

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

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

WPA 25875 of 2022

**Durjodhon Shil
-Vs.-
State of West Bengal & Ors.**

**For the petitioner : Mr. Sufi Kamal,
Mr. Shireen Hossain**

For the State respondents : Ms. Amrita Panja Moulick

**For the respondent no. 5 : Mr. Ram Anand Agarwal,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee,
Ms. Sonam Ray**

**Heard on : 07.08.2023, 08.08.2023,
10.08.2023**

Judgment on : 10.08.2023

Bibek Chaudhuri, J.

The petitioner is the younger son of one Subodh Chandra Shil, since deceased. During the lifetime of Subodh Chandra Shil he and the private respondent no. 5 who is the elder brother of the petitioner owned a dealership of fair price shop and kerosene oil distributor. They used to run the said business in a partnership firm under the name and style of M/s. Shil Enterprise situated at Village -

Krishnanagar, P.O. – Molikan under Sub-Division – Chanchal in the district of Malda. Subodh Chandra died leaving behind two sons and two daughters and his widow, Renu Bala Shil. At the time of death of Subodh Chandra, the petitioner and one of his daughters were minor. Accordingly, the dealership was run by the private respondent no. 5 and the widow of late Subodh Chandra, namely, Renu Bala Shil jointly in a partnership business. There was no dispute in respect of the said business during the lifetime of the mother of the petitioner. Renu Bala died in the year 2018. After the demise of his mother the private respondent no. 5 being the elder brother of the petitioner and other siblings of Subodh Chandra and Renu Bala was running the business on behalf of all the legal heirs of Renu Bala. However, without any knowledge of the petitioner the respondent no. 5 tried to change the partnership business in respect of the said dealership to a proprietorship business in his name. For such purpose he manufactured certain documents, forged signatures of the petitioner and their sisters and submitted the application for granting licence in respect of the said dealership in his own name. The said application was, however, rejected by the authority. Subsequently, the petitioner came to know that on 27th April, 2022 the private respondent no. 5 again resubmitted the application along with necessary documents by forging the signature of the petitioner and other legal heirs on no objection certificate and resubmitted the same. When the petitioner came to know about such conspiracy he immediately made a complaint on 8th June, 2022 to the respondent no. 3, District Controller, Food and Supplies, Malda against respondent no. 5 stating all facts. The District Controller asked the petitioner and other legal heirs including the private respondent no. 5 to appear before him on

13th June, 2022 for examination of the documents and personal hearing. In the said hearing, the petitioner appeared but the respondent no. 5 chose not to attend the hearing. It is further submitted by the petitioner that in case of vacancy arising out of death or incapacitation on medical ground of the licensee, subject to the satisfaction of the authority, prayer of any of the family members of the deceased or incapacitated dealer having no regular means of income shall be considered with preference on compassionate ground provided such prayer along with formal application in the prescribed form is submitted within 90 days from the death or incapacitation. The said period of 90 days may be extended to 120 days. The petitioner further states that previously the petitioner filed an application being WPA/18276/2022 which was disposed of by a Coordinate Bench directing the respondent no. 4, i.e., the Sub-Divisional Food Controller "to inquire into the matter and take a decision regarding obtaining dealership on compassionate ground". Subsequently, the petitioner's application for compassionate appointment was revived. Date was fixed on 17th October, 2022 for personal hearing. The respondent no. 5 was asked about the genuineness of the signature in no objection certificate on non-judicial stamp papers. He failed to give satisfactory reply. Subsequently, the petitioner received a copy of the order dated 14th November, 2022 wherefrom it is learnt that his application for compassionate appointment was rejected. This led the petitioner to challenge the said order passed by the respondent no. 4 in the instant writ petition. The respondent nos. 1 to 4 have filed an affidavit-in-opposition duly sworn by the Sub-Divisional Controller, Food and Supplies denying all allegations made out in the aforesaid writ petition. It is specifically

urged on behalf of the State respondents that the writ petition filed by the petitioner is not maintainable in view of the fact that he challenged the application of respondent no. 5 on the ground of fraud and forgery. The State respondents have no machinery to inquire into the matter as to whether the respondent no. 5 created forgery in respect of the signatures appearing in the no objection certificates of the legal heirs of deceased Renu Bala Shil. It is further stated by the State respondents on solemn affirmation that the partnership business under the name and style of M/s. Shil Enterprise was run by Ranu Bala Shil and the respondent no. 5 jointly. After the death of Ranu Bala Shil on 19th November, 2018, all the beneficiaries of M/s. Shil Enterprise was tagged with another adjacent dealer vide order dated 20th November, 2018. After the demise of Ranu Bala Shil the respondent no. 5 applied for appointment under compassionate ground in prescribed proforma. The said application of respondent no. 5 was rejected vide order dated 7th July, 2022 as the family members of the deceased partner of the said fair price shop had raised objection. The order of rejection was duly communicated to the respondent no. 5. Subsequently, the present petitioner being younger son of Renu Bala made similar application for grant of licence of the fair price shop after a long lapse of statutory period of time alleging that the State respondents did not take any action on the application filed by the petitioner, the petitioner filed WPA/18276/2022. In the said writ petition, a Coordinate Bench directed the State authority to consider the application of the petitioner afresh. It is pointed out by the Sub-Divisional Controller that the petitioner did not file any application in proper form. No objection certificate was also not filed by the petitioner. The

application filed by the petitioner suffers from inordinate delay of 1456 days. Thus, the application was not filed within the statutory period of limitation as provided in WBPDS(Maintenance and Control) Order, 2013. In view of such circumstances, petitioner's application was also rejected. It is contended on behalf of the respondents that neither the petitioner nor respondent no. 5 has any case to get compassionate appointment and the writ petition ought to have been rejected.

The respondent no. 5 has also filed an affidavit-in-opposition against the writ application filed by the petitioner. Factual aspect with regard to death of Renu Bala Shil, application filed by the respondent no. 5, rejection of the said application by the Sub-Divisional Controller, Food and Supplies has not been denied by the respondent no. 5. It is contended by the respondent no. 5 that the daughters of Subodh and Renu Bala were married. Therefore, they cannot be treated as dependent family members of the deceased licensee. Moreover, the younger son of Subodh and Renu Bala being the petitioner herein did not reside with the deceased licensee at the time of his death and he was not dependent upon deceased Renu Bala. In support of his claim he has filed certain Bank statements wherefrom it is ascertained that the petitioner maintains an account in a nationalized Bank at Siliguri and he resides in Siliguri. Therefore, the petitioner cannot get renewal of licence on compassionate ground. Apart from the aforesaid factual assertion, the respondent no. 5 also takes the plea of delay in filing the compassionate appointment.

The petitioner filed affidavits-in-reply against the opposition filed by the State respondents and the respondent no. 5. In the affidavit-in-reply, the petitioner disputed the share of profit and loss

stated in the partnership business as well as the declaration made by the partners which would take effect after the death of one of the partners. The petitioner has also filed a supplementary affidavit annexing certain documents to show that a criminal case is pending against respondent no. 5 under Sections 417/468/471 of the Indian Penal Code being Chanchal Police Station Case No. 131/2023.

On the basis of the pleadings the learned Advocates on behalf of the parties have made their submission. It is submitted on behalf of the petitioner that the petitioner's right to get his application for compassionate appointment heard and decided favourably accrued in view of the judgment passed in WPA/18276/2022. In the said writ petition, the Coordinate Bench, of course, found that his application for compassionate appointment was filed at a belated stage, in spite of such delayed application the State authorities were directed to consider the application of the petitioner afresh. The order impliedly condones the delay of the petitioner in filing the application for compassionate appointment.

It is provided in Clause 20(vi) that in case of death of one of the partners of a partnership firm comprising of only two partners having the dealer's license, 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. Proviso 'B' to the said provision states that in case of death of a partner or partnership firm having the dealer's licence and if no eligible members found to become the 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 Director, DDP&S in this behalf. It is contended on behalf of the petitioner that on the death of Renu Bala Shil the respondent no. 5 ought to have included the petitioner to run the fair price shop. When he failed to comply with the said provision, his application was rejected. Moreover, his application for conversion of licence in his own name was rejected on the ground that the other family members disputed their signature in the no objection certificates before the licensing authority. At this juncture, it is the duty of the Court to decide as to whether the petitioner's application which is admittedly barred by limitation could be favourably considered by the Sub-Divisional Controller in view of the direction passed in WPA/18276/2022.

In WPA/18276/2022 a Coordinate Bench directed to consider the application of the petitioner afresh. By passing the judgment the Coordinate Bench did not condone the delay in filing the application by the petitioner for grant of licence on compassionate ground. It is the statutory requirement that such application shall be filed within 90 days from the date of death of the licensee which can be extended up to 120 days. Admittedly, the application was filed after 1456 days. The application was hopelessly barred by limitation. The petitioner did not file any application in prescribed format. Therefore, his application was rejected. I do not find any illegality in the impugned order for which the Court can issue any of the prerogative writs in the nature of mandamus or certiorari. Now comes the issue relating to the private respondent's application. It is a matter of record that the private respondent's application was rejected vide order dated 7th July, 2022. The learned Advocate for the private respondent

strenuously urged that in Clause no. 14 of the partnership deed it is stated that on the death of Renu Bala Shil the respondent no. 5 shall run the business as an absolute owner of M/s. Shil Enterprise. The issue arises as to whether the Writ Court can decide the right of the respondent no. 5 on the declaration made by the partners in the partnership deed which will take effect after the death of one of the partners. It is important to note that the respondent no. 5 has not come before this Court with a prayer to issuing of any prerogative writ to give effect of Clause 14 of the partnership deed. The above matter is agitated as a ground of objection.

It is no longer a *res integra* that without pleading and specific prayer the writ Court cannot grant any relief to any of the parties. Pleading in affidavit-in-opposition is in the nature of an objection against the prayer made by the petitioner. The written objection cannot be treated as a counter-claim of a civil suit in a writ proceeding. Considering such aspect of the matter, I am also not inclined to accept the submission made by the learned Advocate for the respondent no. 5.

The instant writ petition is, accordingly, disposed of.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 10.