

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

W.P.A. 8188 of 2022

Santosh Kumar Mahato
Vs.
The State of West Bengal & Ors.

For the petitioner	Ms. Nibedita Pal Ms. Sonam Ray
For the respondent nos. 6	Mr. Saibal Kumar Acharya Mr. S. B. Mukherji
For the State	Mr. Sirsanya Bandopadhyay Mr. A. K. Nag

Heard on : 24.11.2022.

Judgment on : 24.11.2022.

Jay Sengupta, J.

This is an application seeking direction upon the respondent authorities to withdraw and/or rescind and/or cancel the impugned memo no. 112/SC/FS/Jhalda/2022 dated 7.4.2022 of the SCFC

Jhalda and the impugned memo dated 8.4.2022 issued by the Deputy Director (License), Directorate of DDP&S, forthwith.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the dependent son of the MR Dealer who passed away in April, 2021. On 20.05.2021, the petitioner made an application for compassionate appointment. Another brother being the respondent no.6 herein, living separately, also made an application for compassionate appointment, on 31.05.2021. The present petitioner's claim was rejected only because 'no objection' was not given by the said other brother. However, although clause 20(ii) of the WBPDS (Maintenance and Control Order), 2013 required that an approval be obtained from the State before a rejection could be done, no such approval was taken before the rejection. In the meantime, the other brother approached this Court and was granted an order of consideration of his claim. His claim was considered and rejected. He could not produce relevant documents including 'no objection' from the other family members. There are documents to show that respondent no. 6 was not dependent on the deceased MR Dealer and was living separately. A copy of the Swasthya Sathi Card issued for his family has been annexed. Ration cards in respect of the present dealer have already been tagged with the MR Dealer, Prasanto Mondal. Therefore, there is no exigency in declaring vacancy. Reliance

is placed on a decision of the Division Bench of this Court passed on 05.08.2022 in MAT 842 of 2022 (Gurupada Das -vs- State of West Bengal & ors.). In the said case, it was decided that an administrative enquiry can be ordered to find out whether the family member not giving “no objection” was a dependent or not and whether he was at all residing in the same mess.

Learned counsel appearing on behalf of the State submits as follows. The public distribution system cannot suffer for disputes between brothers. The stage of seeking approval of the State Government had not come by the time the petitioner’s claim was rejected. In the event an inquiry was directed, the appropriate authority to conduct it would be the District Controller, Food and Supplies, Jhalda.

Learned counsel for the respondent no.6 submits as follows. The respondent was very much dependent on the deceased MR Dealer. Reliance is placed on copies of documents which would show that the respondent no.6 was receiving articles in respect of the MR dealership of the original dealer on his request. Moreover, Swasthya Sathi Card is not a document that would determine the dependants of a family member. There would be no harm if an inquiry is directed in terms of the order passed by the Division Bench of this Court in Gurupada Das’s case (supra).

The case at hand involves claim and counter claim made by two brothers for obtaining the MR dealership of their deceased father.

In Gurupada Das's case, a Division Bench of this Court has held in:

"15. The concern of the authority holding enquiry, therefore, is to find out whether the person who has not filed affidavit was dependent on the deceased on the date of his death or he was living separate or independent from the deceased. If the answer is to the effect that he is independent and has got sufficient means of subsistence, no affidavit by that legal heir need be filed and without his affidavit also the application of a legal heir can be processed and allowed."

Therefore, in the present case, it would be appropriate if an inquiry is conducted to find out whether the petitioner was the dependent son of the deceased MR dealer, whether he did not require any "no objection" from the respondent no.6 or whether the respondent no.6 was also a dependent of the said MR dealer at the relevant date.

Accordingly, let the respondent no.5 conduct an inquiry to the above effect and pass an order on the said issues after hearing the interested parties, within two months from the date of communication of this order.

As the ration cards for the dealer have already been tagged with another, the respondent authorities are directed not to declare vacancies till the respondent no.5 decides the issue.

With these observations, the writ petition is disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)