Form J(2) **IN THE HIGH COURT AT CALCUTTA**

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Bibek Chaudhuri

WPA No. 16963 of 2023

Md. Samsul Kabir

Vs.

The State of West Bengal & Ors.

For the petitioner	**:**	**Mr. Debabrata Saha Roy,** **Mr. Pingal Bhattacharyya,** **Mr. Subhankar Das.**
For the State	**:**	**Mr. T. M. Sidiqui,** **Mr. Amrita Lal Chatterjee.**
For the respondent Nos. 6 &7	**:**	**Mr. Pratip Chatterjee.**
Judgement on	**:**	**01.08.2023.**

Bibek Chaudhuri, J.

One Abdul Moktar, since deceased, was a licensee of fair price shop-cum- S.K.Oil dealership under Kandi Sub-Division in the district of Murshidabad. It is the case of the petitioner that during the lifetime of the said Abdul Moktar he executed a partnership deed in respect of the said business making himself and his younger son, the petitioner herein as partners of the said business. The partnership deed also disclosed the share of profit and loss to the extent of 80 per cent and 20 per cent in respect of the petitioner and his father.

Since the partnership deed was not accepted initially by the concerned authority, the petitioner and his father filed a writ petition being WPA/71/2022 before this Court. A Coordinate Bench of this Court passed an order on 13th January, 2022 giving liberty to the petitioner to forward a copy of the representation dated 13th September, 2021 along with all supporting documents to the respondent along with the copy of the order and the State respondent was directed to pass a reasoned order and communicate the same to the petitioner no. 1 immediately thereafter. Subsequently a Medical Board was formed to ascertain the physical and mental capacity of the father of the petitioner in relation to execution of partnership deed. Medical examination of the father of the petitioner was conducted on 16th May, 2022 and the Medical Board opined after examination of the father of the petitioner that the petitioner was alert, conscious and cooperative. He was well oriented on the date of examination. His memory was intact. His social and personal judgment was intact and he was having perfect insight. On the basis of the said medical report the partnership deed executed by Abdul Moktar converting the FPS-cum-kerosene oil dealership business to a partnership business under the name and style of M/s. Abdul Moktar was accepted by the Department.

Indisputably, the said Abdul Moktar died on 29th November, 2022. Immediately thereafter the petitioner made an application on 1st December, 2022 to the Sub-Divisional Controller, Food and Supplies praying for taking necessary step with regard to the said partnership business. The petitioner also prayed for running the FPS-cum-kerosene dealer shop in the meantime.

It is needless to say that Clause 20 of the WBPDS(Maintenance and Control) Order, 2013 states:-

"Provided that in case of death of one of the partner of a partnership firm comprising of only two partners having the dealer's licence, the surviving partner shall reconstitute the partnership firm by inducting only the family member of the deceased partner having no regular means of income and not otherwise: Provided further that – (A) in case of death of a partner of partnership firm having the dealer's licence, the licensing authorities may, on an application made by the surviving partner, allows him to continue the business for a period of ninety days or till the new license is granted, whichever is earlier; (B) in case of death of a partner or partners, as the case may be, of the said partnership firm, the surviving partner, may apply for the conversion, before the licensing authority, and upon satisfaction of the licensing authority, the said surviving partner will be allowed to continue the business, as a sole licensee, subject to the approval given by the State Government in this behalf."

Thus, a clear provision has been made in case of FPS and kerosene oil dealership run by a partnership firm in case of death of one of the partners as to the right of the surviving family members of the deceased to claim to be the partner in respect of the said business. The basic consideration in such case would be that the inducting family member of the deceased partner shall have no regular means of income.

It is submitted by the learned Advocate for the petitioner that as per the control order the petitioner filed an application in proper form for converting the licence to his name. However, his elder brother, namely, Md. Samsuzzoha filed an objection against such prayer. Not only this the said Samsuzzoha filed an appeal being MAT/247/2022 against the judgment passed in WPA/71/2022 dated 13th January, 2022 as a party interested stating, *inter alia*, that on the death of the original licence being the father of the petitioner and the respondent no. 6, respondent no. 6 has the equal right to either get the licence or to be inducted as a partner in the partnership business with equal share. The said appeal was disposed of giving liberty to the appellant of hearing before the Sub-Divisional Controller at the time of deciding the issue as to whether the licence will be granted in the name of the petitioner or partnership deed while surviving inducting one partner from the member of the family of the deceased partner having no source of income. The Sub-Divisional Controller gave personal hearing of the matter. The respondent nos. 6 and 7 herein stated at the time of hearing that they wanted to be the partners of the said business.

It is contended by the learned Advocate for the petitioner that respondent no. 6 permanently resides in Suri in the district of Birbhum. As per the control order of 2013 a person can only pray for grant of licence of FPS shop and kerosene oil dealership if he is the permanent resident of the District and Sub-Division where the licensee is sought to be granted. Since the respondent no. 6 is not a permanent resident of Kandi, Murshidabad his prayer ought to have been rejected by the concerned authority.

It is, however, disputed by Mr. Chatterjee, learned Advocate for the respondent no. 6 that the respondent no. 6 is a resident of Suri, Birbhum. On the other hand, it is contended by him that respondent no. 6 is a resident of Baroa, Murshidabad under Kandi Sub-Division. The petitioner also contends that the respondent no. 6 is a man of substance. He executed a deed of gift in favour of his son in respect of a property, the value of which is more than Rs.20,00,000/-. It is also contended on behalf of the petitioner that the respondent no. 7 is having a husking mill and she is a consumer of commercial electric connection for which she pays monthly electric bill on an average of Rs.25,000/- per month. Therefore, the petitioner is the only eligible person to get the licence.

Mr. Chatterjee, learned Advocate for the respondent nos. 6 and 7 controverted the submission made by Mr. Saha Roy, learned Advocate for the petitioner. It is specifically submitted by him that the son of the respondent no. 7 is the owner of a husking mill but the electric meter stands in the name of the respondent no. 7 in respect of the said husking mill. She is not the owner of the husking mill.

It is further contended by Mr. Saha Roy that in case of devolution of interest in respect of licence of a fair price shop or kerosene oil dealership, the same will devolve to a family member of the deceased who was dependent upon the deceased licensee during his lifetime. The issue was dealt with by the Division Bench of this Court in a recent judgment in MAT 842 of 2022, Gurupada Das Vs. State of West Bengal & Ors. decided on 5th August, 2022 where the Division Bench was pleased to hold that the most important word in the definition of family members is the word "dependent". If any of the family member was not dependent on the deceased on the date of his death, his no objection is no necessary for consideration of issuance of licence in favour of any of the legal heir who has applied in Form 'C' along with Annexure 'I' of the 2013 Control Order. The Division Bench in the said judgment made certain guidelines in Paragraph 18 of the said judgment which are reproduced below:-

(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."

It is needless to say that the matter is still pending before the Sub-Divisional Controller, Food and Supplies Department for decision in view of the judgment passed by the Hon'ble Jay Sengupta, J. in WPA 5989 of 2023 dated 17th March, 2023 directing the respondent No.5, Sub-Divisional Controller to consider the application made by the petitioner and any other application that might have been filed in respect of the said dealership within a period of four weeks from the date of the order and thereafter communicate the order to the petitioner within two weeks therefrom.

It is needless to say that the order dated 17th March, 2023 was passed after a lapse of the outer limit of 6 (six) months prescribed by the Division Bench of this Court in MAT 842 of 2022. Considering such aspect of the matter, the Sub-Divisional Controller, Food and Supplies is required to take decision with regard to the grant of licence of fair price shop-cum-kerosene oil dealership on the basis of the application filed by the petitioner and objections filed by the respondent Nos. 6 and 7.

In view of such matter, the Sub-Divisional Controller, Food and Supplies, Kandi Sub-Division is specifically directed to dispose of the application and written objection within four weeks from the date of communication of this order. At the time of disposing of the application, the Sub-Divisional Controller, Food and Supplies Department will take note of the provisions contained in Clause 20 with regard to reconstitution of partnership on the death of one of the partners, means of the respondent No.6 and respondent No.7 to come to a finding whether they have any means to maintain their livelihood on their own or not, and, thirdly, the residential proof of the respondent No.6.

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

In view of the above direction, the order dated 12th April, 2023 passed by the Sub-Divisional Controller, Food and Supplies, Kandi is set aside.

There shall be no order as to costs.

(Bibek Chaudhuri, J.)

Srimanta/Mithun, A.Rs.(Ct.)
Item No. 08.