

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate side

PRESENT:

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE ANIRUDDHA ROY

MAT 842 OF 2022
with
I.A. No.: CAN 1 OF 2022

Gurupada Das
vs.
State of West Bengal & Ors.

For the Appellant	:	Mr. Debabrata Saha Roy, Adv. Mr. Pingal Bhattacharyya, Adv. Mr. Subhankar Das, Adv. Mr. Neil Basu, Adv.
For the State	:	Mr. S.N. Mookherjee, learned Advocate General Mr. Susovan Sengupta, Adv. Mr. Subir Pal, Adv.
For the Respondent No. 6	:	Mr. Bhaskar Chandra Manna, Adv.
Heard on	:	18.07.2022.
Judgment on	:	05.08.2022.

CHITTA RANJAN DASH, J.:-

1. In this Appeal Judgment dated 18.05.2022 passed by the Hon'ble Single Judge in WPA No. 2774 of 2022 dismissing the Writ Petition filed by the present appellant is impugned.

2. Rasbihari Das who was a fair price shop dealer ("FPS dealer" for short) under the control of Sub-Divisional Controller, Food & Supplies ("SDC,F&S" for short), Contai died on 08.10.2019 leaving behind his sons named Gurupada Das (present Appellant), Haripada Das (present Respondent No. 6) and Kalipada Das including two married daughters named Lakshmipriya Das @ Jana and Sresweti Das @ Payra (since deceased). After the death of aforesaid Rasbihari Das, present Appellant being the son of late Rasbihari Das filed required application on 31.12.2019 in Form C of the West Bengal Public Distribution System (Maintenance and Control) Order 2013 ("2013 Control Order" for short) along with the Annexure-I thereto with requisite fees etc. Subsequently, on 19.01.2021, the Appellant filed "No Objection" Affidavit from all the legal heirs of his late sister Sreswati Das @ Payra who had expired on 15.08.2020.

The present Appellant claimed that his late father Rasbihari Das during his life time had sworn an Affidavit (P2 to the Writ Petition) on 05.02.2019 before the Judicial Magistrate, First Class, Contai exercising his option to engage the present Appellant as a FPS dealer in his place. Such Affidavit along with a representation had been presented to the SDC, F&S (Respondent No. 5). When no action was taken by Respondent No. 5, the present Appellant again on 31.12.2019 presented

a representation requesting him therein to issue licence of FPS dealership in his favour in place of his deceased father on compassionate ground. By report dated 03.06.2021 (Annexure P8 to the Writ Petition) submitted by the Inspector, Food & Supplies, in charge of Contai III Block, the present Appellant was found to be fulfilling all the eligibility criteria for grant of licence for FPS dealership on compassionate ground as his father Rasbihari Das had died in harness. On 06.01.2022 (Annexure P10 to the Writ Petition) the application filed by the Petitioner on 31.12.2019 in Form C of 2013 Control Order along with the Annexure-I thereto with requisite fees was rejected on the ground that one of the family members i.e. Haripada Das (present Respondent No. 6) has not given his "No Objection" Affidavit.

3. Such order vide P10 to the Writ Petition obliged the present Appellant to approach this Court in WPA No. 2774 of 2022.

4. Before the Hon'ble Single Judge the following points on facts were pressed:-

- Rasbihari Das, the FPS dealer during his lifetime having opted to transfer his licence in favour of the present Appellant as he was looking after him during his incapacitation and was also looking after his business, there was no necessity of filing "No Objection" Affidavit from all the family members as the option exercised by the present Appellant's late father Rasbihari Das had not been nullified by the intervention of his death.
- The Appellant's father having opted for engagement of the Appellant as a dealer in his place by filing Affidavit dated

02.02.2019 and representation dated 05.02.2019 and the appropriate department having sat over the matter without any action thereon, the right of the present Appellant that accrued on option being exercised by his late father should not have been negated on intervention of his death, requiring the present Appellant to file “No Objection” Affidavit from all the family members including the present Respondent No. 6.

- The application of the petitioner in Form C vide Annexure P6 to the Writ Petition though filed after death of his father, being in continuation of the representation of his late father made long since along with the Affidavit by his father, the authority concerned should not have insisted upon, “No Objection” Affidavit from all the family members including Respondent No. 6.
- The ratio of the case decided in **Samar Das Vs. State of West Bengal & Ors.** [WP 34215 (w) of 2013 disposed of on 19.02.2014] and **Rajib Debnath Vs. State of West Bengal & Ors.** (WPA No. 18261 of 2017 disposed of on 18.12.2020) being supportive of the claim of the Appellant, those decisions are binding on the Co-ordinate Bench exercising writ jurisdiction.

5. On the basis of aforesaid factual submission, the following points of law were urged before the Hon’ble Single Judge –

- (i) Whether after opting for transfer of licence in favour of one of the legal heirs, if the dealer dies, said legal heir is required to submit NOC to get licence on compassionate ground.
- ii) Whether no objection certificate from legal heirs are required to be submitted when dealer during his life time, opted for transfer of licence in favour of one of the legal heirs.
- (iii) Whether law settled by coordinate Bench of this Court is binding on subsequent Co-ordinate Bench.

6. The Hon'ble Single Judge by a reasoned order dismissed the Writ Petition on the ground, *inter alia*, that the cases of **Samar Das** and **Rajib Debnath** *supra* do not apply to the fact of the present case. If the licence would have been issued in favour of the petitioner (present Appellant) during the life time of his deceased father, things would have been different but his father's death having intervened, right has accrued in favour of other legal heirs and their "No Objection" Affidavit is necessary to grant the licence in favour of the petitioner (present Appellant).

7. Mr. Debabrata Saha Roy, learned Counsel for the Appellant reiterates the same contentions in the appeal including the point that the case of **Samar Das** and **Rajib Debnath** *supra* squarely applies to the fact of the present case and Hon'ble Single Judge has not properly dealt with the aforesaid Judgements relied on in course of hearing before Her Ladyship. Further relying on the case of **Sandhya Educational Society & Anr. Vs. Union of India & Ors.** [2014 (7) SCC 701] it is submitted by Mr. Saha Roy that Judgement of a Co-ordinate Bench is binding upon another Co-ordinate Bench and such a practice ensues judicial

decorum and discipline. Relying on the case of **Kusheshwar Prasad Singh Vs. State of Bihar & Ors.** [2007 (11) SCC 447], Mr. Saha Roy contends that the appropriate department having not considered the affidavit and representation filed by the late father of the Petitioner on 02.02.2019 and 05.02.2019 and having sat over the matter causing delay in disposal of the representation cannot now take the stand that the Appellant has to suffer by intervention of his father's death inasmuch as Respondent State being the wrong doer cannot take advantage of their own wrong.

Mr. Sushovan Sengupta, learned Counsel appearing for the State supports the impugned Judgement and submits that matters of policy are within the domain of executive; a policy is not open to interference merely because the Court feels that it is not practical or less advantageous for government servants for whose benefit the policy is made [**V. Sivamurthy Vs. State of Andhra Pradesh & Ors.**, (2008) 13 SCC 730]. Relying on the case of **State Bank of India & Anr. Vs. Raj Kumar** [(2010) 11 SCC 661] it is submitted by Mr. Sengupta that the claim for compassionate appointment is traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. Further relying on the case of **Director of Education (Secondary) & Anr. Vs. Pushpendra Kumar & Ors.** [(1998) 5 SCC 192] Mr. Sengupta submits that compassionate appointment is an exception to the general provision and, being an exception, it should not interfere unduly with the rights of other persons. Lastly, relying on the case of **State of Jammu & Kashmir & Ors. Vs. Sajad Ahmed Mir** [(2006) 5 SCC 766] it is submitted that normally, an employment in government or

other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole bread-winner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread-earner, the family survived and substantial period is over, there is no necessity to say “good bye” to the normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution of India.

8. Without going into the merit of the decision rendered by the Hon’ble Single Judge in the impugned Judgment and other Co-ordinate benches in the case of **Samar Das** and **Rajib Debnath** *supra* and keeping in mind the general and common principle that compassionate engagement or appointment is given to the **dependent family members** of a deceased person or a person incapacitated to tide over the crisis befallen on the family by sudden departure or incapacitation of the sole bread-winner; in no event it is a right; it is a concession granted by policy/scheme/Rules /Act framed by the employer to give succor to the dependent family members of the deceased in derogation of right conferred by the Constitution of India in Article 14, we deem it just and proper to examine the facts and law taking an independent and uninfluenced view of the matter. Sub-Clause (vi) of Clause 20 of 2013 Control Order reads thus:

(vi) **“Engagement on compassionate grounds** In case of vacancy arising out of **death** or **in case of incapacitation on medical ground**, 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 means 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 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 a 1st 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 / 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 opinion to the District Controller, Food and Supplies. While forwarding a case on medical ground the Sub-divisional Controller should satisfy himself / herself on examination of the medical prescription and certificate issued by a Registered Government Medical Practitioner that the ex-licensee

was not in a position to run dealership business considering his / her health ground. The District Controller, Food & Supplies, shall forward the same with his comments to the State Government through the Director, DDP&S for necessary approval.

The Sub-divisional Controller, Food and Supplies after having Government approval, shall issue an offer letter in Form D to the approved candidate, directing him / her to furnish recent passport size photograph(s), security deposit and licensing fee as per Clause 21(i) and Schedule-A.

(Emphasis supplied by us)

9. Cursory reading of the aforesaid provision would show that engagement on compassionate grounds can be claimed on two events –

(i) in case of death and

(ii) in case of incapacitation on medical grounds, subject to satisfaction of the authority.

Point (a) of paragraph 2 of Clause (vi) applies to case on death of the dealer where the spouse of the deceased licensee is the applicant.

Point (b) of paragraph 2 of Clause (vi) applies to case of permanent incapacitation/infirmness, where the dealer has opted for engagement of one of his legal heir as a dealer in his place.

In case of death of the husband who else is the greater loser than the spouse. This status of a widow or widower has been taken into consideration while inserting Point (a) in paragraph 2 and if a spouse is the applicant for appointment as FPS dealer on the death of the ex-dealer there is no need of filing any “No Objection” from any other family members.

So far as case of permanent incapacitation or infirmness is concerned the option of the dealer in favour of any of his legal heir is vital as it speaks of faith and fiat of the dealer on the person opted to run the dealership in his place and to look after him properly in course of his incapacitation.

In any other case beside the aforesaid two exceptions the applicant shall have to furnish “**No objection**” from **other family members** in the form of an affidavit executed before a First Class Magistrate.

10. Further requirement of Clause (vi) is that in case of vacancy arising out of death or in case of permanent incapacitation on medical ground prayer of any of the family members having no regular means of subsistence is to 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 (sixty) days from the occurrence of such vacancy.

11. The outer limit of 60 (sixty) days provided in Clause (vi) is mandatory inasmuch as compassionate engagement is of urgent nature and vacancy is not to be notified in view of provision contained in Clause 20 (vi) of 2013 Control Order but this limitation is mandatory in case of death only. It is however, not mandatory in case of permanent incapacitation inasmuch as there cannot be a

fixed date for permanent incapacitation of a person. The process of incapacitation may be slow or sudden. Suffice it to say that the legal heir opted by the dealer should apply within 60 (sixty) days of issuance of medical certificate by a registered medical practitioner regarding the factum of incapacitation of the dealer. Similarly the dictate of the provision in Clause (vi) to apply in Form C along with Annexure-I thereto with requisite fee is also a *sine qua non* and the application can be stated to be made on the date on which the application in Form C is submitted by the legal heir of a deceased or a person incapacitated before the competent authority.

12. Rasbihari Das, father of the Appellant made representation along with the Affidavit sworn by him vide Annexure-P2 to the Writ Petition on 05.02.2019 before the SDC, F&S, Contai (present Respondent No. 5). With such Affidavit the necessary medical papers to evaluate and assess his nature of permanent incapacitation etc. were not filed. According to the scheme in Clause 20 (vi) the incapacitation on medical ground is subject to satisfaction of the authority. If medical papers are filed, the authority may conduct an enquiry or may satisfy itself on the basis of medical papers filed regarding the factum of incapacitation of the dealer on medical ground. As per dictum of Clause 20 (vi) of 2013 Control Order the Applicant along with the Affidavit of his father had not submitted his application in Form C of 2013 Control Order along with Annexure-I thereto with requisite fees. Therefore, in our view no application filed by the Applicant (present Appellant) was pending before the authority till the application vide P6 to the Writ Petition was filed after the death of Rasbihari Das (father of the Appellant). It is

well settled in law that if an application is not complete in all respect as required by law, such application may not be processed by the authority concerned. In the present case there being no materials before the authority concerned to evaluate and assess the incapacitation of Rasbihari Das on medical ground and there being no formal application in Form C before the authority submitted by the applicant there was nothing before them to proceed on the basis of a simple Affidavit filed by Rasbihari Das (Appellant's father) accompanied by a representation. There being no proper application on record before the competent authority from 05.02.2019 as claimed by the present Appellant, no delay can be attributed to the competent authority on their part in processing the application.

13. So far as the questions raised by Mr. Saha Roy, learned Counsel for the Appellant outlined in paragraph 4 and 5 *supra* is concerned, we are of the view that Hon'ble Single Judge has proceeded on right premises to answer these questions. "**Permanent incapacitation**" and **death** of a dealer are two distinct events. Consideration of an application submitted on the ground of "**permanent incapacitation**" is different than an application on the ground of "**death**". In the former, the prime consideration is as to on whom the incapacitated dealer has reposed confidence and faith to look after him and his business. In the later, who others are the family members dependent on the deceased dealer on the date of his death. The consideration being different and distinct in both the events, death of a dealer in course of his incapacitation would not elevate the Applicant in favour of whom option was exercised by the deceased dealer during his life time to claim the dealership exclusively to the exclusion of other legal heirs whom the provision

in Clause 20 (vi) of 2013 Control Order has brought as Co-claimants after death of the dealer. Any application filed during the incapacitation of a dealer shall not stand rejected on the ground of death. What the Applicant is required to do is to intimate the competent authority about the factum of death of the dealer, who had exercised option in his (Applicant's) favour during his life time. The nature of consideration shall only change as required by the provisions contained in Clause 20 (vi) of the 2013 Control Order. But no benefit can be claimed on the basis of a dealer exercising option in favour of someone during his lifetime after his (dealer's) death.

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.

18. The very essence of any scheme of compassionate appointment is **dependence**. The very purpose of any such scheme is to provide succor to such dependents. So any delay in providing appointment/engagement to a dependent or dependents defeat the very purpose of such policy/scheme. We find that in Clause 20 (vi) of 2013 Control Order there is no time limit prescribed for the authority to act on the application filed under the said provision and we also come across cases where claims are kept pending for years. We therefore using our plenary power under Article 226 of the Constitution of India interdict the State Government to comply strictly with the following directions:-

- (i) Every application should be disposed of within 6 (six) months from the date of filing of formal application under Form C along with Annexure-I thereto of 2013 Control Order.

- (ii) If there is any defect in the application, the Applicant be intimated to rectify the defects within one month from the date of filing and such defects be rectified by the Applicant within 15 (fifteen) days of such intimation.
- (iii) If the application cannot be processed by the outer time limit of 6 (six) months outlined *supra* for any reason, temporary licence should be issued in favour of the Applicant subject to the condition that such licence shall be subject to the outcome of the enquiry. If more than one application have been received from more than one legal heir, the Applicant who submitted his application first should be issued with the temporary licence pending enquiry.
- (iv) In no event any application be kept pending beyond one year.

19. Coming to the view expressed by this Court in the impugned order, cases of **Samar Das** and **Rajib Debnath**, we are constrained to hold that the decision in the cases of **Samar Das** and **Rajib Debnath** cannot be held to be good law any more in view of our discussion *supra*.

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.

21. In view of our discussion *supra* we do not proceed to discuss in detail the decisions relied on by learned Counsel for the parties to unnecessarily burden our Judgment because we have dealt with the principles enunciated in the decision relied on by learned Counsels in our discussion.

22. Though we agree with the impugned Judgment on the premises it has proceeded we fail to concur with the same so far as the conclusion arrived. Accordingly, the impugned Judgment is set aside and the appeal is allowed, remanding the matter back to SDC, F&S, Contai (Respondent No. 5).

23. Respondent No. 5 is directed to reconsider the application submitted by the Appellant *de novo* keeping in mind our observation *supra* to find out whether the

present Respondent No. 6 was dependent on his deceased father Rasbihari Das on the date of his death. If he (Respondent No. 6) is found to be not dependent on his deceased father on the aforesaid relevant date “**No Objection**” Affidavit by him is not at all necessary for granting licence in favour of the present Appellant as other family members have already filed “**No Objection**” Affidavit.

24. In view of disposal of the Appeal the interim application being CAN 1 of 2022 is also disposed of.

25. There is no order as to costs.

I agree.

(Aniruddha Roy, J.)

(Chitta Ranjan Dash, J.)