

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 6517 of 2023

**Swapna Majumdar
Vs.
The State of West Bengal & Ors.**

For the petitioner : Mr. Srijib Chakraborty
Mr. Prashar Baidya
Mr. Deeptangshu Kar

For the State : Mr. T. M. Siddique
Mr. Amritlal Chatterjee

Item No.13

Heard & Judgement on : 20.09.2023

Bibek Chaudhuri, J.

Indisputably one Gopal Chandra Majumdar, since deceased was the original FPS licence holder and S.K. Oil dealership situated at Fulia Belamath in the district of Nadia. It is also not a dispute that the said Gopal Chandra Majumdar died on 11th July, 2020. On 31st July, 2020 the widow of the said Gopal Chandra Majumdar filed an application for granting/transferring the licence in her name on compassionate ground. However, while the said application was

under consideration by the State Respondents, the said widow of Gopal Chandra Majumdar breathed her last on 6th September, 2020.

It is pertinent to mention here that both Gopal Chandra Majumdar and his widow died leaving behind one son and three daughters namely Biman Majumdar, Krishna Mondal (married daughter), Ratna Pramanick (married daughter) and Swapna Majumdar, the petitioner herein. On 28th September, 2020 the petitioner filed an application for compassionate appointment with 'no objection certificates' of her two married daughters.

The respondent authority rejected the said application on the ground that the petitioner had not approached the Sub-Divisional Controller of the concerned jurisdiction with 'no objection certificate' of all the legal heirs of the deceased licensee.

Such administrative order was challenged by the petitioner by filing a writ petition being WPA 6086 of 2022. A Co-ordinate Bench vide order dated 4th May, 2022 rejected the said writ petition stating, inter alia, that since the petitioner failed to produce 'no objection certificate' of all the family members of the deceased licence holder, she is not entitled to get licence on compassionate ground. The petitioner challenged the said order by filing an appeal before the Division Bench which was registered as MAT No. 1555 of 2022. The said appeal was allowed vide order dated 5th December,

2022 relying on another Division Bench order in the case of **Gurupada Das versus State of West Bengal and Others** reported in **AIR 2022 Cal 331**. The Division Bench while setting aside the order of the Single Bench passed in WPA 6086 of 2022 directed the Sub-Divisional Controller for disposal of the petitioner's application within three months from the date of receipt of the certified copy of the order in the light of the decision rendered in the case of **Gurupada Das** (supra). It specifically stated in WBPDS (Maintenance and Control) Order, 2013 that in case of death of a licence holder, it is open for a dependent family member to make an application for compassionate ground.

In **Gurupada Das** (supra) the Division Bench had the scope to interpret the word 'dependent' in relation to the 2013 Control Order. It is held in the said decision that the members of the deceased family who were living with the deceased at the time of his/her death and is/are dependent upon the deceased licence holder having no source of independent income he/she is to be treated as dependent family member who is entitled to get the licence of fair price shop on compassionate ground.

The observation made by the Division Bench in **Gurupada Das** (supra) is quoted hereinbelow:-

"20. The most important word in the definition is the word '**dependent**'. If any of the family member was not dependent on the deceased on the date of his death, his no objection is not necessary for consideration of issuance of licence in favour of any of the legal heir who has applied in Form C along with Annexure-I of the 2013 Control Order. If any of the sons or daughters who are dependent they are required to file "No Objection". If we read paragraph 2 of sub-Clause (vi) of Clause 20 in conjunction with Clause 2(m), it would be clear that only sons and daughters who were dependent on the deceased on the date of his death are required to file "No Objection" and not all family members."

After the application filed by the writ petitioner was directed to be considered in the light of the observation and guideline made in **Gurupada Das** (supra) the Sub-Divisional Controller decided the said representation and rejected the same on the following grounds:-

- (i) The writ petitioner stated that she does not know about the whereabouts of his brother Biman Majumdar but the said Biman Majumdar filed an objection against the writ petitioner's prayer for grant of licence of fair price shop

on compassionate ground. It is held by the Sub-Divisional Controller that the writ petitioner made wrong statement when she stated that her brother was unheard for about four years.

- (ii) The writ petitioner filed a 'no objection certificate' of one of the married daughters of the original licence holder namely Ratna Pramanick but during hearing Ratna Pramanick stated that she did not file any 'no objection certificate' in favour of the petitioners and her signature was forged. Thus, the Sub-Divisional Controller held that the writ petitioner filed false statement and produced forged documents before the said authority to obtain licence on compassionate ground.
- (iii) The writ petitioner stated that she has no income but during enquiry it is found that she is an income tax assessee and has regular income. She also files income tax return every year. Thus, she is not dependent upon the original licence holder.

If the reasoned order made by the Sub-Divisional Controller and the guidelines made by the Division Bench in **Gurupada Das** (supra) side by side, this Court is of the considered view that the Sub-Divisional Controller exceeded his jurisdiction in coming to such

finding. Such excess of jurisdiction and consequent denial of the petitioner's right to have the licence is, of course, arbitrary, mala fide and unjust offending her legal right to get the licence on compassionate ground.

Let me assign the reason.

It was not within the scope of the Sub-Divisional Controller to consider and to come to a decision that the petitioner is making a false statement regarding his brother. From the recorded statement made by said Biman Majumdar, brother of the writ petitioner it is ascertained that from before the death of his father he used to reside in Belgharia and also used to carry on an independent business. If the relation between the siblings are not cordial, it may be a fact that the petitioner may not know the whereabouts about her one of the brothers and sisters. The scope of enquiry of the Sub-Divisional Controller was if Biman Majumdar used to reside on the date of death of the original licence holder and was dependent upon the income of the licence holder it is found from the report of the Sub-Divisional Controller that he did not reside in the house of the writ petitioner and also has independent income of her own. Two other daughters of the original licence holder are married. Both of them stated that they are not dependent upon the income derived from the said fair price shop. They are dependent upon their

respective husband. Similarly, it is found from the record that the name of the original licence holder, since deceased has not been struck off from the list of the licensee, though the cards of the beneficiaries are tagged with the nearest licence holder. Therefore, the writ petitioner being unmarried dependent daughter of the original licence holder has been getting commission amounting to Rs.5,000/- and as she is having a permanent account number, she files income tax but her income is not taxable. Since 2019 she has been filing such income tax returns with the Government.

The commission which the petitioner is entitled to get after the death of her father cannot be taken into account as income because of the fact that the said commission will be automatically stopped as soon as a vacancy will be declared in respect of the said fair price shop.

Considering such aspect of the matter, this Court is of the opinion that the Sub-Divisional Controller failed to appreciate the ratio and guideline laid down in **Gurupada Das** (supra). Therefore, the order dated 21st February, 2023 passed by the Sub-Divisional Controller is set aside and quashed.

The Sub-Divisional Controller is directed to consider the representation of the petitioner strictly in accordance with the

guidelines laid down in **Gurupada Das** (supra) as well as the observation made by this Court hereinabove.

With the above direction, the instant writ petition is **disposed of** on contest.

There shall, however, be no order as to costs.

(Bibek Chaudhuri, J.)