

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 3410 of 2022

**Susanta Das & Ors.
-versus
State of West Bengal & Ors.**

**Mr. Asimes Goswami,
Ms. Paulomi Banerjee.
...For the Petitioners.**

**Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag.
...For the State.**

None appears on behalf of the private respondent.

The petitioners are the heirs and legal representatives of one Charubala Das a FPS dealer since deceased. The FPS dealership was originally in the name of one Brajendra Chandra Das. On account of physical incapacitation/incapability the said Brojendra Chandra Das opted to transfer the license in favour of his wife Smt. Charubala Das.

Smt. Charubala Das applied before the respondent authority mentioning about the ill health of her husband and prayed for issuance of license in her favour. The said letter dated 10th January, 1978 is annexed at page 13 of the writ petition.

The said letter bears the left thumb impression of Charubala Das.

In response to the application made by Smt. Charubala Das the license was transferred in her favour.

In the course of running the business Smt. Charubala Das became physically unfit. She allegedly obtained a certificate from the Medical Officer of Uttarpara State General Hospital, Hooghly on 19th June, 2015 wherein it has been mentioned that Smt. Charubala Das is physically checked and found suffering from ischemic heart disease with hypotension and cerebral atrophy with complete blindness in extreme old age. The age of Smt. Charubala Das as mentioned in the medical certificate is 85 years.

The certificate further mentions that she is unfit physically now for any normal physical and mental work.

An affidavit was allegedly affirmed by the said Smt. Charubala Das before the Learned Judicial Magistrate (1st Class), Howrah on 12th June, 2015 wherein the said Smt. Charubala Das declared that due to her old age and serious illness she is unable to look after the job in respect of ration shop. She declared that her younger son, Sri Jayanta Das the private respondent herein, who looks after her and bears all her expenses including medical charges is being deputed by her as the owner of the said ration shop business.

It has been mentioned that the said consent to opt for Jayanta Das was made out of free will and she did not have any objection if the fair price shop license is transferred and issued in favour of Jayanta Das.

The said affidavit bears the signature of Smt. Charubala Das in as many as three places.

Smt. Charubala Das expired on 24th December, 2021.

On 23rd May, 2018, Susanta Das, the petitioner No.1 herein, one of the sons of Smt. Charubala Das applied before the Rationing Officer praying for recording the license of the said shop jointly in favour of the sons and daughters of Smt. Charubala Das. No step was taken by the respondent authority in response to the said application.

After her death, the petitioners applied before the respondent authority for being engaged on compassionate ground. The petitioners came to learn that the authority was taking steps to issue license in favour of the private respondent. Three of the heirs of the deceased Smt. Charubala Das recorded their objection and protested against the action on the part of the respondent authority in issuance of license in favour of the private respondent.

A prayer was made by them for recalling the license which was issued in favour of the private respondent.

As no positive step was taken by the respondent authority to consider the representation filed by the petitioners herein, the present writ petition has been filed praying for necessary relief.

A report was called for from the State respondents.

In the said report, the affidavit dated 12.06.2015 allegedly executed by the said Smt. Charubala Das and physically unfit certificate dated 19.06.2015 has been annexed. A further certificate of a doctor namely Dr. B. Halder dated 23.05.2008 has also been annexed

wherein, it has been mentioned that Smt. Charubala Das has been suffering from ischemic heart disease with hypotension and she should avoid strenuous activity now until further advice.

License has been issued in favour of the private respondent on 10.05.2021, i.e. prior to the death of Smt. Charubala Das.

Learned advocate representing the State respondents submits that the application was made by the recorded licensee opting in favour of the private respondent. The said application was taken into consideration and duly enquired by the Sub-Divisional Controller and only after being satisfied that the same has been made in accordance with the provision of the Control Order, 2013, license was issued in favour of the private respondent during the lifetime of the recorded licensee. There is no requirement for obtaining the No Objection Certificate from the other heirs of the ex-licensee as she voluntarily opted in favour of the private respondent.

It has been submitted that the Sub-Divisional Controller relied upon the certificate issued by the medical practitioner and the declaration submitted by the ex-licensee and proceeded to issue license in favour of the private respondent.

According to the petitioners, the said license was obtained by practicing fraud. The petitioners submit that their mother was an illiterate lady and the same will appear from the left thumb impression which was given by her at the time of making application for issuance of license on compassionate ground in her favour in the year 1978. The subsequent documents of the deceased licensee bear her signature. It has been submitted that their mother was not in proper mental condition to give any consent for transfer of license in favour of the private respondent.

From the documents annexed to the writ petition and the report filed on behalf of the State respondents, it appears that the vacancy which occurred on account of incapacitation of the recorded licensee was filled up relying on the medical prescription and the declaration filed by the ex-licensee.

The certificate issued by the doctor on 19.06.2015 clearly mentions that the patient was suffering from complete blindness and she was unfit physically for any normal physical and mental work. Consent given by a person not mentally fit cannot be treated to be a valid consent in the eye of law.

The declaration which has been given by Smt. Charubala Das mentioning that she opted in favour of the private respondent out of her free will and consent cannot be treated as valid one as she was not mentally fit to give her consent at the material point of time. On the said date she was not in a position to do any mental work.

The Sub-Divisional Controller mechanically considered the affidavit and the doctor's certificate and proceeded to issue the license in favour of the private respondent on the ground of medical incapacitation of the ex-licensee.

The other point which the Court takes notice of is that Smt. Charubala Das appended her left thumb impression in the letter written by her way back 1978, but surprisingly, she put her signature in all the documents in the year 2015 even though the doctor certifies that she was suffering from complete blindness. An earlier medical certificate dated 23.05.2008 annexed to the writ petition mentions about the ill health of the licensee. She was advised to avoid strenuous activity until further advice.

It appears from the aforesaid medical documents annexed to the report filed by the State respondents that Smt. Charubala Das was not keeping good health physically and mentally for quite sometime. The private respondent may have taken advantage of the said situation and applied for obtaining the license on medical ground on account of physical incapacitation of his mother.

The Sub-Divisional Controller ought to have arranged for an enquiry to verify the eligibility of the applicant prior to forwarding the case on medical ground and should have satisfied himself upon examination of the medical prescription and the certificates issued by the registered Government medical practitioner that the ex-licensee was not in a position to run the dealership business on account of her health ground.

Though the Sub-Divisional Controller acted in response to the medical certificate and the affidavit by the private respondent, but failed to take notice of the fact that at the material point of time the ex-licensee was completely blind and was not in a position to do normal mental work. As the ex-licensee was not in a position to do normal mental work, accordingly the Sub-Divisional Controller ought not to have relied upon the affidavit which was allegedly affirmed by the said Smt. Charubala Das. A further enquiry ought to have been conducted by the said Sub-Divisional Controller prior to the issuance of license in favour of private respondent.

In view of the above, the Sub-Divisional Controller is directed to revisit the issue of grant of license in favour of the private respondent by verifying the documents relied upon by the private respondent for obtaining the license on compassionate ground. The Sub-Divisional Controller shall afford a reasonable

opportunity of hearing to all the parties and pass a reasoned order in the matter at the earliest, but positively within a period of four months from the date of communication of this order. If after enquiry, the Sub-Divisional Controller is of the opinion that the license which was issued in favour of the private respondent herein was not in accordance with the provision of the Control Order, 2013, necessary steps for recalling the same shall be taken by the said officer.

As of now, the Court is not disturbing the license which has been issued in favour of the private respondent and decision shall be taken in the matter only after giving reasonable opportunity of hearing to all the parties. The reasoned order shall be communicated to all the parties immediately thereafter.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)