

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

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

WPA 10075 of 2023

**Fakaruddin Mondal
-Vs.-
State of West Bengal & Ors.**

**For the petitioner : Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharyya,
Mr. Neil Basu,
Mr. Sankha Biswas**

For the State respondents : Mr. Amrit Lal Chatterjee

Heard & Judgment on : 17.08.2023

Bibek Chaudhuri, J.

The father of the petitioner was a licensee of fair price shop at village - Bahirgachhi within Mouza – Bahirgachhi 73 under Police Station – Chapra in the district of Nadia. The father of the petitioner died on 13th December, 2009. The petitioner made an application under the provision of paragraph 19(ii), 23(iii) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 for compassionate appointment. 2003 Control Order did not stipulate any obligation upon the applicant to file no objection certificate of other legal heirs by swearing affidavit before any 1st Class Judicial Magistrate. The widow and other legal heirs of the original licensee

submitted letters declaring their no objection before the authority if the licence is granted in favour of the petitioner under 2003 Control Order on compassionate ground. They also made separate notarial affidavit. All those documents were filed before the concerned authority on 19th March, 2010. The State respondents did not take any action on the said application. However, it appears from the report submitted on behalf of the State respondents by respondent no. 5 on affidavit that after a lapse of about four years on 12th September, 2014 the Area Inspector (Food & Supplies), Chapra was requested to enquire into the matter by the Sub-Divisional Controller, Food & Supplies, Krishnagar. The Area Inspector found time to enquire into the matter after a lapse of about one year and ten months. On 9th March, 2016 he visited the spot and asked the petitioner to submit necessary papers to him. But he failed to submit any paper in support of his claim and the file was returned to the Sub-Divisional Controller (Food & Supplies), Krishnagar, Nadia. The Sub-Divisional Controller, Food & Supplies Department issued a letter on 29th September, 2016 directing the applicant to submit the following documents:-

1. Affidavit as per annexure – I, sworn before 1st Class Magistrate Certificate.
2. Photocopy of death certificate.
3. "No Objection" from other family members sworn before 1st Class Magistrate.
4. Document regarding possessional right over the shop cum godown with sketch map.
5. Document in support financial solvency.
6. Declaration regarding employment status/occupation.

7. Copy of old licence.
8. Medical fitness certificate authorized by Govt. of West Bengal.
9. Declaration in respect of G.O. Nos. – 1706-FS & 1707-FS.
10. Affidavit No-Court case or No-departmental case.

It is informed by the petitioner that at the relevant point of time the legal heirs issued no objection in favour of the petitioner. But after a lapse of about 13 years the legal heirs of the deceased licensee are not willing to swear further affidavit declaring their no objection for grant of licence in favour of the petitioner.

Learned Advocate for the petitioner relying on the decision passed by the Division Bench of this Court in ***MAT/842/2022, Gurupada Das –Vs.- State of West Bengal & Ors.,*** decided on 5th March, 2022 that the Division Bench has laid down certain guideline with regard to the time period within which the Food & Supplies Department shall dispose of the application for grant of licence on compassionate ground. The directions are :-

- (i) Every application should be disposed of within 6(six) months from the date of filing of formal application under Form 'C' along with Annexure – I thereto of 2013 Control Order;
- (ii) If there is any defect in the application, the applicant be intimated to rectify the defects within one month from the date of filing and such defects be rectified by the applicant within 15 (fifteen) days of such intimation;
- (iii) If the application cannot be processed by the outer time limit of 6(six) months outlined supra for any

reason, temporary licence should be issued in favour of the applicant subject to the condition that such licence shall be subject to the outcome of the enquiry. If more than one application have been received from more than one legal heir, the applicant who submitted his application first should be issued with the temporary licence pending enquiry;

- (iv) In no event any application be kept pending beyond one year.

Relying on the above directions it is submitted by the learned Advocate for the petitioner that the act of the State respondents in the instant matter is not only arbitrary but also *mala fide* and the State respondents ought to be directed to pass necessary order granting licence in favour of the petitioner forthwith.

It is also submitted by the learned Advocate for the petitioner relying on another decision of the Division Bench of this Court in ***MAT/1257/2016, State of West Bengal & Ors. –Vs.- Matadin & Anr.***, decided on 19th September, 2016 that it is obligatory for the State respondents to dispose of an application on the basis of the statutory provision and/or Control Order prevailing at the relevant point of time when the application was filed.

In the instant case, the application was filed in the year 2010 when 2003 Control Order remained in force. Clause 19(ii) of Notification No. 5880 SF published in the Kolkata Gazette on 28th March, 2005 regarding compassionate appointment is dealt with in the following language:-

"In case of vacancy arising out of death, incapacitation of medical ground of any existing dealer

Such vacancy shall not initially be notified. The prayer of the legal heirs will be considered with preference on compassionate ground provided required minimum qualifications are fulfilled. If out of several legal heirs only one legal heir is the claimant he is to submit no objection of other legal heirs along with his prayer.”

Thus, in 2003 Control Order there is no provision of filing no objection affidavit duly sworn in before a 1st Class Magistrate. There was no requirement with regard to filing of application in prescribed format like Form ‘C’ etc. in 2003 Control Order. What was required in 2003 Control Order, the petitioner had complied the State respondents must dispose of the petitioner’s application for compassionate appointment on the basis of the document filed by the petitioner and his other legal heirs in the year 2010. The Sub-Divisional Controller or any other State respondent cannot claim the documents required for compassionate appointment under 2013 Control Order.

In view of what has been stated above, the respondents, specially respondent no. 5 is directed to dispose of the application of the petitioner dated 19th March, 2010 in accordance with law within 60 days from the date of communication of the server copy of this order. In view of the above discussion, vacancy notice dated 19th December, 2022 be quashed.

(Bibek Chaudhuri, J.)