

Form J(2)

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

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

WPA 14548 of 2023

Raufannechha Molla

Vs.

The State of West Bengal & Ors.

With

WPA 15366 of 2022

Nazrul Hossain Molla

Vs.

The State of West Bengal & Ors.

For the petitioner in WPA 14548 of 2023	: Mr. Pratip Mukherjee, Mr. Sudip Basu
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For private respondents WPA 15366 of 2022	: Mr. Sanjib Kumar Mukhopadhyay, Ms. Nargish Parveen
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For proforma respondents WPA 14548 of 2023	: Mr. A. Roychoudhury, Mr. S.N.Ghosh
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For the State in item No.62.	: Mr. Sirsanya Bandopadhyay, Mr. Arka Kumar Nag
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Judgement on	: 25.07.2023.
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Bibek Chaudhuri, J.

Since both the above-mentioned writ petitions arose under the same facts and circumstances, this Court proposes to dispose of both the writ petitions on the basis of the averments made in the said writ

petitions as well as submissions made by the learned Counsels for the rival parties. One Moktar Hossain Molla was the original licensee in respect of FPS shop at Durga Mondap area, Sandeshkhali. The said Moktar Hossain Molla died leaving behind his widow, two sons and one married daughter. After the death of Moktar Hossain , the eldest son being the petitioner of WPA 15366 of 2022, made an application for grant of licence in respect of the said FPS shop on compassionate ground. The said application was rejected by the Sub-Divisional Controller (Food and Supplies), Basirhat, North 24-Parganas on the grounds, inter alia,

- (i) the application was not filed in proper proforma;
- (ii) the applicant failed to file No Objection Certificate in the form of affidavit of other legal heirs of the original licensee, since deceased.

Simultaneously the widow of the original licensee namely Raufannechha Molla has filed WPA No.14548 of 2023 praying for a direction by issuing a writ in the nature of mandamus upon the Sub-Divisional Controller, (Food and Supplies), Basirhat, North 24-Parganas to grant licence in her favour. The said application was filed in proper form and other legal heirs of the original licensee except the eldest son issued no objection in the form of affidavit in favour of the petitioner of WPA 14548 of 2023 who is their mother.

It is submitted by Mr. Pratip Mukherjee, learned Advocate for the petitioner of WPA 14548 of 2023 that the procedure for engagement of a licensee on compassionate ground in case of death or incapacitation on medical ground is delineated in Rule 20(VI) of the WBPDS (Maintenance and Control) Order, 2013. The proviso to the said provision clearly says 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 opted the name of the application.

In the instant case, the petitioner is the widow of the deceased. Therefore, no objection certificate of other legal heirs of the original licensee is not necessary in course of adjudicating and allowing the application filed by the widow of the original licensee.

On the other hand, the case of the eldest son of the licensee is not supported by other legal heirs of the deceased. Therefore, his prayer was rightly rejected by the appropriate authority.

On the contrary, it is submitted by the learned Advocate on behalf of the petitioner of WPA 15366 of 2022 that his mother is aged about 75 years. She is illiterate. She has no experience to run FPS shop. On the other hand, the petitioner used to help his father in running the said FPS during the lifetime of the original licensee. The competent authority failed to consider those aspects of the matter

and rejected the application made by the petitioner of WPA 15366 of 2022 on the basis of the statutory provision contained in Rule 20 (VII) third proviso.

It is submitted on behalf of the State respondents that the Competent Authority found the widow of the original licensee eligible to get the licence of fair price shop under the provision of WBPDS (Maintenance and Control) Order, 2013. In case of the spouse of the deceased licensee, no objection certificate in the form of affidavit is required to be filed. In spite of such fact, except the eldest son of the original licensee, all other legal heirs submitted no objection certificate in respect of the application filed by their mother.

The respondent authority finding the application of the petitioner of WPA 14548 of 2023 eligible to get the licence on compassionate ground already processed her application and it was approved at the level of Sub-Divisional Controller and at the level of District Controller, (Food and Supplies) and such approval note was sent to the Departmental Secretary for final ratification.

Having considered the respective cases of the parties, I find that the petitioner of WPA 14548 of 2023 is entitled to get licence on compassionate ground on the death of her husband. Therefore, the above-mentioned writ petition is allowed on contest.

In view of the above order, WPA 15366 of 2022 is dismissed on contest.

The State respondents are directed to issue fresh licence in favour of Raufannechha Molla within four weeks from the date of communication of this order.

Both the writ petitions are accordingly disposed of.

There shall, however, be no order as to costs.

(Bibek Chaudhuri, J.)

***Mithun De.
A.R. (Ct).
Sl No.62 & 63.***