

23.09.2021
SL No. 4
Court No.24
(P.M.)

WPA 3823 of 2021

**Humayun Kabir
Vs.
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Malay Kr. Bhattacharyya
... for the petitioner

Mr. Susovan Sengupta,
Mr. Manas Kr. Sadhu
... for the State

Exception filed by the petitioner to the report filed by the State is taken on record.

The petitioner claims to be one of the heirs and legal representatives of a deceased M.R. Dealer who expired on 11th April, 2008.

According to the petitioner, an application was made on 7th May, 2008 addressed to the Sub-Divisional Controller, Food and Supplies, Malda praying for providing engagement on compassionate ground. The said application is alleged to be annexed at page 16 of the writ petition. A note in the body of the said application allegedly under the signature of Inspector (F&S), Ratua-II, Malda mentions that “the petition merits favourable consideration on compassionate ground. In my considered opinion Humayun Kabir, has all the requisites to have the M.R. dealership and Kerosene license, he has no other means to maintain his livelihood except this”.

The petitioner along with one of the other legal heirs filed a writ petition before this Court earlier. The said writ petition stood dismissed for default by an order dated 2nd February, 2015 passed in W.P. NO. 24802 (W) of 2014 (Mohammad Akramul Hoque & Anr. – Vs – The State of West Bengal & Ors.).

The petitioner submits that the said writ petition was filed praying for a direction upon the respondent authorities to permit the petitioners therein to run the business as partnership firm.

Presently, the impugned orders under challenge are dated 12th March, 2018 and 20th July, 2018 passed by the Sub-Divisional Controller, Food & Supplies, Chanchal wherein the prayer of the petitioner for engagement as FPS dealer and S.K. Oil dealer has been rejected.

The ground for rejection is that the applicant submitted application after about eight years from the date of death of the ex-dealer.

According to the petitioner, there is no time limit mentioned in 2003 Control Order within which an application has to be filed for obtaining the license on compassionate ground.

The petitioner refers to the report filed by the State respondents wherein it has been mentioned that on 1st December, 2008 Humayun Kabir along with his elder brother Mohammad Akramul Hoque applied for getting M.R. license on compassionate ground on partnership basis.

During the hearing one of the partners Mohammed Akramul Hoque was absent and accordingly the file stood closed.

On 25th October, 2010 again both of them applied to get M.R. license on compassionate ground. A hearing was conducted but the application could not be processed further as there was no consensus between the proposed partners.

On 22nd March, 2012 again the petitioner and his brother applied for running the business jointly as partnership. The application could not be processed further once again, as the other partner did not appear at the time of hearing.

The writ petition filed by the petitioner earlier was also not proceeded diligently and the same stood dismissed for default.

On 27th January, 2017 the petitioner applied individually as sole proprietor for obtaining the M.R. Dealership on compassionate ground. The said application stood rejected which is under challenge in the instant writ application.

According to the provisions of law on the death of a licensee the vacancy is not initially notified. The heirs of the licensee have an opportunity to apply for obtaining license(s) on compassionate ground. If there are more than one heirs, then 'no objection certificate' from the other heirs

in favour of the proposed candidate is required to be submitted.

Admittedly, in the instant case, there are more than one legal heirs of the deceased dealer. The legal heirs do not have a consensus between themselves. Time and again applications have been made for granting the license to run the business on partnership basis but the same has also not materialized.

It appears that the petitioner failed to comply the provisions of law in applying with no objection certificate from the other legal heirs.

The claim of the petitioner that an application was made on 7th May, 2008 has been categorically denied by the respondents in the report filed by them. The specific stand taken by the respondent is that no application dated 7th May, 2008 was received by the office of the respondent Nos. 3 and 4. During the course of hearing on 24th May, 2018 admittedly the petitioner failed to produce any document in support of his stand that the application was made in May, 2008.

The petitioner strenuously submits in Court that the other legal heirs of the deceased dealer do not have any objection if the license is granted in favour of the petitioner. Surprisingly, the petitioner has not impleaded the other legal heirs as party respondent in the instant writ petition.

The matter was considered by the respondent authorities on several occasions for the purpose of taking a

call as to whether the license may be granted to run the business on partnership basis. On each and every occasion the effort taken by the respondents failed as all the heirs could not come up with an amicable settlement between them. The petitioner time and again cannot change his stand and once apply for license individually and thereafter pray for running the business on partnership basis. Once application is made subsequently for running the business as partnership then it has to be taken that petitioner waived his right for running the business individually.

In view of the above, no relief can be granted to the petitioner in the instant case. The vacancy could not be declared on and from 2008.

The concerned respondent is directed to take steps for declaring vacancy in respect of the area in question at the earliest.

In the event, the petitioner applies pursuant to the declaration of vacancy and emerges successful, then necessary consequential steps shall be taken for grant of license in his favour.

The writ petition is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)