sub-divisional Controller Food and Supplies with prior approval of the department. **Sub-clause (vi)** to **Clause 20** of the said Control Order, *inter alia*, provides that in case of vacancy arising out of death, subject to satisfaction of the authority, of any existing dealer, such vacancy shall not initially be notified. Prayer of any Family Members of the deceased dealer having no regular means of subsistence, will be considered with preference of compassionate ground provided such prayer along with formal application in the statutory form with all its annexure with requisite fee is submitted within **60 days** from the occurrence of such vacancy.

Referring to the statutory **Form 'C', Annexure P-3** at **page 71** to the writ petition learned counsel for the petitioner submits that, the application was made by the petitioner within the stipulated period on

November 23, 2020 as provided under the Control Order.

Learned counsel submits that, the petitioner is a **Family Member** within the meaning and definition as provided under the Control Order and hence, she has a right to receive the licence on compassionate ground to run the Fair Price Shop. In support, he has relied upon a decision of a Single Bench of the High Court at Madras dated **January 23, 2020** *In the matter of: C. Sarojini Devi Vs. The Director of Local Fund Audits, Chennai – 600 108 & Ors.*, rendered in **WP No. 34952 of 2019** with **WMP No. 35740 of 2019**.

In the light of the above, he submits that, the observations and reasons mentioned in the said impugned decision dated **July 28, 2022** is not tenable in law and is liable to be **set aside** and **quashed** and the petitioner shall be granted the licence for running the said Fair Price Shop on Compassionate Ground.

Mr. Momenur Rahman, learned State counsel appearing for the respondent nos. 1 to 6 at the outset submits that though there was a direction for filing affidavit-in-opposition but no such affidavit-in-opposition has been filed. However, learned State counsel, on instruction, submits that, since the issue involves a pure question of law, the writ petition can

be finally considered without affidavit-in-opposition and the respondents shall proceed on the basis of the existing record.

Learned State counsel referring to the definition of “**Family Members**” as defined under **Sub-Clause (m) to Clause 2** of the **Control Order** submits that, the petitioner at no stretch of imagination can be considered as a family member of the deceased dealer. The marriage of the petitioner, as alleged by her, is no marriage at all and is void *ab initio* as Smt. Swapna Sarkar, wife of the deceased dealer was alive and the marriage between the dealer and Smt. Swapna Sarkar was not revoked or dissolved in any manner, when the petitioner claimed to have married the deceased dealer. Therefore, the petitioner cannot be considered as spouse of the deceased dealer nor can she be considered as a dependent or a family member of the deceased dealer at all. Referring to the reasons from the said impugned decision dated July 28, 2022 learned State counsel submits that, the same is lawful and valid and no interference is called for.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court, at the outset, proceeds to deal with the conduct of the petitioner. The petitioner has not disclosed the **date of death** of **Smt. Swapna Sarkar**, since deceased. The petitioner did not disclose the

date of her alleged marriage with the deceased dealer. However, the petitioner admits that, she came and joined the family of the deceased dealer as his alleged wife during the subsistence of the marriage between the dealer and Smt. Swapna Sarkar.

This constitutional Court in exercise of its power under Article 226 of the Constitution of India has a limited authority to assess the impugned decision. This Court cannot sit on appeal over the same. This Court shall not reappraise the evidence or materials on record on the basis whereof the impugned decision dated **July 28, 2022** was passed, unless contrary relevant materials are produced before this Court. This Court shall only look into whether any infirmity is there in the impugned decision and in the decision making process of the authority and if there is any perversity on the face of it.

Admittedly, as already discussed above, no contrary material has been disclosed before this Court by the writ petitioner wherefrom this Court can arrive at a finding that, the reasons and observations in the said impugned decision dated **July 28, 2022** are perverse on the face of it. On the contrary, this Court shall presume that, while passing the impugned decision dated July 28, 2022 the respondent no.3 was satisfied with the materials and records before it.

Inasmuch as, to grant a licence on compassionate ground is a result of a benevolent State policy. The provisions in the Control Order, as discussed above, are elaborate and has described the situation under which such licence can be issued on compassionate ground. The petitioner primarily does not come within the scope, meaning and definition of the **Family Members**.

In the matter of : C. Sarojini Devi (supra), the writ petitioner claimed family pension where the Single Bench of the Hon'ble High Court held that, since the writ petitioner therein was residing for a substantial period of time with the State employee even after the death of his wife, with a continuous cohabitation for a long time, the petitioner was considered to be the wife of the deceased employee.

In the considered view of this Court, if the alleged marriage is void *ab initio*, as in the instant case, there is no marriage at all in the eye of law. Moreover, to grant a licence on compassionate ground is strictly a matter of State policy. Such policy defines the expression "**Family Members**" within which this petitioner does not fall at all. Hence, the ratio decided *In the matter of : C. Sarojini Devi* (supra) has no application in the facts of the instant case.

The conduct of the petitioner as discussed above, is also not appreciated by this Court. The

petitioner did not apply before this Court with clean hands and suppressed the material facts.

In view of the foregoing reasons and discussions, this Court finds no reason to interfere with the decision of the respondent no.3 dated **July 28, 2022, Annexure-P6 at page 102** and there is no infirmity in it. Hence, the decision of the respondent no.3 dated **July 28, 2022** stands **affirmed**.

This writ petition is totally devoid of any merit and clearly an abuse of the process of law.

Accordingly the writ petition, **WPA 2729 of 2022** stands **dismissed** with costs assessed at **Rupees Twenty-five Thousand only (Rs.25,000/-)** to be paid by the petitioner in favour of the **West Bengal State Legal Aid Services Authority** within one month from date.

Learned **Registrar, Circuit Bench at Jalpaiguri** is requested to communicate this order to the appropriate authority of the **West Bengal State Legal Aid Services Authority**.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)