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

W.P.(C) No.259 of 2020

Sri Shyamal Saha,
son of Sri Nikhil Chandra Saha, resident of Subhashnagar, Agartala, P.O. East Pratapgarh, PIN-799004, 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 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. 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 Bankumari Bazar Foreign Liquor Shop, Bankumari for the years 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 after cancelling the technical bid of the respondent No.4 the effort be taken to finalize the tender for settlement of the said F.L. Shop for the years 2020-2021, 2021-2022 and 2022-2023.

[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.5646-51/F.XX-1(3)/CEW/SFLCL/20 dated 15.01.2020 [Annexure-3 to the writ petition]. For participation in that process, the petitioner filed both technical

and financial bids as required in the two-bid system. During opening of the technical bids, 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/premises along with the supporting documents duly attested shall be uploaded, but the respondent No.4 did not upload such no objection certificate from the owner of the building. On the contrary, he has submitted an affidavit sworn by one Janardhan Chakraborty on 06.02.2020, without the supporting documents viz. documents of ownership of the premises, rent or lease agreement for 3[three] years [the period of settlement] with the owner of the building and other associated documents duly attested by the Notary. Thus, it has been contended by the petitioner that the essential term of the tender has not been confronted to, by the respondent No.4.

[3] That apart, the petitioner has contended that the Clause 4[ii] of the DNIT has also not been complied with. The said condition provides that a statement of immovable property along with supportive document [s] and current bank balance mentioning name of the bank and the account number to prove his/her

financial ability to carry on the business liquor. A certificate from the concerned Bank Manager about the present bank balance of the bidder against the account number should also be given. In this regard, the petitioner has categorically asserted as follows:

> **"…..it was not found in the uploaded documents of the respondent No.4 that he has/had ever downloaded any statement of immovable property coupled with supporting documents. The petitioner submits under the terms of the DNIT it is obligatory on the part of the respondent No.4 to upload first statement of immovable property and then to upload supporting documents of immovable property. By not uploading those required documents he has rendered himself not qualified in the technical bid evaluation and consequently his financial bid is not be looked upon in law. It is submitted that purpose behind requiring statement of the immovable properties and supporting documents have some definite object to see the financial viability. Certain amounts in the Bank Saving Accounts do not connote the financial viability alone. This amount may also be accumulated through loan. No provision is there in the DNIT that immovable property and supporting documents is optional."**

Thus, the technical bid of the respondent No.4, according to the petitioner, was ineligible and liable to be rejected at once. It has been further added by the petitioner that no lease agreement for 3[three] years with the owner of the building and other documents, duly attested by the Notary, were not uploaded by the respondent No.4. Despite that the respondents No.1,2 & 3, the respondent No.3 in particular, by throwing the norms of the tendering, as adverted, accepted the technical bid of the respondent No.4 on 19.03.2020. In addition to that the petitioner has averred in Para-8 of the writ petition that the respondent No.4 did not submit the 'partnership agreement or deed' though he declared himself that he is a partner with Janardhan Chakraborty,

owner of the proposed shop with whom he would run the foreign liquor shop.

[4] According to the petitioner, though initially the respondent No.3 pretended that the said technical bid of the respondent No.4 would be rejected but later on, the said bid was accepted 'for reason no very intelligible to the petitioner'. Again in addition to those objections, the petitioner has raised other objection that the Professional Tax Clearance [PTC] certificate as uploaded 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. Thus, the authenticity of the said certificate cannot be accepted. The Collector of Excise, the respondent No.3 herein, should not have accepted the technical bid of the respondent No.4 inasmuch 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 for the same tenure. The tender of one Subrata Debnath [see para-12 of the writ petition] had been rejected on the ground of mistake made in referring the DNIT number correctly. The petitioner has produced some documents [Annexures-6,7 & 8 to the writ petition] in this regard.

In that perspective, the petitioner has submitted that the same Collector of Excise cannot take a different stand when a serious breach of Clause 4(iii) of the said DNIT is noticed. The petitioner filed a complaint recording the said breach on 13.03.2020 to the Collector of Excise but no decision was taken on the said complaint. The petitioner came to know on 06.04.2020 that call on the financial bids would be taken shortly. The said revelation persuaded the petitioner to approach this court inasmuch as the technical bid of the respondent No.4 cannot be accepted for gross violation of those tender conditions. The petitioner has also averred that the technical bid of the respondent No.4 was kept alive as valid. The financial bid was opened on 06.04.2020. The petitioner has admitted that his technical bid was also considered valid. The petitioner has further contended that the respondent No.4 brought influence of the influential persons in the hierarchy and manipulated the entire process and got his invalid tender accepted by the respondent No.3.

[5] The respondents No.1,2,3 & 4 filed separate replies. The reply of the respondent No.4 is mere adoption of the reply filed by the respondents No.1,2 & 3. The respondents No.1,2 & 3 have traversed the averments made in the writ petition and submitted that the tendering process was scheduled to be completed by

29.02.2020 for sending recommendation for grant of licence. The respondents No.1,2 & 3 in their reply has asserted further that a team was constituted of the Addl. District Magistrate & Collector, West Tripura District along with 8[eight] other officials by the memorandum dated 14.01.2020 for examination/scrutiny of the technical bids i.e. documents of the bidders. The said committee had assessed all the technical bids. It has been categorically asserted that at no point of time the petitioner was assured that the bid of the respondent No.4 would be cancelled. Thereafter, they have asserted as follows:

> **"8. That, with regard to paragraph-7, I say that the Collector of Excise, West Tripura District [Tender Inviting Authority] had constituted a Committee/Team head by the ADM & Collector-II, West Tripura District comprising 9[nine] officials vide Memorandum No.5378-89/F.XX-1(3)/CEW/SFLCL/20 dated 14.01.2020 to scrutinize all the documents of the bidders for Bankumari F.L. Shop as uploaded and accordingly the said Committee submitted evaluation report in the form Assessment Sheets of Bids listed as per each bidder. On examination of said assessment sheet, it is found that respondent No.4 i.e. Sri Abhishek Dahiya has submitted statement of current bank balance mentioning the name of Bank & account number to prove his financial ability to carry on the business as per the DNIT condition No.4(ii). On examination the document submitted about his current bank balance, it is observed that Sri Dahiya has sufficient bank balance to carry on his business. Further, Sri Dahiya had also submitted a self declaration stating that, he does not have any immovable property in his name but, he has sufficient Bank Balance to run Foreign Liquor shop business. It is mention worthy that, the mandatory condition as per the DNIT is submission of statement of immovable property. However, there is no specific mention in the DNIT conditions that, a bidder must possess immovable property in his/her name. Besides, there is no such amount of bank balance prescribed in the DNIT which is to be maintained by a bidder for participating in the e-tender for settlement of Foreign Liquor/Country Liquor shops.**
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> **On examination of submitted documents and technical evaluation report, it appears that Sri Dahiya-respondent No.4 has submitted details location & description of proposed shop premises along with location in Google map besides land Khatian for Bankumari Bazar F.L. Shop as per DNIT condition No.4(iii). Further, it is to state here that the proposed location/shop premises of Sri Dahiya-respondent No.4 is hired**

> **and accordingly, the land owner and peaceful possessor of the land in question had issued an NOC in favour of Sri Dahiya duly Notarized as per DNIT condition No.4(iii). In addition, submission of lease agreement or tenancy agreement are not mandatory under the said DNIT condition. Thus, the comments mentioned by the petitioner in this para is incorrect.**
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> **It is further to state here that during lock-down period, the Excise Officials had worked as per guidelines of the MHA and accordingly, said e-tender processing works was being continued since it relates with Govt. revenue. As per procedure, the financial bid of 9(nine) nos. bidders those who had technically qualified was opened on 06.04.2020. Accordingly, as per prevailing system of e-tender the concerned bidder received an automatically generated e-mails/SMS regarding opening of financial bid. So, the complaint against the Licensing Authority by the petitioner is untrue.**
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> **The respondent No.4(bidder) had submitted NOC from land owner with duly Notarized and land Khatian of proposed shop premise with attestation for Bankumari F.L. shop. The details had been recorded in the Technical Evaluation as prepared by the Committee/Team headed by the ADM & Collector-II, West Tripura District comprising of 9(nine) officials."**

[6] It has been further asserted by the respondents No.1,2 & 3 that the said committee had assessed the technical bids and prepared an assessment sheet. The tender inviting authority [the Collector of Excise] revaluated the assessment of the technical bids. The purpose of revaluation was to get reassurance whether the bids had been filed in accordance with the tender guidelines and conforming to the requirement of Tripura Excise Act and the rules made thereunder. The respondents No.1,2 & 3 have categorically denied that the respondent No.4 did not upload no objection certificate from the land owner. On examination of the NOC, according to the respondents No.1,2 & 3, it is apparent that Janardhan Chakraborty has certified that he is the owner and peaceful possessor of the proposed site located at Jogendranagar,

West Tripura. To verify that statement, the record of right was examined and found that the relevant Khatian No.4491 of Mouza and Tehshil-Jogendranagar is recorded in the name of Janardhan Chakraborty who had given the NOC in favour of the respondent No.4. Thereafter, the following statements have been made by the respondents No.1,2 & 3 [in para-9 of their reply:

> **"It is to state here that submission of 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 by the bidder. The objections of the petitioner according to the respondents No.1,2 & 3 is wholly unfounded."**

[7] The respondents No.1,2 & 3 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 formed by the memorandum dated 14.01.2020 was accepted as the recommendation was in conformity to the required norm.

[8] In respect of rejecting the technical bid of one Subrata Debnath, the respondents have stated that none named Subrata Debnath participated in the tendering process for Mohanpur F.L. Shop No.1 for the years 2020-2021, 2021-2022 & 2022-2023.

However, during evaluation of the technical bids, the bid of one Subrata Nath was rejected. The respondents No.1,2 & 3 had clarified their action in the following terms:

> **"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."**

[9] The respondents No.1,2 & 3 have further asserted that the complaint which was filed by the petitioner on 13.03.2020 was on non-submission of the rent agreement by the respondent No.4 and on non-visibility of the signature of the respondent No.4 on the PTC certificate. In this context, those respondents have reiterated that submission of the rent agreement is not mandatory as per Clause 4(iii) of the DNIT. Moreover, when the original PTC certificate was examined, the team found the said PTC certificate in order. In respect of non-submission of the statement of current bank balance mentioning the name of the bank and account numbers in order to prove the financial ability to carry on the business, it has been stated that as per the Clause 4(ii) of the DNIT *Sri Dahiya had also submitted a self declaration stating that, he does not have any immovable property in his name but, he has*

sufficient bank balance to run Foreign Liquor shop business. It is mention-worthy that, the mandatory condition as per the DNIT is submission of statement of immovable property. However, there is no specific mention in the DNIT conditions that, a bidder must possess immovable property in his/her name. Besides, there is no such amount of bank balance prescribed in the DNIT which is to be maintained by a bidder for participating in the e-tender for settlement of Foreign Liquor/Country Liquor shops.

[10] Having noticed these averments as reproduced in Para-9, we have carefully considered the fundamental assertions made by the respondents No.1,2 & 3 in the reply. In Para-6 of the reply, the respondents No.1,2 & 3 have reiterated that the said team had examined the technical bids of all the bidders with utmost care and sincerity. Each and every technical bids as stated were reassessed by the tendering authority i.e. the Collector of Excise and the technical bid of the respondent No.4 had been accepted after approval of the Collector of Excise. Only thereafter, that case was recommended to the State Government for issuance of the licence to vend foreign liquor. It has been averred that the registered sale deed is not the only options to comply Clause 4(iii) of the DNIT, the land documents viz. Khatian and Touzi can also be uploaded in place of registered sale deed. According to the respondents No.1,2

& 3, the partnership deed and lease/tenancy agreements are not mandatory as per the DNIT conditions. According to the respondents, another committee/team headed by the Addl. District Magistrate & Collector was constituted to carry out the field verification for purpose of ascertaining the actual physical status of the proposed location/premises. During the field verification exercise, the committee had ascertained whether the site/location conformed to Rule 26 of Tripura Excise Rules, 1990, as amended from time to time. Finally, they have asserted that the petitioner had quoted the bid amount of Rs.1,65,25,392/- and the respondent No.4 had quoted the bid amount of Rs.1,67,00,000/- whereas the MRF amount was Rs.38,58,115/- fixed by the Government. It has been also asserted that consequent upon approval of the State Government in the Finance Department the respondent No.4 had been informed to deposit the first quarter [3 months] of the licence fee being Rs.13,91,667/- and 20% of the tendered value i.e. Rs.33,40,000/- as the security deposit.

[11] Mr. T.D. Majumder, learned counsel appearing for the petitioner has submitted that the respondent No.4 even did not comply the Clause 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. Mr. Majumder, learned counsel having referred to Para-15 of the reply, particularly to that part which has been reproduced above, has contended that the documents as indicated in Clause 4(ii) of the DNIT had not been uploaded by the respondent No.4. Only a statement has been uploaded by the respondent No.4 that he does not have the immovable property. Even he did not submit the certificate from the Bank Manager where he has been maintaining his account. The petitioner had enclosed all the documents as uploaded by the respondent No.4. and the statement relating to the immovable property which is available at page 46 of the writ petition [part of Annexure-9 to the writ petition]. That, statement reads thus: *'I do not owned any property in my name but I have sufficient funds available in my bank account to bid on the foreign/country liquor tenders and continue business in the State of Tripura".* He has produced another statement regarding his bank balance in his account No.50100042818482 [Savings Bank Account] maintained in the HDFC Bank. The bank balance has been shown as Rs.50,49,697.96. While scrutinizing the records, we find that a balance confirmation certificate has been issued by the said

bank showing the said balance in the account along with a transaction note. Mr. Majumder, learned counsel has reiterated that even the respondent No.4 did not conform the requirement of Clause 4(iii) of the DNIT. But on scrutiny of the records, this court has observed that the no objection certificate by the said owner has been authenticated by the Notary on 06.02.2020. Along with no-objection certificate the Khatian No.4491 of Mouza- Jogendranagar had been uploaded as the supporting document. The respondent No.4 has also filed other documents which are not relevant for the present controversy. But it appears that all the declarations as required by the DNIT had been duly filed by the respondent No.4. However, Mr. Majumder, learned counsel having drawn our notice to the objection filed by the petitioner on 13.02.2020 [Annexure-10 to the writ petition] has submitted that non-submission of the rent agreement with the owner of the shop premises and valid PTC certificate rendered the technical bid of the respondent No.4 ineligible to be considered. Mr. Majumder, learned counsel has reiterated that the PTC certificate as uploaded did not have the signature of the applicant [the respondent No.4] but later on, 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 submitted that the allegation of not conforming to the requirement of Clause 4(ii) of the DNIT is grossly unfounded. Clause 4(ii) does not provide that the bidder must have the immovable property. The object of this clause is to ascertain the resourcefulness of the bidder. Mr. Bhattacharjee, learned GA has submitted that no-objection certificate has been issued by the owner of the premises in favour of the respondent No.4 along with the record of right of that land. That apart, both the Clauses 4(ii) & (iii) of the DNIT are not mandatory. Thus, if the tendering authority is satisfied about their resourcefulness and the ownership or tenancy the licence to vend can be issued in favour of that person if he is found otherwise eligible. Mr. Bhattacharjee, learned GA however has submitted that on the face of the plea of authenticity of the PTC certificate, the respondent No.3 has verified the original and found that the same PTC certificate was uploaded and hence, the objection relating to the PTC certificate is not tenable. For purpose of reference, let us also reproduced the Clause 4(iii) of the DNIT:

> **"(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."**

[13] We have carefully appreciated the submissions of the learned counsel of the parties in respect of the nature of the conditions as provided by Clauses 4(ii) & (iii) of the DNIT dated 15.01.2020 [Annexure-7 to the writ petition]. In our considered view both those conditions as incorporated as Clauses 4(ii) & (iii) of the DNIT dated 15.01.2020 are essential and mandatory conditions to be conformed to by the bidders at the time of depositing the bid/tenders. Clause 4(ii) of the DNIT requires a statement relating to the immovable property with supporting documents and the current bank balance mentioning the name of the bank and the account number to prove the financial ability of the bidder to carry on the business. In addition thereto, a certificate from the concerned bank manager about the present bank balance of the bidder again mentioning the account number is to be given. It is apparent that this clause has been incorporated for purpose of assessing the financial ability of the bidder. Hence, this is an essential clause and its compliance is mandatory. The plea as raised by the respondents No.1,2 & 3 that this clause is not an essential clause is totally unacceptable to us. So far the Clause 4 (iii) is concerned, it provides that the tenderer/bidder may propose not more than two premises against one particular shop. 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 owned or hired, including all documents of the building i.e. Khatian/Touzi/registered sale deed and in the case of hired building, a no objection certificate from the owner of the building along with supporting documents, duly attested by the Notary should be submitted. The very purpose of this clause is to ascertain, in the case of a hired building, that the owner has clear title and he had competence to let out the said building or the part of the building. For this purpose, a no objection duly notorized has to be submitted at time of filing of the tender along with supporting documents. In our considered view, the clarification of the respondents No.1,2 & 3 is untenable as this clause provides an essential condition so as to ascertain the clear title and the unencumbered status of possession. This clause being essential be mandatorily complied by all bidders.

[14] It may be noted for purpose of record that Mr. S.M. Chakraborty, learned senior counsel has adopted the submission of Mr. Bhattacharjee, learned GA and in addition, he has submitted that at the time of scanning, the signature of the respondent No.4 on the designated place of the PTC certificate got blurred. When the respondent No.3 compared with the original that plea 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.

[15] Before we appreciate the submissions of learned counsel appearing for the parties, we need to dwell upon on the jurisdictional limit in respect of tendering process. The tendering process are segmented, in the present case broadly in 3[three] parts viz. (i) the assessment of the technical bid, (ii) assessment of the financial bid and (iii) overall assessment in respect of selecting the suitable bidder for purpose of recommending the name for issuance of the licence to vend against a particular shop. The latter part involves making the requisite deposit by the vendor for issuance of the licence. The controversy as raised in the present writ petition hinges on the assessment of the technical bid. According to the petitioner, the technical bid of the respondent No.4 is ineligible and hence, was liable to be rejected. But the respondents No.1,2 & 3, particularly the respondent No.3, did not reject the said bid. The fundamental ground of objection is violation of the mandatory Clauses 4(ii) & (iii) of the DNIT. We have already expressed our view that the Clauses 4(ii) & (iii) of the DNIT are essential conditions to be complied all the bidders. The challenge is based on complete violation of those clauses and arbitrary

acceptance of the technical bid of the respondent No.4 by the respondent No.3 in particular.

[16] This court does not have omnibus powers to take a decision on the merit of the decision of the respondents. Its power is limited to examine the process and to see whether the fair play principles at that stage were conformed to. In **Raman Dayaram Shetty vs.** the **International Airport Authority of India and Ors.,** reported in **(1979) 3 SCC 489**, the apex court had occasion to formulate a distinct principle which has since been applied by the apex court in a number of cases. The principle can be gathered from the following passage:

> **It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Viteralli v. Seton, [359 U.S. 535: 3 Led 2d 1012, where the learned Judge said:**
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> > **"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and if I may add, rightly so. He that takes the procedural sword shall perish with the sword."**

[17] The said principle is attributed to Justice Frank Frankfurter of the U.S. Supreme Court, but has been imported and restated in **A.S. Ahluwalia vs. State of Punjab,** reported in **(1975) 3 SCC 503** and in the subsequent decision of **Sukhdev**

Singh vs. Bhagatram Sardar Singh Raghuvanshi, reported in **(1995) 1 SCC 421**. In both the reports, in the said observation of Justice Frank Frankfurter have been quoted with approval. It may be noted also that the apex court has observed that the said rule, though gets supports from Article 14, but it does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution, but evolved it purely as a rule of administrative law. Even in England, the recent trend in the administrative law is in that direction as is evident from [pages 540-41] Prof. Wade's *Administrative Law* 4th edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law.

[18] In **G. J. Fernandez vs. State of Karnataka and others,** reported in **(1990) 2 SCC 488**, the apex court had occasion to revisit the said principle and to observe, in the context of that case, as follows:

> **"It is, therefore, obvious that both having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of administrative law, the respondent 1 was not entitled to act arbitrarily in accepting the tender of the respondents 4, but was bound to conform to the standard or**

> **norm laid down in paragraph 1 of the notice inviting tenders which required that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to tender. It was not the contention of the appellant that this standard or norm prescribed by the respondent 1 was discriminatory having no just or reasonable relation to the object of inviting tenders namely, to award the contract to a sufficiently experienced person who would be able to run efficiently a IInd class restaurant at the airport. Admittedly the standard or norm was reasonable and non-discriminatory and once such a standard or norm for running a IInd Class restaurant should be awarded was laid down, the respondent 1 was not entitled to depart from it and to award the contract to the respondents 4 who did not satisfy the condition of eligibility prescribed by the standard or norm. If there was no acceptable tender from a person who satisfied the condition of eligibility, the respondent 1 could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norm, but it could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of the respondents 4. When the respondent 1 entertained the tender of the respondents 4 even though they did not have 5 years' experience of running a IInd Class restaurant or hotel, it denied equality of opportunity to others similarly situate in the matter of tendering for the contract. There might have been many other persons, in fact the appellant himself claimed to be one such person, who did not have 5 years' experience of running a IInd Class restaurant, but who were otherwise competent to run such a restaurant and they might also have competed with the respondents 4 for obtaining the contract, but they were precluded from doing so by the condition of eligibility requiring five years' experience. The action of the respondent 1 in accepting the tender of the respondents 4, even though they did not satisfy the prescribed condition of eligibility, was clearly discriminatory, since it excluded other person similarly situate from tendering for the contract and it was also arbitrary and without reason. The acceptance of the tender of the respondents 4 was, in the circumstances invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law inhibiting arbitrary action."**

[19] We are inclined to apply the said principle in the present case. The respondents No.1,2 & 3 cannot state that they can depart from the standard by which it professes its action to be judged. They must scrupulously observe those standards on pain of invalidation of an act in violation of them. Thus, what the respondents No.1,2 & 3 have asserted in their reply that the Clauses 4(ii) & (iii) of the DNIT are not essential or mandatory in nature is not accepted by us. That plea is rejected. But we find that

even if that plea is rejected their decision may not be affected substantially. What we have observed that the respondent No.4 has clearly stated that he does not have the immovable property but the respondent No.4 has submitted the statement in respect of the bank balance and the supporting documents issued by the bank manager of the bank where the respondent No.4 maintained his savings. It is, therefore, apparent that the respondent No.4 has conformed to the requirement. This court cannot have any say in respect of inference drawn on merit on verification of the documents as required by Clause 4(ii) of the DNIT. The satisfaction is entirely of the respondent No.3. Hence, the challenge as structured upon non-compliance of the requirement of Clause 4(ii) of the DNIT falls through as the merit of the decision by the competent authority cannot be judicially reviewed unless it is shown that the decision is entirely unreasonable and perverse in terms of Article 14 of the Constitution, meaning the action is grossly arbitrary.

[20] So far the other limbs of the challenge are concerned, that the respondent No.4 did not comply the requirement of Clause 4(iii) of the DNIT, we are of the considered view that no-objection certificate as filed by the respondent No.4 is in order but the dispute has emerged from non-submission of the supporting

documents, which according to us, is substantially misconceived as the no-objection certificate as issued by the owner of the premises has been uploaded. No-objection certificate is duly attested by the Notary Public as required. As the supporting document, the finally published record of rights had been uploaded by the respondent No.4, in the manner in which the said Clause 4(iii) of the DNIT has required. It appears that any document showing apparent title of owner of the premises would suffice the purpose. It appears that the respondents No.1,2 & 3 were satisfied with Khatian. As the constitutional court we refrain ourselves for substituting any other opinion in exercise of our jurisdiction under judicial review. Hence, the challenge in the writ petition in this regard is bound to fail. Consequently, the writ petition stands dismissed.

There shall be no order as to costs.

JUDGE **JUDGE**

Sujay