

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

**Hon'ble Justice Chitta Ranjan Dash
AND
Hon'ble Justice Partha Sarathi Sen**

**M.A.T. No.760 of 2022
C.A.N 1/2020**

Dilip Saha @ Dilip Kumar Saha.

-Versus-

State Of West Bengal

For the Appellant : **Mr. Kalyan Bondopadhyay, Sr. Adv**
: **Mr. Ram Anand Agarwala, Adv.**
: **Ms. Nibedita Pal, Adv.**
: **Mr. A.G Mukherjee, Adv.**
: **Ms. Sonam Roy, Adv.**

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

Heard on: : **28.09.2022**

Judgment on. : **29.09.2022**

PARTHA SARATHI SEN, J. : –

1. The present appeal arises out of the judgment dated 19.04.2022, passed by the Hon'ble Single Judge in W.P.A No.4252/2022, whereby and whereunder the writ petition as filed by the petitioner (appellant herein) was dismissed.

2. The petitioner felt aggrieved and thus preferred the instant appeal.
3. Before the Learned Single Judge, the writ petitioner challenged the order dated 15.02.2022, as passed by the Sub-Divisional Controller, Food and Supplies, Jangipur, Murshidabad (hereinafter referred to as SDC Jangipur, Murshidabad) whereby SDC Jangipur, Murshidabad refused to grant license of F.P.S Dealer/Distributor in favour of the present appellant on compassionate ground in place of his deceased father Janardan Saha (since deceased).
4. On perusal of the impugned order as passed by the Learned Single Judge, it reveals that Hon'ble Single Judge dismissed W.P.A 4252/22 basically on the following grounds:-
 - i)the contention of the writ petitioner that since his father i.e the original ex-dealer or the original licensee had opted in his favour for grant of license during his life time and thus , **"No Objection"** from the other legal heirs of the original licensee/ex-dealer are not necessary, is not tenable in the eye of law.
 - ii)the other legal heirs of the original dealer have given their consent beyond the prescribed time limit.
 - iii)the integrity of the writ petitioner is questionable since before the SDC Jangipur, Murshidabad, he relied on the fake legal heir certificate.
5. In support of the instant appeal learned advocate for the appellant at the very outset draws our attention to the judgement dated 05.08.2022, as passed in

MAT 842/2022; Gurupada Das vs. State of West Bengal and Ors. by a Co-ordinate Bench of this High Court.

6. Placing reliance upon the case of **Gurupada Das (supra)**, learned advocate for the appellant contends that while passing the impugned judgement dated 19.04.2022, Learned Single Judge has got no occasion to go through the judgement of **Gurupada Das (supra)**, as the same was passed subsequent to 05.08.2022. It is contended on behalf of the appellant that in view of the propriety of the decision dated 05.08.2022, as taken in the case of **Gurupada Das (supra)**, it is well settled that “**No Objection**” from all the legal heirs of the original dealer is not at all necessary and on the contrary, consent is only necessary from the **dependant family members** of the deceased licensee for considering engagement as dealer/distributor on compassionate ground in view of Clause (2)(m) of the of the 2013 Control Order and in view of the settled position of law as enshrined in the case of **Gurupada Das (supra)**.

It is thus, argued that the proposition of law as involved in the case of **Gurupada Das (supra)** is squarely applicable in this case and on this score the present appeal deserves to be allowed.

7. While opposing the contention of the learned advocate for the appellant, learned advocate for the State contends that the factual matrix as involved in the present appeal are quite distinguishable from the facts and circumstances as involved in the case of **Gurupada Das (supra)**. It is contended further that since there was no statutory compliance on the part of the present appellant for getting compassionate engagement as dealer/distributor in place of his deceased father, the original licensee and since the Learned Single Judge has

rightly noticed that the integrity and honesty of the appellant is questionable on account of his furnishing a fake legal heirship certificate before the SDC, Jangipur, Murshidabad, the present appeal deserves to be dismissed.

8. After having perusal of the entire materials as placed before this Court and after giving anxious consideration over the submissions of the learned advocates of both the sides, it appears to us that the points of law as involved in this appeal are more or less same as involved in the case of **Gurupada Das (supra)**.

9. In considered view of us, for effective disposal of the instant appeal the relevant portion of the judgement of **Gurupada Das (supra)** is required to be looked into and thus those are reproduced hereunder in verbatim:-

*“14. Now the most important question is what is the meaning of “**No Objection**” from **other family members**. **Family members** have been defined in Clause 2 (m) of the 2013 Control Order which reads thus:*

*2.(m) “**Family members**” means spouse, dependent parents, dependent sons and daughters for the purpose of considering engagement as Dealers/Distributors on compassionate ground.*

*The most important word in the definition is the word ‘**dependent**’. If any of the family member was not dependent on the deceased on the date of his death, his no objection is not necessary for consideration of issuance of licence in favour of any of the legal heir who has applied in Form C along with Annexure-I of the 2013 Control Order. If any of the sons or daughters who are dependent they are required to file “No Objection”. If we read paragraph 2 of sub-Clause (vi) of Clause 20 in conjunction with Clause 2 (m), it would be clear that only sons and daughters who were dependent on the deceased on the date of his death are required to file “No Objection” and not all family members.*

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.

16. It is settled law that negative facts cannot be proved, therefore, if any of the legal heir files an Affidavit to the effect that he was dependent on his father on the date of his death and he is eligible to be bestowed with the benefit contained in Clause 20 (vi) of the 2013 Control Order and other family members namely such and such are independent. The simple exercise the SDC, F&S has to do, is to issue notice to other family members and hold an enquiry asking them to prove the affirmative that they were also dependent on the deceased on the date of his death. The enquiry should not be a roving enquiry. If on administrative enquiry by SDC, F&S it is found that any of the legal heir was not dependent on the deceased on the date of his death and he has got sufficient means of subsistence he (SDC, F&S) cannot insist upon filing of "No Objection" Affidavit by him.

17. If we give any other interpretation to the meaning of paragraph 2 of sub-Clause (vi) of Clause 20 read with Clause 2 (m) of 2013 Control Order that will defeat the very purpose of the benevolent scheme of compassionate engagement inasmuch as any person who is independent from the ex dealer during his life time can also come forward to frustrate the chance of an otherwise eligible legal heir to get a licence on the death of his father who was an ex dealer by not filing a "No Objection", though such an action may be owing to sibling rivalry, meanness or any previous grudge. Therefore, when both the provisions are read in conjunction the clear meaning that come out is as aforesaid. Therefore, in our merited consideration the application of the Appellant be reprocessed afresh keeping in mind whether Respondent No. 6 who has not filed "No Objection" was dependent on his deceased father, Rasbihari Das on the date of his death. Our such view is also supported by catena of case laws, which declares that **dependence** is the essence of any scheme or policy offering compassionate appointment/engagement.

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20. The Court writes a Judgment neither for its intellectual satisfaction nor for intellectual consumption by other. It writes a Judgment for common people but generally a Judgment delivered by a Court is bound to be riddled with legalese, beyond comprehension of a common man. As the issues decided here touches the interest of common people we deem it proper to summarise our findings as follows:

- (I) Compassionate engagement as a dealer can be claimed on two events;

- (a) *Death of the dealer or incapacitation of the dealer on medical ground.*
 - (b) *The incapacitation of the dealer on medical ground is subject to satisfaction of the competent authority.*
- (II) *When any dealer is incapacitated and he has expressed his desire opting for any of his legal heir to look after him and his business, then such legal heir so opted should file an application in Form C contained in 2013 Control Order along with necessary medical papers touching on the nature of incapacitation of the dealer and requisite affidavit of option exercised by the dealer.*
- (III) *In the event of death, application in Form C of 2013 Control Order along with Annexure-I and requisite fees should be filed and such application should be accompanied with a requisite "No Objection" Affidavit from all the dependent family members and death certificate of the ex-dealer.*
- (IV) *If more than one family member are dependents on the deceased dealer they may submit joint application in accordance with the scheme.*
- (V) *In no event any application filed during the lifetime of the dealer exercising option in favour of the Applicant shall be entertained if the dealer dies before any action is taken on the application within the time limit specified supra by us but thereby the application so filed does not stand rejected. On filing of death certificate of the ex-dealer by the Applicant who had applied during the lifetime of the dealer, the consideration by the authority shall change.*
- (VI) *In case of permanent incapacitation the authority concerned may satisfy themselves on the basis of medical certificate and medical papers filed or they may conduct any enquiry according to their discretion if they do not get satisfied on the basis of medical certificate and medical papers filed. In case of death any of the legal heir may file an application in Form C along with Annexure-I thereto accompanied by requisite fees and death certificate of the ex-dealer. He should also file such "**No Objection**" Affidavit from other dependent family members and he should supply the name(s) and*

*address(s) of the family members who has/have not filed “**No Objection**” Affidavit so that the competent authority may issue notice to them for an enquiry to find out as to whether he/they are/were dependent on the deceased on the date of his death. If on sufficiency of notice issued by the Authority, the legal heir(s) who has/have not given “**No Objection**” Affidavit(s) do(es) not turn up, it would be presumed by the competent authority that he/they have “no interest” in the matter.*

(VII) The SDC, F&S should not conduct a roving enquiry to find the factum of dependence. It should be an administrative enquiry giving opportunity to interested family members to prove his/her case that he/she was dependent on the deceased on the date of his/her death. If all the family members have filed “No objection” Affidavit, no such enquiry is necessary. If one or more than one of the family members have not filed “No Objection” Affidavit, such enquiry be conducted in respect of their claim only.”

10. In view of the proposition of law as discussed hereinabove it appears to us that in the instant matter as involved in this appeal there is no requirement on the part of the present appellant to submit “**No Objection**” of all the legal heirs of his deceased father Janardan Saha. It will suffice if he would file the “**No Objection**” of those legal heirs who are dependent upon the original dealer/distributor, Janardan Saha (since deceased) and at the same time, he would disclose the names and other particulars of the legal heirs of his deceased father who had not given “**No Objection.**”

11. We thus dispose of the instant appeal after setting aside the impugned judgement dated 19.04.2022, passed by the Hon’ble Single Judge in W.P.A No.4252/2022, with the following directions:-

- i) the Sub-Divisional Controller, Food and Supplies, Jangipur, Murshidabad, shall within one month from the date of communication of

this judgement shall start afresh an administrative enquiry as to the eligibility of the present appellant for being appointed as a dealer/distributor on compassionate ground on account of death of his father, Janardan Saha, since deceased, the original dealer/ distributor in the light of the direction as passed by the Hon'ble High Court at Calcutta in the case of **Gurupada Das (supra)**.

ii) liberty is given to the present appellant to submit an affidavit before the Sub-Divisional Controller, Food and Supplies, Jangipur, Murshidabad along with a fresh legal heirship certificate of his deceased father, Janardan Saha and in such affidavit the appellant shall clearly indicate the names and all particulars of such legal heirs who are/were dependent upon his above name deceased father and who are not, if there be any within a fortnight from the day of passing of this judgement.

ii) further liberty is given to the present appellant to submit all the **"No Objections"** in original before the Sub-Divisional Controller, Food and Supplies, Jangipur, Murshidabad, copies of which have been annexed as Annexure 'Z 1' to the supplementary affidavit as filed by the appellant on 05.09.2022 also within a fortnight from the day of passing of judgement.

iii) Considering the facts and circumstances as involved in this case, by exercising our plenary power under Article 226 of the Constitution of India, we extend the outer limit of sixty days as provided in Sub-clause(6) of Clause 20 of 2013, Control Order for a further period of 30 days from the day of passing of this judgement.

iv) it is further directed that while causing an administrative enquiry as to the entitlement of the present appellant for being appointed as a dealer/distributor in place of his deceased father, Janardan Saha, Sub-Divisional Controller, Food and Supplies, Jangipur, Murshidabad, shall have to keep in mind the directions as well as the guidelines as given by the Co-ordinate Bench of this High Court in the case of **Gurupada Das (supra)**.

12. With the aforesaid observation the instant appeal is disposed of.
13. Let a copy of this judgement along with LCR be sent down at once.
14. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)