

06.5. 2025
item No.1
n.b.
ct. no. 24

WPA 17853 of 2013

Nazia Begam

Vs.

State of West Bengal & Ors.

Mr. Ram Anand Agarwal,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee,
Ms. Sonam Ray,
..... for the petitioner.
Mr. Debopriyo Karan,
..... for the State.

Affidavit service filed by the petitioner is taken on record.

Munshi Jahanara Khatun and present petitioner conducted a business of MR dealership and S.K. Oil licence issued by the State respondent through a partnership deed. In the partnership deed, present petitioner had 90% share and Munshi Jahanara Khatun had 10% share.

On 7.1.2011 Munshi Jahanara Khatun submitted a prayer before the concerned authority to surrender her ownership from business MR dealership as well as S.K. Oil licence. Her application for surrender of ownership was accepted by the concerned authority. Petitioner submitted a representation with the concerned authority to continue the licence in her name in individual capacity. Petitioner's prayer was not considered. So, she moved two separate writ petitions one for M.R.

Dealership licence and another for renewal of his S.K. Oil licence.

This writ petition initially placed under the Original Side jurisdiction in this Court being WP. No.1105 of 2011. A Co-ordinate Bench in Original Side, vide order dated December 23, 2011 issue an interim order directing the concerned authority to renew the licence for a period of 15 days without prejudice to the rights and contentions of the parties. The said interim order was extended time to time and finally vide order dated March 30, 2012, a Co-ordinate Bench of this Court has extended the interim order until further order.

This matter again appeared before the Co-ordinate Bench of this Court on June 7, 2013 wherein the Court has transmitted the matter from Original Side to Appellate Side; accordingly, the matter was re-numbered as WPA 17853 of 2013.

Mr. Ram Anand Agarwal, learned senior counsel appearing on behalf of the petitioner submits that the erstwhile partner of the partnership business namely, Munshi Jahanara Khatun has retired from the partnership business. Petitioner applied for the renewal of the Kerosene licence in her name under personal capacity, which was not considered by the authority. Hence this writ petition.

Mr. Agarwal, further argued that the issue of running a licence in individual capacity by a partner

after dissolution of partnership has been decided by this Court in W.P. No. 22080 of 2016. The present petitioner has preferred the other writ petition in respect of MR dealership licence. This Court after considering the submission of the parties has allowed the writ petition in favour of the petitioner and directed the concerned authority to issue the licence of FPS in favour of the petitioner in individual capacity. In terms of the said direction, the authority concerned has already issued the licence of FPS in favour of the petitioner on September 13, 2024.

Mr. Agarwal, learned counsel submits that the issue involved in the instant writ petition has already been settled by this Court in the earlier writ petition being WPA 22080 of 2016. Thus, the petitioner is entitled to the similar order and relief as passed by this Court in the earlier writ petition.

Learned counsel appearing on behalf of the State authority submits that the petitioner has given the licence of FPS in terms of the direction of this Court in WPA 22080 of 2016. He further submits that vide notification dated 24.7.2014 by the Commissioner, Food and Supply Department, regarding S.K. Oil dealership business, the applicant shall be unemployed and shall not be holding any office of profit at the time of making application. He placed the notification, specific specifically point no.3(6)(iii)(a) of the notification and

argued that it has been enumerated therein **“a person holding licence of S.K. Oil dealership or S.K agent or FPS dealer or distributor or wholesaler in his name of relative of such licence”** are not entitled to apply for the licence.

It is further contention of the learned counsel appearing on behalf of the State that the business of S.K. Oil dealership licence was ran by a partnership firm, after resignation of one of the partner, the partnership business has dissolved. So, after dissolution of partnership business, the petitioner is not entitled to get the licence under individual capacity.

Heard learned counsel for the parties, perused the memorandum dated September 24, 2014. The initial portion of the memorandum is run as follows:-

“Sub: Appointment of SKO Dealers on existing and new vacancies in the districts and Kolkata and Bidhan Nagar areas.

IN partial modification of the order issued under Memo No.G-94/1(24)FC Dt. 25.06.2010 and CG/K.Oil/Allot/Cell 107/2014/19 dt. 17.6.2014 read with Memo no.Cg/K.Oil/Allot/Cell/107/2014/293(8) dt. 18.6.2014, it is hereby ordered that in order to maintain uniformity in the process of filling up an existing vacancy of SKO Dealer arising out of death/incapacitation/resignation/termination, those vacancies will be filled up after taking prior approval of the State Government in the following process.....”

From the plain reading of the entire memo, it appears that the said memo is in respect of filling up new vacancies for appointment of S.K Oil dealership. It is also applicable for an existing vacancies, which arisen out of death/ in incapacitation/ resignation or termination

of the licence. It appears that the present petitioner was protected by an interim order of this Court regarding impugned licence of S.K. Oil dealership. The impugned notification dated September 24, 2014 has been issued by the Government of West Bengal much after passing of the interim order by this Court. Moreover, the merit of the memo is in respect of new vacancy and procedure thereof to fill up the vacancies. Hence, the memo dated September 24, 2014 is not applicable here.

Considering the notification dated June 4, 2021 by the Secretary of Government of West Bengal, Food & Supply, specifically point no.3(6)(iii) it provides the persons, who are not eligible to apply for the licence of S.K. Oil, as follows:

“(a) a person holding a licence of S.K. Oil dealer or S.K. Oil Agent or FPS Dealer or Distributor or Wholesaler in his name or a relative of such licensess:

(b) a member of local bodies, local authority, Panchayati Raj Institutions, board or corporation, or Member of Legislative Assembly or a Member of Parliament during his tenure as such capacity:”

(c) a minor or person of unsound mind or an insolvent;

(d) a person convicted by the Court under the Act or in any other criminal proceedings connected with essential commodities:

(e) a person holding a post in the establishment of any State Government or Central Government or any authority or body or institution of Local self-government established or constituted by or under the Constitution or by any other law made by the Parliament or a State Legislature or by notification issued or order made by the Central Government or a State Government.

(f) a limited liability partnership:

(g) a corporation or company:”

From the plain reading of the specific portion of the notification, it appears that this is applicable for the

persons who are intending to apply for new S.K. Oil licence. In the present case, the business of S.K. Oil licence was being ran by the present petitioner and Munshi Jahanara Khatun under partnership a deed. Thus, specific portion of the notification dated June 4, 2021 is not applicable in the present case.

In deciding the issue whether the present petitioner can allow to run the business in individual capacity after dissolution of partnership. This Court has already decided the issue in WPA 22080 of 2016 by strength of ratio of this Court passed in **Amitava Dutta Vs. State of West Bengal.**

The observation of **Amitava Dutta** is required to be set out for better appreciation of the matter.

“The petitioner’s prayer for grant of licence in his own name, however, has been rejected on the ground of dissolution of the partnership firm on death of one partner, where the total number of partners were two. Since the licence in this case was granted in joint names of the petitioner and his deceased sister and not in firm name, I do not think principle of dissolution of partnership can be applied in the instant case. It is not clear to this Court on what basis the deed of partnership was executed and to what extent the authorities relied on the same, but the fact remains that licence was issued jointly, in favour of the petitioner and his deceased sister.”

Having heard the entire matter and considering the fact that the issue has already been decided by this Court in the earlier writ petition regarding her entitlement in running the business in individual capacity.

I make it clear that the non-participation business by one partner due to death or resignation shall have the same effect regarding the consideration of the State authority as to whether the said business be allowed to proceed by the surviving co-licensee. The precedence of **Amitava Dutta** is squarely applicable in the present case.

Under the above observation, the instant writ petition is allowed and disposed of.

The concerned authority is directed to renew and issue the licence of S.K. Oil in favour of the petitioner in individual capacity within four weeks from the date of communication of this order.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)