

Item No. 209

04.05.2022  
Ct-24

In The High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side

WPA 21347 of 2021  
Sahidur Rahaman @ Sahidur Islam  
v.  
The State of West Bengal & Ors.

Mr. Kalyan Kumar Panda  
... for the petitioner.

Mr. Susovan Sengupta  
Mr. Subir Pal  
... for the State respondents.

Mr. Ram Anand Agarwal  
Mr. Ananda Gopal Mukherjee  
... for the private respondent.

The petitioner happens to be one of the sons of one Ajinur Bewa, widow of late Fitu Biswas who was an M.R. Dealer. After expiry of Fitu Biswas his widow Ajinur Bewa was issued the licence on compassionate ground. The said Ajinur Bewa expired on October 20, 2017 leaving behind as many as eight children. One of the sons of the deceased Ajinur Bewa that is Md. Isab Nabi made an application for issuance of licence in his favour on compassionate ground by taking no objection from the other heirs and legal representatives of the deceased licensee Ajinur Bewa.

The application of Md. Isab Nabi was taken into consideration and was proceeded with by the respondent

authority. But prior to the license being issued in favour of Md. Isab Nabi he expired on May 31, 2020 leaving behind his widow and three minor children.

On the death of Md. Isab Nabi his widow Sokhina Bibi, the private respondent herein, applied for obtaining dealership on compassionate ground. The respondent authority considered the application of the said Sokhina Bibi and issued license in her favour.

The petitioner, one of the sons of the deceased Ajinur Bewa, is aggrieved by the same.

It is the specific contention of the petitioner that the children of the deceased Ajinur Bewa issued no objection in favour of Md. Isab Nabi, but did not issue any no objection in favour of the private respondent herein, that is the widow of Md. Isab Nabi.

On the death of Md. Isab Nabi the no objection which was issued in his favour lost its force and the same could not have been relied upon by the respondent authority for grant of licence in favour of his widow.

It is the further case of the petitioner that license on compassionate ground could not have been issued in favour of the daughter-in-law as the said relation “daughter-in-law” is not covered in the definition of “family members” appearing in paragraph 2(m) of the Control Order, 2013.

It has been submitted that daughter-in-law not being a family member in terms of the Control Order 2013, could not have been issued the license on compassionate ground on the death of the dealer Ajinur Bewa.

The license which was issued in favour of the private respondent on September 29, 2021 clearly mentions that the same was issued on compassionate ground in place of the deceased FPS dealer Ajinur Bewa.

The petitioner prays for setting aside the license which was issued in favour of the private respondent.

Learned advocate representing the private respondent submits that as the application for license which was filed by the son of Ajinur Bewa that is Md. Isab Nabi was proceeded with by the respondent authorities and just prior to the formal issuance of the license the said Md. Isab Nabi expired, accordingly, the respondent authority thought it fit to issue the license in favour of his widow.

It has been contended that as the children of the deceased dealer Ajinur Bewa issued no objection in favour of Md. Isab Nabi relinquishing their right for obtaining the license on compassionate ground, accordingly, at this stage, they cannot again pray for issuance of licence on compassionate ground in their favour. They cannot also object to the issuance of license

in favour of the widow of the proposed licensee Md. Isab Nabi who died on May 31, 2020.

Learned advocate representing the State respondents candidly submits before this Court that as such license was not issued in favour of the proposed licensee Md. Isab Nabi, accordingly, the claim of the widow of the said proposed licensee, for grant of license on compassionate ground, cannot be accepted.

It has been submitted that, the no objection issued in favour of the son of Ajinur Bewa, will not be applicable in favour of the widow of Md. Isab Nabi.

After hearing the submissions made on behalf of the parties it appears that Ajinur Bewa expired on October 20, 2017. Md. Isab Nabi, her son, applied for the license after taking no objection from the other heirs. Though the application of Md. Isab Nabi duly processed, but prior to the formal issuance of license in favour of Md. Isab Nabi, he expired on May 31, 2020.

On the expiry of Md. Isab Nabi all steps taken by the respondent authority to issue license in his favour became futile and the vacancy which arose on the death of Ajinur Bewa was required to be filled up from amongst the heirs and legal representatives of Ajinur Bewa and not from the heirs and legal representatives of Md. Isab Nabi.

Had the license been formally issued in favour of Md. Isab Nabi, then on his death, his widow would have got an opportunity to be considered for engagement on compassionate ground, but as Md. Isab Nabi expired prior to the issuance of license in his favour, accordingly, his widow does not have an opportunity for consideration of her case for being engaged on compassionate ground.

The vacancy has to be considered to have arisen on account of the death of the recorded licensee Ajinur Bewa and not on account of the death of the proposed licensee Md. Isab Nabi. Moreover, the private respondent, being the daughter in law, not being a 'family member' as per the Control Order, 2013, do not have a chance to be considered for engagement on compassionate ground on the death of her mother in law.

Accordingly, the license which has been issued in favour of the private respondent herein is liable to be set aside and quashed being issued contrary to the provisions of the Control Order, 2013. The same is accordingly set side and quashed.

The respondent authority is directed to take steps for filling up the vacancy which arose on account of the death of the recorded dealer Ajinur Bewa strictly in accordance with law, at the earliest.

It will be open for the respondent authority to consider the application for engagement on compassionate ground, if any, filed by the heir(s) of the deceased recorded licensee Ajinur Bewa in accordance with law.

The writ petition stands allowed.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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**(Amrita Sinha, J.)**