

05.08.2021  
SL No. 1  
Court No. 24  
(P.M.)

**WPA 6286 of 2021**

**Shib Shankar Das  
Vs  
The State of West Bengal & Ors.  
(Via Video Conference)**

Mr. S. Mandal,  
Mr. S.C. Dhara,  
Mr. A. Dam  
... for the petitioner

Mr. Tarapada Das  
... for the respondent No. 9

Mr. Ram Anand Agarwal,  
Ms. Nibedita Pal,  
Mr. Ramesh Dhara,  
Mr. A. G. Mukherjee  
... for the respondent No. 6

Mr. Susovan Sengupta,  
Ms. Supriya Dubey  
... for the State.

The petitioner's father was a licensee of a fair price shop. He died intestate on 18<sup>th</sup> March, 2017. The petitioner herein applied for license on compassionate ground. The prayer of the petitioner stood rejected by the Sub Divisional Controller by an order dated 21<sup>st</sup> September, 2020. The ground for rejection was that the legal heirs of the deceased licensee failed to come into a settlement for choosing suitable applicant within them, and for which, in spite of repeated intimation and correspondences the applicant failed to produce the requisite documents.

The petitioner being aggrieved by the said order preferred an appeal before the District Controller, Food and Supply, Bankura. The appellate authority by order dated 17<sup>th</sup> December, 2020 rejected the prayer of the petitioner. The petitioner is aggrieved by the said order of rejection.

The private respondent herein is the brother of the petitioner. He also intends to obtain the license. The application made by him stood rejected on the self same ground.

The learned advocate representing the private respondent submits that during the lifetime of the licensee he opted for transferring the license in favour of the private respondent but unfortunately prior to final order being passed the licensee expired.

The private respondent relies upon the provision for engagement on compassionate ground as notified in the Kolkata Gazette (extraordinary) dated August 8, 2013.

Reference has been made to the provision where no objection from other family members in the form of an affidavit is not required. It has been submitted that if the ex-licensee, because of his/her being incapacitated/infirm has opted for the applicant then the no objection certificate is not required.

According to the private respondent, the licensee during his lifetime opted to transfer the license in favour of the private respondent, accordingly the license ought to be transferred and issued in his favour.

The provision for engagement on compassionate ground as mentioned in the said Kolkata Gazette makes it clear that in case of vacancy arising out of death of any existing dealer such vacancy shall not initially be notified. The prayer of any of the family members of the deceased heir having no regular means of subsistence will be considered with preference on compassionate ground, provided such prayer along with the formal application in form G along with the Annexure I and the requisite fee is submitted within sixty days from the occurrence of such vacancy.

It appears from the above, that on the death of the licensee the heir of the deceased licensee gets preference for the purpose of filling up the vacancy. No objection from other family members which is required has not been filed in the instant case. The brothers i.e, the sons of the deceased have failed to come to a settlement till date.

The submission of the private respondent is that the no objection will not be required in this case as the applicant opted for him during his lifetime. The Court cannot accept such contention because though the application of the licensee was taken up for consideration and enquiry was made but thereafter no favourable decision was taken during the lifetime of the licensee. The prayer of the licensee ceased to exist on his death. The same implies that after the death of the licensee the process has to be started all over again and no objection from the other family

members will be required in terms of the aforesaid provision mentioned in the notification.

However, the learned advocate appearing for the private respondent also submits that the petitioner has a regular source of income and he is employed, whereas the private respondent is an unemployed person and the fair price shop was the only source of his income.

It will be open for the authorities to take into consideration the submission of the private respondent at the time of consideration of the application for license.

The instant writ petition is disposed of by directing the Sub-Divisional Controller, Food and Supply, Khatra to grant ninety days' time to the parties to submit the requisite documents. If the necessary documents are received within the aforesaid time then the respondent authority shall consider the same in accordance with law.

In the event, the parties fail to submit the requisite documents within the aforesaid period of ninety days, the respondent authority shall be at liberty to proceed to declare the vacancy and fill up the same in accordance with law.

The writ petition stands disposed of.

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

**(Amrita Sinha, J.)**