

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF
WPA 14809 of 2023
With
IA No. CAN 1 of 2023

Shib Shankar Das
Vs.
The State of West Bengal & Ors.

For the Petitioner : **Mr. Ashok Kr. Banerjee, Adv.,**
Mr. Samiran Mandal, Adv.
Mr. Abhinaba Dan, Adv.,
Mr. Nitish Samanta Adv.

For the respondent
No.7 : **Mr. Ram Anand Agarwal, Adv.**
Ms. Nibedita Pal, Adv.,
Mr. Ananda Gopal Mukherjee, Adv.,
Ms. Sonam Ray Adv.

For the State : **Ms. Tuli Sinha Adv.**

For the respondent
Nos. 8, 9 & 10 : **Mr. Tarapada Das Adv.**

Reserved on : **15.07.2024**

Judgment on : **28.08.2024**

Subhendu Samanta, J.

1. One Satish Chadra Das was fare price shop dealer under Sub-division Khatra, Bankura. He expired on 18.03.2017 living behind one daughter and four sons. Present petitioner and respondent Nos. 7, 8 and 9 are the sons, respondent No. 10 is the daughter.

2. After the demise of Satish Chadra Das, both the petitioner and respondent No. 7 submitted separate applications before the authority for getting the license on compassionate ground. Their prayers were turned down by the concern authority and they separately approached this court in several writ petitions. Different directions were passed by this court in the writ petitions to hear out the parties and to pass a reason order. Both the petitioners and the respondent No. 7 were also aggrieved with the orders of Learned Single Judge, and preferred appeal before the Division Bench. Ultimately the Division Bench of this court has heard both the appeals filed by the petitioners

and respondent No. 7 and directed the concern authority as follows:--

9. From the facts narrated (Supra) it is clear that two brothers have filed applications for appointment as Fair Price Shop dealer on compassionate ground. Appointment on compassionate ground can be given to one, if said one is found to be eligible in all respect. So far as the requirement of filing of No Objection Certificate' is concerned it has been held in the case of Gurupada Das vs. State of West Bengal & Ors. (MAT 842 of 2022 disposed of on 05.08.2022) that No Objection Certificate' by an applicant is required to be given from a dependant family members and if any such family member was living independent from the ex-dealer, no no-objection from him need be

10. From the materials on records and submissions advanced by learned Counsel for the parties it is clear that the present case is fully covered by the judgment passed in Gurupada Das (Supra). Accordingly both the appeals are disposed of directing the SCFS, Khatra to process the application of the appellant and private respondent, Shib Sankar Das in the light of the observation made in Paragraph 20 of the judgment in the case of Gurupada Das (Supra).

11. Before parting with the order we make it clear that there is no need of coming to a composition by the intending parties. The SCFS on enquiry shall recommend issuance of licence in favour of the person who is found to be

suitable, taking into consideration the rival claims of both the appellant and the private respondent, Shib Sankar Das into consideration.

3. In pursuance to the direction of this court the respondent authority has passed an impugned order on 29th May 2023 thereby the private respondent No. 7 is found eligible and was recommended for the license on compassionate ground.

4. Being aggrieved by the said impugned order the instant writ petition was preferred.

5. Mr. Ashok Kumar Banerjee, Learned Senior Counsel, submits that the impugned order passed by the State respondent is arbitrary, one sided and not according to the direction of the Division Bench.

6. Mr. Banerjee further submits that after the demise of Satish Chandra Das, there were family settlement between the legal heirs by such family settlement it was settled that the present petitioner would have applied for FPS license and

the other business of their father would be looked after by private respondent No. 7.

7. Mr. Banerjee further submits that the respondent No. 7 has not only influenced the concern State authority as well as the person namely Nalini Kanta Mahato being a MR Dealer, with whom the business of Let Satish Chandra Das was tagged. It is the submission of the writ petitioner that the private respondent No. 7 is actually running the business of his father with the help of the Nalinikanta Mahato and State authority. There are some local agitation for not supplying the food grains properly wherein the local people has informed the authority regarding illegal running FPS shop of Dhadanga at the instance of respondent No. 7.

8. It is the further contention of the petitioner that the State Authority has not considered the direction of this court regarding the status of gainful employment by the present petitioner and private respondent No. 7. The petitioner also alleged that the respondent

authority has passed the impugned order without considering the positive fact of the business of respondent No. 7 regarding his grocery shop, Fertiliser shop and other distributorship along with three vehicles registered in the name of respondent No. 7.

9. Mr. Banerjee further contended, the petitioner once had license of SK oil dealer with a small quota of only 95 litres -- 124 litres of kerosene oil on weekly basis. The distribution in such quantity of kerosene oil was more like a social work rather than the gainful employment. It is the specific contention of the petitioner that, he surrendered the license of SK oil distributorship on 24th January 2018; while the respondent No. 7 running several businesses such as grocery shop, distributor of fertiliser and also having pick up van, Maruti Car and Tractor and several landed properties. Furthermore the wife of respondent No. 7 is an employee under the State Government.

10. Mr. Banerjee further argued, all circumstances of this case proved that the respondent No. 7 is under gainful employment but the present petitioner who was holding SK Oil retailer license and subsequently surrendered the same, was actually dependant upon the income of his father. Mr. Banerjee further argued that the impugned order dated 29th May, 2023 passed by the Sub-Divisional Controller is purposive, mala fide and arbitrary. Mr. Banerjee further contended that though it has been categorically proved before the authority that respondent No. 7 has sufficient means of income but the authority surprisngly found him eligible which is beyond the direction of the Hon'ble Division Bench of this Court. He further submits that the concerned authority has failed to appreciate the observation of Hon'ble Division Bench as well as directions thereof and passed the order which is mala fide and suffers biasness.

11. Mr. Ram Ananda Agarwal, Learned Counsel, appearing on behalf of the respondent No. 7 submits that concern authority has considered the entire materials placed before them. It has been specifically proved that respondent No. 7 was looking after the business of fair price shop of her father Satish Chandra Das. Subsequently, her father made an application during his life time so that Ajit can be appointed as MR dealer under the same license. Mr. Agarwal further argued that the concern authority during inspection has inquired the matter locally, and there are evidences that the respondent No. 7 was dependant upon the income of his father. He further submits that the other sons and daughters of Let Satish Chandra Das was stayed separately and they had separate means of subsistence. So, the present petitioner or other brothers of respondent No. 7 are not entitled to get the license on compassionate ground. He further argued that the order passed by the concern authority is valid and is

according to the provisions of WBPDS (M&C) order 2013.

12. Mr. Agarwal further argued that there is no merit to entertain the instant writ petition. So it is liable to be dismissed.

13. The State respondent No. 6 used affidavit- in- opposition against the writ petition containing inter alia that, according to the direction of the division bench of this Court, Sub-Divisional Controller Food and Supply, Khatra conducted hearing in presence of Ajit Kumar Das (respondent No. 7) Shib Shankar Das (petitioner). Enquiry is conducted to find out of dependency of legal heirs on deceased dealer Sri Satish Chandra Das at the time of his death in respect of requirement of NOC. The enquiry report was filed along with a certificate issued by concerned Gram Panchayet. After such enquiry and hearing of the parties the concern authority has arrived at a reason decision on 29th May, 2023 and wherein respondent No. 7 Ajit Kumar

Das appears to be eligible for recommendation of license.

14. Heard the Learned Advocates. Perused affidavit in opposition filed by respondent No. 6 along with enquiry report as well as the certificate issued by Prodhan, Halud- Kanali Gram Panchayet.

15. Respondent No. 9 is a practicing advocate of this court who appears personally and submits that the family settlement was held between the brothers and sisters after the demise of their father Satish Chandra Das. It was settled therein that the other businesses of the family would be looked after by respondent No. 7 and the MR dealership license business would be conducted by the petitioner. He further submits that it was settled between the brothers that Shib Shankar (petitioner) shall apply for the license. He further submits that the respondent No. 7 by flouting such settlements have applied for license. Respondent No. 7 in collusion with the officers of the concern authority is now

actually running the FPS business which was tagged with the nearby dealer namely Nalini Kanta Mahato. He further submits that the respondent No. 7 is financially solvent so that license may be allowed in favour of the petitioner.

16. Heard the Learned Counsels. Perused the writ petition along with annexures and the affidavit in opposition filed by the respondents, also the replies filed by the petitioner.

17. Let me consider the crux of the matter. The Hon'ble Division Bench in FMA 106 of 2022 with FMA 107 of 2022 has directed the concern authority, SCFS, Khatra to process the application of Shib Shankar Das (petitioner) and Ajit Kumar Das (private respondent No. 7) in the light of observation made in Paragraph 20 of the judgment in the case of **Gurupada Das Vs. State of West Bengal**. The Division bench also directed the concern authority to inquire the matter and issue license in favour of the person who is found to be suitable taking into consideration

the rival claims of both the parties. In following the said direction one inspector, Food & Supply, Ranibandh, Bankura conducted an enquiry on 27th April 2023. During enquiry, it came to the notice of the inquiring officer that Shib Shankar Das (petitioner) had a Telecom-cum- Xerox shop while Ajit Kumar Das (respondent No. 7) is running a business of grocery shop. During enquiry Ajit Kumar Das admitted that his wife working as Second ANM, purely of contractual basis. But he denied running of in fertilizer shop or other business. During enquiry it further appears that Shib Shankar is currently unmarried or not involved any Government or Private job. At the time of enquiry one certificate of Prodhan of Halud- Kanali Gram Panchayet was received on the basis of which the enquiry inspector is of opinion that the certificate ascertained that Ajit Kumar Das was dependent of his father at the time of his death and used to help Satish Chandra to run the FPS business. It was nowhere stated in the inspection report that

whether Panchayet Prodhan was enquired by the inspector at the time of inspection, or not. At the end of such inspection report, the inspector of opinion that as Shib Shankar holding SK Oil license at the time of death of his father thus he was not fully dependant on him and also he is of opinion that Ajit Kumar Das was dependant of his father as per certificate of Prodhan.

18. At the time of passing the reason order the Sub- Divisional Controller Food and Supply Khatra is of opinion that Shib Shankar Das was already had a separate SK oil license at the time of death of his father thus having means of subsistence and not wholly dependent of his father at the time of his death. On the other had it is the opinion of the Sub- divisional controller that Ajit Kumar Das was helping his father in running the FPS. At the time of the death of his father he was not employed according to the statement of his father while he made an application with the authority for transfer the licence in the name of Ajit Kumar Das. It is also

opinion of the Sub-Divisional Controller accepting view of the Inspector that Ajit Kumar Das was unemployed.

19. Let me consider whether the observation of the concerned authority is accurate and correct as per the direction of the Hon'ble Division Bench as well as the provision of law laid down under WBPDS (M&C) Order, 2013.

20. Clause 20(vi) deals with the provision of engagement on compassionate ground:-

[(vi) Engagement on compassionate grounds: (a) In case of death or in case of incapacitation on medical ground subject to satisfaction of the authority, of any existing dealer, prayer of any of the family members of the deceased / incapacitated dealer having no regular means of income, may be considered on compassionate ground if such prayer along with formal application in Form C2 alongwith Annexure-I with requisite fee as prescribed in Schedule A, corroborative documents as per checklist and "No Objection" from other family member in the form of an Affidavit to be sworn before

a Magistrate in Annexure-II is submitted:

21. In considering true purport and meaning of the direction of Hon'ble Division Bench, it appears to me that statement of income and the earnings of Shib Shankar Das and Ajit Das had already been placed before the Hon'ble Division Bench by the concern authority before passing the direction in the appeal.

22. The Division bench has directed the concern authority to verify who is more suitable candidate amongst Shib Shankar and Ajit. The provision of Clause 20(vi) has clarified the term **"having no regular mans of income"**; it is the abundant duty of the concern authority to justify among Ajit and Shibshankar, who is more affluent than others. In deciding the said issue, the concern authority denied the claim of the Shib Shankar only on the ground at the time of demise of his father he had a licence of S.K. oil. The subsequent fact of quantity of weekly issuance of S.K. oil in favour of Shib Shankar, as

well as, the surrender of such license, was not taken care of. Rather the concern authority has denied to make any comment regarding the other business run by Ajit at the time to death of his father as well the income of his wife from a Government sector. More surprisingly, the concern authority placed reliance upon a certificate issued by the Prodhan of concerned Panchayet, but it is silent whether the Panchayet Prodhan was inquired regarding the correctness of the certificate during the enquiry; it further appears, the certificate issued on 06.02.2023, but reliance upon it was placed by the inspector at the time of inquiry on 27th April 2023 without recording the statement of Prodhan. On proper reading of the said certificate it appears that the Pradhan has certificate that "*Satish Chandra Das was dependant on Ajit Das up to the time of his death*". The said certificate was interpreted by the concerned authority on the reverse, way such as, Ajit was dependant upon Satish Chandra Das.

23. During the pendency of the instant writ petition respondent No. 7 (Ajit) filed affidavit in opposition wherein he admitted employment status of her wife, his business of grocery shop and presence of a Tractor, Bolero pick up van, and one Maruti van standing in his name, though it has been stated by respondent No. 7 that fitness certificate and road tax of the said vehicles were not paid/renewed due to the financial stringency. However if the said affidavit of the private respondent No. 7 is taken to be true, then also the facts subsists that, Ajit now have a business of grocery shop along with a Tractor, Bolero pick up van as well as a Maruti Van. The concerned authority has failed to note down the volume of business of Ajit who by only running a grocery shop maintaining three vehicles at a time.

24. Under the above observation it appears to me that at the time of passing of impugned order SCFS Khatra failed to appreciate the status of gainful employment of private respondent no.

7 and the petitioner [as has already been observed and directed by the Division Bench to justify the suitability of candidate]. More over the entire impugned order based upon a certificate of Panchayet Pradhan appears to me not justified. The certificate was issued in the month of February 2024. The inquiry report does not speak, who placed the certificate and whether the Pradhan, Halud—kanali Gram Panchayet was enquired at the time of inspection, or not. Furthermore the interpretation of such certificate by the concerned authority appears to be faulty.

25. Under the above observations, the impugned reason order dated 29.05.2023 is hereby quashed. The concern authority is directed to enquire the matter afresh according to the direction of the Hon'ble Division Bench of this court passed in FMA 106 of 2022 with 107 of 2020 dated 3rd January 2023 and according to the provisions of law laid down in the WBPDS (M&C) Order 2013.

26. The respondent authority is further directed to pass a reasoned order after causing an inspection regarding the status of nature of gainful employment of the petitioner and respondent No. 7 after giving them a reasonable opportunity of being heard. The respondent authority is further directed to conclude the entire exercise by informing the reason order to the parties, within a period of 08 weeks from the date of communication of this order.

27. Thus, the instant writ petition is disposed of.

28. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)