

Form No. J.(2)
Item No. 5-6
Court No. 1
RP

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 11.02.2026 & 12.02.2026

DELIVERED ON: 12.02.2026

CORAM:

**THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

MAT 50 of 2025

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IA NO.CAN 2 of 2025

The State of West Bengal & Ors.

Versus

Bikash Kumar Deb & Anr.

With

WPA 389 of 2024

Bikash Kumar Deb & Anr.

Vs.

The State of West Bengal & Ors.

Appearance:-

Mr. Hirak Barman

Mr. Bikash SinghaFor the Appellants

Mr. Amales Roy, Sr. Adv.

Mr. Nigam MittalFor the Respondents

JUDGEMENT (ORAL):

PER, SUJOY PAUL, CJ.:-

1. This intra-Court appeal takes exception to the order dated 18th February, 2025 passed by the learned Single Judge in WPA 389 of 2024.

ADMITTED FACTS :

2. The admitted facts between the parties are that the respondents/petitioners were enjoying a Fair Price Shop (FPS) dealership. They wrote two letters dated 01.11.2021 and 22.11.2021 to the competent authority requesting acceptance of their surrender of FPS on medical ground. It was expressly stated in these applications that because of the health condition, they are not in a position to run the FPS.
3. In turn, the respondents were put to notice and they entered appearance in the proceeding before the concerned Sub-Divisional Controller where they reiterated their aforesaid stand and requested for acceptance of their applications for surrender of FPS.
4. A report was obtained from Area Inspector, Alipurduar, II Block by the concerned Sub-Divisional Controller and it was found that the respondents were unfit to run the FPS and, accordingly, the concerned Sub-Divisional Controller by issuing the orders dated 18.11.2021

decided to temporarily tag the FPS with nearest FPS of Raju Ray at Alipurduar-II.

5. Thereafter, by a communication dated 22.11.2021 the respondents again specifically stated that they shall be highly obliged if their prayer for surrendering of dealership licence forever is accepted for "Duare Ration Scheme" from November 2021 due to their illness.
6. The respondents then preferred an application dated 17.12.2021 wherein they stated that upon rethinking of the matter and considering all other aspects, requested to withdraw the applications for surrender of licence. It is clearly averred that they will manage the business somehow and continue with the dealership with the help of nearest relatives to help the ration card holders. This application of the respondents was rejected by the order dated 18.01.2022 against which the respondents preferred WPA 3028 of 2022 before this Court. This Court disposed of the said writ petition without expressing any opinion on merits and formulated certain points and expected that the respondent no.2 shall decide the representation by taking into account

the said points. In turn, speaking order dated 08.1.2024 was passed by the respondent no.2.

7. By filing the instant WPA 389 of 2024, the legality, validity and propriety of the said speaking order dated 08.01.2024 was called in question. The learned Single Judge after hearing both the parties passed the impugned order dated 18.02.2025 and set aside the impugned order therein dated 08.01.2024 and directed restoration of FPS. However, for the inconvenience and harassment caused to the State, the respondents were directed to pay a cost of Rs.5,00,000/-. This order is the subject matter of challenge in this intra-Court appeal.

CONTENTION OF APPELLANT/ STATE

8. Learned counsel for the appellant/State submits that the applications submitted by the respondents are clear and unambiguous. They expressed their inability to run the FPS and, therefore, requested to accept their surrender applications. By taking this Court to the original license, it is submitted that Clause - 11 provides the right to a licensee to submit resignation. The preferring of surrender applications amount to

tendering resignation, which were considered and accepted after due enquiry about the fitness of the respondents. Clause – 20 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 (hereinafter called “Control Order”) is relied upon to bolster the submission that once resignation is tendered and FPS is tagged to a nearby dealer, the resignation/surrender application is deemed to have been accepted. This exercise amounts to creation of FPS position where the surrender had taken place. The temporary assignment to a nearby shop only shows that the said shopkeeper does not have any enforceable right to continue with an arrangement of tagging the shop with him.

9. Learned counsel for the appellants submits that the learned Single Judge has erroneously relied on Clause - 24 of the Control Order, which deals with such licensee, who commits irregularities. The present case is not a case where the respondents committed any irregularity and consequent thereupon punitive step was taken against them. Instead, it is a case of preferring applications for surrendering the license simpliciter on the ground of incapacity/inability because of ill health.

The learned Single Judge, in the opinion of learned Government counsel has erred in relying on a wrong provision and in absence of any express provision for accepting the resignation / surrender the learned Single Judge erred in directing restoration of FPS. Clause – 20 of the Control Oder makes it clear that resignation comes into force when another dealer is engaged.

CONTENTION OF RESPONDENTS/WRIT PETITIONERS

10. Learned counsel for the writ petitioners/respondents urged that when the respondents preferred said application showing their intention to surrender their dealership license, a proceeding was drawn by the Sub-Divisional Controller, Food & Supply, Alipurduar. By placing reliance on the said proceeding dated 08.11.2021, it is strenuously contended by the learned counsel for the respondents that the said authority opined that this application will be enquired into and will be sent to the higher authority for approval and then shall be tagged to a nearby FPS till such time, the respondents were required to run their FPS. The bone of contention of learned counsel for the respondents is that despite the first order of this Court in WP.A. 3028 of 2022 dated 24.11.2023, in the

said speaking order, it could not be spelt out as to when the matter was sent to the higher authority, when the higher authority took a decision on that and what is that decision, which resulted into tagging or engaging another dealer in place of the present respondents. In absence thereof, it is urged that the action of the appellant/State in not restoring the dealership, is bad in law.

11. It is also argued by the learned counsel for the respondents that resignation unless expressly accepted cannot come into force automatically. Reliance is placed on a judgment of Supreme Court in the case of *Raj Kumar Vs. Union of India* reported in *AIR 1969 SC 180*.
12. Learned counsel for the respondents further submits that when the learned Single Judge asked the State under which provision of law they have accepted the surrender applications for dealership and took the impugned decision, the State relied on Clause - 24 of the Control Order and, therefore, Clause - 24 is the governing provision on the anvil of which the decision has to be tested.
13. No other point is pressed by the learned counsel for the parties.
14. We have heard the parties at length and perused the record.

FINDINGS

15. This is not in dispute that by preferring applications dated 21.10.2021 and 01.11.2021, the respondents have specifically prayed for surrendering their dealership license forever because of their health condition. The competent authority obtained the report of Area Inspection, Alipurduar – II Block and found that both the partners of FPS are physically unfit to run the FPS and accordingly, recommended for tagging of their FPS with nearby FPS of one, Sri Raju Ray.
16. Pertinently, during the course of hearing on a specific query from the Bench, learned counsel for the State and learned counsel for the respondents have fairly admitted that there exists no express provision in the Control Order for acceptance of resignation/surrender application. In this backdrop, the matter needs to be examined.
17. The learned Single Judge has examined the action in the teeth of Clause - 24 of the Control Order. The heading of Clause - 24 itself shows that it deals with the 'power to take action against the licensee for committing irregularity'. If we examine the entire Clause carefully, it deals with a situation, where licensee commits irregularity since, in this case,

admittedly, no action or decision was taken because of any irregularity being committed by the respondents, in our opinion, Clause – 24 of Control Order cannot be pressed into service even if it was relied upon by the State before the learned Single Judge. It is trite that no estoppel operates against a statute. Since Clause - 24 of the Control Order has no application in the facts and circumstances of this case, merely because it was relied upon by the State, it will not bind the parties for the purpose of determination of questions involved in this matter.

18. In *Raj Kumar (supra)*, the Apex Court in paragraph 5 opined that till resignation is accepted by an appropriate authority in consonance with Rules governing the acceptance, public servant concerned has locus poenitentiae but not thereafter. The argument advanced by learned counsel for the respondents on the strength of *Raj Kumar (supra)*, on the first blush appears to be attractive but lost much of its shine when the entire judgment is examined carefully.
19. Paragraph 3 of this judgment in *Raj Kumar (supra)* shows that the governing provision was a Circular Memorandum issued on May 6, 1958. It was the requirement of that Memorandum that a resignation

tendered must be accepted. In the light of this governing provision, in paragraph 5 in *Raj Kumar (supra)*, the Apex Court opined that acceptance is necessary.

20. As noticed above, in the Control Order, no such express provision requiring acceptance of resignation/surrender application could be pointed out. Thus, the judgment of *Raj Kumar (supra)* is of no assistance to the respondents.

21. Relevant portion of Clause 20 of Control Order reads thus:-

“20. Engagement of Dealer

- (i) *In the event of-*
 a) *resignation of any dealer;*
 b)
 c)
 d)
 e)”

22. A plain reading of this provision makes it clear that another dealer can be engaged on certain eventualities, one of which is “a) resignation of any dealer”. Thus, in our opinion, once a dealer is engaged upon resignation of a person, the surrender application is deemed to have been accepted. The view taken in the speaking order that matter of surrender reached its finality with the issuance of tagging order dated

18.11.2021 is justifiable and in consonance with the scheme of the Control Order.

23. We will be failing in our duty if we fail to consider the pivotal argument of learned counsel for the respondents, wherein he argued that Sub-Divisional Controller himself in order-sheet dated 08.11.2024 directed to send the matter for approval to the higher authority but, no such approval was brought to the notice of the Court. In our considered opinion, this finding will not bind the Sub-Divisional Controller in absence of any such statutory requirement of obtaining approval from higher authority in the Control Order. In the order dated 18.11.2021, the Sub-Divisional Controller considered the report of the Area Inspector wherein he found that both the partners/respondents are physically unfit to run the FPS. Interestingly, when the respondents preferred the application dated 17.12.2021 seeking restoration/withdrawal of the acceptance letter, they again pleaded that it will be very tough for them to continue with the business because of their health but, they will try to manage it

somehow with the help of nearest relatives in order to help the ration card holders.

24. Thus, on a conjoint reading of the applications preferred by the respondents for surrendering FPS alongwith the finding/order dated 18.11.2021 and their own letter dated 17.12.2021 makes it clear that both the respondents were physically unfit to run the FPS. No provision could be pointed out from the Control Order, where the FPS can be permitted to be run by the nearest relatives to help the ration card holders.
25. In view of foregoing analysis, in our opinion, the learned Single Judge has applied a wrong provision viz. Clause – 24 to reach to a different conclusion. The respondents cannot take the benefit of their own wrong. They are medically unfit (which was expressed by them on more than one occasion) to run the FPS.
26. In this backdrop, the direction of restoration of their FPS is unsustainable.

27. Resultantly, the order of learned Single Judge is set aside. The action of respondents in accepting their application for surrender of FPS is affirmed.
28. The appeal and the connected application are disposed of.
29. At this stage, the learned counsel for the respondents prays for staying of this order. We find no reason to do so.
30. Urgent certified website copies of this judgment, if applied for, be made available to the parties upon compliance with the requisite formalities.

(SUJOY PAUL, CJ.)

I agree.

(PARTHA SARATHI SEN, J.)