

ASR 23.
Ct. no. 24.
19.08.2025

WPA 15896 of 2025

**Nabin Mondal
Vs.
State of West Bengal & Ors.**

Mr. Debabrata Saha Ray
Mr. Pingal Bhattacharyya
Mr. Subhankar Das

.....For the petitioners

Ms. Sonal Sinha
Mr. Lalmohan Basu

.....For the State

One Kamal Krisha Mondal of FPS dealer. He expired on 29th of November, 2011. He had three sons namely (petitioner) and other two sons Samir and Shyamal. Three sons of the deceased M.R. dealer applied for license jointly under partnership. The said application was filed within the statutory period. But the application was not preceded.

However, it came to know to the sons through the department that the ownership license cannot be transferred in the name of partnership. Consequently at the instruction of the authority the present petitioner applied for license under individual capacity on 9th February, 2017. There were a long silence from the department and only on 13th July, 2021 the department is directed the petitioner to submit certain documents.

Accordingly, he submitted those documents but the concerned authority has not taken any decision but has issued two separate vacancy notifications on 15th May, 2024 in respect of same service area.

The petitioner approached this court vide writ petition no. WPA 28189 of 2023 whereby this court vide an order dated 9th December, 2024 has passed an interim order staying the operation of impugned vacancy notification dated 15th May, 2024.

By such order this court also directed the respondent authority to furnish an affidavit-in-opposition. In terms of such direction the respondent authority has submitted an affidavit-in-opposition affirmed on 22nd day of April, 2025. Along with such affidavit the respondent authority has placed document whereby it reveals that the prayer of the petitioner for engagement on compassionate ground was turned down by the concerned authority on 22nd of February, 2023.

The petitioner approached this court challenging the said impugned order dated 22nd February, 2023.

Mr. Saha Ray, learned Senior Advocate appears on behalf of the petitioner and submits that the respondent authority has passed the impugned order without following the provision laid down in the Control order, 2013. He further submits that the Division Bench of this court in **Gurupada Das -Vs. State of**

West Bengal has categorically ordered how the issue of compassionate appointment should be decided by the authority.

Mr. Saha Ray, further argued that before deciding the matter the competent authority must have to conduct an enquiry regarding the fact who are the dependent upon the deceased dealer at the time of his death.

Mr. Saha Ray submits that the authority concerned not followed the law laid down by the Hon'ble Division Bench decision **Gurupada Das V. State of West Bengal (Supra), thus**, the order passed by the concerned authority is required to be set aside.

Ms. Sonal Sinha, learned Advocate appearing on behalf of the State submits that the deceased Kamal Kumar Das had three sons namely Nabin (petitioner), Samir and Shyamal. Nabin the petitioner herein who submitted no objection one of this brother Samir but he failed to submit the no objection of one other namely brother Shyamal. Shyamal is one of the son of the deceased M.R. dealer and he is a necessary party of the instant proceeding.

Ms. Sinha further argued that the decision has already been obtained by the authority regarding the rejection of the prayer of the petitioner. Thus at this juncture the instant writ petition challenging the said order passed in the year 2023 cannot be challenged.

Having heard the learned counsel for the parties and also considering the impugned order dated 22nd February, 2023 it appears that Director, DDPS (Deputy Director License) issued the memo to District Controller, Food & Supplies, Nadia regarding rejection of application of the petitioner for engagement of FPS dealer on compassionate ground. It has been intimated by the Deputy Director (license) that Director, DDPS has rejected the application of the petitioner, only on the ground that the petitioner/applicant has failed to produce “no objection” for all other family members of deceased dealer as required under Clause 20(6) of the West Bengal Distribution System Maintenance and Control Order, 2013.

This being sole ground for rejection, to appreciate the entire law regarding the compassionate appointment under Control Order, 2013.

It is required to set out the said provision enumerated under Clause 20(6) of WBPDS (M&C), order, 2013.

“VI (a) In case of death or in case of incapacitation of 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 along with 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:

Provided that in case of death of a licensee such prayer is submitted within 90 days from the date of death of the licensee:

Provided further that the licensing authority may, on just and sufficient grounds shown by the applicant and for the reasons to be recorded in writing, accept such application upto 120 days from the date of death of the licensee:

Provided further “No Objection” is not required if the applicant be the spouse of the deceased licensee or if the licensee, because of his/her being incapacitated/infirm has opts the name of the applicant.”

The said issue of compassionate appointment was further deliberated by the Division Bench of this court in **Gurupada Das Vs. State of West Bengal & Ors. (MAT 482 of 2022).**

“14. Now the most important question is what is the meaning of “No Objection” from other family members. Family members have been defined in

Clause 2 (m) of the 2013 Control Order which reads thus: 2.(m) "Family members" means spouse, dependent parents, dependent sons and daughters for the purpose of considering engagement as Dealers/Distributors on compassionate ground. The most important word in the definition is the word 'dependent'. If any of the family member was not dependent on the deceased on the date of his death, his no objection is not necessary for consideration of issuance of licence in favour of any of the legal heir who has applied in Form C along with Annexure-I of the 2013 Control Order. If any of the sons or daughters who are dependent they are required to file "No Objection". If we read paragraph 2 of sub-Clause (vi) of Clause 20 in conjunction with Clause 2 (m), it would be clear that only sons and 14 daughters who were dependent on the deceased on the date of his death are required to file "No Objection" and not all family members. 15. The concern of the authority holding enquiry, therefore, is to find out whether the person who has not filed affidavit was dependent on the deceased on the date of his death or he was living separate or independent from the deceased. If the answer is to the effect that he is independent and has got sufficient means of subsistence, no affidavit by that legal heir need be

filed and without his affidavit also the application of a legal heir can be processed and allowed. 16. It is settled law that negative facts cannot be proved, therefore, if any of the legal heir files an Affidavit to the effect that he was dependent on his father on the date of his death and he is eligible to be bestowed with the benefit contained in Clause 20 (vi) of the 2013 Control Order and other family members namely such and such are independent. The simple exercise the SDC, F&S has to do, is to issue notice to other family members and hold an enquiry asking them to prove the affirmative that they were also dependent on the deceased on the date of his death. The enquiry should not be a roving enquiry. If on administrative enquiry by SDC, F&S it is found that any of the legal heir was not dependent on the deceased on the date of his death and he has got sufficient means of subsistence he (SDC, F&S) cannot insist upon filing of "No Objection" Affidavit by him. 17. If we give any other interpretation to the meaning of paragraph 2 of subClause (vi) of Clause 20 read with Clause 2 (m) of 2013 Control Order that will defeat the very purpose of the benevolent scheme of compassionate engagement inasmuch as any person who is independent from the ex dealer during his life time 15 can also come forward to

frustrate the chance of an otherwise eligible legal heir to get a licence on the death of his father who was an ex dealer by not filing a "No Objection", though such an action may be owing to sibling rivalry, meanness or any previous grudge. Therefore, when both the provisions are read in conjunction the clear meaning that come out is as aforesaid. Therefore, in our merited consideration the application of the Appellant be reprocessed afresh keeping in mind whether Respondent No. 6 who has not filed "No Objection" was dependent on his deceased father, Rasbihari Das on the date of his death. Our such view is also supported by catena of case laws, which declares that dependence is the essence of any scheme or policy offering compassionate appointment/engagement.

18. The very essence of any scheme of compassionate appointment is dependence. The very purpose of any such scheme is to provide succor to such dependents. So any delay in providing appointment/engagement to a dependent or dependents defeat the very purpose of such policy/scheme. We find that in Clause 20 (vi) of 2013 Control Order there is no time limit prescribed for the authority to act on the application filed under the said provision and we also come across cases where claims are kept

pending for years. We therefore using our plenary power under Article 226 of the Constitution of India interdict the State Government to comply strictly with the following directions:- (i) Every application should be disposed of within 6 (six) months from the date of filing of formal application under Form C along with Annexure-I thereto of 2013 Control Order. 16 (ii) If there is any defect in the application, the Applicant be intimated to rectify the defects within one month from the date of filing and such defects be rectified by the Applicant within 15 (fifteen) days of such intimation. (iii) If the application cannot be processed by the outer time limit of 6 (six) months outlined supra for any reason, temporary licence should be issued in favour of the Applicant subject to the condition that such licence shall be subject to the outcome of the enquiry. If more than one application have been received from more than one legal heir, the Applicant who submitted his application first should be issued with the temporary licence pending enquiry. (iv) In no event any application be kept pending beyond one year.”

Peculiar fact suggest that the erstwhile M.R. dealer Kamal Krishna Mondal expired on 29th November, 2011. On 13th January, 2012 all the sons of such M.R. dealer approached the authority since then

concerned authority kept long silence. Subsequently, the individual application of the petitioner was turned down by an order dated 22nd of February, 2023.

In paragraph 20 (VII) the Hon'ble Division Bench in **Gurupada Das** has observed that "the SDC, FPS should not conduct an enquiry to find the factum of vacancy. It should be a administrative enquiry giving opportunity to interested family members to prove his/her case that he/she was depended 'on the deceased on the day of his/her death. If all the family members have filed "no objection" affidavit, no such enquiry is necessary. If one or more than one of the family member have not filed "no objection affidavit" such enquiry be conducted in respect of their claim only.

The direction of the Hon'ble Division Bench if clearly dissect it would appear that it is the duly of the concerned authority to conduct an administrative enquiry by giving reasonable opportunity to the interested family members who can demonstrated their grievances. It suggests that while making such enquiry the concerned authority shall issue notices to the all family members, and if they are interested they must appear before the authority to ventilate their claim. In absence of such administrative enquiry any order passed by the authority appears me de-horse to the direction of the Division Bench. I also make it clear that

the direction of the Hon'ble Division Bench in **Gurupada Das**, it make clear that it is not the duty of the applicant to collect all "no objection affidavit" of the legal heirs of the deceased but it is also duty of the concerned authority to conduct an enquiry to fix up the point of dependency.

Under the above observation the impugned order passed by the respondent authority on 22nd February, 2023 appears to me not in confirmity with the direction of the Division bench of this court. The concerned Director, DDPS has only imposed the liability upon the applicant to collect "no objection affidavit" from all family members which appears to me not a good ground to reject the application of the present petitioner.

Under the above observation I find justification to quash the impugned order passed by the concerned DDPS intimated by the Deputy Director, (license) concerned on 22nd February, 2023.

Under the above observation the instant writ petition is disposed of.

Let the matter be relegated to the Director DDPS, Food & Supplies department, Government of West Bengal to re-hear the petitioner and pass an order in terms of the decision enumerated by the Hon'ble Division Bench in **Gurupada Das -Vs. State of West Bengal & Ors.**

The concerned SCFS shall conduct the enquiry in terms of the decision of the Division Bench and submit a report to the Director DDPS within six weeks from the date of communication of this order.

Writ petition is disposed of.

I make it clear that this court is not entered into the merit of this order.

The concerned DDPS shall take decision independently without being influenced by any observation of this court.

Since no affidavits are exchanged, the allegation made in the writ petitioner shall be deemed to have been not admitted.

[Subhendu Samanta, J]