

Form J(2)

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

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

WPA No. 25834 of 2022

**Sarjahan Sk.
Vs.
State of West Bengal & Anr.**

**For the Petitioner : Mr. Bibek Jyoti Basu,
Mr. Uttam Kr. De,
Ms. Ankita Mukherjee**

Judgement on : 27.06.2023.

Bibek Chaudhuri, J.

One Abdul Khalil was the grandfather of the petitioner. He was a dealer of distribution of S.K. Oil. On his death the dealership was assigned to his son, Mamlot Sk. Subsequently, Mamlot Sk. Expired on 30th January, 2021. Even after his death the licence which was granted in his name was extended till 31st December, 2021. After the death of the said Mamlot Sk. The present petitioner filed an application praying for granting licence in his name on compassionate ground on 18th February, 2021. The widow and other legal heirs of the said Mamlot Sk., since deceased, issued no-objection by swearing affidavit. However, prior to the filing of such application, after death of the said Mamlot Sk. the Sub-Divisional Controller tagged the said licence temporarily with the nearest S.K.Oil dealer, namely, Banyeswar Pal, Village – Sitalgram of Burwan Block. Subsequent to

the filing of such application by the petitioner no order was passed by the respondent authority. Of late, he came to know that a fresh vacancy declaration has been made depriving the petitioner of the opportunity of being granted S.K.Oil dealership which he is entitled to get on compassionate ground. As the respondent authority failed to discharge their statutory obligation, hence the instant writ petition. The State respondents have filed a report in the form of affidavit. It is contended by the answering respondent that he did not receive any representation whatsoever from the petitioner or from any of the legal heirs of deceased dealer, Mamlot Sk. within the time period as prescribed in the West Bengal Public Kerosene Control Order, 1968. Therefore, the answering respondent has initiated a proposal for declaring a vacancy in the S.K.Oil dealership. It is further contended by the respondent that only after receipt of a copy of the instant writ petition on 24th November, 2022 the respondents came to know that the present petitioner made a representation on 18th February, 2021 for his appointment as S.K.Oil dealer on compassionate grounds. The respondent has raised a doubt as to whether the application for appointment of the petitioner as a dealer of S.K.Oil on compassionate ground was actually made by him before the authority on the ground that the copy of the said application and no-objection affidavits were not annexed with the writ petition. Another technical objection was raised to the effect that the said application was not made in prescribed proforma.

The petitioner has filed a supplementary affidavit annexing the application filed by the petitioner and the affidavits stating no-objection by the legal heirs.

At the time of hearing the State respondents were not represented by any of the learned Advocates from the panel. Since at the time of admission of the instant writ petition an order of *status quo* was granted, S.K.Oil dealership of Mamlot Sk., sine deceased, is still tagging temporarily with the dealership of one Banyeswar Pal and no other person was appointed in respect of the dealership in place of Mamlot Sk.

For the reasons stated above and in view of the fact that the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 has suffered amendment vide notification dated 14th December, 2020 whereby the family members of a deceased dealer are given opportunity to get appointment as a dealer on compassionate ground under die-in-harness category, the respondent authority ought to have considered the application filed by the petitioner.

For the reasons stated above, the application filed by the petitioner on 2nd March, 2021 along with no-objection affidavits filed by the legal heirs of the petitioner is required to be considered by the respondent authority.

Therefore, the instant writ petition is disposed of directing the respondent no. 2 to dispose of the application of the petitioner dated 2nd March, 2021 within 60 days from the date of communication of this order. The petitioner shall be given liberty of hearing at the time of consideration of his representation by respondent no. 2.

If the respondent no. 2 finds that the petitioner is able to satisfy the requirements of the Control Order of 1968, the respondent no. 2 shall issue an order granting licence of dealership of S.K.Oil in the name of the petitioner under usual terms and conditions.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 105.