

24.11.2021
SL No. 49
Court No. 24
(P.M.)

WPA 15539 of 2021

**Dilip Kumar Saha
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Arabinda Chatterjee,
Mr. Apurba Ghanti,
Ms. Priti Jain
... for the petitioner

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

The father of the petitioner was M.R Dealer in Raghunathganj, Murshidabad. He died on 1st July, 2014 leaving behind three sons and a daughter. One of his sons, that is the petitioner herein, made an application for engagement on compassionate ground on 18th September, 2014. The application of the petitioner was considered favourably and an enquiry cum assessment report for his appointment as new F.P.S. dealer on compassionate ground was prepared by the enquiry officer.

The petitioner produced a certificate of legal heirs dated 6th May, 2016 issued by the Prodhan of the Gram Panchayat for obtaining the license.

The other legal heirs of the deceased M.R. Dealer thereafter filed separate applications for engagement on compassionate ground. On receipt of the application made from one of the other legal heirs of the deceased M.R. Dealer, a spot enquiry was conducted by the Sub-Divisional

Controller, Food and Supplies, Jangipur, Murshidabad and by communicating Memo No. 809/Scj/15 dated 25th March, 2015 the Sub-Divisional Controller intimated the District Controller that a spot enquiry was conducted on receipt of the application of Asoke Saha, one of the sons of late Janardan Saha, the deceased M.R. Dealer. At the time of enquiry it was revealed that Dilip Saha submitted an application containing the no-objection of the said Asoke Saha wherein Uttam Kumar Saha, one of the other legal heirs is a signatory. Uttam Kumar Saha was present at the spot and he has denied that he put his signature or his left thumb impression in favour of Asoke Saha, the other son of the deceased M.R. Dealer.

The recommendation of the petitioner for grant of license on compassionate ground was thereafter revoked due to the allegation of suppression of facts by the applicant by communicating Memo dated 28th March, 2019 issued by the Sub-Divisional Controller, Food and Supplies, Jangipur. According to the petitioner no reason was mentioned in the letter of revocation of grant of F.P.S. license on compassionate ground.

The petitioner challenged the order of revocation by filing an application under Article 226 of the Constitution of India before this Court. The said writ petition being W.P. No. 19375 (W) of 2019 stood disposed of by an order dated 16th January, 2020 wherein the Court was pleased to set aside the impugned revocation with a direction upon the Principal

Secretary, Food and Supplies, Govt. of West Bengal to take a decision in the matter after granting an opportunity of hearing to the petitioner. The decision taken by the Secretary, Department of Food and Supplies in compliance of the order passed by this Court is impugned herein.

It is the specific case of the petitioner that he made application for engagement on compassionate ground relying upon the legal heir certificate which was issued by the Prodhan of the Gram Panchayet. The names of the legal heirs of the deceased dealer were clearly mentioned therein. The authority conducted an enquiry and on being satisfied recommended his name for engagement. The petitioner has denied that he relied upon any fake document for the purpose of obtaining recommendation in his favour.

The learned advocate representing the State respondent submits that the petitioner did not file the application along with the no-objection certificate of the other heirs of the deceased M.R. Dealer which is a mandatory requirement in law.

The no-objection certificates, if any, filed beyond the prescribed time period cannot be taken into consideration for the purpose of providing engagement on compassionate ground.

I have heard the rival submissions made on behalf of both the parties.

The licensed M.R. dealer expired on 1st July, 2014. According to the provisions of law the heir of the deceased

M.R. dealer is required to make an application for providing compassionate engagement with all supporting documents within a period of sixty days. The application was made by the petitioner on 18th September, 2014 that is beyond the time limit prescribed in law. The petitioner failed to submit the necessary no-objection certificate which is required as the deceased M.R. dealer expired leaving behind more than one heir and legal representative.

The West Bengal Public Distribution System (Maintenance and Control) Order, 2013 prescribes that in case of vacancy arising out of death of any existing dealer, such vacancy shall initially not be notified. Prayer of any of the family members of the deceased dealer, having no regular means of subsistence, will be considered with preference on compassionate ground provided such prayer along with the formal application in Form 'C' along with Annexure I with requisite fee is submitted within sixty days from the occurrence of such vacancy.

While applying, the applicant shall have to furnish "no-objection" from other family members in the form of an affidavit executed before the 1st Class Magistrate. The Sub-Divisional Controller shall enquire to verify the eligibility of the applicant and submit the report.

In the instant case, even though the application was made beyond the prescribed period without the supporting documents, the Sub-Divisional Controller prepared an

enquiry cum assessment report in favour of the petitioner. The same is impermissible in law.

The petitioner submits that though the no-objection certificate was submitted at a delayed point of time but as his application remained pending from 2014 till revocation of his recommendation in the year 2019, the authority ought to have taken into consideration the said no-objection certificate issued in his favour by the other heirs.

The aforesaid contention of the petitioner cannot be accepted by the Court. When time limit has been prescribed in law, the authority is bound to act in accordance with the same. The authority cannot and ought not to rely upon document(s) which is/are issued long after the application for engagement on compassionate ground is filed.

Law mandates that the no-objection certificate in the form of affidavit is to be executed before the 1st Class Magistrate. The petitioner has annexed affidavit affirmed before the learned Executive Magistrate in March, 2017, that is nearly three years after the death of the M.R. Dealer. The application of the petitioner was not in proper form on the date it was filed. Accordingly, revocation of the recommendation for engagement of the petitioner on compassionate ground does not appear to be erroneous.

Moreover, had the other heirs executed no-objection certificate in favour of the petitioner, then the question of filing separate independent application by other heirs

seeking engagement on compassionate ground could not have arisen at all.

The learned advocate for the petitioner submits that till date fresh vacancy has not been declared. He further asserts that the petitioner submitted the no-objection certificate in the form of affidavit before the First Class Magistrate at the time of making the application in September, 2014.

In the present facts, the application for compassionate engagement ought to have been submitted by the applicant within 1st September, 2014. It is noticed that though the petitioner filed the necessary application fee on 14th August, 2014, but the application was filed belatedly on 18th September, 2014.

In view of the above the Sub-Divisional Controller, Food and Supplies is directed to once again verify the documents submitted by the petitioner at the time of making the application.

In the event it transpires that no-objection certificate in the form of affidavit before the 1st Class Magistrate was filed by the petitioner at the time of making application, then steps shall be taken by the said authority for considering of the prayer of the petitioner for being engaged on compassionate ground by condoning the marginal delay in filing the application because the application fee was deposited within the prescribed time. Steps shall be taken by the Sub-Divisional Controller to act in terms of this order

at the earliest, but positively within a period of eight weeks from the date of communication of this order. As the other heirs are not impleaded as parties in the instant writ petition, an opportunity of hearing shall be given to all the necessary parties prior to taking a final call in the matter. The reasoned order passed by the Sub Divisional Controller shall be communicated to all concerned immediately thereafter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)