

WPA 16768 of 2021

**Kamalesh Saha
Vs
The State of West Bengal & Ors.**

(Via Video Conference)

Mr. Arijit Bakshi
.....for the Petitioner

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

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Subhankar Das
Mr. Neil Basu

.....for the Private Respondent

The petitioner and the private respondent are siblings. Their father Jatish Chandra Saha was an M.R. dealer. After his death license was issued in favour of the widow, i.e. the mother of the parties which was later on transferred in favour of the private respondent.

The petitioner being aggrieved by the action on the part of the respondent authorities in transferring the license in favour of the private respondent filed a writ petition before this Court being WP 15083(W) of 1999 which stood disposed of by an order dated 22nd November, 1999, wherein the Court was of the opinion that it was not necessary for the transferee to consult all heirs to give a fresh appointment. Once a fresh

appointment is given, the appointee is vested with all rights and obligations. If such appointee has transferred there was no question of obtaining no objection in respect of such transfer. The Court, however, gave liberty to the petitioner to approach the Civil Court, if advised, to challenge the transfer by the mother in favour of the other brother.

The petitioner thereafter filed a title suit being O.C. 96 of 2001. The learned Civil Judge (Junior Division), Balurghat, Dakshin Dinajpur by order dated 9th December, 2004 dismissed the suit on contest.

Even after the dismissal of the suit, the petitioner went on filing one after other representations before the respondent authorities alleging fraud and forgery on the part of the private respondent to get the license transferred in his name from his mother.

The petitioner relies upon a document bearing Memo no. 72 of 2006 dated 12th June, 2006 issued by the District Controller (Food and Supplies), Dakshin Dinajpur wherein the representation of the petitioner was considered favorably and the District Controller recommended that in the interest of the Public Distribution System, the M.R. Dealership of the private respondent be cancelled. Proper action for forgery against the private respondent was also recommended.

The petitioner has also relied upon an affidavit allegedly affirmed before the Notary Public, Dakshin

Dinajpur at Balurghat on 9th August, 2007 wherein the mother of the parties declared that the private respondent was torturing her and it was on account of the illegal act of the private respondent that the license stood transferred in his favour.

The petitioner relies upon series of communications made by him before the authorities praying for cancellation of the license issued in favour of the private respondent and for issuance of the same in his favour.

The Sub-Divisional Controller considered the matter and by a communicating memo dated 25th November, 2019 requested the parties to appear along with supporting documents on 3rd December, 2019 to conduct a Verification/Cross Verification of the incident.

In the meantime, the mother of the parties expired on 29th November, 2019. The District Controller (Food & Supplies), Dakshin Dinajpur by a communicating memo dated 23rd December, 2019 intimated the Private Secretary to the Hon'ble MIC, F&S that the petitioner raised various complaints against his brother, number of times at different places. The case had been duly inquired into by the Sub-Divisional Controller. It revealed from the inquiry that there is a family dispute between the brothers and the petitioner expressed his desire to join the family business as partner of the Public Distribution System. As there is no provision in the Control Order for changing the character of the Public Distribution System

from proprietorship to partnership, accordingly the prayer of the petitioner for cancellation of the license or for change of the licensee based on mere complaint was not accepted.

According to the petitioner the complaint made by him was disposed of without taking into consideration the recommendation which was made in the year 2006.

It appears that even after the prayer of the petitioner stood rejected by the District Controller in December 2019 he again made representations to several other authorities and by a communicating memo dated 10th March, 2021, the Deputy Director, (License), Directorate of District Distribution Procurement & Supply requested the District Controller (Food & Supplies) to look into the matter for examination and further necessary action in the matter.

The petitioner is aggrieved as no step has been taken by the District Controller pursuant to the communication dated 10th March, 2021.

Learned advocate representing the private respondent submits that after the death of the original licensee i.e; his father, license was issued in favour of his mother who later on transferred the same in his favour in the year 1999. The petitioner challenged the same in a writ petition which stood dismissed in 1999 and the suit filed by the petitioner was also dismissed in 2004. After the petitioner exhausted all his remedies and failed to

obtain any order in his favour, he should not be permitted to re-agitate the issue all over again.

The learned advocate representing the State respondents submits that as the Court came to the opinion that the mother had the right to transfer the license in favour of any of her sons, accordingly there is no scope to reopen the matter at this stage. The petitioner lost both in the Writ Court and the Civil Court and as such there is no reason to review the issue again.

I have heard the rival contentions of the parties.

Admittedly, the license in question was issued in favour of the private respondent in the year 1999. The petitioner challenged the same in a writ petition which stood dismissed. The suit filed by the petitioner was also dismissed in the year 2004. It has been submitted by the learned advocate for the petitioner that the order passed by the learned Civil Court was challenged by the petitioner by way of an appeal which was later dismissed for non prosecution. The orders passed by the courts attained finality.

The respondent authority at this distant point of time will not be in a position to re-inquire or revisit the issue all over again, more so, because the most vital witness, i.e., the transferee of the license is no longer alive. The allegation of forgery, coercion, misrepresentation or fraud will be difficult to establish in her absence.

The petitioner continued making one after another representation to various authorities. The District Controller has mentioned that the allegation was inquired into by the Sub-Divisional Controller and the report revealed that a family dispute existed in between the parties.

In my opinion, it will not be proper to pass any direction upon the respondent authority to cause any further enquiry in the matter. The issue has been put to rest by orders of court. It is neither the duty nor obligation of the respondent authorities to settle or enter into private disputes.

The relief prayed for by the petitioner cannot be granted.

WPA 16768 of 2021 is dismissed.

Urgent certified photocopy of this order, if applied for, will be made available to the parties subject to compliance of all requisite formalities.

(Amrita Sinha, J)