

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.231/2022

1. The State of Tripura, (To be represented by) the Secretary, Food, Civil Supplies and Consumer Affairs Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, Pin- 799010.
2. The Additional Secretary, Khadya-O-Bhokta Bhawan, P.N. Complex, Gurkhabasti, Agartala, West Tripura, Pin- 799006.
3. The Director, Khadya-O-Bhokta Bhawan, P.N. Complex, Gurkhabasti, Agartala, West Tripura, Pin- 799006.
4. The Sub- Divisional Magistrate, Dharmanagar, North Tripura, O/o the Sub- Divisional Magistrate, Dharmanagar, North Tripura, Pin- 799250.
.....Appellant(s).

V E R S U S

Sandip Das, S/o- Lt. Pradip Kumar Das, R/o Vill- Baruakandi, P.O - Baruakandi, PS- Dharmanagar, North Tripura, Pin- 799251.
.....Respondent(s).

For Appellant(s)	: Mr. Dipankar Sarma, Addl. G.A.
For Respondent(s)	: Mr. P. Roy Barman, Sr. Advocate, Mr. Samarjit Bhattacharjee, Advocate, Mr. Kawsik Nath, Advocate, Mr. D. Paul, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and judgment: **24th April, 2023.**

JUDGMENT & ORDER(ORAL)

Heard learned counsel for the parties.

2. By the impugned judgment dated 30.11.2022, the learned Writ Court has allowed the prayer of the writ petitioner and in effect quashed the

office memorandum dated 22.08.2022 issued by the Sub-Divisional Magistrate, Dharmanagar, North Tripura by which the Chief Inspector (Food) was asked to conduct handover and takeover in between the nominee of Ex-dealers of Baruakandi F.P. Shop and dealers Sakaibari F.P. Shop for handover of sale Register/Stock Book, all related paper and unsold foodgrains/K.Oil/Sugar/Salt etc., if any of the said F.P. Shop to the dealer of Sakaibari F.P. Shop immediately as per procedure for the interest of cardholders attached with the said F.P. Shop.

3. The petitioner had also prayed for a direction upon the respondents to appoint him as dealer of the Baruakandi F.P. Shop as a legal heir of late Dulu Biswas (Das), Ex-dealer of the said Fair Price Shop. Petitioner had relied upon an office memorandum dated 20.04.2005 issued by the Director, Food, Civil Supplies and Consumer Affairs, Tripura which, *inter alia*, permitted legal heirs of a Fair Price Shop licensee to be given preference for allotment of a Fair Price Shop subject to suitability. Learned Writ Court took note of the recommendation letter of the Additional Secretary and Director, FCS & CA, Tripura dated 06.08.2022 (Annexure-4) in favour of the petitioner observing in clear terms that petitioner has a capability to continue the dealership business which was held by his deceased mother. The Sub-Divisional Magistrate, Dharmanagar, North

Tripura District was requested to take necessary action by observing all codal formalities laid down in the departmental guidelines. This claim was rejected, *inter alia*, on the ground that the petitioner was studying in graduation course at the relevant point of time as per the inquiry conducted by the Sub-Divisional Magistrate and, therefore, his suitability to run the Fair Price Shop was in question.

4. Learned Writ Court, however, came to a finding that the order of the learned Sub-Divisional Magistrate, Dharmanagar dated 22.08.2022 was not clear whether the memorandum dated 20.04.2005 had been considered or not and without considering the other aspects of suitability of the petitioner, a cryptic order was passed by the Sub-Divisional Magistrate, Dharmanagar. Therefore, the prayer of the writ petitioner was allowed and the writ petition was disposed of with a cost of Rs.10,000/-.

The appellant-State being aggrieved thereby is before us in appeal.

5. Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the appellant, submits that the suitability of the petitioner was in question in view of the inquiry conducted by the Sub-Divisional Magistrate, Dharmanagar since he was pursuing a graduation course at the relevant point of time and the Pradhan of Baruakandi Gram Panchayat and

Chairperson of Kalacharra Panchayat Samity and other members had also revealed the same information as per their meeting dated 28.07.2022. It is submitted that, therefore, petitioner was not considered proper for allotment of the Fair Price Shop and an instruction was issued upon the Chief Inspector (Food) to handover and takeover the relevant registers and unsold food articles, K. Oil etc. to the dealer of the Sakaibari F.P. Shop immediately. Learned Writ Court has, therefore, committed an error which deserves to be corrected in appeal.

6. Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the writ petitioner, submits that the appellant-State has not been able to dispute that the legal heir of an Ex-dealer of PDS shop has a right of preference in allotment of the Fair Price Shop on death of the erstwhile dealer as per memorandum dated 20.04.2005. He submits that the impugned order dated 22.08.2022 does not at all discuss the issue of suitability of the petitioner which was apparently a ground to reject his application. It only directed the Chief Inspector (Food) to conduct handover and takeover of the relevant registers/papers and unsold foodgrains etc. of the Fair Price Shop of the Ex-dealer/mother of the writ petitioner to the other dealer of Sakaibari F.P. Shop. He submitted that the writ petitioner has already completed his graduation course and there cannot

be any doubt about his suitability to run the Fair Price Shop. The learned Writ Court had, therefore, rightly set aside the order of the Sub-Divisional Magistrate, Dharmanagar dated 22.08.2022 and accepted the prayer of the petitioner for reconsideration of his application.

7. On consideration of rival submissions of the parties and the limited gamut of facts and the relevant office memorandum placed from record, it appears that the legal heir of an Ex-dealer of Fair Price Shop has a preference in matters of re-allotment of the Fair Price Shop. Learned counsel for the appellant-State has not been able to point out that the office memorandum dated 20.04.2005 has been superseded to that extent. The affidavit which has been filed by the State pursuant to the order dated 17.02.2023 deals with the procedure for allotment of new Fair Price Shop and does not throw light on the claim of the legal heir of an erstwhile dealer of a Fair Price Shop. Learned Writ Court, therefore, appears to have rightly concluded that the impugned order dated 22.08.2022 passed by the Sub-Divisional Magistrate did not take into account all aspects of the matter including the memorandum dated 20.04.2005.

8. We do not find any error in the impugned order to that extent. The competent authority/Sub-Divisional Magistrate, Dharmanagar is obliged

to take a fresh decision in the matter taking into account the observations made by the Writ Court and by this Court as well within a reasonable time.

9. The writ appeal is accordingly disposed of without interfering in the impugned order. However, the costs of Rs.10,000/- imposed upon the State is dispensed with.

10. Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

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