

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 2540 of 2023

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

For the Petitioner: Mr. Partha Sarathi Bhattacharya. Adv.,
Mr. Raju Bhattacharyya, Adv.,
Mr. Arunava Maiti, Adv.

For the Respondent No.6: Mr. Saibal Kumar Acharya, Adv.,
Mr. Sukhendu Bikash Mukherjee, Adv.

For the Respondent No.7 & 8:
Mr. Tanmoy Mukherjee, Adv.,
Mr. Souvik Das, Adv.,
Mr. K. R Ahmed, Adv.

For the State: Mr. T.M Siddiqui, Adv.

Heard on: 14 June, 2023.

Judgment on: 19 June , 2023.

BIBEK CHAUDHURI, J. : –

1. Father of the petitioner namely Mohanlal Mahato, since deceased during his life time was appointed as a MR dealer and was issued licence under the West Bengal Public Distribution System (Maintenance and Control) order, 2013. He was also a kerosene dealer under the provisions of the West Bengal Kerosene Control Order, 1968. The said Mohanlal Mahato died leaving behind the petitioner and his two brothers being the sons and one daughter as his legal heirs successors. During his life time

Mohanlal Mahato used to reside in joint mess with his three sons namely Ashutosh, Santosh and Basudeb. After the death of Mohanlal Mahato the petitioner submitted an application for issuance of FPS licence on compassionate ground in place of his deceased father who was a FPS dealer of village Pardih under Jhalda-1 Block. By an order dated 21st January, 2022 the petitioner was directed to submit “No objection” form issued by other family members of the deceased dealer in the form of affidavit as per legal heirs certificate duly sworn before the First Class Magistrate (2) No objection from other legal heirs of the proposed shop cum godown in the form of affidavit before the First Class Magistrate (3) Medical fitness certificate in the name of the applicant issued by the registered government Medical Practitioner and (4) declaration in respect of GO No.1706-FS and 1707-FS dated 21st July, 2014 in the form of affidavit sworn before the First Class Magistrate.

2. Further case of the petitioner is that the elder brother of the petitioner namely Ashutosh Mahato also made an application for issuance of FPS dealership in his name on the death of his father. Ashutosh Mahato was also directed by the Sub-Divisional Controller, Food and Supplies, Jhalda to submit the documents as claimed from the present petitioner for consideration of his prayer.

3. Further case of the petitioner is that his elder brother Ashutosh Mahato filed a Writ Petition being WPA 2291 of 2022 alleging, inter alia, that the Sub-Divisional Controller, Food and Supply, Jhalda by the letter dated 28th January, 2022 directed the petitioner to submit required

documents within seven days from the date of issuance of the letter failing which the authority will take steps for declaring the vacancy. The petitioner made a communication with the Sub-Divisional Controller on 31st January, 2022 requesting him to extend the time for filing the documents but the representation was not considered. The said writ petition was disposed of by a Coordinate Bench directing the Sub-Divisional Controller, Food and Supplies to take steps for consideration of the representation filed by the petitioner on 31st January, 2022 strictly in accordance with law within a period of eight weeks from the date of communication of a copy of this order.

4. The rival claims of the petitioner and the respondent No.6 were duly considered by Sub-Divisional Controller, Food and Supplies and the representation submitted by them were rejected as they failed to submit requisite documents communicating no objection of the other legal heirs.

5. This led the present petitioner to file WPA 8188 of 2022 before a Coordinate Bench which was disposed of on 24th November, 2022 directing the respondent No.5 to conduct an inquiry to the effect as to whether the petitioner being the dependent son of deceased MR dealer is required to file any no objection from respondent No.6 or whether the respondent No.6 was also a dependant of the said MR dealer at the relevant point of time.

6. In compliance of the above order Sub-Divisional Controller, Food and Supply, Jhalda conducted an inquiry and submitted a report on 22nd December, 2022. It was held by him that as per the statement of the

family members of late Mohan Lal Mahato physical verification and conversation with some villagers at the end of the inquiry it is established that whole family of late Mohanlal including his sons namely Ashutosh Mahato and Santosh Mahato were dependant on their father late Mohanlal Mahato at the time of his death and that they all lived together in a two storied building at the time of his death. The Sub-Divisional Controller also found during inquiry that both the petitioner and the respondent No.6 have no regular source of income. On the basis of the said inquiry final report was submitted by the Sub-divisional Controller, Food and Supplies Department on 13th January, 2023.

7. The said final report is under challenged in the instant writ petition.

8. Respondent No.6 being the elder brother of the present petitioner has filed an affidavit in opposition denying all allegations made by the petitioner in the above mentioned writ petition. It is specifically submitted by the respondent No.6 that even during the life time of Nandalal Mahato the respondent No.6 was entrusted to lift kerosene oil for public distribution on behalf of his father. He also declared that he has no landed property. Few decimal of land was purchased in the name of his wife and son by his mother-in-law and the petitioner tried to establish that the respondent No.6 had separate bastu land and he lives separately from the joint mess of his father, since deceased. It is also stated by the respondent No.6 that he does not carry on any decorating business in the name of his son Satyaban Mahato. Respondent No.6 also filed a copy of a mass petition wherein it is stated that private respondent had no separate

house. He or his son had no decorating business. Previously he used to help his father in distributing ration articles to the ration card holders and at present he earns his livelihood by way of cultivation and working in Hundred Days Work programme.

9. The respondent No.1-5 being the said respondent relied on the inquiry report and the final order passed on the basis of the inquiry report stating, inter alia, that both the petitioner and respondent No.6 are unemployed legal heirs of Mohanlal Mahato. However, none of them issued no objection in the matter of granting MR dealership in favour of one of them on compassionate grounds. Therefore, the only course to the petitioner is to declare vacancy in respect of the said fair price shop. The petitioner has filed affidavit-in-reply against the affidavit-in-opposition separately filed by respondent No.1-5 and respondent No.6.

10. It is submitted by Mr. Partha Sarathi Bhattacharya, learned Counsel for the petitioner that the respondent No.6 runs a business of decorators and light and sound under the name and style of Subrata Decorators and DJ Sound. The local villagers submitted a mass petition stating, inter alia, that respondent No.6 used to live separately in a separate house long before the death of his father. The petitioner has also filed record of rights showing ownership of bastu land in the name of the wife and son of Ashutosh. The said land was purchased at a consideration price of Rs.3,31,000/-.

11. It is contended on behalf of the respondent No.6 that the consideration price of purchase of the said land was paid by his mother-in-law.

12. Learned Advocate for the petitioner submits that the deed in respect of the land in the name of the wife and son of respondent No.6 and the document relating to decorating business of the son of the respondent No.6 were not placed before the learned Sub-divisional Controller. There was no inquiry with regard to the fact as to whether the bank account maintained in United Bank of India, Suisa Branch, being Account No.0719010126700 stands in the name of the respondent No.6 or not. From the representation relied on by the respondent No.6 it is ascertained that he earns his livelihood as a cultivator and also works in Hundred Days Work scheme. Thus, it is not in dispute that the respondent No.6 earns his livelihood by cultivation. On the other hand, all other brothers and sisters of the petitioner except respondent No.6 affirm affidavit declaring that the present petitioner is unable and they have no objection if MR dealership is granted in favour of the petitioner on compassionate grounds.

13. In view of such circumstances, the instant writ petition is disposed of on contest directing the Sub-Divisional Controller, Food and Supplies Department, Jhalda to consider the following facts:-

- i) Whether the respondent No.6 purchased land by his own money in the name of his wife and son.

- ii) Whether respondent No.6 maintains account No.0719010126700 in United Bank of India, Suisa Branch.
- iii) Whether a sum of Rs.1,31,000/- was paid from the said bank account or not to purchase land in the name of wife and son of respondent No.6
- iv) Whether the son of the respondent No.6 has his decorating business.
- v) Whether respondent No.6 has independent income from cultivation and Hundred Days Work programme.

14. . After ascertaining the reply to the above mentioned points the Sub-Divisional Controller, Food and Supply, Jhalda-I shall finally decide as to whether the petitioner or respondent No.6 is entitled to MR dealership of his deceased father on compassionate grounds.

15. There shall be no order as to cost.

(Bibek Chaudhuri, J.)