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

W.P.(C) No.258 of 2020

Sri Sudhir Debnath,
son of late Sukumar Nath, resident of Joypur, Joynagar, Agartala, P.O. Agartala, PIN-799001, 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. **The 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 Ankush Bajoria,**
son of Sri Mahender Gopal Bajoria, resident of 604 Jawahar Nagar, Ganganagar, Rajasthan, PIN-335001

…… Respondents

For the Petitioner (s)	:	Mr. T.D. Majumder, Adv.
For the Respondent (s)	:	Mr. D. Bhattacharjee, GA Mr. S.M. Chakraborty, Sr. Adv. Mr. Abir Baran, Adv.
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 Battala F.L. Shop No.4 for the years 2020-2021, 2021-2022 and 2022-2023. The petitioner has also challenged the assessment of the Evaluation Committee made on 19.03.2020 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 on 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 finalized.

[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 for the period as noted in response to the DNIT No.5580-85/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 bid and financial bid. During opening of the technical bid in two bids system of tendering

under Rule 29(A) read with Rule 22 of the Tripura Excise Rules, 1990 as amended time to time, the petitioner has observed serious deficiency in the tender documents filed by the respondent No.4. The petitioner had lodged the complaint in respect of the technical bid of the respondent No.4 without delay. Initially he was assured that the technical bid of the respondent No.4 would be cancelled. According to the petitioner, Clause-4(iii) of the DNIT dated 15.01.2020 makes it mandatory that no objection certificate from the owner of the building along with supporting document, dully attested by the Notary should be submitted. But the respondent No.4 did not submit such no objection certificate from the owner of the building with supporting documents i.e. the ownership documents, such as registered sale deed, Khatian and the tenancy agreement etc. Those were even not uploaded with the affidavit sworn by the owner. A mere affidavit cannot substitute the no-objection certificate as asked for. The respondent No.4 did only upload a sworn affidavit of one Jhuma Rani Paul who signed the same on 01.02.2020. Later on the said declaration was notorized on 06.02.2020. But the supporting documents viz. documents of the ownership of the premises, rent or lease agreement for 3 years and other documents duly attested were not uploaded. Thus, it has been contended by the petitioner that the essential term of the tender has been grossly violated by the respondent No.4. The respondent No.4 did not submit

partnership agreement or deed showing that the respondent No.4 is a partner with the owner as he stated 'to be the partner of the owner of the said premises' which would be let out for the liquor shop. According to the petitioner, an affidavit cannot be countenced as no objection certificate from the owner and supporting documents duly attested. It has not been disputed by the respondent No.4 that he has only submitted the declaration affirmed by affidavit by Jhuma Rani Paul which was attested by the Notary on 06.02.2020 [Annexure-3 to the writ petition] but the said declaration was executed on 01.02.2020. Despite the said violation, the technical bid of the respondent No.4 has not been rejected by the Collector of Excise, West Tripura District. Finally, on consideration of the financial bid, the tender of the respondent No.4 was accepted. till 19.03.2020 and kept the technical bid of the respondent No.4 for opening and finalization of the technical bid due to be completed by 29.10.202.

In addition to those objections, the petitioner has raised other objections viz. 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 has been uploaded in the portal shows that it was not even signed by the respondent No.4 as required for the PTC

certificate. According to the petitioner, the respondent No.4 had obtained a blank PTC certificate. That directs the needle of suspicion towards a hands in glove situation. Thus, the authenticity of the said certificate cannot and should not be accepted. The Collector of Excise, the respondent No.3 herein, should have rejected the technical bid of the respondent No.4 as the essential term of the tender was not conformed to. For purpose of illustration, the petitioner has brought one example from the tendering process for settlement of Mohanpur F.L. shop No.1 for the same tenure. The tender of one petitioner, namely Subrata Debhath who had participated in the bid for settlement of Mohanpur F.L. Shop No.1 for the same period was rejected on the ground that there was mistake in quoting the tender reference number. The petitioner herein has produced the order dated 16.03.2020 in respect of the said rejection along with the documents filed by the said bidder for Mohanpur F.L. Shop No.1, including the copy of his tender. Thus, the petitioner has contended that the same Collector of Excise cannot take a different stand when a breach of Clause 4(iii) of the said DNIT is noticed. The petitioner has submitted with the writ petition, a copy of the document as uploaded by the respondent No.4 [Annexure-8 to the writ petition]. The petitioner had filed his complaint recording the said breach on 20.02.2020 [Annexure-9 to the writ petition] where the petitioner has only raised the 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 had requested the Collector of Excise to cancel the technical bid of the respondent No.4 for the said reason.

[3] In Para-16 of the writ petition, the petitioner has asserted that he has 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.

The petitioner has further asserted that it appears from the transaction that the respondent No.4 did collect the PTC certificate after the tender was uploaded in the portal. According to the petitioner, unless the tender/bid of the respondent No.4 is discarded or rejected it would cause a serious miscarriage of justice inasmuch as the respondent No.4 had pressurised the respondents No.1,2 & 3 'through high up in the administration to accept the unregistered gift deed of Jhuma Rani Paul as the document of title'. No Khatian had been uploaded for the premises to let out. Even the petitioner has stated that no document relating to the partnership with Jhuma Rani Paul had been uploaded.

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[4] The respondents No.1 to 3 have filed their reply on 06.07.2020 and stated that the Collector of Excise, West Tripura had constituted a committee headed by the Addl. District Magistrate & Collector, West Tripura District for scrutiny of the technical bids. The said committee had prepared the assessment sheet of technical bids and the said evaluation 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 as per requirement, the respondents have averred as follows:

> **"5. That, with regard to Paragraph-5, I say that the Tender Inviting Authority i.e. Collector of Excise, West Tripura District had constituted a Committee/Team headed by the ADM & Collector-II, West Tripura District comprising 9(nine) official vide Memorandum No.5378-89/F.XX-1(3)CEW/SFLCL/20 dated 14.01.2020 for examination/scrutiny of Technical Bids i.e. documents of bidders. Accordingly, the said Committee prepared bidder wise Assessment Sheet of technical bids which was again evaluated by the undersigned and checked whether the evaluation process was in conformity to the tender guidelines and as per the Tripura Excise Act & Rules. Therefore, when the finding of the Committee was made available, the technical bid evaluation process was accomplished to determine the successful bidder. Thus, there is no scope for the authority to express his personal views and to assure any person to cancel the bid.**
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> **6. That, with regard to Paragrapah-6, I say that the respondent No.4, Sri Ankush Bajoria had submitted all documents along with No-Objection Certificate as per DNIT condition No.4(iii) which was scrutinized by the Committee as mentioned in Para No.5 by preparing scrutiny sheet/Assessment Sheet of technical bids.**
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> **It is fact that the whole Battala market is located at Govt. Khas land, in where at present more 700(seven hundred) businessmen are doing business in their allotted shop premises. The proposed sites of both the petitioner- Sudhir Debnath and respondent No.4, Ankush Bajoria for Battala F.L. Shop No.4 are similar in nature i.e. they have only the deed executed by Notary about their ownership over their occupied space. So in the interest of the State Exercise revenue, both the proposed locations had been considered. It is also fact that both, the petitioner, Sri Sudhir Debnath and the respondent No.4, Ankush Bajoria had submitted**

> **NOC obtained from their shop owners by Notary Affidavit which had been accepted. It is also pertinent to mention here that the petitioner had been running the Battala F.L. Shop No.4 since last 3 years at his proposed site which is a Govt. Khas land.**
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> **7. That with regard to Paragraph-7, I say that on scrutiny of land documents of proposed site of respondent No.4, it is apparent that Smt. Jhuma Rani Paul, is owner of the said proposed shop stall as per deed executed by the Notary who has furnished No-Objection Certificate to Sri Bajoria for running foreign liquor through Notary Affidavit. Regarding acceptance the signature of Smt. Jhuma Rani Pual, land owner of proposed site of respondent No.4, Sri Bajoria 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. It is to state here that submission of rent or Lease Agreement, Partnership Agreement or Deed are not mandatory under the said DNIT condition. 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 or leased. "**

[5] Thereafter, the 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 Professional 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 constituted by the memorandum dated 14.01.2020 in respect of technical bids was accepted as the recommendation was in conformity to the required norm. On rejection of the technical bid of one Subrata Debnath for Mohanpur F.L. Shop No.1, the respondent No.3 had clarified their action in the following terms:

> **"11. That, with regard to paragraphs-11, it is not fact that the Collector of Excise i.e. Tender Inviting Authority has rejected the technical bid of others for silly mistake made in the uploading of documents. It is fact that no tender was invited for settling of Mohanpur F.L. Shop No.1 for the financial year 2019-20, 2020-21 and 2021-22. Further, it is to mention here that till date there is no bidder in the name of Sri Subrata Debnath who submitted his bid for Mohanpur F.L. Shop No.1.**
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> **During the evaluation of the technical bids/documents, it has been found one Sri Subrata Nath had participated against Mohanpur F.L. Shop No.1 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 of Battala C.L. Shop, instead of his claim for Mohanpur F.L. Shop No.01. Hence his technical bid was rejected."**

[6] The respondent No.3 has further submitted that the respondent No.4 offered two premises against for one particular shop and both the premises were found to be suitable for setting up of the liquor shop during physical verification as carried out by the committee constituted by the respondent No.3 for that purpose. In addition, the owner and the peaceful possessor of the land in question had issued no objection certificate, which was duly notorized in favour of the respondent No.4 and hence, the objection raised by the petitioner that the respondent No.4 does not comply the requirement of Clause 4(iii) is unsustainable.

The respondent No.3 has categorically denied the fact that there was any in this matter filed to the Commissioner of Excise, Government of Tripura on 20.02.2020. However, the respondent No.3 has 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 respondent No.3 has stated that the process of technical bid evaluation and the financial bid evaluation had been done with utmost care. The

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 site of the proposed premises. The said committee has physically visited the site and submitted the report. The said evaluation committee as constituted by the memorandum dated 14.01.2020 had scrutinized all documents of the bidders for Battala F.L. Shop No.4 as uploaded and the said committed submitted the evaluation report in the shape of an assessment sheet of bids covering all the bidders. On examination of the said assessment sheet, it was found that both the bidders have submitted all requisite documents as per the DNIT. Both the technical bids have been accepted. After opening of the technical bids, two bidders namely, Sudhir Debnath [the petitioner herein], the existing licencee and Sri Ankush Bajoria [the respondent No.4 herein] were found eligible. Only thereafter, the technical committee [team] as constituted for field verification by the memorandum dated 11.02.2020 carried out the physical verification to ascertain the actual physical status of the propose location/premises. The field verification report as submitted by the said committee [team] has categorically observed that the proposed premises of the respondent No.4 for Battala F.L. Shop No.4 fulfils the provisions of Rule 26 of Tripura Excise Rules, 1990 as amended from time to time. To be

precise, no objection has been raised by the petitioner relating to violation of Rule 26 of Tripura Excise Rule, 1990. When the financial bids were opened on 19.03.2020, it was found that the petitioner had quoted the bid amount of Rs.82,22,222/- and the respondent No.4 had quoted the bid amount of Rs.1,37,00,000/- against the MRF of Rs.80,01,000/- as fixed by the Government. As the respondent No.4 has been found eligible and he was the highest bidder, his name has been recommended for the licence of Battala F.L. Shop No.4. Consequent upon the approval accorded by the Finance Department, the respondent No.4 was informed to deposit the licence fee for the first quarter of 2020-2021 amounting to Rs.11,41,667/- and 20% of the tendered value i.e. Rs.27,40,000/- as the security deposit towards issuance of the licence for the said F.L. Shop. According to the respondents No.1,2 & 3, the writ petition is unsustainable in law as no infringement has been demonstrated in respect of the right of the petitioner as the bidder.

[7] The respondent No.4 has even though filed the reply but the reply is not more than an adoption of the reply filed by the respondents No.1,2 & 3.

[8] The petitioner has filed the rejoinder mostly reiterating the same objections. It has been further asserted that the respondent No.4 was allowed to substitute the PTC certificate after

the last date of bid. The petitioner has challenged the analogy given by the respondents No.1,2 & 3 in their reply as according to him, those are bald statements. Even there is no averment in respect of acceptance of unregistered gift deed. However, the petitioner has submitted that once the land is allotted there is no scope for the government to claim the same as the government Khas land. The petitioner has asserted that he never claimed the ownership of the premises against which he had offered for the licence. The notorization of gift deed cannot upgrade the status to a valid gift deed. The unregistered gift deed cannot be accepted as the title deed as proof of ownership of Jhuma Rani Paul. Attestation by the Notary is not registration of the documents and hence, the purported reason of the respondents No.1,2 & 3 should fall flat. Thereafter, the petitioner has asserted as follows:

> **"The contention of the respondents that submission of rent or lease agreement or partnership agreement or deed were not mandatory as NIT runs counter to the language impost in the framing of the NIT in particular condition No.4(iii) of the DNIT. It was clearly stated that no objection certificate from the owner of the building along with supporting documents duly attested by the Notary. So documents of the building are to be authenticated by the Notary. Supporting documents means documents of title of the owner, building permission plan from AMC, rent agreement otherwise the construction of the word supporting documents will have no meaning at all."**

[9] The petitioner has further submitted that mere attestation by the Notary cannot mean or imply that the content of the notorized document is authenticated by the Notary inasmuch as the Notary does not have any such statutory power. The petitioner

has stated that by accepting the PTC certificate of the respondent No.4, the Collector of Excise has acted most illegally. Even though the PTC that was uploaded was defective, but it appears from the reply of the respondents No.1,2 & 3 that later on, the purported original PTC certificate was shown to the Collector of Excise but that cannot cure the act of uploading a forged document. For not mentioning the number of DNIT, the bid of Subrata Debnath, as stated before, was declared not in form. Contrary to the assertion of the respondents No.1,2 & 3 that no supporting documents were required to be uploaded with the bid, the petitioner has submitted that a plain reading of Clause 4(iii) of the DNIT would show that those are the essential requisite for being a valid bid. Hence, the report of the evaluation committee as stated by the respondents No.1,2 & 3 was perverse and in contrast to the stipulation of the DNIT. Acceptance of the technical bid of the respondent No.4 is ex-facie violation of the condition of the said DNIT.

[10] The respondent No.4 had responded to the rejoinder and asserted that the bid was submitted by the respondent No.4 in his individual capacity not 'as a partner of any firm'. The documents where the following declaration has been made is not relating to the constitution of the partnership but it is in respect of detail, location and description of the proposed shop:

> **"5. I am partner with the owners/allotte of the proposed shop premises in where, I intent to run foreign liquor shop in my name."**

As such, there cannot be any inference that the respondent No.4 had been in the partnership with the owner of the land and the bid was submitted on behalf of the said partnership firm. In respect of the PTC certificate, he has made the following statements:

> **"In response to the said statement of the petitioner, the respondent No.4 most humbly begs to state that the said Annexure-4, i.e., the Tax Clearance Certificate contains the signature of the petitioner but in the scanned copy which was uploaded with the bid, the said signature was not distinct and got blurred due to any technical reason. Still in the signature part of the said document a blurred impression of his signature is visible. So the Bid Evaluation Committee asked the respondent No.4 to produce the original certificate for comparison with the same and found that it was a genuine document and issued by the competent authority."**

[11] By the said additional affidavit, the respondent No.4 has asserted that if the petitioner had any doubt in mind in respect of the authenticity of the PTC certificate he could have verified from the authority that issued the same or he could have made the said authority party in the writ proceeding so that the said authority can dispel the unfounded doubt of the petitioner.

[12] The petitioner has expectedly responded to the said additional affidavit with leave of the court and reiterated his stand. He has stated that 'the partnership' as appearing in the statement of details of location and description of the proposed shop premises for

Battala F.L. Shop No.4 cannot be substituted by expression 'tenant'. If there were partnership for carrying out of the said business, the bid document was incomplete and could not have been accepted by the respondent No.3 in view of the condition No.4(iii) of the DNIT. The petitioner has further submitted that the uploading of the PTC certificate and production of the original PTC certificate of the respondent No.4 smacked of fraud as perpetuated by the respondent No.4. Explanation that the signature of the respondent No.4 that got blurred on the PTC certificate, cannot be accepted by this court.

[13] Mr. T.D. Majumder, learned counsel appearing for the petitioner has quite emphatically submitted that even the respondent No.4 did not comply the condition No.4(ii) which requires that *a statement of immovable property along with supporting document (s) and current Bank balance mentioning 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.

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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."**

[14] According to Mr. Majumder, learned counsel, 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 said 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 required to be uploaded. Mere no-objection certificate [excluding the aforesaid documents] would not suffice the requirement. Along with the no objection certificate the supporting documents duly attested by the Notary Public had to be uploaded. It has been contended by Mr. Majumder, learned counsel that such document wan not uploaded by the respondent No.4. Mr. Majumder, learned counsel, has reiterated that the PTC certificate as uploaded was not genuine. The respondent No.3 allowed the respondent No.4

illegal scope to replace the said certificate in the name of verification of the original PTC certificate.

[15] Mr. D. Bhattacharjee, learned GA appearing for the State-respondents has stated that Clause 4(iii) is not a mandatory provision and it does not require submission of title deeds, record of rights etc. in respect of the rented premises against which the respondent No.4 has submitted the declaration containing no objection from the owner. Mr. Bhattacharjee, learned G.A. has emphatically submitted that the respondent No.4 has submitted all required documents with his bid and the petitioner has produced those documents with the writ petition. Those documents not only include the gift deed of the owner but also include the no-objection certificate of the owner. In the no objection certificate, there is no reference of 'partnership'. Having referred to the no objection certificate issued by Jhuma Rani Paul, Mr. Bhattacharjee, learned G.A. has stated that it is a clear no objection certificate in favour of the tenant. However, Mr. Bhattacharjee, learned G.A. has not dealt with the objection that the gift deed on the basis of which Jhuma Rani Paul had issued the no objection certificate was not registered. According to him, the grounds of objection as raised in this regard by the petitioner is not tenable. But Mr. Bhattacharjee, learned G.A. has further submitted that the genuinity of the PTC certificate as

uploaded has been established by the respondent No.4 by producing the original PTC certificate having been so asked for.

[16] Mr. S.M. Chakraborty, learned senior counsel has adopted the submission of Mr. Bhattacharjee, learned GA but in addition to that he has stated that at the time of scanning, the signature of the respondent No.4 on the designated place got blurred. When the respondent No.3 had compared with the original, the plea of the respondent No.4 was accepted for obvious reasons. It appears from the reply filed by the respondents No.1,2 & 3 that 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.

[17] 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 not improbable. The respondent No.3 to obviate the doubt had scrutinized the original and he was satisfied that the uploaded document was a scanned copy of the original PTC certificate. Now, the principal grounds of objections be catalogued. Such objections are : (i) whether Clause 4 (iii) of the DNIT dated 15.01.2020 [Annexure-2 to the writ petition] is the essential condition or not; (ii) whether the respondent No.4 had complied with that condition at

the time of filing the e-bid and (iii) whether on the basis of the unregistered gift deed as executed in favour of Jhuma Rani Paul by her husband by means of notorization can be accepted as the title document?

[18] 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 including all required documents of the building i.e. Khatian, Touzi, registered sale deed is essential 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 be essentially made. The said condition is definitely essential inasmuch by evaluation of those documents the question relating to the ownership or the competence of the person who had 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. It appears that the respondent No.4 had uploaded purported supporting documents for observance of the said essential condition at Clause 4(iii) of the DNIT dated 15.01.2020. But there was no scrutiny of the documents on the premises as it appeared, according to the respondents No.1,2 & 3 that there were no need of evaluating

the supporting documents. If that was so done, the respondents No.1 to 3 should have confronted with the gift deed and they would have determined with the question of legality whether the said gift deed can be accepted as the title deed conferring ownership on Smt. Jhuma Rani Paul who had issued the no objection certificate for the proposed site in favour of the respondent No.4. In this regard, it may be essential to note that Section 17 of the Registration Act, 1908 clearly provides that instrument of gift of immovable property is compulsorily registrable [see Section 17(i) (a)]. The provision of the Section 17 (i) (a) of the Registration Act is always required to be read with Section 47 of the Registration Act, 1908 for understanding the effects of non-registration. The said provision provides that a registered document shall operate from the time from which it would have commenced to operate, if no registration thereof, had been required or made and not from the time of its registration. But Section 49 of the Registration Act, 1908 provides that no document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall (a) affect any immovable property comprised therein, or (b) confer any power to adopt or (c) be received as evidence of any transaction effecting such property or conferring such power. The said provision leaves no ambiguity.

[19] We do not have any hesitation to observe that unless a gift deed is registered in terms of the provision of the Registration Act, 1908 it cannot confer any title on any person and no such person can act on the basis of an unregistered instrument of deed as the owner of the properties. He or she would be lacking in competence to create a right in favour of anyone. The person claiming title on such instrument cannot be treated as the owners of such property as reflected in an instrumental gift, not registered in accordance with the Registration Act, 1908. Thus, we answer the question as formulated whether on the basis of the notorized gift deed Jhuma Rani Paul can act as the owner of the said property. In terms of the rigid law, the person based on an unregistered instrument of gift, cannot act as the owner. Even in the present case, Jhuma Rani Paul cannot act as the agent of the owner lawfully.

[20] So far the objection as to the words 'the partner' appearing in the document titled as 'details location and description of the proposed shop premises for Battala F.L. Shop No.4' cannot be taken as the statement that the business was proposed to be run by a partnership firm. It is apparent from the other documents that the bid had been uploaded as the individual and no documents contradict that status of the respondent No.4. For example, the declaration made by the respondent No.4 as uploaded with the bid

document was unambiguous that the business would be run by him as the sole proprietor, if the licence is conferred in his favour. On scrutiny, other documents as filed apparently satisfied the requirement of Clause 4 (iii) of the DNIT. But unfortunately this court cannot hold that the bid as uploaded by the respondent No.4 is regular. Since Jhuma Rani Paul cannot claim any ownership of the premises as offered by virtue of the said instrument of gift, the ownership has to be deemed with Sri Akash Paul, her husband. Therefore, no objection certificate turns out to be an irrelevant document for purpose of determining the validity of the technical bid. The respondents No.1,2 & 3 are directed to discard the technical bid of the respondent No.4. Consequently, the bid/tender filed by the respondent No.4 has to be set aside and accordingly, it is set aside.

[21] In the result, the respondent No.3 is left with no other options either to consider the financial bid of the petitioner or to go for the fresh tendering. Since the matter relates to revenue and maximization of revenue, we leave the matter to the wisdom of the tendering authority to choose the option. We do expressly observe that the allegation of mala-fide in absence of any grinding material against the respondent No.3 and in absence of the respondent No.3

being made party in person, the allegation of mala-fide cannot be appreciated or accepted by this court.

[22] 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 as passed earlier stands vacated. However, till the respondent No.3 takes a decision in terms of this order, the petitioner may be allowed to continue to run the Battala F.L. Shop No.4.

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

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