

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF
WPA 27051 of 2023
Saraswati Mitra
Vs.
State of West Bengal & Ors.

For the Petitioners	: Mr. Srijib Chakraborty, Adv., Mr. Aditya Mondal, Adv.
For the respondent No. 7	: Mr. Abhijit Basu, Adv., Mr. Arghya Kamal Das, Adv., Mr. Debdipto Banerjee Adv
For the State	: Mr. Sirsanya Bandopadhyay, Adv. Mr. Ritesh Kumar Ganguly Adv.,
Reserved on	: 09.12.2024
Judgment on	: 13.02.2025

Subhendu Samanta, J.

1. M/s Mitra and Kundu Company is a partnership concern, who was a dealer of FPS and Kerosene oil at Gabarchar under Police Station Shantipur in the District Nadia being FPS license No. WB 0336748137. The Said partnership concern had two partners, they are Nimai Mitra (husband of petitioner since deceased) and one Mr. Biswajit Kundu (private respondent No. 7). Nimai Mitra had expired on 17th of December, 2021. Petitioner being the widow of one of the partner (Nimai Mitra) submitted application with the authority for getting license on compassionate ground. The concern authority has turned down her prayer accordingly, she approached this court for

necessary direction. In Writ Petition No. WPA 22628 of 2023, a Co-ordinate Bench of this Court vide its order dated 13th June, 2023 has passed the following direction:

"In view of such circumstances, this Court cannot pass any order directing the Sub-Divisional Controller to induct the name of the petitioner in the partnership deed because a partnership business is a creature of contract between two and more persons to run a business in partnership. In the instant writ petition, the petitioner has prayed for consideration of her representation dated 12 September, 2022. If the dealership of fair price shop was issued in the name of the partnership firm, the present petitioner cannot be permitted to run the said fair price shop as an individual Licensee. Considering such circumstances, this Court is of the view that the representation submitted by the petitioner on 12 September, 2022 should be disposed of by the respondent Nos. 4 and 5 after giving an opportunity to the petitioner and the private respondent No.6 of being heard."

2. In terms of the direction of this Court in WPA 22628 of 2023 the concerned authority has given the opportunity of hearing to all the parties and passed the impugned order on 09th August 2023.

3. Hence this writ petition.

4. The operative portion of the impugned order is set out as follows:

It was explicitly expressed by respondent No. 6, Biswajit Kundu, on multiple occasions that he is not willing to do business under a partnership firm with

the wife of Late Nimai Mitra due to unsettled previous financial accounts. There remains a strong contention between the petitioner and respondent No. 6, and to date, they have not been able to come to an agreement to run the FPS business together. The WBPD&S Control Order, 2013, as amended, states that in the event of the death of one partner in a partnership firm comprising only two partners with a dealer's license, the surviving partner should reconstitute the partnership firm by including only the family member of the deceased partner who has no regular means of income, and no one else. However, in the present case, the surviving partner, Biswajit Kundu, is entirely unwilling to reconstitute the partnership firm by including Smt. Saraswati Mitra, the family member of the deceased partner. Furthermore, in accordance with the instruction of the competent authority, the S.C.(F&S), has already initiated a resultant vacancy proposal vide no-182/RFS/2023 dt- 10/03/2023, and the D.C. (F&S) Nadia forwarded it on 01/04/2023 to the next level along with his recommendation. The government has indeed made provisions for compassionate ground appointments, intending to support the family members of the deceased licensee during financial hardship due to the loss of the primary breadwinner. However, in this case, petitioner Saraswati Mitra has not submitted Form C3 with the relevant documents, such as the reconstitution of the partnership firm.

Based on these observations, it can be concluded that the dealership license in question cannot be granted on compassionate grounds as per the WBPD&S Control Order 2013, as amended, to an individual like the petitioner, who has repeatedly applied with plain paper instead of Form C3, concealing material facts and presenting distorted truths to the licensing authority. Such an application by the petitioner does not align with the provisions of the WBPD&S Control Order 2013 and lacks merit. Hence, the prayer of the petitioner is rejected

5. The issue involved in the writ petition is-whether legal heirs of a deceased partner can apply for FPS license on individual capacity when other surviving partner/partners are unwilling to do the business.

6. To discuss the issue it is appropriate to refer relevant provisions of West Bengal Public Distribution (Maintenance and Control) order 2013. **Clause 20 (vii)**

(vii) Whenever

(a) an individual licensee opt to convert its business into partnership firm for the reason of his physical incapacitation, or

(b) a licensee of a partnership firm opt to induct a new partner or substitute the name of an existing partner, 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: Provided that in case of death of one of the partner of a partnership firm comprising of only two partners having the dealer's license, the surviving partner shall reconstitute the partnership firm by inducting only the family member of the deceased partner having no regular means of income and not otherwise Provided further that-

(A) in case of death of a partner of partnership firm having the dealer's license, the licensing authorities may, on an application made by the surviving partner, allows him to continue the business for a period of ninety days or till the new license is granted, whichever is earlier;

(B) in case of death of a partner of partnership firm having the dealer's license and if no eligible family members found to become the partner or partners, as the case may be, of the said partnership firm, the surviving partner, may apply for the conversion, before the licensing authority, and upon satisfaction of the licensing authority, the said surviving partner will be allowed to continue the business, as a sole licensee, subject to the approval given by the [Director, DDP&S] in this behalf:

Provided also that in case of death of an individual licensee, the eligible family member or members, as the case may be, may apply before the licensing authority, for running its business, either as an individual licensee or as the registered partnership firm, subject to the approval given by the [Director, DDP&S] in this behalf.]

7. Mr. Srijib Chakrabarty, Learned Counsel for the petitioner submits that in terms of Clause 5 of partnership deed dated 07th September, 1990, The petitioner has automatically become a partner of the partnership firm and as such the respondent authorities should have granted the license to the petitioner. He further argued that since respondent No. 7 is unwilling to continue the partnership business neither existing license be granted in favour of partnership firm nor it is converted in favour of the petitioner as a sole licensee, is depriving the petitioner from her legitimate right. Mr. Chakrabarty further submits that due to unwillingness from one of the partners the legal heirs of deceased partner is suffering and the respondent authorities obliged to grant license in favour of the present petitioner. He further submits that if there is dispute regarding partnership business, the respondent No. 7 may proceed to settled the dispute in terms of Clause 9 of the Partnership deed before the arbitrator.

8. Mr. Chakraborty further argued that clause 20 Sub-Clause (vi) and (vii) both speak about the appointment on compassionate ground, wherein Clause (vi) speaks about the appointment on compassionate ground for individual license holder and Clause (vii) speaks about appointment on compassionate ground in case of partnership firm.

9. Mr. Chakraborty further argued that Clause 20 (vii), 2nd Proviso (B) allowed surviving partner to apply for the license under individual capacity. The rule does not provide any of such procedure in case of legal heirs of deceased partner. He submits that the High Court has the power to issue rule of “reading down” in interpreting a statute in

order to make it workable so that any person may not be deprived from their legitimate right. In this case, Mr. Chakraborty submits, it is required to pass the necessary order to make the statute workable.

10. In support of his contention petitioner has cited decisions reported in

1. Calcutta Gujrati Education Society and Anr. Vs. Calcutta Municipal Corpn. and Ors. (2003) 10 SCC 533

2. Vashist Narayan Kumar Vs. State of Biehar 2024 SCC Online SC 2.

3. Gurupada Das Vs. State of West Bengal (2022) SCC Online 2260

11. Mr. Abhijit Basu, Learned Senior Counsel appearing on behalf of the respondent No. 7 submits that, the respondent No. 7 since February 2020 did not receive any profit from the business, furthermore husband of the petitioner has withdrawn Rs. 8,00,000/- from the account of the firm. He submits that unless the same dispute of accounts be settled, the business between the respondent No. 7 and the petitioner (legal heirs of deceased partner) cannot be continued. He further submits that according to the provision of Section 69 of Indian Partnership Act, 32 the instant writ petition is not maintainable. As the firm was unregistered, thus, the petitioner cannot claim any right of firm in the instant writ petition. It is the further contention of Mr. Basu that there is no provision in the control order that the deceased legal heir of deceased partner hereby allowed to continue the business in individual capacity. Mr. Basu further

argued that petitioner has not challenged the virus of the relevant restrictive provision of Clause 20 (vii) of West Bengal Public Distribution System (maintenance and control) Orders 2013, thus the instant writ petition is devoid of any merit and accordingly the same is liable to be dismissed.

12. Mr. Sirsanno Bandopadhyay, Learned Counsel appearing on behalf of the states submits that several opportunity was given to the petitioner as well as the private respondent No. 7 to submit application in prescribed form C-3 of WBPDS (M&C) order 2013. The petitioner as well as the private respondent never avail such opportunities. It is further contention of the State Authorities that several opportunities of hearing was given to the petitioner as well as the private respondent No. 7, during hearing of private respondent No. 7 categorically disclosed that he is not willing to do the business.

13. Mr. Bandopadhyay further argued that initially they intended to re-constitute partnership firm but, afterwards they have not re-constituted the firm, hearing was given to parties in terms of the order of this court in writ petition No. WPA 22628 of 2023. After hearing the parties, the competent authority has passed the reason order. Mr. Bandopadhyay argued that there is no infirmity in the impugned order. The authority concern has proceeded to decide the issue in accordance with the provision enumerated in Clause 20 (vii) of WBPDS (M&C) Order, 2013. Petitioner's prayer for bifurcation of 50% ration card in her name on compassionate ground, which cannot be considered as it is de hors to the provision of the control order.

14. It is the submission of the State Authorities that the State respondents is a creature of the statute, who cannot act in contravention of the statutory provisions for accommodating the demands of the petitioner. The petitioner has not challenged the virus of the statutory provisions which prevent the answering respondents for exceeding to the prayers of the petitioner and in view of the provisions of Clause 20 (vii) of 2013 Control Order; answering respondents are bound to reject the prayer of the petitioner.

15. Mr. Bandopadhyay has relied a decision of Hon'ble Supreme Court passed in **Secretary to the Government Department of Education (primary) Vs. Vheemesh (2021) 20 SCC 707.**

16. Heard Learned Counsel for the parties. In considering the submission before this court, it is admitted fact that the provision of Clause 20(vii) of 2013 of Control Order provides surviving partner of a partnership business to apply for license after reconstitution of the firm, it was also provided there that the concerned authority, if satisfied, may issue the license in favour of the surviving partner in individual capacity.

17. In **Calcutta Gujrati Education Society (Supra)** the Hon'ble Supreme Court has discussed about the rule of "reading down"

35. The rule of "reading down" a provision of law is now well recognised. It is a rule of harmonious construction in a different name. It is resorted to to smoothen the crudities or ironing out the creases found in a statute to make it workable. In the garb of "reading down", however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial

legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfil its purposes. See the following observations of this Court in the case of *B.R. Enterprises v. State of U.P.*³: (SCC pp. 764-66, para 81)

"[F]irst attempt should be made by the courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, maybe beneficial, penal or fiscal etc. Cumulatively it is to subserve the object of the legislation. Old golden rule is of respecting the wisdom of legislature if that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the preamble,

Objects, the scheme of the Act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated. This principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power."

(emphasis supplied)

18. In **Vashist Naryan Kumar (Supra)** the Hon'ble Supreme Court has considered that a rightful claim cannot be deterred due to mere technicalities:

On the peculiar facts of this case, considering the background in which the error occurred, we are inclined to set aside the cancellation. We are not impressed with the finding of the Division Bench that there was no prayer seeking quashment of the results declared over the web. A reading of the prayer clause in the writ petition indicates that the appellant did pray for a mandamus directing the respondents to consider the candidature treating his date of birth as 18.12.1997 and also sought for a direction for issuance of an appointment letter. A Writ Court has the power to mould the relief. Justice cannot be forsaken on the altar of technicalities.

19. The Hon'ble Division Bench of this Court in **Gurupada Das (supra)** has held that, the respondent authority may consider an application for compassionate appointment even if, the applicant has filed the said application in plain paper without being filing of normal application under Form -C-3

24. The very essence of any scheme of compassionate appointment is dependence. The very purpose of any such

scheme is to provide succor to such dependents. So any delay in providing appointment/engagement to a dependent or dependents defeat the very purpose of such policy/scheme. We find that in Clause 20 (vi) of 2013 Control Order there is no time limit prescribed for the authority to act on the application filed under the said provision and we also come across cases where claims are kept pending for years. We therefore using our plenary power under Article 226 of the Constitution of India interdict the State Government to comply strictly with the following directions:-

(i) Every application should be disposed of within 6 (six) months from the date of filing of formal application under Form C along with Annexure-1 thereto of 2013 Control Order.

(ii) If there is any defect in the application, the Applicant be intimated to rectify the defects within one month from the date of filing and such defects be rectified by the Applicant within 15 (fifteen) days of such intimation.

(iii) If the application cannot be processed by the outer time limit of 6 (six) months outlined supra for any reason, temporary licence should be issued in favour of the Applicant subject to the condition that such licence shall be subject to the outcome of the enquiry. If more than one application have been received from more than one legal heir, the Applicant who submitted his application first should be issued with the temporary licence pending enquiry.

(iv) In no event any application be kept pending beyond one year.

20. In **Bheemesh** the Hon'ble Supreme Court has held that on a compassionate appointment cannot be claimed to be a vested right for appointment.

18. Keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified Scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.

19. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the "family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate

grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified f Scheme granted larger benefits, the old Scheme was made applicable.

21. The sole purpose for promulgation of Control Order 2013 is necessity and expediency 50 to do for maintaining supply and securing availability and distribution of Essential Commodities under the Public Distribution System.

22. The legislature has codified Clause 20(vii) of Control Order 2013 enabling the State Authority to engage the family members of deceased licensee on compassionate ground. Rules has been specifically framed how to deal with these issues before passing an order of appointment on compassionate ground. It has also been provided in the said provision that the concerned authority shall not declare fresh/resultant vacancy, without the formalities on compassionate appointment being completed. Thus on complete reading of the provisions, it appears to me that the legislature has codified the statute in a manner so that the family of the deceased

licensee, may not suffer financial stringency due to sudden demise of sole bread earner of the their family (licensee). The legislature is not out of mind to see the situation of the legal heirs of deceased licensee for which the rule of appointment under compassionate grounds is framed. Clause 20(vii) provides the case where business under partnership business may be carried on due to the death of one of the partners of the partnership firm. First proviso of Clause 20(vii) has given sanction to the surviving partner to re-constitute the partnership firm by inducting family members of the deceased partner having no regular means of income. The power to re-constitute a partnership firm is only bestowed upon the surviving partner and not to any other persons.

23. Clause 20(vii) (B) provides that if no eligible family members of the deceased partner found to became the partner or partners , as the case maybe, the surviving partner may apply for conversion before the licensing authority, on such, the licensing authority after satisfaction, may allow the surviving partners to continue the business in individual capacity.

24. The situation arise in the instance case is completely different. Legal heirs of deceased partners are willing to do the business, while the surviving partners are not ready to continue the business. Admittedly, the statute do not provide the licensing authority to allow such prayer of the legal heirs of the deceased licensee.

25. In plain reading of the impugned order it appears that the orders passed by the concerned Authority is according to the

provisions of Control Order 2023, but whether such order is justified under the attending facts and circumstances, or it is expedient to pass an appropriate order by a writ court is the deciding factor in this matter.

26. In **Dwarakanath Vs. ITO AIR 1966 Supreme Court 8** the Hon'ble Apex Court has held that Article 226 of the Constitution is couched in comprehensive phraseology and it is ex-facie confers wide power on the High Court to reach injustice wherever it is found this article enables High Courts to mould relief to provide justice in the peculiar and extraordinary circumstances of the case.

6. This article is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. The constitution designedly used a wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with the those in England, but only draws in analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under article 226 of the Constitution with that of the English courts to issue

prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in T. C. Basappa v. Nagappa, and Irani v. State of Madras,.

27. The peculiar facts of this case suggests that petitioner being the legal heirs of deceased partner intends to do the business but she could not continue the business due to the active denial on the part surviving partner (respondent No. 7). The statute has made a beneficial legislation, which disclose the intention of the law framers to provide sufficient support to the family members of deceased licensee who are in distress; due to the inaction on behalf of the surviving partner, as also absence of the specific provision in Clause 20 (vii), the petitioner though entitled otherwise (poor, having no means of income) is not allowed to continue the business. In that attending situation, I think it necessary to pass an appropriate order so that the intention of legislatures in providing compassionate appointment may be fulfilled in its true perspective. I make it specifically clear that the statute has not made the provision in

appointment of legal heirs of deceased partner as an individual licensee but the peculiar facts and circumstances of this case make it expedient for this court to use inherent power so that the justice may be reached to the person, who deserves.

It is a trite law that court cannot legislate law, at the same time it is permitted for High Court under Article 226 of the Constitution to extend the ambit of statute by ironing the rigid creases of a statute so that true purpose of justice oriented approach of legislatures may be reached towards deserving litigants.

28. In considering the submission of Mr. Bandopadhyay, it is true that the compassionate appointment cannot be considered as a vested right upon the petitioner, but at the same time it would not out of place to mention that, when a statute itself provides for compassionate appointment before declaring a fresh vacancy, that tantamounts, legislatures have made preference for a compassionate appointment over fresh vacancy declaration. The appointment on compassionate ground is not automatic but it is subject to strict scrutiny of various parameters including the financial position of the family, the economic dependency of the family upon the deceased employee and the avocation of other members of the family. I make it clear that the licensing authority has given sufficient power to verify or scrutinise the parameters to justify, whether the petitioner is actually in a position who is entitled for compassionate appointment. On that score the submission of Mr. Bandopadhyay appears to me not justified in the present facts and scenario of this matter.

29. In deciding the issue raised by the respondent No. 7 it appears to me that Section 69(3) of partnership Act 1932 is not a bar to this writ petition. The petitioner has filed the writ petition challenging the action of the state respondent authority, no prayer for enforcing a right of partnership and their contract or right conferred by the Act 1932, is the issue in the present writ petition, accordingly Section 69(3) of Act 1932 is not a bar in the instant writ petition.

30. Under the above observation the instant writ petition is considered and allowed. The impugned order dated 09th August, 2023 passed by the respondent authority is hereby set aside.

31. The instant writ petition is disposed of with a direction to the concerned licensing authority to take a fresh decision upon an application of the petitioner in Form C-3 (as far as applicable) and proceed to issue license in favour of the petitioner individually, if she found otherwise eligible according to law and in terms of the direction passed by this court hereinabove.

32. I make it clear that before issuing license the licensing authority must satisfy themselves (on inspection) that the petitioner is capable of running the business of FPS dealer according to the provisions of law.

33. The Petitioner is directed to submit the application in Form C3 along with prescribed fees (as far as applicable) to the authority within 02 weeks from date of passing of this order, the licensing authority shall take the decision within 08 weeks from the date of submission of

such application of the petitioner. The decision of the authority shall be communicated to the petitioner within two weeks thereafter.

34. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)