

03.01.2023
Court No.12
M/L. No. 18+19
Suvayan/
Sourav

**FMA 106 of 2022
With
IA No: CAN 1 of 2021**

**Ajit Kumar Das
Vs.
The State of West Bengal & Ors.**

With

**FMA 107 of 2022
With
IA No: CAN 1 of 2021**

**Ajit Kumar Das
Vs.
Shib Sankar Das & Ors.**

*Mr. Kalyan Bandopadhyay, Sr. Adv.
Mr. Ram Anand Agarwala
Ms. Nibedita Pal
Mr. Ananda Gopal Mukherjee
Ms. Sonam Ray*

*...for the appellant in
FMA 106 of 2022 and
FMA 107 of 2022.*

*Mr. Susovan Sengupta
Mr. Subir Pal*

*...for the State in
FMA 106 of 2022 and
FMA 107 of 2022.*

*Mr. Samiran Mandal
Mr. Abhinaba Dan*

*...for the respondent no. 6 in
FMA 106 of 2022 and respondent
no. 1 in FMA 107 of 2022.*

1. As both the appeals are connected these are taken up together for disposal by a common judgment with consent by learned Counsel for the parties.

2. Heard Mr. Kalyan Bandopadhyay, learned Senior Counsel for the appellant in both the appeals, Mr. Susovan Sengupta, learned Counsel for the State and Mr. Samiran Mandal, learned Counsel for the private respondent.
3. The present appellant's father was a Fair Price Shop dealer. On 02.03.2016 he made an application before the appropriate authority for transfer of his dealership in favour of the appellant and subsequent to that the appellant had submitted statutory application form with requisite application fee, etc.
4. In course of processing of the aforesaid application, the appellant's father expired on 18.03.2017. Thereafter, on 17.05.2017 the present appellant made an application for grant of dealership in his favour on compassionate ground under Sub-clause (VI) of Clause 20 of the West Bengal Public Distribution System (Maintenance and Control) Order 2013 (2013 Control Order, for short). On 13.04.2017 Shib Sankar Das, the private respondent, who is the one of the brother of the present appellant had also submitted an application for grant of dealership in his favour on compassionate ground.
5. Aforesaid Shib Sankar Das filed WP 13496 (W) of 2019 for expeditious action for disposal of the

application by the concerned Sub-Divisional Controller, Food and Supply (in short, SCFS). During pendency of the aforesaid writ petition, the SCFS issued notice for hearing on 30th July, 2019. In view of such, development, this Court disposed of the writ petition directing the SCFS to issue fresh notice for hearing to all parties and pass a reasoned order within four weeks from the date of hearing.

6. Pursuant to notice, all legal heirs of the deceased father of the present appellant appeared before the SCFS except the married daughters. As the legal heirs failed to come to a settlement in choosing a suitable applicant, an order was passed rejecting the applications by the present appellant and the present private respondent. The matter was carried in statutory appeal by private respondent, Shib Sankar Das but in vein.
7. Shib Sankar Das filed writ petition being WPA 6286 of 2021 challenging the order of the appellate authority. The said writ petition was disposed of by this Court directing the SCFS to grant 90 days time to the parties to submit the requisite documents and in case of failure by them, to proceed to declare vacancy and fill up the same. Said order passed in WPA 6286 of 2021 is the subject matter of FMA 107 of 2022.

8. Challenging the order dated 21.09.2020 passed by the SCFS the present appellant preferred WPA 9389 of 2021. The Hon'ble Single Judge disposed of the writ petition directing the present appellant to submit 'No Objection Certificate' within 90 days as per the order passed by the Court in earlier writ petition, i.e., WPA 6286 of 2021. The said order passed in WPA 9389 of 2021 is the subject matter of FMA 106 of 2022.
9. From the facts narrated (Supra) it is clear that two brothers have filed applications for appointment as Fair Price Shop dealer on compassionate ground. Appointment on compassionate ground can be given to one, if said one is found to be eligible in all respect. So far as the requirement of filing of 'No Objection Certificate' is concerned it has been held in the case of Gurupada Das vs. State of West Bengal & Ors. (MAT 842 of 2022 disposed of on 05.08.2022) that 'No Objection Certificate' by an applicant is required to be given from a dependant family members and if any such family member was living independent from the ex-dealer, no no-objection from him need be filed. In Paragraph 20 of the judgment detail guideline have been framed regarding nature of enquiry to be held by SCFS.

10. From the materials on records and submissions advanced by learned Counsel for the parties it is clear that the present case is fully covered by the judgment passed in Gurupada Das (Supra). Accordingly both the appeals are disposed of directing the SCFS, Khatra to process the application of the appellant and private respondent, Shib Sankar Das in the light of the observation made in Paragraph 20 of the judgment in the case of Gurupada Das (Supra).
11. Before parting with the order we make it clear that there is no need of coming to a composition by the intending parties. The SCFS on enquiry shall recommend issuance of lincece in favour of the person who is found to be suitable, taking into consideration the rival claims of both the appellant and the private respondent, Shib Sankar Das into consideration.
12. It is made clear that the application filed by the parties shall be processed within a period of 90 days from the date of receipt of a copy of this order.
13. The judgment impugned in both the appeals are accordingly set aside and the appeals are accordingly allowed.
14. Accordingly, the appeal being FMA 106 of 2022 with interim application being CAN 1 of 2021 and the appeal being FMA 107 of 2022 with

interim application being CAN 1 of 2021 are disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)