

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

MAT 553 of 2023

CAN 1 of 2023

Mati Lal Karan

Vs

State of West Bengal & Ors.

For the Appellants : Mrs. Usha Maiti
Ms. Anita Khatri
Mr. Sakya Maity

For the State : Mr. T M Siddique
Ms. Amrita Panja Moulick

Heard on : 14.8.2024, 23.8.2024 and 6.9.2024

Judgment on : 06.09.2024

Joymalya Bagchi, J.:-

1. Appellant has assailed order dated 19th December 2022 whereby the Hon'ble Single Judge rejected the prayer of the appellant with regard to issuance of license on compassionate ground in favour of his brother (respondent no. 6 herein) due to medical incapacitation of their father and former licensee namely, Lalit Mohan Karan (since deceased) with regard to MR dealership.

2. Lalit Mohan Karan was a licensee in respect of a ration shop. On 18.11.2017, he wrote a letter to the Sub-Divisional Controller stating due to ill health he is unable to run the MR dealership and the dealership may be transferred in favour of his son Hiralal Karan, respondent no. 6 herein.

3. It may be pertinent to note in the letter Lalit stated he had one son and four married daughters. In terms of the said letter licence was transferred in favour of Hiralal in 2019 on compassionate ground. Appellant is the elder son of Lalit Mohan. During lifetime of his father, appellant was unaware of transfer of licence in favour of his brother Hiralal. When Lalit Mohan expired on 15.6.2020, appellant made representation before the Sub-Divisional Controller to appoint him as a licensee on compassionate ground. Thereafter on 22.7.2020 he submitted another letter stating that his brother Hiralal has forcibly taken over running of the ration shop. When he was informed that the licence had been transferred in favour of respondent no. 6, he called upon the respondent authorities to hand over relevant documents with regard to transfer of the licence. Pursuant thereto documents were supplied to the appellant. Thereupon the appellant approached this Court praying for setting aside the licence transferred in favour of respondent no. 6 on compassionate ground.

4. It was argued before the Hon'ble Single Judge, that the representation of Lalit Mohan is a fabricated one and contains incorrect facts. It is not disclosed in the said letter that Lalit Mohan had another son namely, the appellant.

5. After considering the submissions of the appellant, Hon'ble Single Judge was of the view that licence had been validly transferred and dismissed the writ petition.

6. Before us, Mrs. Maiti reiterates her submission that the licence was transferred under most suspicious circumstances. Purported representation of Lalit Mohan does not disclose he had two sons i.e. appellant and respondent no.6. There was no enquiry conducted with regard to medical incapacitation of the erstwhile licensee and transfer of licence was done in a hurried manner. During lifetime of Lalit Mohan her client was unaware of the transfer of licence and came to know such fact only upon documents being supplied in February 2021.

7. In view of the aforesaid submissions we called upon the State to submit a report enclosing relevant documents pertaining to the enquiry and transfer of licence in favour of respondent no. 6. The report is placed on record and circulated amongst the parties.

8. Referring to the report it is argued though representation of Lalit Mohan was dated 8th November 2017, in the subsequent letter dated 9.4.2018 enclosing medical certificate it is recorded the representation was made on 8.9.2017. It is also argued the medical certificate was submitted under the cover of a subsequent letter dated 9.4.2018 while enquiry at the behest of Sub-Divisional Controller was completed on 14.12.2017. Hence, he could not have verified the subsequent medical certificate.

9. Clause 20(vi)(b) of the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 (hereinafter referred to as the Order of 2013) lays down the procedure for dealing with a prayer for appointment of

a family member in place and stead of a medically incapacitated dealer. The said sub-clause reads as follows :

“(b) The Sub-divisional Controller, Food and Supplies shall arrange for an enquiry to verify the eligibility of the applicant and submit the report in Form L1 with his opinion and recommendation in Form M1 to the District Controller, Food and Supplies within fifteen days. While forwarding a case on medical ground the Sub-divisional Controller should satisfy himself on examination of the medical prescription and certificate issued by a Registered Government Medical Practitioner that the ex-licensee is not in a position to run dealership business considering his health ground. The District Controller, Food & Supplies, shall forward the same with his comments and recommendation to the Director, DDP&S for necessary approval within seven days from the date of receipt of report from the Sub- divisional Controller and the Director may grant such approval within seven days”.

10. We have examined the documents annexed to the report in light of the aforesaid statutory rule. Erstwhile dealer i.e. Lalit Mohan made a representation for transfer of his dealership in favour of respondent no. 6 due to medical incapacitation. The representation was *inter alia* accompanied by a sworn affidavit by the said dealer. A spot enquiry was held on 14.12.2017. The enquiry report dated 18.12.2017 was submitted before the Sub-Divisional Controller. In the enquiry report it is noted as follows:-

“In spot enquiry on 14-12-17 at Balipata, all original document were verified. Medical unfit certificate in favour of incapable Lalit Mohan Karan was submitted. Hence, license may be issued in the name of Hira Lal Karan Son of Lalit Mohan Karan instead of Lalit Mohan Karan.”

Lalit Mohan also submitted a medical certificate issued by medical officer on 19.03.2018, Pathra Primary Health Centre stating that he is suffering from respiratory distress associated with memory loss since last year and is totally unfit to do any normal work under cover of letter dated 9.4.2018. The certificate had been issued by the medical officer after examining Lalit Mohan on 19.03.2018.

11. Upon consideration of the aforesaid materials the Sub-Divisional Controller was satisfied the licensee was medically incapacitated and recommended transfer of the license in favour of his son respondent no. 6. This came to be approved by the district controller and the license was issued in 2019 in favour of respondent no. 6.

12. It is nobody's case that respondent no. 6 is not the son of the erstwhile licensee Lalit Mohan or had independent income. However, it is argued the appellant is another son and Lalit Mohan's representation gives an incorrect picture that he had only one son. We are of the view nothing turns on this incorrect representation. It is the discretion of the licensee to recommend transfer of his licence due to medical incapacitation to anyone of his family members who does not have regular means of income.

13. Sub-Divisional Controller conducting enquiry under clause 20(vi)(b) of the Order of 2013 is not concerned whether there are other family members to whom the licensee could have transferred the license. He is required to enquire into the genuineness of the plea of medical incapacitation of the licensee and the eligibility of the candidate in whose favour the license is sought to be transferred. There is no dispute that the respondent no. 6 is eligible for transfer. With regard to enquiry vis-à-vis medical incapacitation we have examined the records and we note the authorities concerned were satisfied with the certificate issued by a medical officer of a public health centre with regard to the precarious health condition of the licensee justifying transfer of license due to medical incapacitation. We are also not impressed by the desperate plea that the representation was not signed by Lalit Mohan as the same is accompanied by a sworn affidavit duly verified during the enquiry held on 14.7.1999. Inadvertent error recording a different date with regard to the representation in the subsequent letter dated 19.3.2019 is of little consequence.

14. Under such circumstances we are of the opinion proper enquiry as per law had been conducted and upon satisfaction recorded by the authorities concerned the licence was transferred in favour of respondent no. 6 from his father due to the latter's medical incapacitation.

15. In light of the aforesaid discussion we are of the opinion order impugned does not call for interference and the appeal is dismissed.

16. There shall be no order as to costs.

17. Urgent Photostat certified copy of judgment, order if applied for be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)