

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 28971 of 2008

with

CAN 3 of 2022

and

IA No. CAN 1 of 2015 (Old No. 1898 of 2015)

Basudeb Mondal

Vs.

State of West Bengal & ors.

For the Petitioner : Mr. Arup Banerjee
.....advocate

For the Added
Respondent : Mr. Ranjit Kumar Jaiswal,
Mr. Pradip Mukherjee
.....advocates

For the State :Mr. Benazir Ahmedadvocate

Heard on : 05.05.2022

Judgment on : 13.05.2022

Hiranmay Bhattacharyya, J.:-

1. The son of the original M.R. Dealer, since deceased, filed this writ petition praying for issuance of a writ of mandamus to set aside the order dated November 5, 2008 passed by the District Controller, Food and Supply,

Burdwan and to allot the M.R. dealership in favour of the petitioner.

2. The father of the petitioner namely Lakshmi Kanta Mondal was appointed as a M.R. Dealer. He died on April 18, 2007. After his death the petitioner applied for being appointed as a M.R. Dealer on compassionate ground. Since the authority was sitting tight over the matter, petitioner filed a writ petition being WP No. 4326(W) of 2018 which was disposed of by an order dated July 16, 2018 by directing the concerned authority to take a decision on the petitioner's application on being satisfied of the petitioner having adequate infrastructure for conducting the business of a dealer and other conditions stipulated for such compassionate engagement being fulfilled, the authority shall consider granting the petitioner license for such dealership.
3. Pursuant to the said order passed in the writ petition, District Controller, being the respondent no. 2 herein passed an order dated November 5, 2008 rejecting the application of the petitioner. Being aggrieved, the petitioner filed the instant writ petition.
4. The respondent no. 3 filed an affidavit-in-opposition stating that pursuant to the order passed in WP No. 4326(W) of 2018 an enquiry was held and it was mentioned in the enquiry report that the godown which was shown by the petitioner was a residential mud house which is not fit for storage of foodgrains. It was, further, stated that the

petitioner failed to furnish consent from the owners of the house to conduct such business from the proposed place of storage. It was, further, stated therein that the other legal heirs of the deceased dealer raised objection against grant of dealership in favour of the petitioner.

5. The respondent no. 9 claims to be the grandson of the original dealer. The said respondent filed an affidavit-in-opposition stating that his father Ambika Mondal predeceased his grandfather i.e., the original dealer. It was contended that the original dealer affirmed an affidavit for substitution of his name in the dealership license. It was specifically stated therein that the godown which was shown by the petitioner for storing the goods is jointly owned by him and his brother Swapan Mondal by virtue of a deed of gift executed by his grandfather. Thus, according to the respondent no. 9, the petitioner cannot claim himself to be a co-sharer of the godown.
6. Mr. Banerjee, learned advocate for the petitioner submitted that the petitioner being the son of the original M.R. Dealer is entitled to be appointed as a M.R. Dealer on compassionate ground. He contended that the godown which was used by the original M.R. Dealer was inspected by the concerned authority pursuant to an order passed by this court on the earlier writ petition and the authority could not have held that the said godown is not fit for storage of foodgrains. He, further, submitted that the petitioner has constructed a pucca structure on a plot

which is very near to the mud built shop from where the original M.R. dealer was running his dealership business. He submitted that the respondent authorities can be directed to inspect the said property and consider the case of the petitioner for allotment of the dealership license in favour of the petitioner on compassionate ground.

7. Mr. Ahmed, learned advocate for the State relied on the order passed by the District Controller on November 5, 2008 and contended that the godown is a residential house and the condition of the said godown is not fit for storage of foodgrains. He submitted that in the absence of consent from the owners of the said godown the petitioner cannot be allowed to carry on the dealership business from the said shop room. He further submitted that in course of hearing before the District Controller the other legal heirs i.e., four daughters of the deceased M.R. Dealer withdrew their consent. He, thus, submitted that the order passed by the District Controller need not be interfered with by this court.
8. Mr. Jaiswal, learned advocate appearing for the added respondent no. 9 contended that he being the son of the predeceased son of the original M.R. Dealer is a legal heir as per the Hindu Succession Act and as such he is entitled to be appointed as a M.R. Dealer on compassionate ground. He, further, submitted that the other legal heirs of the original M.R. Dealer gave no objection certificate in favour of the respondent no. 9 for appointment as a dealer in place of his grandfather. He contended that since the godown which

was shown by the petitioner for using the same for storage of foodgrains is owned by the respondent no. 9 and his brother and the petitioner has no manner of right, title and interest in respect of the said godown/ shoproom, the petitioner cannot use the same without the consent of the owners of the said property. Thus, he submitted that the respondent no. 9 should be appointed as a M.R. Dealer in place of Lakshmi Kanta Mondal, the original dealer, on compassionate ground.

9. Heard the learned advocates for the parties and perused the materials on record.

10. The son of the original M.R. Dealer i.e., the petitioner herein and the grandson of the said dealer being the respondent no. 9 herein are fighting against each other and trying to enforce their claim for being appointed as a M.R. Dealer on compassionate ground. It is evident from the records that the respondent no. 9 applied before the Sub-divisional Controller, Food and Supplies, Burdwan for appointment as a dealer on compassionate ground. Such prayer of the respondent no. 9 was rejected by the Sub-divisional Controller by an order dated 09.02.2013. The said order dated 09.02.2013 was challenged by the respondent no.9 in WP 29470 (W) of 2013 which stood dismissed by an order dated November 6, 2013 by a co-ordinate bench of this court upon holding that the Sub-Divisional Controller did not commit any illegality in passing the impugned order.

11. On a query of this court, the learned advocate for the respondent no. 9 submitted that the respondent no. 9 did not challenge the said order. Therefore, the order dated November 6, 2013 attained finality. Thus, the respondent no. 9 cannot claim to be appointed as a dealer on compassionate ground in place of Lakshmi Kanta Mondal.
12. After going through the order dated November 5, 2008 passed by the District Controller, this court is of the considered view that the said order cannot be sustained in the eye of law and the same is liable to be set aside and quashed for the reasons stated hereinafter.
13. Firstly, the finding of the District Controller that the godown is not fit for storage of foodgrains as the same is a residential mud house cannot be accepted as the said godown was used by the original M.R. Dealer for storage of foodgrains. The respondent no. 3 admitted the fact that the said godown was used by the original M.R. dealer in his affidavit. It is not clear to this court as to why a residential mud house, when the same was used by the original M.R. Dealer, was found to be suitable and was considered to be not fit for storage of foodgrains at the time of carrying out inspection of the same for the purpose of deciding the claim of the petitioner. No reasons have been indicated in the said order as to why the said godown was not considered to be fit for storage of foodgrains. Merely because the godown is a residential mud house, the same cannot be said to be unfit for storage of foodgrains.

14. Secondly, the daughter of the original M.R. Dealer gave their no objection in favour of the petitioner by affirming affidavits in that regard. It appears from the order dated November 5, 2008 that the District Controller, merely on the basis of oral submission of the other legal heirs, treated the no objection granted by them by affirming affidavits as cancelled. A statement affirmed by an affidavit cannot be withdrawn subsequently merely on the basis of oral statement. Thus, the said finding cannot also be sustained in the eye of law.

15. Thirdly, the respondent no. 9 who is claiming to be a legal heir of the original M.R. Dealer has not given any no objection in favour of the petitioner. Mr. Banerjee contended that the respondent no. 9 cannot be said to be a “family member” as defined in Clause 2(m) of the West Bengal Public Distribution (Maintenance and Control) Order, 2013 (for short “the Control Order”) and as such the no objection certificate from the respondent no. 9 is not necessary. However, the learned advocate for the respondent no. 9, by placing reliance on the notification dated December 14, 2020, submitted that he is a “relative” as per sub-clause (xa) of Clause 2 of the 2013 Control Order. He, thus, submitted that being the legal heir he has a right to object to the claim of the petitioner. The object behind giving no objection certificate by the family member/legal heirs of the original M.R. Dealer is to ascertain as to whether there are any rival claims to the said dealership. Right of the respondent no. 9 in respect of his claim for appointment to the said dealership on

compassionate ground has been decided against him by this court. Furthermore, in view of the strained relationship between the petitioner and the respondent no. 9, the respondent no. 9 may not be willing to issue a no objection certificate. The requirement of obtaining no objection certificate from the respondent no. 9 in view of the facts and circumstances of this case should be dispensed with.

16. Fourthly, the respondent no. 9 is claiming to use the said godown for storage purpose. The order of the District Controller is silent in that respect. Therefore, the godown which was shown by the petitioner, could not have been considered to be not fit for storage of the foodgrains.

17. Thus, for the aforesaid reasons, this court is of the considered view, that the enquiry report of the Sub-divisional Controller dated October 10, 2008 is liable to be set aside and the same is set aside and quashed by this court.

18. As this court has already set aside the enquiry report of the said Sub-divisional Controller, the objection of the respondent no. 9 that petitioner cannot be permitted to use the said godown without taking consent of the owners of the said property should not detain this court for deciding the writ petition as the petitioner is ready to offer a pucca structure, which he claims to have constructed on plot no. 256 under Khatian No. 344 within Mouja Balabati under Police Station Khandaghosh in the District of Purba Bardhaman, and is situated near the said mud built godown according to the petitioner.

19. Since the petitioner is ready to offer an alternative place for storage of foodgrains for the purpose of running the dealership business, this court is of the considered view, that the concerned respondent should be directed to cause an inspection of the said proposed alternative location and after taking into consideration the suitability of the said property for the purpose of the business of M.R. Dealer should consider the prayer of the petitioner for appointment as a M.R. Dealer in place of Lakshmi Kanta Mondal on compassionate ground. This Court has already observed that the no objection given by the daughters of the original dealer cannot be cancelled or withdrawn orally. The requirement of no objection certificate from the respondent no. 9 also stands dispensed with for the reasons as given hereinbefore.

20. Mr. Banerjee relied upon a judgment dated July 14, 2014 passed by a co-ordinate bench in WP 18200(W) of 2014 (*Bijoy Krishna Jana and Anr. Vs. State of West Bengal and Ors.*) and contended that the case of the petitioner is to be considered in terms of the 2013 control order. Since this Court proposes to direct the concerned authority to decide the claim of the petitioner, this Court does not wish to make any comment on such submission at this stage and the competent authority shall be free to decide such issue.

21. For the reasons as aforesaid the order dated November 5, 2008 passed by the District Controller, Food and Supplies, Burdwan being the respondent no. 2 herein is set aside and quashed. WPA 28971 (W) of 2008 accordingly stand disposed

of with the following directions- (i) The writ petitioner shall file the documents in respect of the property which he proposes to use as a godown for storage of foodgrains and for the purpose of running the proposed dealership business by specifically mentioning his right in respect of the said property along with a copy of this order before the District Controller. (ii) Upon receipt of the said documents, the District Controller, Food and Supplies Department, District-Burdwan (now District- Purba Burdwan) being the respondent no. 2 herein is directed to cause an inspection of the said property by deputing a responsible official for such purpose. (iii) The respondent no. 2 shall reconsider the claim of the petitioner for appointment as a M.R. Dealer on compassionate ground after taking into consideration the enquiry report, the documents submitted by the petitioner with regard to his right in respect of proposed godowns/ shop rooms as well as any other relevant materials that may be necessary for deciding such claim and pass a reasoned order strictly in accordance with the law in the light of the observations made hereinbefore without insisting for submission of no objection certificates. The said order shall be communicated to the petitioner. (iv) The entire exercise shall be completed by the respondent no. 2 within a period of eight weeks from the date of submission of the documents by the petitioner.

22. The applications also stand disposed of accordingly.

23. It is, however, made clear that the authority while deciding the claim of the petitioner shall take into consideration the provisions of the relevant Control Order and the judicial pronouncements.

24. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)

(P.A.- Sanchita)