

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Ananda Kumar Mukherjee**

**MAT 294 of 2018
Arising out of
WP No. 33586(W) of 2014
With
CAN 6725 of 2018**

***Minu Bewa*
Vs.
State of West Bengal & Ors.
With
**MAT 289 of 2018
Arising out of
WP No.25789(W) of 2014****

***Abdur Rouf*
Vs.
*State of West Bengal & Ors.***

For the Appellant: Mr. Debanik Banerjee, Adv.
Mr. Sidharta Basu, Adv.
Ms. Sabnam Sultana, Adv.

For the Respondent No. 9: Mr. Milan Chandra Bhattacharjee, Adv.
Ms. Sulagna Bhattacharya, Adv.

For the State : Mr. Susovan Sengupta, Adv.
Mr. Manas Kumar Sadhu, Adv.

Heard on : 05.05.2022.

Judgment on: 02.08.2020.

Ananda Kumar Mukherjee, J. :-

1. These two intra-court appeals have been directed against the judgment and order dated 02.02.2018, passed by Hon'ble Single Bench of this Court in WP No. 33586(W) of 2014 and WP No. 25789(W) of 2014, whereby the prayer of both the writ petitioners were dismissed.

2. These appeals have a chequered history. In short, the fact is that Md. Billayet Ali, the husband of Minu Bewa and the father of Abdur Rauf, was Fair Price Shop dealer *vide* Licence No. 6/MR/KC1/05 and also a kerosene oil shop having Licence No. 82/K. OIL/MR/KC, at Village – Chhoto Sujapur, P.O. – Chhoto Sujapur, Police Station – Kaliachok, District – Malda. The said Md. Billayet Ali died on 25th March, 2013 leaving behind his wife Minu Bewa, three daughters and two sons, one of whom being Abdur Rauf, the writ petitioner in WP No. 25789(W) of 2019.

3. Minu Bewa filed an application on 27.05.2013 before the Sub-Divisional Controller (Food and Supplies), Malda being Respondent no. 8 for grant of licence of the Fair Price Shop and Kerosene Oil Shop Dealership in her name in place of her deceased husband on compassionate ground.

4. The application, filed by Minu Bewa on 27.05.2013 the appellant under 2003 Control Order, was rejected by respondent no. 8 which was communicated to her by his order dated 27.12.2013, informing that most of the documents filed by her were submitted by putting LTI instead of her signatures and she was requested to re-submit application duly signed along

with requisite documents in Form “C” as per W.B.P.D.C. Control Order, 2013 immediately.

5. The appellant, Minu Bewa made a fresh application before the Sub-Divisional Controller (Food and Supplies), Malda on 3rd February, 2014 for grant of licence of Fair Price Shop M.R. Dealership and Kerosene Oil Dealership in place of her deceased husband on Compassionate ground in terms with letter dated 27.12.2013, but the same was not considered.

6. The appellant Minu Bewa preferred WP No. 13202(W) of 2014 under Article 226 of the Constitution of India, which was disposed of by order dated 10.06.2014 passed by Hon’ble Single Bench of this Court, whereby the Sub-Divisional Controller (Food and Supplies), Malda, respondent no.6 was directed to dispose of the representation of Minu Bewa dated 3rd February, 2014 for transfer of MR Dealership Licence and kerosene oil licence which was standing in the name of late Md. Billayet Ali in accordance with the provisions contained in West Bengal Public Distribution System (Maintenance and Control) Order, 2013 and the West Bengal Kerosene Control Order, 1968. It was further directed that if the petitioner was found entitled to the order as prayed for, the Respondent no.6 herein shall take follow-up action immediately.

7. Appellant Abdur Rauf was not impleaded in the writ petition. He preferred an appeal against the order passed by Hon’ble Single Bench in AST 287 of 2014 with ASTA 221 of 2014 and ASTA 220 of 2014, contending therein that the appellant-petitioner is one of the sons of respondent no. 1/writ

petitioner who is also interested for grant of MR Dealership and kerosene oil licence in his favour on the death of his father on Compassionate ground.

8. The Hon'ble Division Bench of this Court disposed of the applications as well as the appeals and directed the respondent Sub-Divisional Controller (Food and Supplies), Malda to consider the claim of the appellant-petitioner along with respondent no.1/writ petitioner for grant of MR Dealership and Kerosene Oil Licence on compassionate ground in view of death of the erstwhile licensee namely, Md. Billayet Ali. It was further directed that Sub-Divisional Controller (Food and Supplies), Malda would consider the claim of the appellant-petitioner as well as respondent no.1/writ petitioner strictly in accordance with law and specially taking note of the relevant provisions of the Control Order which are applicable.

9. In compliance with such direction the Sub-Divisional Controller (Food and Supplies), Malda gave an opportunity of hearing to Abdur Rauf and Minu Bewa in respect of their claims regarding licence of MR Dealer and kerosene oil dealer in place of Md. Billayet Ali on Compassionate ground on 05.08.2014 and passed an order on 25.08.2014 which is set out as follows:

"In compliance of Order of Hon'ble Justice Soumitra Paul in W.P. No. 13202 (W) of 2014 (Minu Bewa Vs. The State of West Bengal & Ors.) and of Justice Pranab Kr. Chattopadhyaya and Hon'ble Justice Samapti Chatterjee in AST 287 of 2014 with ASTA 221 of 2014 with ASTA 220 of 2014 (Abdur Rouf Vs. Minu Bewa).

Being the respondent no. 6 gave an opportunity of hearing to Abdur Rouf, S/o. late Bilayet Ali appellant and Minu Bewa, W/o. Late Md. Bilayet Ali and respondent (AST No. 287 of 2014) in support of their claim regarding licence of M.R. Dealer and S.K. Oil Dealer in place of late Md.

Bilayet Ali on compassionate ground on 05.08.2014, where both were present.

As the Minu Bewa has already submitted application for M.R. Licence and S.K. Oil Dealer licence on 03.02.2014 with necessary document in support of claim and required enquiry regarding eligibility has been done by ACI, recommending her name.

However Abdur Rouf one of the son of late Md. Bilayet Ali has also made appeal for M.R. Dealer and S.K. Oil licence in his favour (AST 287 of 2014).

On the basis of above facts and as per provision of W.B.P.D.S. (M&C), 2013 clause 20 (VI), the applicant Minu Bewa widow of ex-licencee Md. Bilayet Ali will get the first preference for getting M.R. Dealer and S.K. Oil Dealer licence. As the No objection is not necessary from the other family members as per W.B.P.D.S. (M&C), 2013 where the applicant is the spouse of the deceased licensee. So objection of Abdur Rouf cannot be taken into consideration. However as Abdur Rouf is also seriously interested for getting M.R. Licence in place of late Md. Bilayet Ali, his claim may be taken into consideration as second preference subject to full filling of required criteria, if the application of Minu Bewa failed get required approval from higher authorities.

Thus the application stand disposed off.

D/A Please sent the file to higher authority and intimate to the petitioner/appellant, Ld. State Advocate."

10. Abdur Rauf being aggrieved with impugned order dated 25th August, 2014 passed by the Sub-Divisional Controller (Food and Supplies), Malda and communicated under a memo dated 26th August, 2014, filed WP No. 25789(W) of 2014 contending, *inter alia*, that West Bengal Public Distribution System (Maintenance and Control) Order, 2013 came into force from 8th August, 2013. Since the death of MR Dealer Md. Billayet Ali occurred during W.B.P.D.S. (M & C) Order, 2013, the licensee will be governed by 2003 Control Order. It is contended that Hon'ble Division Bench made it clear that Sub-

Division Controller will consider the matter, specially taking note of the provisions of the Control Order are applicable in this regard and the Hon'ble Division Bench did not declare that 2003 Control Order will apply. According to the writ petitioner, Abdur Rauf Clause 20(VI) of the Control Order, 2013 provides that the applicant should be capable of running a distributorship smoothly but the Sub-Divisional Controller (Food and Supplies), Malda, has recommended her for grant of licence.

11. In the writ petition Abdur Rauf prayed for issuance of Writ directing the respondents to forebear from giving effect to the impugned order dated 25.08.2014 passed by Sub-Divisional Controller (Food and Supplies), Malda, and not to apply the provisions of West Bengal Public Distribution System (Maintenance and Control) Order, 2013 but to take into consideration the Control Order, 2003 and issue a joint licence of MR Dealership and kerosene oil dealership in favour of the petitioner and Abdur Ohab, his brother, to the exclusion of Minu Bewa.

12. Both the writ petitions were considered together since the cause of action of the parties and the order impugned therein were same. In course of discussion, Hon'ble Single Bench observed that the Control Order of 2013 meant for Rural areas has come into force with effect from 8th August, 2013 and by enacting such Control Order, 2013 the earlier Control Order of 2003 and all subsequent amendments thereto have been repealed without any saving clause, therefore, the Control Order of 2013 will come into play on and from 8th August, 2013. It appears from the impugned order passed on the writ

petitions is that Abdur Rouf filed his first application on 10.12.2013 which was beyond 60 days as required under the Control Order of 2013 and it was also beyond 90 days which was the time period for filling application under the Control Order of 2003. It is also observed that Minu Bewa submitted her first application on 27.05.2013 with LTI affixed on all documents which was rejected on the ground that the application and the documents were without signature. The date of death of Md. Billayet Ali is 25.03.2013. It has been held by the Learned Single Judge that the document dated 29.04.2013 claimed to be the first application of Abdur Rouf was not in proper form for taking any step for appointment on Compassionate ground, therefore, it was to be considered that there was no application filed by Abdur Rouf before the authority seeking grant of licence. So far as the application dated 10.12.2013, it is held that the application was not filed within the statutory period of 60 days under the Control Order of 2013.

13. In respect of the claim made by Minu Bewa, Hon'ble Single Bench in the writ petition observed that her application dated 27.05.2013 was initially rejected and furthermore it was filed 63 days after the date of death. The Learned Judge referred to Clause 20(VI) of the Control Order of 2013 and noted that the application was to be filed within 60 days from the date of occurrence of the vacancy and held that the application of Minu Bewa was already a time-barred application and should not have been entertained to pass the impugned order. Hon'ble Single Judge observed that the statute did not vest power upon the authority for condoning the delay or extending the time and the Court

cannot vest such authority to extend the time. The application of Minu Bewa was also found to be time-barred and her W.P. No. 33586(W) of 2014 stood dismissed and Order dated 25.08.2014 by which the Sub-Divisional Controller (Food and Supplies), Malda, allowed first preference to Minu Bewa for getting M.R. Dealership and Kerosene oil dealer licence was quashed.

14. Being aggrieved with the order dated 02.02.2018 passed in the writ petitions, both the writ petitioners preferred two separate appeals.

15. In MAT 294 of 2018 the appellant Minu Bewa assailed the Judgment and Order in the writ petition filed the appeal substantially on the grounds set out hereunder:

I. For that the Learned Judge erred in law and in fact by dismissing the writ petition filed by the writ petitioner/appellant implementation of order dated 25th August, 2014 passed by the Sub-Divisional Controller, Food and Supplies, Malda.

II. For that Learned Judge failed to appreciate that Minu Bewa, (i.e. the Appellant0 widow of the deceased M.R. Dealer cum Kerosene Oil Dealer made in application on 27th May, 2013 with L.T.I. enclosing all necessary documents for appointment on compassionate ground which was within the stipulated period as per West Bengal Public Distribution System (Maintenance and Control) Order, 2003 as well as 2013. But the said application was rejected by the Sub-Divisional Controller, Food and Supplies, Malda on the ground the said application was not signed by Minu Bewa and the said authority requested to the Minu Bewa to resubmit application with duly sign. Accordingly said Minu Bewa filed her application on 3rd February, 2014. As such there was no delay on filing the application for appointment on compassionate ground for dealerships.

III. For that the Sub-Divisional Controller, Food and Supplies, Malda passed a reasoned order whereby the said authority observed that Minu Bewa has a preferential right over other successors. The said authority also forwarded that claim of Minu Bewa for obtaining approval. The question of limitation has not been raised either by the other legal heirs of the deceased Dealer or by the concerned authority.

IV. For that the clause 20(vi) of West Bengal Public Distribution System (Maintenance and Control) Order, 2013 specifically says that prayer for engagement on compassionate ground is to be submitted within 670 days from the occurrence of such vacancy. The Ex-Licencee i.e. Bilayat Ali died on 25th March, 2013. But his licence had been continuing till 31st March, 2013. As such the vacancy occurred with effect from 01st April, 2013. So that application dated 27th May, 2013 was well within the prescribed period under the provision of West Bengal Public Distribution System (Maintenance and Control) Order, 2013.

V. For that as per provision clause 20(vi) of West Bengal Public Distribution System (Maintenance and Control) Order, 2013 which specifically mentioned, “in case vacancy arising out of death or in case of incapacitation on medical ground, prayer, subject to satisfaction of the authority, of any existing dealer, such vacancy shall not initially be notified. Prayer of any of the family members of the deceased/incapacitated dealer having no regular mean of subsistence, will be considered with preference on compassionate ground provided such prayer along with formal application in Form-C along with annexure-I with requisite fee is submitted within 60 days from occurrence of such vacancy”. It is clear from the above that the date of death of a Licencee is not the date of occurring vacancy but when the authority concerned has been given effect the order of tagging to the nearest dealer is the date of ‘occurrence of vacancy would arise on and from 1st April, 2013 when the nearest Dealer accepted the order for tagging the ration cards.

VI. For that the words ‘subject to satisfaction of the authority’ clearly indicate the discretionary power of the said authority. When the authority has accepted the application of your appellant-Minu Bewa and acted upon the same passing a reasoned order in terms of the Hon’ble High Court’s order. So it will be deemed that the authority has condoned the delay, if arises at all.

VII. For that under the provision of West Bengal Public Distribution System (Maintenance and Control) Order, 2013 the authority concerned has been empowered to describe the date of ‘occurrence of vacancy’ and the concerned authority by exercise such discretionary power, has entertained the application of the Appellant-Minu Bewa. By examining the said application, the said authority being satisfied and forwarded the same to the higher authority for necessary approval.

VIII. For that in West Bengal Public Distribution System (Maintenance and Control) Order, 2013 there is no specific time limit for making application for appointment dealership on compassionate ground. So the hypothetical conclusion of the Learned Judgment and order is liable to be quashed and set aside.”

16. In MAT 289 of 2018 Abdur Rouf assailed the Order passed in WP No. 33586(W) of 2014 and WP No.25789(W) of 2014 substantially on the grounds set out as follows:

“1. That the clause 20(vi) of West Bengal Public Distribution System (Maintenance and Control) Order, 2013 specifically says that prayer for engagement on compassionate ground is to be submitted within 60 days from the occurrence of such vacancy. The Ex-Licencee i.e. Bilayet Ali died on 25th March 2013. But his licence had been continuing till 31st March, 2013. As such the vacancy occurred with effect from 01st April, 2013. So the application dated 27th May, 2013 was well within the prescribed period under the provision of West Bengal Public Distribution System (Maintenance and Control) Order, 2013.

2. That as per provision of clause 20(vi) of West Bengal Public Distribution System (Maintenance and Control) Order, 2013 which specifically mentioned “in case vacancy arising out of death or in case of incapable on medical grounds prayed subject to satisfaction on the authority of any existing dealer, such vacancy shall not initially be notified. Prayer of any of the family members of the deceased incapacitated dealer having no regular mean of subsistence, will be considered with preference on compassionate ground provided such prayer along with formal application in form-C along with annexure-I with requisite fee is submitted within 60 days from occurrence of such vacancy”. It is clear from the above that the date of death of licensee is not the date of occurring vacancy but when the authority concerned has been given effect the order of tagging to the nearest dealer is the date for occurrence of such vacancy”. In the instance of the occurrence of vacancy would arise on and from 1st April, 2013 when the nearest dealer accepted the order for bagging the ration cards.

3. That the Sub-Divisional Controller, Food and Supplies issued an order on 25th March, 2013 for tagging the ration card, with nearest M.R. Shop namely Hamidullah Mondal and said Hamisulia Mondal received the said order on 1st April, 2013. Therefore “occurrence of vacancy” should be considered and counted on and from 1st April, 2013.

4. That the words “Subject to satisfaction of the authority” clearly indicated the discretionary power of the said authority. When the authority has accepted the application of your appellant Minu Bewa and acted upon the same passing a reasoned order in terms of the Hon’ble High Court order. So it will be deemed that the authority has condoned the delay, if arises at all.”

17. Learned Advocate for the appellant Minu Bewa submitted that being the spouse of deceased licensee, she is entitled to be considered for grant of M.R. Dealership and Kerosene Oil Dealership Licence. It is contended that the appellant had submitted her application at the time the Control Order of 2003 was in force. Her application was rejected on 27.07.2013 after the Control Order, 2003 was repealed and the Control Order, 2013 came into force with effect from 08.08.2013. The appellant was intimated by the respondent no. 8 to re-submit her application in proper form with signature under the Control Order of 2013. It is argued that the right of the appellant had survived and she filed an application thereafter which was considered and recommendation was made in her favour. Learned Advocate further submitted that as spouse of the deceased, there was no requirement on her part to obtain any no objection from any of the legal heirs of the deceased and her claim is in a better footing than the claim of the other appellants. Learned Advocates urged that the impugned order passed by Hon'ble Single Bench, dismissing the claim is an outcome of wrong appreciation of facts and law and the same is liable to be set aside. Learned Advocate submitted that there is no specific time for making application for appointment of dealership on compassionate ground and the concerned authority has ample discretionary power to entertain the application.

18. Learned Advocate for the appellant Abdur Rouf argued that Learned Single Judge has erred in law by holding that his application before respondent no. 8 for M.R. Dealership and Kerosene Oil Dealership on compassionate

ground was barred both under Control Orders of 2003 and 2013. It is argued that his application should be considered under Control order, 2003 and if necessary licence may be issued jointly in his favour and his brother Abdur Oohab.

19. Learned Advocate, Mr. Sengupta submitted that the applications of both the appellants were time-barred and they were not filed within 60 days as is required under Control Order, 2013, therefore, Learned Single Judge committed no error by dismissing the writ applications of both the appellants. Having heard Learned Advocates for the respective parties and considering the impugned order and the Memo of appeals, this Court finds that the appellant applied have contending contentions for issuance of Fair Price Shop Dealership and Kerosene Oil licence on compassionate ground on the demise of her husband Md. Billayet Ali on 25.03.2013. The short question for determination is whether any of the Appellants are entitled to the M.R. Shop and Kerosene Oil Dealership Licence under Compassionate ground.

20. At the relevant time, the Control Order, 2003 was in force. Minu Bewa submitted her application on 27th May, 2013, that is within 90 days as was required at the relevant time under the 2003 Control Order. Since the application submitted by the appellant was not in order and did not bear her signature which was mandatory, the same was rejected and she was communicated by letter dated 27.12.2013 to resubmit the application duly signed along with all requisite documents in proper form "C" as per W.B.P.D.S. Control Order, 2013 immediately. It is gathered from the Government

Notification that West Bengal Public Distribution System (Maintenance and Control) Order, 2013 came into force with effect from 8th August, 2013. The relevant provision in this Control Order is Clause 20(vi) which provides for engagement on Compassionate grounds. The same reads as follows:

“In case of vacancy arising out of death or in case of incapacitation on medical ground, subject to the satisfaction of the authority, of any existing dealer, such vacancy shall not initially be notified. Prayer of any of the family members of the deceased/incapacitated dealer having no regular means of subsistence, will be considered with preference on compassionate grounds provided such prayer along with formal application form “G” along with Annexure – I & II with requisite fees is submitted within 60 days from the occurrence of such vacancy.”

21. It further lays down that while applying, the applicant shall have to furnish “No Objection” from other family members in the form of an affidavit executed before a First Class Magistrate except in the following cases:

- a) If the applicant be the spouse of the deceased licensee,*
- b) If the Ex-Licencee, because of his/her being incapacitated/infirm has opted for the applicant the Sub-Divisional Controller, Food and Supplies shall arrange for an enquiry to verify the eligibility of the applicant and submit the report with his information to the District Controller, Food and Supplies. The District Controller, Food and Supplies shall forward the same with his comment to the State Government through Director, DDP & S for necessary approval.*

It may be noted that Savings Clause 39 of the 2013 Urban Control Order preserved the rights of selection under the previous repealed 2003 Urban Control Order to be continued under the amended order but the Repeal and Savings clause 42 applicable to the Rural areas provided that the repeal shall not affect any investigation, penalty, imposition of punishment but it did not save the rights of selection under the previous repealed order of 2003.

22. In the instant case, the appellant had submitted her first application in time according to the Control Order of 2003. By doing so, the appellant/petitioner had expressed her intention to be considered for the purpose of issuance of Fair Price Shop Dealership and Kerosene Oil Dealership Licence in her favour in place of her deceased husband. Due to some formal defects in her application, which did not bear her signature, the same was rejected and simultaneously in the same communication the appellant was directed to resubmit her application in form "C" with her signature. The petitioner complied with the same by submitting a fresh application on 03.02.2014 which was, however, not considered and she filed WP No. 13202(W) of 2014 with a prayer for direction upon the respondent S.D.C. (F & S), Malda to consider the application. The writ petition was disposed of by order dated 10.06.2014, where the respondent no. 6 was directed to consider the case of the petitioner and dispose of her representation dated 03.02.2014 for issuance of M.R. Dealership and Kerosene Oil Dealership licence in her favour under provisions contained in W.B.P.D.S. (M & C) Order, 2013.

23. Appellant Abdur Rouf, who was not a party in the said Writ Petition preferred appeal bearing AST No. 287 of 2014 with ASTA No. 221 of 2014 and ASTA 220 of 2014 challenging the order passed by the Hon'ble Single Bench while disposing of the appeals, a coordinate Bench of this Court directed the respondent S.D.C. (F & S), Malda to dispose of the representation of respondent no.1/writ petitioner for transfer of M.R. Dealership and Kerosene Oil licence standing in the name of her late husband Md. Billayet Ali and also to consider the claim of the appellant/petitioner Abdur Rouf, one of the sons of Minu Bewa, for grant of M.R. Dealership and Kerosene Oil licence strictly in accordance with law and specially taking note of the relevant provisions of the Control Order which are applicable in this regard.

24. It is essential to bear in mind that only Control Order of 2013 was in force for issuance of M.R. Dealership licence at the relevant time. In compliance with such direction of the Hon'ble Division Bench, an enquiry was held by S.D.C. (F & S), Malda on 05.08.2014 and passed an order on 25.08.2014.

25. Being aggrieved with the order passed by S.D.C. (F & S), Malda, Abdur Rouf preferred WP No. 25789(W) of 2014. Minu Bewa preferred her second Writ Petition bearing no. 33586(W) of 2014, praying for issuance of mandamus for her appointment as F.P.S. Dealer and Kerosene Oil Dealer in place of her husband on the basis of the recommendation of S.D.C. (F & S), Malda dated 25.08.2014. both the writ petitions were taken up together and were dismissed by order dated 02.02.2018.

26. The contention of Abdur Rouf in his writ petition was that the vacancy arose during prevalence of Control Order, 2003 as such Control Order, 2003 would apply and his application dated 29.04.2013 ought to have been considered as it was filed within 90 days, it is for the case of Abdur Rouf is that the S.D.C. (F & S), Malda by entertaining the application of his mother, Minu Bewa, made discrimination as the application dated 27.05.2013 submitted by Minu Bewa was not filed within 60 days, which is the time limit for filing of application under the Control Order, 2013. The Coordinate Bench of this Court while considering such writ application of Abdur Rouf, observed that the document dated 29.04.2013 filed by him was not in proper form as the text of such application indicated that if his prayer took any steps for obtaining licence in his name, the department should consider so that the licence be issued jointly in the name of the two brothers and not by depriving him. The application was, therefore, not for the purpose of his appointment as a dealer on compassionate ground. The second application filed by Abdur Rouf on 10th December, 2013 for his appointment was long after 90 days from arising of vacancy.

27. It is observed that the new Control Order, 2013 came into force with effect from 8th August, 2013 whereby the Control Order, 2003 was repealed and the prescribed time for filing of the application was 60 days from the death of the original licensee. Learned Single Judge on a conspectus of these issues held that the application of Abdur Rouf dated 10th December, 2013 was hopelessly time-barred.

28. In respect of the application submitted by Minu Bewa, the Learned Single Judge observed that the Coordinate Bench of this Court indicated that Control Order, 2013 would apply and the said order was not challenged by Minu Bewa. The order was challenged by Abdur Rouf who was not a party in the writ petition and the Appellate Court directed the authority to dispose of the matter in accordance with law. The Learned Single Judge computing the period between the death of Md. Billayet Ali and filing of the application by Minu Bewa and observed that it was filed on the 63rd day and as per Clause 20(vi) of the Control Order, 2013, the period for filing of the application was 60 days accordingly her application could not have been considered as there is no provision in Control Order of 2013 vesting the authority with the power to extend the time beyond the number of stipulated days. Accordingly the both the writ applications were dismissed.

29. Admittedly Minu Bewa filed her first application on 27.05.2013 within the statutory period according to the Control Order of 2003, The process had been initiated by then and the question of barring her subsequent applications on the ground of limitation cannot arise. The S.D.C. (F & S), Malda rejected the first application on 27.12.2013 of Minu Bewa on the ground that it should bear her signatures and proper documents to be annexed. Therefore, she was asked to resubmit her application in proper form. The process continued when on such permission Minu Bewa submitted her application on 03.02.2014 with particulars. Since the said application was not being considered for a long period, the writ petition was filed. The S.D.C. (F & S), Malda, held an enquiry

in compliance with the direction of the Hon'ble Division Bench in AST No. 287 of 2014 with ASTA No. 221 of 2014 and ASTA No. 220 of 2014. Opportunity was given to both the appellants to produce documents in support of their claim for the M.R. Dealership and S.K. Oil Dealer on compassionate ground.

30. Since the Control Order of 2003 was repealed by the Control Order of 2013, which came into effect on 08.08.2013, the provision of Control Order of 2013 would automatically apply to the parties as there was no savings in respect of the Control Order of 2003 and no other alternative before the concerned department. It is to be reckoned that Minu Bewa filed her application on 27.05.2013 which was within the period of limitation of 90 days applicable at the relevant time. Therefore, the limitation of 60 days for filing application for the purpose of grant of licence under the Control Order, 2013 could not have any application to her case then. For every separate application filed in course of the process, the time limits will not apply afresh and it would be reckoned to have been filed within time limit applicable under the Control Order in force. Therefore, where the Control Order 2013 came into force on 8.8.2013, the first application of Minu Bewa was pending for consideration. The time limit would apply if the application was submitted for the first time.

31. The other aspect in this case is that by order dated 25.08.2014 the S.D.C. (F & S), Malda allowed first preference to Minu Bewa for getting the M.R. Dealership and Kerosene Oil Dealership licence and the claim of Abdur Rouf was given second preference in his recommendation.

32. On a clear reading of Clause 20(vi) regarding engagement of dealer on compassionate ground it is evident that while applying, the applicant shall have to furnish “No Objection” from other family members in the form of an affidavit executed before a First Class Magistrate except in the following cases:

- a) If the applicant be the spouse of the deceased licensee,*
- b) If the Ex-Licencee, because of his/her being incapacitated/infirm has opted for the applicant.*

33. In the instant case, the appellant Minu Bewa is the spouse of Md. Billayet Ali. In her case “no objection” is not necessary from any other family members in any form. However, in order to consider any application submitted by Abdur Rouf, one of the sons of the deceased licensee, a “no objection” is required from other family members which includes Minu Bewa and his brother Abdur Oohab.

34. The appellant/spouse of the deceased having laid her claim for issuance of licence in her favour in place of her husband, it implies that she has by implication objected to the prayer of Abdur Rouf for grant of licence. Therefore, the claim of Minu Bewa for grant of licence stands in a better footing than that of Abdur Rouf, accordingly, the S.D.C. (F & S), Malda committed no error by passing an order dated 25.08.2014 recommending Minu Bewa, the spouse of the deceased licensee, to get the first preference for getting the dealerships-in-question.

35. The vacancy of M.R. Dealership having arisen out of death of Md. Billayet Ali since 27.05.2013, the F.P.S. Dealer Licence No. 6/MR/K.C.I./05 and also

Kerosene Oil Licence No. 82/K. OIL/MR/KC, at Village – Brahamattar (Chhoto Sujapur) is lying vacant and the vacancy has not been notified. Therefore, on considering such facts this Court is persuaded to hold that the order passed by Sub-Divisional Controller (Food and Supplies), Malda dated 25.08.2014 recommending Minu Bewa, widow of Ex-Licensee for getting both the M.R. and Kerosene Oil Dealerships on compassionate ground needs to be considered by the appropriate authority for approval. In the light of the above discussion the finding of Hon'ble Single Bench in the impugned Judgment dated 02.02.2018 appears unsustainable and the same stands set aside.

36. Thus, **MAT No. 294 of 2018** along with **CAN 6725 of 2018**, stands accordingly **allowed**. **MAT No. 289 of 2018**, filed by Abdur Rouf is **dismissed**.

37. Respondent nos. 7 and 8 are directed to give effect to the order dated 25.08.2014 passed by respondent no. 8 and conclude the proceeding for appointment of Fair Price Shop Dealer and Kerosene Oil Dealer under the appropriate order within three months from the date of this order and communicate the same to the appellant.

38. All parties to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

39. Urgent Photostat certified copy of this judgment, be supplied to the parties if applied for, maintaining all formalities.

I Agree,

(Subrata Talukdar, J.)

(Ananda Kumar Mukherjee, J.)