

Court No. 24
19.04.2022
(Item No. 295)
(AB)

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

W.P.A. 4252 of 2022

Dilip Saha @ Dilip Kumar Saha
VS
The State of West Bengal & Ors.

Ms. Nibedita Pal
..... for the petitioner
Mr. Susovan Sengupta
Mr. Manas Kumar Sadhu
..... for the State

The order dated 15th February, 2022 passed by the Sub-Divisional Controller, Food and Supplies, Jangipur, Murshidabad is under challenge in the present writ application. The said order was passed allegedly in compliance of the order dated 24th November, 2021 passed by this Court in WPA 15539 of 2021.

The petitioner prays for engagement on compassionate ground.

An opportunity of hearing was given to the petitioner who was personally present on the date of hearing. The Sub-Divisional Controller has passed a detailed reasoned order which is impugned herein.

It mentions that the petitioner i.e. Dilip Kumar Saha tried to obtain the license relying upon an heirship certificate issued by the Pradhan of the Gram Panchayet which was later proved to be a false one.

The petitioner submits that as the ex-dealer already opted in his favour for the grant of license, accordingly no

objection from the other legal heirs was not required to be filed in terms of the Control Order, 2013.

The affidavit of Janardan Saha in the form of Power cum Authorization Letter which the petitioner relies upon in support of the submission that option was given by the ex-licensee in favour of the petitioner herein mentions that “after the expiry of myself the eldest son of myself will be empowered and entitled to have the same as sole and absolute owner of the said business with the authorization letter/power of myself.”

The Power cum Authorization Letter was allegedly executed on 10th July, 2013 by the ex-licensee and notarized before the Notary Public, Murshidabad, Jangipur on 5th August, 2013. The aforesaid Janardan Saha expired on 1st July, 2014.

The Sub-Divisional Controller mentions that the other legal heirs having known of the legal heirship certificate relied upon by the petitioner raised objection and on the basis of the said objection the competent authority has taken cognizance and the authority was of the opinion that the petitioner tried to obtain the license by suppressing the material fact and upon breach of trust of authority and other legal heirs of the deceased licensee.

The impugned order records that the petitioner confessed his culpability and prayed for excuse. The impugned order further records that the other legal heirs expressed their belated consent but as the consent was given beyond time as prescribed in the Control Order,

2013, the authority thought it fit not to rely upon the said no objection certificate.

According to the provisions of law an application for being engaged on compassionate ground is required to be made within a prescribed time limit and in a prescribed format.

Paragraph 26 (vi) of the Control Order, 2013 mentions that in case of vacancy arising out of death or incapacitation on medical ground of any existing distributor, such vacancy shall not initially be notified. In the present case the vacancy arose after the death of the licensee.

The Control Order mentions that prayer of any of the family members of the deceased distributor, 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 annexures I and II and the 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 First Class Magistrate except in the following cases. (a) if the applicant be the spouse of the deceased licensee, (b) if the ex-licensee, because of his/her being incapacitated/infirmness, has opted for the applicant.

In the present case the vacancy arose not on account of incapacitation but on the death of the licensee.

In case of death the applicant is required to file the “No Objection Certificate” from the other family members in the form of an affidavit executed before the 1st Class Magistrate. The petitioner has not been able to show that the affidavit duly executed before a 1st Class Magistrate was submitted within the time limit as prescribed in the Control Order.

The submission of the petitioner that as the licensee opted in favour of the petitioner, accordingly, the “No Objection Certificate” will not be required, cannot be accepted by the Court.

Had it been a case of medical incapacitation/infirmness of the licensee, then only the requirement of filing the “No Objection Certificate” could have been dispensed with. The moment the licensee expires, vacancy arises out of death of the licensee and the other legal heirs of the licensee are required to submit their “No Objection Certificate” in the prescribed format within the time as specified in the Control Order.

On a close perusal of the alleged option in favour of the petitioner, that is, the Power cum Authorization Letter, it appears that the same is a document appointing the petitioner as agent and attorney for smooth functioning of the business. The duties which the agent and attorney was supposed to do have been mentioned in the said document. The agent was paid a monthly remuneration for performance of the duties mentioned therein. Merely adding that after expiry the agent will be entitled to run the

business does not imply that option was granted in favour of the petitioner for obtaining the license. The Power cum Authorization Letter ceased to exist immediately on the death of the executor.

In the present case, it appears that the Sub-Divisional Controller was of the opinion that the petitioner relied upon fake documents to obtain the license in his favour.

The Court cannot come to the aid of a person who tries to take advantage of documents which are fake, to obtain a license in his favour.

The Sub-Divisional Controller was of the considered opinion that it was a clear case of commission of offence of false representation and breach of trust.

The petitioner seeks license for grant of Fair Price items. Honesty and integrity of the applicant is of prime importance to deal with fair price items. Any candidate, who does not have the minimum integrity and honesty to make application in the proper format but relies upon false/fake documents to obtain the license, cannot be permitted by the Court to run the FPS business.

In view of the above, no relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

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

(Amrita Sinha, J.)