IN THE HIGH COURT OF TRIPURA
A G A R T A L A

W.P.(C) No.257 of 2020

Sri Subrata Debnath,
son of late Benulal Nath, resident of Gangatipur, P.O. Mohanpur, PIN-799211, District- West Tripura

…… Petitioner

– V e r s u s –

1. **The State of Tripura,**
represented by the Secretary to the Government of Tripura, Revenue Department, having his office at Capital Complex, P.O. Secretariat Complex, P.S. New Capital Complex, Sub-Division-Sadar, District- West Tripura

2. **The Commissioner of Excise,**
having his office at Gurkhabasti, Pandit J.N. Complex, P.O. Kunjaban, District-West Tripura

3. **Collector of Excise,**
West Tripura District, Government of Tripura, Office of the DM & Collector, Akhaura Road, Agartala, P.O. Agartala, District- West Tripura

4. **Sri Abhishek Dahiya,**
son of Jagbir Singh, resident of 2539, Sector 19C, Chandigarh, PIN-160019, Chandigarh

…… Respondents

For the Petitioner (s)	**:**	Mr. T.D. Majumder, Adv.
For the Respondent (s)	**:**	Mr. D. Bhattacharjee, GA Mr. S.M. Chakraborty, Sr. Adv. Ms. P. Sen
Date of hearing	**:**	07.10.2020
Date of delivery of Judgment & order	**:**	**17.12.2020**
Whether fit for reporting	**:**	

YES	NO
	√

HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S.G CHATTOPADHYAY

JUDGMENT & ORDER

[Talapatra, J]

By means of this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the decision of the respondents No.1,2 & 3 accepting the technical bid of the respondent No.4 towards finalization of the tender for settlement of Ranirbazar F.L. Shop for the year 2020-2021, 2021-2022 and 2022-2023. The petitioner has also challenged the assessment of the Evaluation Committee as the petitioner has categorically asserted that the evaluation committee has accepted the ineligible technical bid of the respondent No.4. It has been further urged by the petitioner that only after cancelling the technical bid of the respondent No.4, the tender for settlement of the said F.L. Shop for the years 2020-2021, 2021-2022 and 2022-2023, be finalised. Surprisingly, in the relief it has been typed as under:

> **"issue notice upon the respondents and each of them to show cause as to why a writ of mandamus shall not be made directing official respondents No.1-3 *to immediately cancel the technical bid of* *the petitioner* and to proceed for finalisation of the tender for settlement of Ranirbazar F.L. Shop for the years 2020-2021, 2021-2022 and 2022-2023."**

Apparent it is that instead of the respondent No.4, it has been typed as the petitioner. No amendment however has been sought for correcting that part by the petitioner. But from

wholesome reading of the records this court has derived the relief as noted above.

[2] There is no dispute that both the petitioner and the respondent No.4 had participated in the tender process for settlement of the said F.L. Shop and for the period as noted in response to the DNIT No.5610-15/F.XX-1(3)/CEW/SFLCL/20 dated 15.01.2020 [Annexure-2 to the writ petition]. The petitioner for participation in that process filed both technical and financial bids. During opening of the technical bid in two bids system, the petitioner had observed serious deficiency in the tender-documents uploaded by the respondent No.4. Hence, he had lodged the complaint without delay. According to the petitioner, Clause-4(iii) of the DNIT dated 15.01.2020 makes it mandatory that the no objection certificate from the owner of the building along with the supporting documents duly attested shall be uploaded but the respondent No.4 did not submit such no objection certificate from the owner of the building. On the contrary, he has submitted an affidavit sworn by Khela Rani Debnath on 05.02.2020, without the supporting documents viz. documents of ownership of the premises, rent or lease agreement for 3 years[the period of this settlement] associated with the owner of the building and other associated documents duly attested by the Notary. Thus, it has

contended by the petitioner that the essential term of the tender has been grossly violated by the respondent No.4. The respondent No.4 even did not submit partnership agreement or deed showing that the respondent No.4 is a partner with the owner of the said premises which would be let out for the liquor shop. According to the petitioner, an affidavit cannot countence as substitute for no objection certificate from the owner and supporting documents, duly attested. It has not been disputed by the respondent No.4 that he has submitted the declaration affirmed by an affidavit by Khela Rani Debnath, duly authenticated by the Notary on 05.02.2020 [Annexure-3 to the writ petition], but executed on 01.02.2020. Despite the said violation of the term of the tender, the technical bid of the respondent No.4 has been accepted by the Collector of Excise, West Tripura District. The financial bid thereafter was assessed. In addition to those objections, the petitioner has raised other objections viz. that the Professional Tax Clearance [PTC] certificate as submitted by the respondent No.4 [Annexure-4 to the writ petition] cannot be accepted as the valid PTC, inasmuch as the document that had been uploaded in the portal showed that it was not even signed by the respondent No.4. Thus, the authenticity of the said certificate was not established. The Collector of Excise, the respondent No.3 herein, should not have accepted the technical bid

of the respondent No.4 as the essential term of the tender was not complied with. For purpose of illustration, the petitioner has brought one example from the tendering process for settlement of Mohanpur F.L. shop No.1 initiated by the same DNIT for the same tenure. The tender of the petitioner was not accepted as the tender reference number was not inserted in the bid. Thus, the petitioner has submitted that the same Collector of Excise cannot take a different stand by adopting inconsistent interpretation when a breach of Clause 4(iii) of the said DNIT is noticed. The petitioner filed, his complaint recording the said breach on 20.02.2020 [Annexure-7 to the writ petition] where the petitioner had raised the only objection that the respondent No.4 has submitted *'his bid with insufficient papers and documents i.e. without any lease agreement or no any partnership agreement but there is no any paper regarding the partnership'.* The petitioner requested the Collector of Excise to cancel the bid of the respondent No.4.

[3] In Para-16 of the writ petition, the petitioner has asserted that he had come to know from a reliable source that the respondent No.3 would settle the said foreign liquor shop without attending the objection that he had raised.

[4] The respondents No.1 to 3 have filed their reply and stated that the Collector of Excise, West Tripura had constituted a committee headed by the District Magistrate & Collector, West Tripura District for scrutiny of the technical bids. The said committee prepared the assessment sheet of technical bids and the said evaluation assessment sheet was checked by the respondent No.3 to ascertain whether the technical bids were in conformity to the tender guidelines, Tripura Excise Act and the rules made thereunder. In respect of non-furnishing of the ownership documents and no objection certificate the official respondents including the respondent No.3 has averred as under:

> **"That, with regard to Paragraph-7, I say that on scrutiny of land documents/Khatian No.5789 and No.6375 of proposed site of Respondent No.4, it is apparent that Smt. Khela Rani Debnath is actual land owner who has furnished a Notarized No-Objection Certificate to Sri Dahiya for running a Foreign Liquor Shop. Regarding acceptance the signature of Smt. Khela Rani Debnath, land owner of proposed site of Respondent No.4 who signed in the NOC paper on 1st February, 2020 though the same was Notarized on 6th February, 2020 which was ignored since the same was accepted by the Notary. <u>It is to state here that submission of Rent or Lease Agreement, Partnership Agreement or Deed are not mandatory under the said DNIT condition</u>. It is only mandatory whether the land owner has furnished No-objection Certificate to set up liquor shop in his/her land, if the proposed land is hired."**

[5] Thereafter, the official respondents have asserted that the petitioner was given opportunity of being heard on 06.03.2020. The petitioner had appeared and he was informed at that point of time that the original Profession Tax Clearance [PTC] certificate as produced by the respondent No.4 contained the required signature.

The said objection was thus disposed of. The report of the evaluation committee as formed by the memorandum dated 14.01.2020 was accepted as the recommendation was, according to the official respondents, in conformity to the required norm. In respect of rejecting the technical bid of the petitioner for Mohanpur F.L. Shop No.1, the official respondents have clarified in the following manner:

> **"During the evaluation of the technical bids/documents, it has been found one Sri Subrata Nath had participated against Mohanpur F.L. Shop No.01 for the financial year 2020-21 to 2022-23. But his technical bid was rejected due to major defects in the self declaration submitted in the shape of 4(four) nos. Notary Affidavit to fulfill DNIT condition No.4(v), 4(vi), 4(vii) & 4(viii) which are the most vital and important condition of the DNIT. The fact is that he had uploaded 4(four) self declarations in the form of 4(four) nos. Notary Affidavit as per DNIT condition No.4(v), 4(vi), 4(vii) & 4(viii) where he had mentioned about the claim for settlement for Battala C.L. Shop, instead of his claim for Mohanpur F.L. Shop No.01. Hence his technical bid was rejected."**

[6] The official respondents have further submitted that the respondent No.4 offered two premises against one particular shop and both the premises were found to be suitable for setting up of foreign liquor shop during the physical verification. Moreover, the land owner in possession issued the no-objection certificate which was notorized. The said objection as raised for non-compliance of the terms of Clause 4(iii) is unsustainable inasmuch as the official respondents have categorically denied the fact that there was any objection at all filed on 20.02.2020. But the official respondents have admitted that one complaint was received from the petitioner

on 20.02.2020 and its fate was communicated to the petitioner after hearing him on 06.03.2020. The official respondents have disclosed that the process of technical bid evaluation and the financial bid evaluation had been carried out with utmost care. Allegation against the evaluation committee is entirely baseless and fabricated. A committee headed by Addl. District Magistrate & Collector was formed by the memorandum dated 11.02.2020 for physical verification of the proposed site/premises. The said committee had physically visited the site and submitted the report. Out of the bidders, the site of one Biswajit Saha was rejected for the reason that one Anganwadi Centre is located within 100 meters of the proposed site/premises. Such site cannot be accepted as the location is contrary to the provision of Rule 26 of the Tripura Excise Rule, 1990 as amended time to time. But 3 bidders, namely, the petitioner, the respondent No.4 and one Nindu Bhowmik fulfilled the condition as laid down in Rule 26 of Tripura Excise Rule, 1990. So their technical bids were accepted and according to the schedule, their financial bids were opened and found that the petitioner quoted the bid amount of Rs.1,12,00,008/-, the respondent No.4 quoted the bid amount of Rs.1,23,00,000/- and Sri Nindu Bhowmik quoted the bid amount of Rs.73,73,073/- against the MRF amount of Rs.60,50,000/- as fixed by the

Government. The respondent No.4 has been recommended for granting licence of Ranirbazar F.L. Shop being the highest bidder. The respondent No.4 has been asked to deposit the proportionate licence fee for the first quarter of 2020-2021 amounting to Rs.10,25,000/- and 25% of the tender value i.e. Rs.24,60,000/- as the security deposit for issuance of licence for Ranirbazar F.L. Shop. But in the meanwhile, the petitioner has filed this writ petition and the process is stuck up there.

[7] The respondent No.4 filed the reply but strangely enough he has simply adopted the reply of the respondents No.1 to 3 through his attorney.

The petitioner has filed a rejoinder and reiterated his objection by stating that the tender process has not been carried out following the adverted procedure. It has been strongly controverted that only no objection certificate from the land owner is essential. Only declaration before the Notoary is adequate. The petitioner, thus made an endeavour of distinguishing between the no objection and the declaration duly notorized. Thus, he has denied the contentions of the respondents No.1 & 2 that no objection certificate from the owner is sufficient and no other documents such as title, rent agreement etc. were not asked to be

uploaded with the tender document. The petitioner has made a serious allegation against the Collector of Excise for showing undue favour to the respondent No.4. Even the decision of accepting the PTC has again been questioned in the rejoinder. In the rejoinder, it has been asserted that acceptance of the questioned document for consideration subsequent to the last date of filing the bid, is beyond the terms of the DNIT. This statement is unintelligible inasmuch as according to the respondents No.1 to 3, the PTC which was uploaded carried the signature of the respondent No.4. However, on the face of the allegation as projected by the petitioner that the respondent No.4 was allowed to replace the document, the respondents No.1 to 3 in Para-11 of their reply have denied the allegation.

But this court will not evaluate that objection as neither the petitioner nor the respondents had filed the relevant document to verify the process of rejection of the petitioner's tender for Mohanpur F.L. Shop No.1. It is admitted fact that the petitioner did not challenge the said decision of the respondent No.3 in respect of rejection of his technical bid for Mohanpur F.L. shop No.1. Finally, it has been asserted that for acceptance of the informal technical bid, the entire process has been vitiated. However, the process can be salvaged by severing the tender filed by the respondent No.4.

[8] The respondent No.4 has filed an additional affidavit and stated that the tax clearance certificate contained the signature of the respondent No.4, but in the scanned copy which was uplodaded by him with the bid, his signature was not distinct as got blurred due to any technical reason. Still in the signature part of the said document a blurred impression of his signature was visible. Hence, the bid evaluation committee had asked the respondent No.4 to produce the original certificate for comparison with the same. On comparison, they found that it was a genuine document, issued by the competent authority. He has further stated that the Superintendent of Taxes, Udaipur issued the said PTC on 04.02.2020. Therefore, such document cannot be questioned as genuinity of the document can always be verified from the statutory authority which had issued the same.

[9] The petitioner has also filed the rejoinder against the said additional affidavit filed by the respondent No.4 and reasserted that the admission of the respondent No.4 that submission of rent or lease agreement or partnership agreement or deed were not mandatory if the Clause No.4 (iii) of the DNIT is unambiguous. The petitioner has stated that the respondent No.4 has committed fraud saying that uploaded PTC certificate bore an invisible signature. The

petitioner has also reiterated his allegation of nexus between the official respondents and the respondent No.4. But the official respondents have found on comparison that the PTC certificate which was uploaded was genuine. Moreover, that certificate is statutory certificate. To bring allegation of fraud, more materials and description are needed for effective inquiry. But the petitioner has not provided such input.

[10] Mr. T.D. Majumder, learned counsel appearing for the petitioner has submitted that the respondent No.4 even did not comply the condition No.4(iii) which requires that *a statement of immovable property along with supporting document (s) and current Bank balance mentioning the name of Bank and Account No. to prove his/her financial ability to carry on the business. A certificate from the concerned Bank Manager about the present bank balance of the bidder mentioning the Account No. should also be given.* This objection cannot be entertained by this court for the simple reason that the said objection has not been raised in the writ petition and the respondents did not get any opportunity to have their say on such allegation. Thereafter, Mr. Majumder, learned counsel has referred to Clause 4(iii) which reads as under:

> **"(iii) The tenderer may propose not more than two premises at the time of submission of tender against one particular shop. The area proposed premises should not be less than 100 square**

> **feet and the details of the location & description of the building (owned or hired) including all required document (s) of the building i.e. Khatian/Touzi/Registered sale deed and in case of hired building a no objection certificate from the owner of the building along with supporting document (s) duly attested by the Notary Public should be submitted."**

[11] According to Mr. Majumder, learned counsel, the area of the proposed premises should not be less than 100 square feet and the details of the location and description of the building both owned or hired including all required document(s) of the building i.e. Khatian, Touzi, registered sale deed were to be uploaded with the bid. According to him, this is a mandatory requirement and as such, it cannot be waived. He has further submitted that in terms of the clause, in case of a hired building, a no objection certificate from the owner of the building along with supporting documents duly attested by the Notary Public was the requirement. Mere no objection certificate would not suffice the requirement. Along with the no objection certificate, the supporting documents duly attested by the Notary Public were to be uploaded. Without uploading such documents the respondent No.4 has uploaded a declaration as regards no- objection and the said declaration was simply notorized. Mr. Majumder, learned counsel has reiterated that the PTC certificate as uploaded was not genuine. The respondent No.3 allowed the respondent No.4 to replace the said certificate in the name of verification of the original PTC certificate.

[12] Mr. D. Bhattacharjee, learned GA appearing for the State-respondents has stated that Clause 4(iii) is not a mandatory condition and it does not require submission of title deed, record of rights etc. in respect of the rented premises for which the respondent No.4 has submitted only the declaration of no objection from the owner. According to him, the grounds of objection as raised by the petitioner are not tenable. Mr. Bhattacharjee, learned G.A. has further submitted that the genuinity of the PTC certificate as upload has been established by the respondent No.4 by producing the original PTC certificate on being asked.

[13] Mr. S.M. Chakraborty, learned senior counsel has adopted the submission of Mr. Bhattacharjee, learned GA and stated in addition that at the time of scanning, the signature of the respondent No.4 on the designated place got blurred. When the respondent No.3 compared with the original, the plea of the respondent No.4 was accepted for obvious reasons and it appears from the reply filed by the respondents No.1,2 & 3, the said decision was communicated to the petitioner and as such, the said statement of the respondent No.4 cannot be treated as invented subsequently.

[14] Having appreciated the submission of the learned counsel appearing for the parties, we are of the view that the objection relating to the PTC certificate cannot be sustained inasmuch as the blurring or wiping out of some part during the scanning is probable. The respondent No.3 in order to obviate any doubt had scrutinized the original and he was satisfied that the uploaded document was a scanned copy of the said document. Now the principal ground of objection are -(i) whether Clause 4 (iii) of the DNIT dated 15.01.2020 [Annexure-2 to the writ petition] is the essential or mandatory condition or not and (ii) whether the respondent No.4 has complied with that condition at the time of filing the e-bid.

[15] On reading of the Clause 4(iii) of the DNIT dated 15.01.2020 it clearly appears that uploading of the documents in support of details of location and description of the building owned or hired namely, Khatian, Touzi and registered sale deed is essential or mandatory condition. In the case of hired building, the uploading/filing of no objection certificate from the owner of the building along with supporting documents duly attested by the Notary Public is essential. There cannot be any other reading. The conditions Clause 4(iii) is are definitely essential inasmuch by

evaluation of those documents the question relating to the ownership or the competence of the person who issued the no objection certificate can only be determined by the tendering authority. We are unable to accept the submission of the counsel for the respondents in this regard. Thus, the technical bid of the respondent No.4 was grossly irregular for non-observance of the essential condition as laid down at Clause 4(iii) of the DNIT dated 15.01.2020. Hence, acceptance of the technical bid of the respondent No.4 cannot be sustained. The respondent No.3 is directed to discard the technical bid of the respondent No.4 as not in form. When the technical bid of the respondent No.4 is declared irregular by this court the same has to be discarded and as consequence thereof, the financial bid of the respondent No.4 cannot also be considered by the respondent No.3. As a result, the bid of the respondent No.4 shall stand discarded. It is ordered accordingly.

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[16] In the result, the respondent No.3 is left with two options, either to consider the financial bids of the remaining two bidders or to go for the fresh tendering. In this regard, we leave the matter to the wisdom of the tendering authority inasmuch as

we are unable to accept the allegation of mala-fide in absence of any material against the respondent No.3.

[17] Having observed thus, the writ petition stands partly allowed.

There shall be no order as to costs.

Pending application, if any, stands disposed of.

Interim order, if any, as passed earlier stands vacated. However, till the respondent No.3 takes a decision on settlement, the petitioner may be allowed to continue run the Ranirbazar F.L. Shop.

A copy of the order be supplied to Mr. Bhattacharjee, learned G.A. appearing for the respondents No.1,2 & 3.

JUDGE **JUDGE**

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Sujay