

24.06.2024
SL No.9
Court No.24
Ali

WPA 205 of 2023

**Sadhan Kumar Pramanick & Anr.
Versus
The State of West Bengal & Ors.**

Mr.Sudhakar Biswas
.....for the petitioners.

Ms.Amrita Panja Moulick,
..... for the State.

The father of the present petitioners and respondent No.6, namely, Santosh Kumar Pramanick @ Santosh Pramanick was a M.R. Dealer. The said M.R. Dealer expired on 25.04.2020. It is the case of the petitioners that the present petitioners are fully dependent upon the business conducted by their father and the present petitioners are continuing the joint business with other brother, namely, Bhajan Kumar Pramanick (respondent No. 6). After the demise of their father they are jointly conducting their business.

In the month of May, 2021 the present petitioners came to learn that the licence of the Fair Price Shop belong to Santosh Pramanik was transferred in the name of the respondent No. 6 by the authority concerned. They have made several representations through their learned advocates and came to know that prior to demise of their father one application was filed by deceased licensee on 5th of

April, 2017 for transfer of the business in favour of Bhajan (respondent No. 6). On the ground of incapacitation, it is the father case of the petitioners that after demise of their father without obtaining any “No Objection Certificate” from the other owners i.e. petitioners, the concerned authority has issued the licence only in favour of the present respondent No. 6. It is the further case of the petitioners that the application and procedure thereof by the concerned authority for transfer of licence on the ground of incapacitation put to an end with the demise of the original licensee. The petitioners submit that the licence issued in favour of the respondent No. 6 required to be terminated.

Learned advocate appearing on behalf of the State submits that the present petitioner has not filed any appropriate application for their appointment in compassionate ground according to the law till today.

Learned advocate further states that the application by the licensee himself for transfer of the dealership in favour of the respondent No.6 was filed on 05.04.2017. On the basis of such application, one enquiry was conducted on 5th of December, 2017. Thereafter, certificate was obtained from the original licensee on 04.08.2018. Another certificate was also obtained from the wife of the licensee on

12.08.2018. Certificate of the concerned authority i.e. the medical officer was obtained on 04.06.2018 and on the basis of such certificate hearing was conducted on 04.09.2019. Thereafter, the entire file was forwarded to the upper authority for approval. It is the case of the State that the concerned authority was not aware about the death of the original licensee. So, they proceeded according to the law in force of the application for transfer of the licence on the ground of incapacitation. It is the positive case of the State that they first of all came to know about the death of the original licensee in the year 2021 but the licence was issued on 5th of October, 2020 in favour of respondent No. 6.

Learned advocate appearing on behalf of the petitioners submits that in spite of receiving the representations and the letters of advocate, on behalf of the petitioner, the concerned authority is regularly renewing the licence of respondent No. 6 year after year without considering the representation of the present petitioners.

In support of his contention, learned advocate for the petitioners cited a decision reported in ***Gurupada Das V. State of West Bengal [2022 (2) CLJ (Cal)]***.

The Co-ordinate Bench of this Court in deciding the identical issue has held that:

“22. The Cause of action arises only when the licensee is declared to be incapacitated/infirm but the same ends when the licensee expires. A fresh cause of action arises on the death of a licensee. The avail the benefit of being-engaged on the ground of incapacitation of the ex licensee, the licensee ought to remain alive at the time when license is being issued in favour of the optee.

23. It has been enthusiastically argued that it is settled law that if a matter is required to be done in a particular manner, the same has to be done in that manner or not at all. The option exercised by a licensee remains in force only during the lifetime of the licensee, and its effect ceases immediately on the death of the licensee”.

Heard the learned advocates, perused the relevant grounds under Rule 20 (6) regarding engagement on compassionate ground under the Control Order, 2013.

In considering the entire facts in hand, it appears that the concerned authority had proceeded with the application of erstwhile M.R. Dealer dated 5th of April, 2017. They had concluded the entire procedure, but prior to completion of the procedure and before issuance of licence (dated 05.10.2020) the original licensee expired on 25.04.2020.

According to the observation of a Co-ordinate Bench of this Court as cited above, the application as well as the option of the licensee expires with the death of the licence. So, according

to the law the licence issued by the concerned authority in favour of the respondent No. 6 on 05.10.2020 became non-est due to the demise of the original licensee on 25.04.2020. It further appears that the present petitioner has filed several applications stating the date of death of original licensee but as the entire procedure has been closed by that time, the respondent authority did not consider the representation.

Considering the same, it appears to me that the licence issued in favour of respondent No. 6 is illegal and void and hereby it is set aside.

The respondent authority is directed to consider the representation in the form of application on compassionate appointment of the present petitioners to be made before the concerned authority within two weeks from this date. After receiving such representations/applications the concerned authority shall issue notice to respondent No. 6 asking him to file application, if any, and shall dispose of the same representations/applications after hearing all the concerned within four weeks thereafter. The concerned authority shall dispose of the representation according to the law and after hearing the present respondent No. 6.

In spite of service respondent No. 6 did not turn up.

However, as this order shall affect his right, respondent No. 6 had the option to represent his case before the concerned authority.

Till the entire exercise being completed the M.R. Dealership licence should be continued by the respondent No. 6 so that, the Public Distribution System may not be hampered.

Accordingly, the application being **WPA 205 of 2023** is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)