

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/9774/2019

Gouri Karmakar & Ors.

-Vs-

State of West Bengal & Ors.

For the Petitioners: Mr. Subir Banerjee, Adv.,
Mr. Dipanwita Das, Adv.,
Ms. Rimpa Das, Adv.

For the Respondent No.12: Mr. Debabrata Saha Roy, Adv.,
Mr. Neil Basu, Adv.,
Mr. Sankha Biswas, Adv.

For the Respondent No.13: Mr. Sankha Prasad Ray, Adv.

Hearing concluded on: 05 July, 2023.

Judgment on: 14 July, 2023.

BIBEK CHAUDHURI, J. : –

1. This instant writ petition is filed by one Gauri Karmakar, daughter of one Nirod Kumar Das and Shyam Lata Das against the Food and Supplies Department, Government of West Bengal, and, one Purna Chandra Das (Respondent No.13), the elder brother of the petitioner, for alleged illegal transfer of license in the name of the said Respondent no.13.
2. The father of the petitioners and respondent no.12, Nirod Kumar Das, was the licensee in respect of license no MR-37/GMP/FPS, 47/GMP (Kerosine) and had been conducting his business from shop no. 43 at Village Nakoir, within Uday Gram Panchayat, P.O. Buridighi, P.S.

Gangarampur, Dakshin Dinajpur. The said Nirod Kumar Das died on or about May 5, 2008 leaving behind Shyam Lata Das, respondent no. 13 herein as his wife and Purna Chandra Das (respondent No. 12), GouriKarmakar, Mousumi Karmakar, Samar Choudhury @ Samar Das, Amar Das (the petitioners herein) as his daughters and sons.

3. After the death of the said Nirod Kumar Das, the said license was transferred to the name of his wife Shyam Lata Das. After the death of the said Nirod Chandra Das, his legal heirs and successors have automatically become entitled to the said license. However, the business in respect of such license was managed and controlled by the elder son Purna Chandra Das (respondent no.12). It was known and understood between all the legal heirs of Nirod Kumar Das that the said business would only be managed and controlled by the respondent no. 12 to assist and support the mother of the petitioners. The name of the shop room was changed to the name of the mother of the petitioners.

4. Respondent no. 13. Shyam Lata Das was residing along with the family of the elder son, respondent no.12 after the death of her husband. The other sons and daughters used to reside in separate residence constructed in the plot given by Nirod Chandra Das. Around November 2017, respondent No.12 put his mother, Shyam Lata Das' signature on some blank papers and documents with the representation that such documents would be necessary for the conduct of the said business. In good faith, she had trusted her son and had signed such documents and

blank papers as requested by respondent no.12. Thereafter, the said business continued as usual.

5. It is alleged by Shyam Lata Das that a month after the signing, around December 2017, respondent No.12 had started to misbehave with his mother and that he abused her regularly. Due to such a change in the behaviour of her son, she was compelled to depart from her son's residence and reside separately. Gradually, with the advancement of her age and with the grief of the misbehaviour of her son, Shyam Lata Das stopped attending to the daily duties of the said business, while respondent no.12 continued the said business on her behalf. She alleges that her son never made any efforts to reconcile with her after she departed from his residence. It was in accordance with a common family decision that Shyam Lata Das stayed with respondent no.12, after the passing of her husband and therefore, the sudden change in behaviour of her son was very shocking and surprising to her.

6. On or about 19th March, 2019, the petitioners found out that the said business was running under the name of respondent no.12, Purna Chandra Das. The petitioner obtained a copy of a distribution list from the MR distributor of the relevant subdivision and from the list it was clear that the name of respondent no.12 had been replaced in the place of the mother of the petitioners. Shyam Lata Das states specifically and with certainty that the documents which were signed above were not signed by her willingly or deliberately to effect the transfer of the license in favour of the respondent no.12. Any such document reflecting her assent or

recommendation for transfer of the license in favour of the respondent no.12 is manufactured and obtained by fraud and misrepresentation.

7. The petitioners argue that respondent no.12 does not have any separate right to the said license exclusive to the rights of the other legal heirs of Nirod Chandra Das. As such, the said transfer of the said license in the name of the respondent No. 12 is absolutely illegal and untenable. Due to these circumstances, the petitioners have made a representation before the respondent authorities, i.e. the Department of Food and Supply, Government of West Bengal, demanding justice vide a letter dated 26th March 2019 issued by their Learned Advocate. But the respondent authorities have failed to revert.

8. By filing affidavit in opposition respondent No.12 denied allegations made out by the petitioners in the instant writ petition. It is the specific case of the respondent No.12 that his mother, who is an octogenarian lady, has been suffering from various old age diseases and has been under medical treatment. And therefore, she has opted to transfer the said license in his favour and as such asked her to submit the necessary application before the authorities so that the license may be transferred in his name. He alleges that as per the advice of his mother, he has submitted his application for the Dealership for granting license for running fair price shop in as much as FPS No. 13310060035, M.R Licence No. DNJ (S)- GGRP- GGRP-13310060035, S.K. Oil Licence No. DNJ(S)- GGRP-GGRP-K- 1310060035 had been running in the name of his mother Shyamlata Das, wife of Late Nirod Kumar Das. He also argues that his

mother made a representation dated 27.11.2017 to the Sub- Divisional controller (Food and Supply) Gngarampur, Buniadpur, Dakshin Dinajpur, with a request to transfer the aforesaid licence of the dealership (fair price shop) in his name i.e. Purna Chandra Das. He, therefore, alleges that the statements made in the petition are false and misleading.

9. In the instant writ petition the petitioners have prayed for following reliefs:

- “i. A writ of or in the nature of mandamus do issue commanding the respondent authorities and each of them to revert the said license in the name of the mother of the petitioner;
- ii. A writ of or in the name of mandamus do issue commanding the respondent authorities and each of them to cancel the license granted in the name of the respondent no.12;
- iii. A writ of or in the nature of certiorari do issue directing the respondent authorities to certify the records of the case as true and correct and transmit the same to this Hon’ble Court so that upon consideration, conscionable justice may be done;
- iv. Rule NISI;
- v. An order be passed directing the respondent authorities to consider and dispose the representation dated 26th March, 2019 made by the petitioners;
- vi. Such further and/or other order or orders as may be deemed fit or proper.”

It is submitted by the learned Advocate for the petitioner that till date the name of the respondent No.13, i.e., the mother of the petitioners and respondent No.12 is written on the sign board of the fair price shop of

which the respondent No.12 is claiming to be the licensee. It is not in dispute that originally one Nirod Kumar Das father of the petitioners and the respondent No.12 and the husband of respondent No.13 was the licensee in respect of the said fair price shop and the said Nirod Kumar Das died on 5th May, 2008 leaving behind his widow, petitioners and respondent No.12 as his legal heirs and successor. After the death of Nirod Kumar Das, license was granted in favour of respondent No.13 Shyam Lata Das. It is submitted by the learned Advocate for the petitioners that the said respondent changed the name of the licensee from Shyam Lata Das to Purna Chandra Das, respondent No.12 herein without obtaining any no objection certificate of other heirs of the original licensee, namely Nirod Kumar Das.

10. It is also submitted by the learned Advocate for the petitioners that the petitioners and the private respondent belong to the same joint family. Respondent No.12 is the eldest son of Nirod Kumar Das, therefore he was entrusted to look after the business of the said fair price shop on behalf of the respondent No.13. Taking advantage of his relation with his mother, the respondent No.12 took her signature on some blank papers on the pretext that the signature of respondent No.13 was required for the purpose of running the said business and he converted the said documents to an application purportedly submitted by Shyam Lata Das, respondent No.13 requesting the Sub-Divisional Controller (Food and Supply) that due to her old age she was suffering from various ailments and on the ground of physical incapacitation, the license of the said fair

price shop might be transferred in favour of respondent No.12 on compassionate ground. In the instant proceeding the respondent No.13 has filed an affidavit stating, inter alia, that no such application was submitted by her to the respondent authority and she never surrendered her license in respect of the said fair price shop.

11. Learned Advocate on behalf of the respondent No.12, on the other hand submits that clause 20(vi) WBPDS (Maintenance and Control) order 2013 prescribes the mode of compassionate appointment. Proviso to the abovementioned provision states 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 opts the name of the applicant. The respondent No.13 opted the name of respondent No.12 for transferring the FPS license in his name in the year 2018. The petitioners did not make any allegation till 2023. Only in the year 2023 the petitioners managed to bring their mother, respondent No.13 herein to their camp and file the instant writ petition.

12. Having heard the learned Counsels for the parties, and on careful consideration of the relevant clause for compassionate appointment under the WBPDS (Maintenance and Control) order 2013, there cannot be any denial of the fact that no objection of other legal heirs is not required if the licensee, because of his/her incapacitation or infirmity has opted for the name of the applicant.

13. However when the original licensee by swearing an affidavit before this Court states that she never intended to transfer her license in respect

of fair price shop in favour of respondent No.12 and all her children are entitled to have equal share in the said business, equity demands that the dispute should be referred to the Sub-Divisional Controller to consider as to whether the respondent No.13 transferred her license on her free will in favour of respondent No.12 or not.

14. In view of the above discussion, this Court directs the respondent No.4 to consider the demand notice issued by Biswajit Nag, Advocate on behalf of the petitioners on 26th March, 2019 and pass a reasoned order after giving opportunity of hearing to the petitioners, respondent No.12 and respondent No.13 within 60 days from the date of communication of this order.

15. With the above order the instant writ petition is disposed of. There shall be no order as to costs.

(Bibek Chaudhuri, J.)