

ASR 24.
Ct. no. 24.
28.1.2025

WPA 1316 of 2025

Tuhimina Khatun

Vs.

State of West Bengal & Ors.

Mr. S.P. Lahiri

Md. Nouroz Rahber

Md. Jawwad

....For the petitioner

Ms. Sonal Sinha

Ms. Ashmita chakraborty

...For the State

Mr. Ramesh Dhara

Ms. Mousumi Chakraborty

....For the respondents

Affidavit-of-service filed on behalf of the petitioner is taken on record.

Challenging the impugned order dated 9th December, 2024 passed by the District Controller, Food and Supply, Uttar Dinajpur in terms of the direction of this court in WPA no. 21134 of 2024, this writ petition has been filed.

Learned counsel for the petitioner submits that the concerned District Controller has not properly gone through the merit of this matter and pass the impugned order violating the direction of this court. He further submits that the District Controller has passed the

order without perusing the relevant documents placed by the petitioner before the District Controller.

It is the submission of the learned counsel for the petitioner that fair opportunity of being heard was not provided, all the documents placed by the petitioner were not considered so, the District Controller may be directed to again re-visit the matter.

Ms. Sonal Sinha, learned counsel appearing on behalf of the State authority submits that by virtue of direction of this court, the District Controller has considered the representation of the petitioner as annexure P10 of the earlier writ petition. The annexure P 10 of the earlier writ petition disclose the relationship between the private respondent and one Musaraf Ali to be the husband and wife. Such issue was properly dealt with by the District Controller by calling upon the marriage register, by whom a divorce certificate was issued.

Ms. Sinha further submits that the District Controller has categorically dealt with the issue, enquire the report of the marriage register and in terms of the statement of the marriage register has decided the issue. He submits that nothing remains there in the matter so, it is not required to remand the matter again.

Learned counsel appearing on behalf of the private respondent submits that the District Controller has correctly passed the impugned order in terms of the

direction of this court, thus there is no scope to re-hear the matter.

Having heard learned counsel for the parties and also considering the materials on record it appears to me that in the earlier writ petition (WPA No. 21134 of 2024) the petitioner has challenged the issuance of license in favour of the private respondent with a positive fact that the private respondent is a married wife of Musaraf Ali whose mother namely Meheranga, is a M.R. dealer.

The said fact was severely challenged by the respondent. Thus this court has issued direction upon the District Controller to decide the issue as follows:

“Considering the situations, the instant writ petition is disposed of directing the respondent No. 5 to decide the representation made before him by the petitioner on 23rd February, 2024 (Annexure P-10) by giving proper opportunity to the petitioner of being heard as well as the private respondent.

The authority concerned is further directed to dispose of the representation within six weeks from the date of communication of this order.

Respondent No. 5 shall dispose of the representation by pending a reasoned

decision; and shall intimate the decision to the petitioner within two weeks thereafter.”

In terms of the direction of this court the District Controller has passed a reasoned order dated 9th December, 2024. The operative portion of the reasoned order is as follows:

“Notice duly served. Received by the petitioner and the private respondent.

The petitioner and the private respondent are present by filling Hazira.

The petitioner was heard at the time of hearing. During the hearing Tuhimina Khatun, the petitioner claimed that the private had applied against the vacancy by submitting the false marriage certificate.

On the other hand, the private respondent had denied the allegation regarding submission of false documents.

After hearing the both parties, it has been observed that

a) The representation submitted on 23.02.2024 by one Jahidur Rahaman who was neither the petitioner of the instant Writ petition nor any applicant of the vacancy declared at Lakhania, Bilpara, under Raiganj Block. However, he prayed through his representation to

take appropriate step on considering the facts in his representation which is annexed in the writ petition.

b) At present the private respondent is a FPS Dealer under the jurisdiction of the SCFS Raiganj and SCFS Raiganj is the licencing authority.

c) The concerned licencing authority enquired into the representation submitted dated on 23.02.2024 and submitted the statement of the Marriage Register who had verified the Certificate of Divorse of the private respondent and confirmed that this certificate was issued as per prevailing Muslim Marriage Act and issued from his office end

Hence, considering statement of both parties and relying on the report of the concerned licencing authority, the representation of the petitioner is hereby considered and rejected.”

In considering the entire matter, it appears to me that annexure P 10 of the earlier writ petition alleges the relationship of the private respondent with one Musaraf Ali. It was alleged in the earlier writ petition by the respondent that she is a divorcee and her divorce certificate was challenged before the authority. In

deciding the divorce certificate, the District Controller has placed reliance upon the statement of the marriage Register, who admitted that divorce certificate was issued from his office.

It is the positive case of the petitioner before this court that after such alleged date of divorce there are several documents i.e. register deed, voter list of the relevant constituency, wherefrom it would be revealed that the marriage of the private respondent with Musaraf Ali is still subsisting. It is the positive fact of the petitioner that the District Controller has not considered any of the document in coming the decision of the matter.

He submits the District Controller may be directed to decide the issue afresh on the basis of the document as placed by the petitioner before the authority concerned.

It is the also submission of the learned Advocate for the petitioner that when a matter is directed by this court to decide the issue by the concerned authority on all points, the authority is duty bound to decide the issue according to the direction of all points. He submits in this case the District Controller has not decided the issue on all points.

In considering the submission of the petitioner it appears that this court has specifically directed the concerned authority in WPA No. 21134 of 2024 to

dispose of the representation appearing in annexure P 10 of the writ petition, but not all issues appearing in that writ petition. Thus, this argument has no substance.

In considering the impugned order it appears that the District Controller has correctly gone into the merit of this matter and proceeded to decide whether the private respondent is divorcee or not.

It is true that several documents were placed before the District Controller but it appears that the District Controller has adopted to proceed with the statutory document by calling upon the statutory authority i.e. the marriage register to ascertain the fact and to verify whether the certificate of divorce is correct or forged.

It is true that the authority concerned may have also opted to decide the issue by perusing the other documents i.e. the register deed or the voter identity card, in my view the District Controller is not the proper authority to decide the fact that whether a certificate of marriage is correct or fabricated. On that way, the petitioner is to proceed before the appropriate forum of court of law to decide the issue.

Merely, the concerned District Controller has adopted to decide the issue on the basis of the statement of marriage register is not an improper order passed by the District Controller. The decision making

process by the District Controller, appears to me not in correct.

The authority has adopted a procedure to decide the issue which in my view is not at all incorrect one. In that score, I find no justification to interfere the impugned order.

Accordingly, the instant writ petition being not meritorious, is dismissed and disposed of.

[Subhendu Samanta, J]