

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**Hon'ble Justice Chitta Ranjan Dash
AND
Hon'ble Justice Partha Sarathi Sen**

MAT 769 of 2022

Sabita Pramanick

Vs.

State of West Bengal & Ors.

For the Appellant : Mr. Bikash Ch. Das, Adv.
Mr. Mahadeb Sarkar , Adv.

For the State : Mr. Sirsanya Bandapadhyay, Adv.
Ms. Tapati Samanta, Adv.

Last Heard on: : 23.03.2023

Judgment on. : 31.03.2023

PARTHA SARATHI SEN, J. : –

1. In this intra-court appeal, the order dated 04.05.2022 as passed in WPA No.7819 of 2022 by the Hon'ble Single Bench of this Court has been assailed. By the impugned order the Hon'ble Single Bench while disposing the said writ petition has been pleased to reject the prayer of the writ petitioner seeking engagement on compassionate ground as a MR Dealer in place of her deceased husband. The writ petitioner felt aggrieved and thus preferred the instant appeal.

2. In support of the instant appeal Mr. Das, learned advocate for the writ petitioner/appellant at the very outset draws attention of this Court

to the Annexure P4 i.e. the copy of Memo No.70/MR/SCF&S/BGN/21 dated 08.01.2021 as passed by Sub-divisional Controller (F&S), Bongaon, North-24-Parganas whereby and whereunder one Bimal Krishna Pramanick, since deceased, the husband of the writ petitioner/ appellant herein was exempted to act as a MR Dealer on account of his voluntary surrender of FPS Licence on medical ground. Attention of this Court is also drawn to Annexure P3 i.e. the copy of the advertisement seeking appointment of MR Dealer by the respondent/State in village Aasharu where the deceased husband of the writ petitioner/ appellant used to carry on his business of MR Dealership. It is argued by Mr. Das that the State/respondents ought not to have published such advertisement seeking dealership in the said village especially when the present writ petitioner/ appellant had sought for appointment on compassionate ground in respect of the dealership as has been granted in favour of the deceased husband of the writ petitioner. It is further argued on behalf of the writ petitioner/appellant that since the MR Licence standing in the name of the husband of the writ petitioner/appellant was never terminated, the State/respondents ought to have considered the prayer of the writ petitioner /appellant for compassionate appointment of MR Dealership in a favourable manner and in not doing so the principle of natural justice has been violated which affects the fundamental rights of the present appellant as envisaged under Article 21 of the Constitution of India. Mr. Das thus submits that it is a fit case for allowing the instant appeal by setting aside the impugned order.

3. Per contra, Mr. Bandapadhyay, in course of his argument took us to Annexure P6, P7, P8 and P10. It is argued by Mr. Bandapadhyay, learned advocate for the State/respondents that from the aforesaid copies of the paper it would reveal that the husband of the present writ petitioner/ appellant had voluntarily surrendered his MR Dealership on account of his ill health and accordingly he was exempted from his duties to act as a MR dealer on and from 02.06.2013. It is further argued by Mr. Bandapadhyay that even after such exemption neither the writ petitioner/appellant herein being the wife of the deceased MR dealer nor any of his other legal heirs approached the State /respondents for appointment on compassionate ground and suddenly the present appellant woke up from her eternal slumber and applied for MR Dealership on compassionate ground in the year 2021 when the original MR Dealer Bimal Krishna Pramanick was no more in the earth.

4. Drawing attention to Clause 20(vi) of WBPDS (Maintenance and Control) Order, 2013, (hereinafter referred to as the 'Control Order, 2013', it has been argued that an application for appointment of MR Dealer on compassionate ground can be entertained only when dealership licence of original MR Dealer remains valid. It is thus argued on behalf of the State/respondents that since on the day of application by the present writ petitioner/appellant, the licence of Bimal Krishna Pramanick, since deceased stood terminated and not existing on account of his voluntary surrender thereof, the present writ petitioner/appellant cannot claim her right of appointment on compassionate ground. Mr. Bandapadhyay,

learned advocate for the State/respondents thus submits that it is a fit case for dismissal of the instant appeal.

5. On perusal of the entire materials as placed before us and after giving due consideration over the submissions of the learned advocates for the contending parties, it appears to us that for effective disposal of the instant appeal a look to the provisions of Clause 20 (vi) of the Control Order, 2013 is necessary and thus the same is reproduced hereunder in verbatim:-

“(vi)Engagement on compassionate grounds: (a) In case of death or in case of incapacitation on medical ground subject to satisfaction of the authority, of any existing dealer, prayer of any of the family members of the deceased/incapacitated dealer having no regular means of income, may be considered on compassionate ground if such prayer along with formal application in Form C2 along with Annexure-I with requisite fee as prescribed in Schedule A, corroborative documents as per checklist and “No Objection” from other family member in the form of an Affidavit to be sworn before a Magistrate in Annexure-II is submitted:

*Provided that in case of death of a licensee such prayer is **submitted within 90 days from the date of death of the licensee:***

*Provided further that the licensing authority may, on just and sufficient grounds shown by the applicant and for the reasons to be recorded in writing, accept **such application upto 120 days from the date of death of the licensee:***

Provided further that “No Objection” is not required if the applicant be the spouse of the deceased licensee or if the

licensee, because of his/ her being incapacitated /infirm has opts the name of the applicant.”

6. Keeping in mind the provisions of the aforementioned Clause(Emphasis supplied by us), if we look to the facts and circumstances as involved in this appeal, it appears to us that there is no dispute that as per the prayer of the deceased husband of the present writ petitioner/appellant his MR Dealer licence was terminated with effect from 02.06.2013 on medical ground since the said deceased MR Dealer voluntarily surrendered his FPS licence to the State/respondents. It further reveals that immediately thereafter the account of the said MR Dealer was directed to be tagged with three separate temporary counters. It has also been placed on record that considering the difficulties in tagging the account of said MR Dealer with other MR Dealers, the State/respondents requested the said MR Dealer Bimal Krishna Pramanick (husband of the appellant), since deceased to continue his MR business for some more time for the interest of public distribution before the ensuing Panchayat Election , 2013. However subsequently respondent no.4/authority directed the Area Inspector Bagdah, North-24-Parganas to submit proposals for three new resultant vacancies and probably for which the vacancy notification were published in the newspaper dated 19.04.2022.

7. However, in our considered view such publication of notification in the newspaper has got little relevance in the instant lis in as much as the present appellant has no right to seek engagement on compassionate

ground because of the fact that on the day of her application the MR Dealer licence standing in the name of her deceased husband, Bimal Krishna Pramanick stood terminated long back and was not in existence on account of the voluntary surrender of such licence by her deceased husband during his life time. Such being the position, we thus find that the Hon'ble Single Bench is very much justified in rejecting the prayer of the writ petitioner.

8. We thus find no merit in the instant appeal and accordingly the instant appeal is dismissed but without cost.

9. Consequently the impugned order dated 04.05.2022 as passed in WPA No.7819 of 2022 by the Hon'ble Single Bench of this Hon'ble Court is hereby upheld .

10. The interim order of stay as passed by this Court on 13.01.2023 stands hereby vacated.

11. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)