

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 1310 of 2023

Bidyut Kumar Das

-Vs-

**The Secretary, Department of
Food and Supplies & Ors.**

For the Petitioner: Mr. Prosenjit Mukherjee, Adv.,

Heard on: 30 June, 2023.

Judgment on: 30 June, 2023.

BIBEK CHAUDHURI, J. : –

1. One Pran Kishore Das since deceased was a MR dealer at Artialiguri, Cooch Behar. The said Pran Kishore Das died sometime in 2003. Before his death Pran Kishore Das made an application before the Sub-Divisional Controller, Food and Supplies, Cooch Behar stating, inter alia, that due to physical incapacitation he was not in a position to run the fair price shop and he nominated his elder son Rakhal Chandra Das to act as MR dealer in respect of the said fair price shop on the ground of his physical incapacitation. Subsequently, by an order dated 28th November, 2003 Rakhal Chandra Das, respondent No.7 herein was appointed as MR dealer for Artialiguri under Cooch Behar Gram Panchyat under the provision of the West Bengal Kerosene and Control Order, 1968.

2. The petitioner is the grand-son of the said Pran Kishore Das. It is the case of the petitioner that Pran Kishore Das died leaving behind two sons, two daughters and a widow. None of them, except Rakhal Chandra Das knew about the transfer of MR dealership in favour of respondent No.7 herein.

3. That on 4th May, 2023 the petitioner received information of his application dated 30th April, 2023 wherefrom he came to know that Pran Kishore Das submitted a prayer on 4th August, 2003 to convert his licence from his name to the name of his eldest son Rakhal Chandra Das since he was medically unfit to run the shop. The wife of Pran Kishore Das, i.e., Smt. Surya Bala Das also submitted a similar prayer to the Sub-Divisional Controller on 4th August, 2003. Thereafter, the licence was granted in favour of the respondent No.7.

4. It is the grievance of the petitioner as ascertained from the submission made by the learned Advocate for the petitioner that Clause 6(ix) of the West Bengal Kerosene Control Order, 1968 deals with the engagement of a person as licensee of fair price shop on compassionate grounds on the following conditions:-

“(a) In case of vacancy arising out death or in case of incapacitation on medical grounds, subject to satisfaction of the authority, of any existing dealership run by an individual person, such vacancy shall not initially be invited. Prayer of any of the family members of the deceased of the incapacitated dealer having no regular means of income, shall be considered with

preference on compassionate ground provided such prayer along with formal application in Form D1 along with a checklist appended therewith and requisite fee is submitted within 90 days from the death or incapacitation. However, the licensing authority may, on just and sufficient grounds shown by the applicant and for the reasons to be recorded in writing, accept such application upto 120 days:

Provided that while applying, the applicant shall have to furnish "No Objection" in Annexure-II from other family members in the form of an affidavit executed before a Magistrate except in the following cases:

- (A) if the applicant be the spouse of the deceased licensee.
- (B) if the ex-licensee, because of his being incapacitated/infirm has opted for the applicant."

(5) In the instant case ex-licencee opted for respondent No.7 to be the licence holder because of his being incapacitated/infirm.

(6) It is submitted by the learned Advocate for the petitioner that the respondent NO.7 did not file application in Form D1 and the mother of the respondent gave no objection in favour of him putting her Left Thumb Impression on her application though she was a literate lady.

(7) I have already recorded that the original licence holder, Pran Kishore Das died sometimes in 2003. Before his death he recommended the name of his eldest son to be the licensee of the fair price shop. The petitioner was granted MR dealership vide order dated 28th November,

2003 though he has been running the fair price shop for an uninterrupted period of 20 years. After a lapse of two years the petitioner being the grand-son of the original licensee challenged the ground of licence in the name of respondent No.7 on the ground that he did not file his application in Form D1 and his mother was literate but her Left Thumb Impression was obtained on a no objection letter.

(8) It is needless to say that when a licensee opts for recommendation of his licence in favour of another person on his permanent incapacitation, no-objection certificate of his spouse is not necessary. Moreover, after long lapse of time, the petitioner cannot challenge an administrative action on the ground that the applicant did not file his application in some prescribed form.

(9) In view of the above discussion, I do not find any merit in the instant writ petition and accordingly the instant writ petition is summarily dismissed.

(Bibek Chaudhuri, J.)