

22.01.2025
SL No.6
Court No.24
Ali

WPA 11683 of 2024

**Madhu Mallick
Versus
The State of West Bengal & Ors.**

**Mr. Shamit Sanyal,
Mr. Sabyasachi Roy
.....for the petitioner.**

**Mr. Ram Anand Agarwala,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee,
Ms. S. Roy,
Ms. N. Khatoon
..... for the respondent.**

**Mr. Swapan Kr. Datta, Sr. Adv. & AGP
Mr. Dipankar Das Gupta
.....for the respondent State.**

Challenging impugned order dated 9th of April, 2024 passed by the Sub-Divisional Controller, Food and Supplies, Burdhaman in pursuance to the order of a Coordinate Bench of this court dated 9th of February, 2024 in WPA No. 2567 of 2024, the petitioner approached this court.

It is the contention of the petitioner that the authority concerned has passed the impugned order without following the provisions laid down in the West Bengal Pubic Distribution System (Maintenance and Control) Order, 2013.

The fact of the case is that mother of the petitioner Jafarunnesa Mallick is an MR Dealer, it

has been alleged that the said MR dealer was medically unfit so she forwarded an application to transfer the licence in favour of the present petitioner.

In pursuance to such application one enquiry has conducted. Enquiring officer has received the medical certificate of the MR dealer and opined as follows:-

“It is found from the enquiry that the application was made out of ignorance of the licensee. Therefore, the case is being forwarded to the licensing authority for his kind perusal and taking necessary action”.

After such enquiry being conducted the authority concerned was silent to take an appropriate decision. Accordingly, the petitioner approached this court. By virtue of the direction of a Coordinate Bench of this court the concerned authority has passed the impugned order.

Learned counsel for the petitioner submits that the conduct of the authority is *de hors* of the provision of the Clause 20 Sub-clause (vi)(b) of the Control Order, 2013. He submits that it is provided in the instant provision for compassionate appointment due to incapacitation of a dealer that,

Sub-Divisional Controller, Food and Supplies shall arrange for an enquiry to verify the eligibility of the applicant and shall submit a report in Form L1. In terms of compliance of Form L1 the enquiry was conducted; more so, it is the direction of the statute that such L1 should be forwarded coupled with Form M1 to the District Controller, Food and Supplies within 15 days by the Sub-Divisional Controller.

He submits, this particular case, Sub-Divisional Controller, Food and Supplies, has not prepared Form M1 for forwarding the same to the District Controller. He submits that the impugned order have not mentioned regarding the preparation of Form M1 in this matter. So, he prayed for necessary direction to re-enquire the matter by setting aside the impugned order.

Learned counsel appearing on behalf of the private respondent submits that the authority concerned has correctly formed the opinion in pursuance to the direction of this court. In arriving at the decision, the Sub-Divisional Controller, Food and Supplies, has held a personal enquiry wherein the licensee (Jafarunnesa Mallick) has appeared before the concerned authority and during hearing she

specifically stated that petitioner (Madhu Mallick) had made the application for MR Shop licence without her consent.

Learned counsel for private respondent also relied the personal enquiry in question/answer form held by the concerned authority. He submits that when the licensee has specifically admitted before the authority that she was fit to carry out the business and has never consented to transfer the licence in favour of the petitioner, the authority has correctly taken the decision.

Learned counsel appearing on behalf of the state authority submits that the authority has taken the decision in terms of the direction of this court and they have awarded the sufficient opportunity of being heard to the petitioner as well as the licensee. Their deposition has been correctly recorded, which they have signed. He further submits, it appears from the deposition that the licensee has not consented for transfer in favour of the petitioner; it is the finding of the concerned authority that SCFS concerned was he was satisfied about the outcome of the hearing conducted with petitioner Madhu Mallick and licensee Jafarunnesa Mallick and a came to an opinion that prayer for licence in favour of Madhu

Mallick cannot be allowed on the ground of incapacitation.

In reply, learned counsel for the petitioner submits that the petitioner has appended the affidavit of licensee regarding her willingness to transfer the licence in favour of the petitioner.

Having heard the learned counsel for the parties, considering the materials also considering the impugned order passed by the licensing authority, it appears to me that the authority concerned, in terms of the direction of this court has conducted personal hearing of the parties and in terms of the hearing he passed the impugned order.

I have perused the direction of this court in the earlier writ petition. It appears that the concerned Sub-Divisional Controller, Food and Supplies has properly complied with the direction of this court.

In considering the merit of this matter, it appears that the present petitioner has submitted an application with the authority for transfer the licence of MR Dealership of her mother due to medical incapacitation.

Clause 20 Sub-clause (b) of Control Order can be set out 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 L 1 with his opinion and recommendation in Form M 1 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".

From the plain perusal of the instant provision it appears to me that, in deciding the case for transfer of licence due to medical incapacitation, Sub-Divisional Controller, Food and Supplies shall cause an enquiry over the application regarding the eligibility of the applicant in Form L1. The provisions says that the enquiry report along with a recommendation in Form M1

has to be forwarded to the District Controller, Food and Supplies for further proceeding of the matter for taking final decision. The said provision also makes it clear that while forwarding the case on medical ground the Sub-Divisional Controller, Food and Supplies 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 term of the statute makes it clear that it is the sole satisfaction of the concerned Sub-Divisional Controller, Food and Supplies regarding medical incapacitation of the concerned dealer.

It further appears from the provision that the certificate issued by the Registered Government Medical Practitioner is not the deciding factors before the authority concerned to decide the fitness of the licensee; in terms of such satisfaction, the Sub-Divisional Controller, Food and Supplies is required to justify himself regarding the medical condition of the licensee by conducting a personal hearing of the licensee and intending applicant.

In the present case, the concerned Sub-Divisional Controller, Food and Supplies has conducted personal hearing within the ambit of the

statute. So, I find no justification in decision making process the concerned authority in passing impugned order.

Accordingly, I find no justification to entertain the writ petitioner.

Accordingly, the writ petition being **WPA 11683 of 2024** is dismissed and disposed of.

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

(Subhendu Samanta, J.)