



IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH
DATED THIS THE 29TH DAY OF NOVEMBER, 2024
BEFORE
THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR
WRIT PETITION NO. 203376 OF 2024 (GM-EC)

BETWEEN:

GANESH S/O NARAYAN RAO CHIDRI
AGE ABOUT 39 YEARS
OCCU UNEMPLOYED
R/O CHADRI GALLI, TQ.HUMANABAD
DIST.BIDAR.

...PETITIONER

(BY SRI. MANURE ASHOK KUMAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS DIRECTOR
DEPARTMENT OF FOOD AND SUPPLY
AND CONSUMER AFFAIRS
VIDHANA SOUDHA
BANGALORE – 560 001.
2. DEPUTY COMMISSIONER
BIDAR – 585 401.
3. DEPUTY DIRECTOR
DEPARTMENT OF FOOD AND
SUPPLY AND CONSUMER AFFAIRS
BIDAR – 585 401.
4. TAHSILDAR - HUMNABAD DIST
BIDAR- 585 428.

...RESPONDENTS

(BY SRI. G.B. YADAV, HCGP)



THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE THE WRIT OF CERTIORARI / ORDER QUASH THE 3RD RESPONDENT IMPUGNED ENDORSEMENT VIDE ANNEXURE-T DATED 2.06.2024 IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR)

1. In this petition, the petitioner seeks the following reliefs:

“(a) Issue a writ of certiorari/order to quash the impugned endorsement issued by 3rd respondent bearing No.A.Na.Sa/Nya.Be.An/CR-47/2023-24 on dated 20.06.2024 vide Annexure-T, in the interest of justice and equity.

“(b) Pass such other further orders as this Hon'ble Court deems fit and proper in the facts and the circumstances of the case and thus render the justice.”

2. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner invited my attention to the Judgment of the co-ordinate bench (Principal Bench) of this Court in the case of



Sri. Tousif Khan S/o. late Ismail Khan Vs. The State of Karnataka and others, in ***W.P.No.765/2024*** and connected matters dated **31.08.2024**, in order to contend that the issue in controversy involved in the present petition is directly and squarely covered by the said Judgment and consequently the present petition also deserves to be disposed of, in terms of the said Judgment.

3. His submission is placed on record.

4. In the case of ***Tousif Khan*** (supra) this Court has held as under:

“In all these petitions, the petitioners, who are the sons, spouse, and both married and unmarried daughters of the deceased dealers, seek the transfer of authorization to operate fair price shops under the Public Distribution System (Control Order, 1992) on compassionate grounds. The deceased dealers had been granted authorization during their lifetime, and upon their passing, the petitioners submitted applications requesting the transfer of the said authorization.

2. *The petitioners' applications were rejected on the grounds that married daughters are not entitled to the transfer of authorization on compassionate grounds, they did not meet the requisite qualifications, and the age of the deceased license holders at the time of death exceeded 65 years.*

3. *The learned counsels for the petitioners contended that the original authorization was granted under the Control Orders of 1986 and 1992, and as per the provisions of unamended Clause 13, there was no restriction on the transfer of authorization on compassionate grounds. The petitioners argued that the*



amended Control Orders of 2016, 2017, and 2021 are not applicable to authorizations granted under the unamended orders. Furthermore, the petitioners contended that married daughters are equally entitled to the transfer of authorization on compassionate grounds, citing the decision of a Co-ordinate Bench of this Court in W.P. No. 51361/2019.

4. *On the contrary, the learned counsel for the respondents, along with the learned Additional Government Advocate (AGA) representing the State, argued that the amended Clause 13 of the Control Orders of 2016, 2017, and 2021 explicitly prohibits the transfer of authorization on compassionate grounds if the authorized dealer dies after reaching the age of 65 years or if the transferee does not possess the prescribed qualifications. They relied on the decision of a Co-ordinate Bench of this Court in W.P. No. 13559/2020 and connected petitions, which were disposed of on 23.12.2021, to support their position.*

5. *After carefully considering the arguments put forth by the learned counsels for the parties, the key point for deliberation is whether the petitioners are entitled to the transfer of authorization to run fair price shops on compassionate grounds.*

6. *Clause 13 of the unamended Public Distribution System (Control Order, 1992) dealt with the prohibition of the transfer of authorization. It states that no authorized dealer shall assign or transfer their authorization to any other person, nor shall any person carry on business on behalf of such an authorized dealer. However, a proviso to Clause 13 allows for the transfer of authorization in the event of the death of an authorized dealer, with prior approval of the Government, to the spouse, son, or unmarried daughter of the deceased.*

7. *Subsequent amendments to Clause 13, made in 2016, 2017, and 2021, introduced restrictions on the transfer of authorization on compassionate grounds. The amended provisions prohibit such transfers if the authorized dealer was over the age of 65 at the time of death or if the transferee had not completed the 10th standard and did not apply for the transfer within 90 days of the death.*

8. *A Co-ordinate Bench of this Court, in W.P. No. 13559/2022, upheld the validity of the amended proviso to Clause 13, but it was dealing with a challenge related to the renewal of*



authorization on compassionate grounds. In W.P. No. 55097/2017, disposed of on 11.12.2017, this Court held that the condition regarding the age limit imposed in the amended Clause 13 was not sustainable. The decision in W.P. No. 204335/2014, which was followed in W.P. No. 43249/2017, ruled similarly. Furthermore, in W.P. No. 103408/2023, disposed of on 12.06.2023, this Court reiterated that the restrictions introduced in the Control Orders of 2016, 2017, and 2021 were prospective in nature and could not be applied retrospectively to authorizations granted under the unamended Control Order of 1992. Therefore, these restrictions are only applicable to applicants seeking fresh authorizations and not to existing authorized dealers or their legal heirs.

9. *In W.P. No. 51361/2019, the Co-ordinate Bench of this Court addressed the issue of whether married daughters are entitled to the transfer of authorization. In paragraph 3, it was held that the Control Orders of 2016 and 2021, which provide for the transfer of authorization to unmarried daughters or widowed daughters with no source of income, cannot discriminate against married daughters solely on the basis of their marital status, provided they have no independent source of income. Such discrimination violates Articles 14 and 15 of the Constitution of India, which guarantee equality before the law and prohibit discrimination on the grounds of sex. This view is supported by the decision in *Bhuvaneshwari*, where the Court held that the principle of equality extends to matters of compassionate appointments as well. The Supreme Court also affirmed this view in S.L.P. (C) No. 20166/2021, disposed of on 17.12.2021.*

10. *The decision of the Co-ordinate Bench clearly establishes that there can be no discrimination between married and unmarried daughters when it comes to the transfer of authorization on compassionate grounds. Discriminating against daughters based solely on their marital status violates the principles of equality enshrined in Articles 14 and 15 of the Constitution of India.*

11. *In light of the foregoing, it is evident that the spouse, sons, adopted sons, and both married and unmarried daughters of deceased authorized dealers, who have attained the age of 18 years, are entitled to the transfer of authorization on compassionate grounds. Denial of such transfers on the grounds*



of marriage or other arbitrary criteria is discriminatory and unsustainable in law. Accordingly, I pass the following:

ORDER

i. *The writ petitions are allowed.*

ii. *The impugned endorsements dated 17.11.2023, 06.06.2020, 05.03.2022, 23.11.2023, 25.11.2022, 03.11.2023, 28.11.2023, 21.11.2023, 22.12.2023, 19.12.2023, 21.12.2023, 15.12.2023, 06.01.2024, 18.02.2017, 12.02.2024, 01.02.2024, 19.02.2024, 27.02.2023, 18.03.2024, 27.05.2024, 09.07.2024 and 10.06.2024 in W.P.Nos.765/2024, 8370/2020, 7349/2022, 27695/2023, 24641/2022, 25399/2023, 28018/2023, 28312/2023, 688/2024, 729/2024, 766/2024, 961/2024, 2283/2024, 2608/2024, 6251/2024, 6467/2024, 7913/2024, 9669/2024, 10279/2024, 15907/2024, 18913/2024 and 19842/2024 issued by the Deputy/Joint Director, Department of food, civil supplies and consumer affairs are quashed.*

iii. *The respondents are hereby directed to reconsider the applications submitted by the petitioners afresh keeping in mind the observations made herein above, subject to satisfying other requirements of existing control order.*

iv. *The said exercise shall be completed within three months from the date of receipt of certified copy of this order."*

5. The facts obtaining in the present case are identical to the facts of the case involved in **Tousif Khan** (supra) and consequently, the present petition also deserves to be allowed and disposed of in the same terms.

6. Accordingly, I pass the following:

ORDER

(i) The petition is hereby allowed and disposed of in terms of **Tousif Khan case** (supra).



(ii) The Impugned endorsement at Annexure-T dated 20.06.2024 passed by respondent No.3 is hereby quashed.

(iii) Matter is remitted back to the respondent No.3 for reconsideration afresh in accordance with law within a period of three months from the date of receipt of a copy of this order.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE