

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 3213 of 2023

**Ganga Sagar Saha and Ors.
Vs.
The State of West Bengal & Ors.**

For the petitioner : Mr. Sambhunath Ray
Ms. Tuhina Parvin

For the State : Mr. T. M. Siddique
Mr. Amrit Lal Chatterjee

Item No.12

Heard & Judgement on : 19.09.2023

Bibek Chaudhuri, J.

The father of the petitioner was the original fair price shop dealer situated at Mouza Goalpara. After the death of the said Parash Nath Saha the legal heirs and representatives constituted a partnership firm under the name and style 'M/s. Saha Enterprise' and the said partnership firm was running the business of the said fair price shop. It is further case of the petitioners that they entrusted the private respondent Amit Kumar Saha being one of the

sons of the said late Parash Nath Saha to carry on the business on behalf of the partnership firm and distribute the profit amongst the partners. However, the private respondent misappropriated entire profit for his own use and benefit without paying anything to the petitioners. The petitioner No.1 is the eldest son of late Parash Nath Saha. Other two petitioners are two other sons of the said Parash Nath Saha. Petitioner Nos. 4, 5 and 6 are married daughters of the said Parash Nath Saha.

The petitioners, therefore, submitted an application before the Sub-Divisional Controller, Food & Supplies, Chanchal on 21st July, 2022 requesting him to take necessary step against the private respondent so that the petitioners may get their profit from the said business as per their share. On 4th August, 2022 the Sub-Divisional Controller had personal hearing of the parties. During such personal hearing it is the petitioner No.1 who submitted a prayer requesting the Sub-Divisional Controller not to renew the licence of the said price shop. It is submitted by the petitioner No.1 that as one of the partners of M/s. Saha Enterprise he was not willing to give 'no objection certificate' for grant of licence and he also submitted before the Sub-Divisional Controller that he wanted the licence to be cancelled. Another partner being the private respondent, of course, objected to such submission made by the petitioner No.1. He

wanted that licence may not be cancelled and prayed for giving some time to settle the dispute amongst them. Therefore, on the basis of the prayer made by the petitioner No.1 on 21st July, 2022 the Sub-Divisional Controller detagged beneficiaries from the FPS and tagged them with the nearest FPS dealer. The said order is impugned in the instant writ petition.

In the writ petition itself the petitioner No.1 annexed an application dated 2nd September, 2022 i.e., after the impugned order having been passed on 4th August, 2022 stating, inter alia, that the private respondent has been running the fair price shop illegally by forging his signature and has been enjoying entire profit of the said business himself. The Sub-Divisional Controller tried to settle the matter amicably but he also failed to give any conclusion of settlement. Therefore, the petitioner No.1 made further prayer that Amit Kumar Saha may not be permitted to run the said ration shop in future.

The learned advocate for the petitioners submits before me that the order dated 4th August, 2022 passed by the Sub-Divisional Controller, Food & Supplies, Chanchal is in the nature of termination of licence of M/s. Saha Enterprise. If there is dispute between the partners with regard to the business, accounts of the partnership firm and distribution of share, it is the civil court who has exclusive

jurisdiction to adjudicate the dispute between the partners. Learned advocate for the petitioners also takes me to clause 21 (ii) of WBPDS (Maintenance and Control), Order, 2013. The said provision runs thus:-

“ Every licence issued under sub-clause (i) of this Order shall be valid upto 31st December of the year in which it has been issued. Thereafter such licence shall be renewed for successive period of two years at a time subject to satisfactory performance and confirmation of the dealer. The licensee shall submit the application for renewal of licence in Form F within the period of validity to the licensing authority together with the renewal fee as mentioned in Scheduled A.”

It is submitted by the learned advocate for the petitioners that in case the petitioners being the licensees submit the application for renewal of licence in the prescribed form, the Sub-Divisional Controller will have to renew the said licence. The Sub-Divisional Controller does not have any authority to terminate the licence or to tag the beneficiaries with another FPS dealer in case of dispute between the partners. Therefore, the Sub-Divisional Controller may be directed to reconsider the order dated 4th August, 2022. The learned advocate for the State, on the other hand, draws my

attention to the exceptions/objections filed on behalf of the State Respondents in the instant case. I am surprised to note that the petitioners are praying for issuance of a writ in the nature of mandamus commanding the State respondents to decide the issue in terms of annexure P-3 and P-4 of the writ petition and to pass a reasoned order upon hearing of the parties. The petitioners have also prayed for issuance of writ of prohibition prohibiting the respondent Nos. 1 to 4 from issuing any dealership licence in place and stead of M/s. Saha Enterprise

When the petitioner No.1 being one of the partners made specific prayer against the other partners that he is usurping the profit of the fair price shop business alone and the petitioner No.1 did not want to give 'no objection certificate' for grant of licence, how do the petitioners claim continuation of the business in the name of the partnership firm. Even after the order dated 4th August, 2022 passed by the Sub-Divisional Controller, Food & Supplies, Chanchal detagging the beneficiaries from the FPS shop of the petitioners and the private respondent and tagging it with another dealer of an FPS shop, good sense of the petitioner No.1 did not prevail. He filed another application against his brother private respondent herein so that he cannot continue the business on 2nd September, 2022. On 5th September, 2022 the same petitioner No.1

wrote a letter that the private respondent filed a false application by forging his signature for renewal of licence of fair price shop of the said partnership business.

Under such circumstances, the step taken by the Sub-Divisional Controller, Food & Supplies, Chanchal cannot be called into question. He has no other alternative but to tag the beneficiaries of M/s. Saha Enterprise with the nearest FPS shop dealership. Therefore, I do not find any illegality or impropriety in the impugned order dated 4th August, 2022 passed by the Sub-Divisional Controller, Food & Supplies Department. However, the petitioners and the private respondent No.5 are given opportunity to amicably settle their dispute within 15 days from the date of this order and in case of such settlement they are permitted to file joint application before the Sub-Divisional Controller, Food & Supplies for renewal of licence and in such case the Sub-Divisional Controller shall consider the matter in accordance with law.

With the above order, the instant writ petition is **disposed of**.

(Bibek Chaudhuri, J.)

