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

W.P.(C) No.262 of 2020

Sri Jogaswar Saha,
son of late Sailswar Saha, resident of Town Shibnagar, P.O. Agartala College, P.S. East Agartala, Sub-Division-Agartala, District- West Tripura

…… Petitioner

– V e r s u s –

1. **The State of Tripura,**
represented by the Secretary to the Government of Tripura, Finance 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. **The Superintendent of Excise,**
West Tripura District, Government of Tripura, Agartala

5. **Sri Abhishek Dahiya,**
son of Jagbir Singh, resident of H. No. 2539, Sector 19C, Chandigarh, PIN-160019, Chandigarh

…… Respondents

For the Petitioner (s)	**:**	Mr. S. Lodh, Adv.
For the Respondent (s)	**:**	Mr. D. Bhattacharjee, GA Mr. S.M. Chakraborty, Sr. Adv. Mr. S. Bhattacharjee, 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 declaring the technical bid of the respondent No.5 submitted in response to the DNIT No.5532-37/F.XX-1(3)/CEW/SFLCL/20 dated 15.01.2020 [Annexure-1 to the writ petition] for settlement of M.G. Bazar Foreign Liquor Shop No.3 as formal or regular. It has been further urged by this petition that the official respondents shall be prohibited to act on the bid as submitted by the respondent No.5 for having the licence against M.G. Bazar F.L. shop No.3.

[2] There is no dispute that both the petitioner and the respondent No.5 had participated in the tender process for settlement of the M.G. Bazar F.L. Shop No.3 in response to the DNIT No.5532-37/F.XX-1(3)/CEW/SFLCL/20 dated 15.01.2020 [Annexure-1 to the writ petition] for the periods of 2020-2021, 2021-2022 and 2022-2023. During opening of the technical bids in two bids system the petitioner had observed serious deficiency in the tender documents uploaded by the respondent No.5. Hence, he had registered a formal complaint on 24.02.2020 [Annexure-2 tot

the writ petition] demanding rejection of the tender of the respondent No.5. According to the petitioner, from the documents as uploaded in the official website of the respondents No.1 to 4, it revealed that the documents uploaded by the respondent No.5 were not in conformity with the requirement of the said DNIT. It has been asserted by the petitioner that on perusal of the documents submitted by the respondent No.5 it further revealed that the proposed shop premise is a rented premise and the owner of the shop premise is one Subhadeep Saha. To substantiate the tenancy relation with Subhadeep Saha, the respondent No.5 submitted the following documents and declaration:

(i) No objection certificate from Subhadeep Saha.

(ii) Touji of Subhadeep Saha

(ii) Touji payment receipt and

(iv) declaration and location-statement of the shop premises by the respondent No.5.

Out of those 4[four] documents, first 3[three] documents were duly attested by the Notary but the 4th document was not attested by the Notary. The petitioner has further asserted that from touji of Subhadeep Saha and touji payment receipt, it revealed that the area of shop premises is 204 square feet [against touji No.21MGD1832] but from the no objection certificate issued

by Subhadeep Saha, the declaration and description-statement of the shop premises as uploaded by the respondent No.5, it revealed that the area of the proposed shop premises is 150 square feet. It is further contended that the respondent No.5 did not submit any rent agreement/any paper showing the monthly/yearly rent of the shop premises. That apart, the petitioner has raised further objection for non-compliance of the requirement of Clause 4(ii) of the DNIT in the following manner:

> **"The petitioner also collected bid document of one Mr. Ankosh Bajoria, who has submitted bid of M.G. Bazar Foreign Shop No.4, M.G. Bazar, Agartala and said Mr. Ankosh Bajoria, who has also proposed to set up his shop in the same premise, showing the area is 150 Sq. Ft. From the Income Tax return of the respondent No.5, for the Assessment Year 2019-20, it is revealed that his Gross Income of the respondent No.5 for the Assessment year 2019-20 is Rs.3,43,000/- and he paid Rs.1,720/- as Income Tax. From the Income Tax Clearance Certificate, which was submitted by the respondent No.5, it is revealed that there is no signature of the respondent No.5 in the Declaration Column. The respondent No.5 also submitted a Declaration stating inter alia that he has no immovable property. To substantiate his financial ability, he produced certificate from his banker (HDFC Bank Ltd.) and one illegible bank statement. From the bank statement, it is revealed that prior to 04.02.2020, his bank balance was Rs.49,697.96 and on 04.02.2020, he deposited Rs.20,00,000/- and Rs.30,00,000/-."**

[3] According to the petitioner, the financial ability of the respondent No.5, is highly questionable and as such, he raised serious objection by filing a formal letter dated 24.02.2020, for not conforming to Clause 4(ii) of the DNIT by the respondent No.5 as it is evident from all documents as downloaded from the said website. On receipt of the said letter dated 24.02.2020, the respondent No.4 issued a notice on 05.03.2020 upon the petitioner and asked him to appear before him on 06.03.2020 at 11 am to substantiate his

grievance. The petitioner accordingly, appeared before the respondent No.4 and analyzed the documents uploaded by the respondent No.5 and stated that the papers as uploaded by the respondent No.5 are not adequate to establish the financial ability. He had also raised an additional objection that the shop premises must be pucca or semi-pucca but from the touji document, it appeared to the petitioner that the shop premise is a kutcha viti tin shed [KVT]. The petitioner has also contended that there is no touji in M.G. Bazar under No.21MGD1832. The petitioner was asked to substantiate that allegation by documentary evidence. Then, the petitioner took initiative to get confirmation of such fact from Agartala Municipal Corporation under Right to Information Act. It may be noted here that one Tapas Saha who had submitted bid for M.G. Bazar F.L. Shop No.4 raised the similar objection. Agartala Municipal Corporation by their letter dated 18.03.2020 had intimated Tapas Saha that there was no touji in the M.G. Bazar under No.21MGD1832. The said information was duly placed before the respondent No.4.

[4] The official respondents did not intimate the petitioner about the outcome of his objection but he was informed by an email dated 04.04.2020 [Annexure-6 to the writ petition] that his bid was found formal and the financial bid would be opened on

06.04.2020. Accordingly, the financial bid was opened and the bid amount of the respondent No.5 was higher than the petitioner. Thus, it surfaced that the respondent No.3 did accept the technical bid of the respondent No.5 without having adverted to the merit of the objection. During that time, the petitioner realized that his objection against the technical bid of the respondent No.5 had been turned down despite the serious irregularities as noted above. For that reason, the petitioner has quite emphatically averred that the official respondents, by violating their own standard, as declared in the DNIT and the statutory provisions contained in the Tripura Excise Rules, accepted the tender of the respondent No.5.

Thereafter, the petitioner has embarked on his other objection based on the requirement of Clause 4(iii) of the DNIT where it has been distinctly stipulated that along with the bid documents, the bidder should submit all the relevant documents of the building viz. Khatian/touji/registered sale deed and in case of hired building, a no objection certificate from the owner of the building along with supporting documents duly attested by the Notary Public. The petitioner has acceded to the fact that the respondent No.5 had proposed to set up his shop in a rented premise and he had uploaded the touji document of the touji holder as stated. The petitioner thereafter has contended that from the

touji document it revealed that the area of the shop premise is 204 square feet and the touji holder wanted to create two tenancies for running the M.G. Bazar F.L. shop No.4 and M.G. Bazar F.L. shop No.3 [the settlement of which is the subject matter of the present writ petition]. The person [the respondent No.5] competing in the bidding system has submitted the declaration as regards the proposed shop premises measuring 150 square feet each. According to the petitioner, the proposal for the premise, smacks of manipulation with the real information. It has been further asserted by the petitioner that under Rule 26(3) of Tripura Excise Rules, as amended from time to time, it has been provided that the licenced premise shall not be used for any other purpose and the premise must be pucca or semi-pucca. According to the petitioner, from the same premises two foreign liquor shops cannot be run. That apart, from the touji document, it appeared to the petitioner that the said premise was kutcha viti tin shed. According to him, these are the glaring irregularities which cannot be waived by the official respondents, particularly by the respondent No.3, the Collector of Excise, West Tripura. The petitioner has taken objection for non-submission of any rent agreement. The petitioner has asserted that even though touji No.21MGB1832 was uploaded by the respondent No.5, but from the letter dated 18.03.2020 issued by Agartala Municipal Corporation in favour of one Tapas Saha it revealed that

there was no touji in M.G. Bazar area with touji No.21MGB1832. Thus, in the eye of law, the said declaration from the owner of the said shop as proposed by the respondent No.5 cannot be accepted. For the foregoing reasons, the petitioner has claimed that the technical bid of the respondent No.5 ought to have been discarded. In the premises as noted before, the petitioner has urged for those reliefs as noted before.

[5] The official respondents by filing the reply have disputed the allegations of the petitioner. The official respondents have stated that the writ petition cannot be maintained inasmuch as the petitioner has failed to make out a case where this court can exercise its power of judicial review in the matter of tendering. In Para-7 of the reply, the official respondents have categorically stated as follows:

> **"7. That, with regard to paragraph-2.4, I say that the respondent No.5 submitted declaration about the details location & description of his proposed building (own/hired) in plain paper which does not required Notary Affidavit as per DNIT condition No.4(iii). It is mandatory for a bidder to propose a premises measuring not less than 100 Sq. Ft. as per DNIT condition No.4(iii). So, during measurement of the proposed premises, the bidder had fulfilled the criteria of having a floor area not less than 100 square feet. Further, under the said DNIT condition, no objection certificate in the form of Notary Affidavit from the land owner of the proposed premises (if hired) is required to be submitted by the bidder but, rent agreement is not mandatory. There is nothing specific in the DNIT condition, Tripura Excise Act & Rules, Notification etc. about the requirement of minimum amount of immovable property and also income to consider a bidder eligible for qualifying the technical bid. However, it is observed from submitted bank certificate issued by Bank Manager of HDFC Bank on 05.02.2020 that he has cash bank balance of Rs.50,49,697.96/-. In regard to the complaint of the petitioner relating to Tax clearance certificate, it is mention worthy that the petitioner was given an opportunity on being heard in person on 06.03.2020, wherein he was informed that the**

original Tax Clearance certificate contained the required signature of the respondent No.5. Accordingly, the same was disposed off."

[6] It has been further asserted by the official respondents in respect of the touji number that the touji document was examined and at the time of scrutiny, it had been noted that there was a typographical error but the original touji document as uploaded by the respondent No.5 carried the correct touji number. Thus, the official respondents disposed the objection. It has been also asserted by the official respondents that the respondent No.5 quoted the bid amount of Rs.1,77,00,000/- against the MRF amount Rs.1,09,38,245/- as fixed by the Government. The petitioner, on the other hand, quoted the bid amount of Rs.1,09,38,276/-. The respondent No.5 being the highest bidder was recommended for licence of M.G. Bazar F.L. shop No.3.

The official respondents have further submitted that it is mandatory for a bidder to propose a premise measuring not less than 100 square feet as per Clause 4(iii) of the DNIT. The respondent No.5 had submitted the touji along with no objection certificate attested by the Notary from the touji holder of the proposed premises. Thereafter, the official respondents have stated that from the field verification report as submitted by the team headed by the Addl. District Magistrate & Collector, West Tripura

District, it revealed that the premises as proposed by the respondent No.5 is a three storied RCC building having a plinth area of 207.93 square feet in the ground floor and 199.815 square feet area in the first floor. Thus, the total area came to be 407.745 square feet. During the field inquiry, according to the official respondents, it revealed that the respondent No.5 had proposed the northern portion of the ground floor of the building measuring 118.32 square feet and the southern portion of the ground floor of the said building comprising as 89.61 square feet. The total area as proposed by the respondent No.5, thus came to be 289.425 square feet. The official respondents have further stated that no specific condition has been laid either in the DNIT or in the Tripura Excise Act and Rules, notifications etc. about the requirement of minimum amount of immovable property and income for considering the bidder whether he is qualified for the licence. However, they have further submitted that from the bank certificate issued by the Bank Manager of HDFC Bank on 05.02.2020 it revealed that bidder had a cash balance of Rs.50,49,697.96. It has been stated in the reply that for purpose of evaluating the technical bids, a committee headed by the Addl. District Magistrate & Collector, West Tripura was constituted. The said committee evaluated the technical bids and submitted their report. Only two bidders participated against M.G. Bazar F.L. Shop

No.3. They were the petitioner [the existing licencee] and the respondent No.5. Similarly, a committee was formed for the field verification to ascertain the actual physical status of the proposed location and premises. The official respondents have averred in their reply as under :

> **"Further, on examination of the field verification report, it is observed that the proposed shop stall of Sri Abhishek Dahiya for M.G. Bazar F.L. Shop No.3 fulfils the provision of Rule 26 of Tripura Excise Rules 1990 (as amended upto 2019) based on the which both the technical bids [petitioner- Sri Jogaswar Saha & respondent No.5- Sri Abhishek Dahiya) had been accepted. Subsequently, their financial bids were opened and found that the petitioner Sri Jogaswar Saha quoted his bid amount Rs.1,09,38,276/- and Sri Abhishek Dahiya quoted his bid amount Rs.1,77,00,000/- against the MRF amount Rs.1,09,38,245/-as fixed by the Government. Being the highest bidder, the name of Dahiya was recommended for licence of MG Bazar F.L. Shop No.3.**
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> **Consequent upon approval of the State Government in the Finance Department, Sri Abhishek Dahiya had been informed to deposit licence fee Rs.14,75,000/- and 20% of tendered value Rs.35,40,000/- as security deposit for issuance of licence of M.G. Bazar F.L. Shop No.3. But in the meantime, the petitioner had filed a writ petition at the Hon'ble High Court of Tripura."**

[7] The respondent No.5 has also filed a reply on 24.08.2020 by simply adopting the reply filed by the respondents No.1 to 4.

[8] The petitioner has filed a rejoinder by placing the documents in support of his contention and reiterating the stand taken in the writ petition on denying the statements made by the official respondents in general. The petitioner has alleged that there was no specific date mentioned in the DNIT for opening of the technical bids. He has stated that in Clause (v) of the DNIT it had been provided that the Collector of Excise, West Tripura District

after receipt of the tender shall open the technical bid and examine the documents submitted by the tenderer in respect of the technical bid. The collector of Excise, West Tripura get the physical verification of the proposed building premises done regarding its suitability as per guidelines stipulated in Rule 26 of the Tripura Excise Rules, 1990, as amended. According to the petitioner, on physical verification, the proposed area of shop was not found suitable but in support of that, the petitioner did not produce any record. It is to be noted here that the physical verification report has been placed by the respondents before us. Despite the specific assertion made by the official respondents, the petitioner has reiterated that the proposed premise was a kuchha viti tin shed. If there had been any construction, that was illegal. It has been asserted by the petitioner that the measurement of the shop as available from the said filed verification report did not tally with the description-statement submitted by the respondent No.5 for locating the MG Bazar F.L. Shop No.3. For this purpose, the relevant part of the physical verification report in respect of the shop premises as proposed by the respondent No.5, is reproduced hereunder:

> **5. Requirements as prescribed under Rule 26 [as amended upto 2017] of Tripura Excise Rules, 1990**
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> ***(i) Description of the land:***
> **The proposed site is actually located at Touji Stall bearing Touji No.21MGB1832, type of construction is recorded as KVT measuring 204 Sq. Ft. allotted in favour of Sri Subhadeep Saha**

> **vide No.01/Touji/AMC/07 dated 22.06.2007. But, the said Touji No. had been furnished as No.21MGD1832 in the submitted proposal of shop premises for setting MG.B. Bazar F.L. Shop No.3 and also, in the No-Objection Certificate executed between the bidder and the Land owner. Further, it is to be mentioned here that, the proposed room is at ground floor of a RCC 2(two) storied building. But neither the bidder nor toujiholder could produce any permission order at the time of field verification for construction of 2(two) storied building.**
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> * * * * * * * *
>
> ***(iv) Description of the building:***
> **As per submitted AMC touji order, the type of construction is recorded as KVT measuring 204 Sq. Ft. But physically it is found 2[two] storied RCC building measuring 207.93 Sq. Ft. at ground Floor and 199.815 Sq. Ft. at 1st Floor in total = 407.745 Sq. Ft. It is also found that that proposed room is in the Northern side of the ground floor measuring 118.32 Sq. Ft. Further, it is to be stated here that neither the bidder nor Touji holder could produce any permission order at the time of field enquiry regarding construction of 2(two) storied building in it.**
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> **[Emphasis added]**

The committee had categorically remarked in their physical verification report as follows:

> **"Authority may kindly take decision on the matter reflected in Point No.5(i) and 5(iv)"**

[9] There is no statement in the reply filed by the respondents No.1 to 4 in respect of the said remark of the physical verification team, even though the committee was categorical that the authority might take decision on the matter reflecting on the points No.5(i) and 5(iv) as reproduced above. It is really unbelievable that the executive, the respondents No.1 to 4 have accepted the tender of the respondent No.5 without considering that comment. It is deducible that according to the said committee's report, the construction is unauthorized inasmuch as neither the bidder nor the touji holder could produce any sanction order at the time of field verification for construction of two storied

building. Whether a statutory authority can grant license to run a foreign liquor shop from an unauthorized construction. This is a serious question and that cannot be relegated without any consideration. The public policy cannot be trampled in such manner.

[10] It may be noted that the official respondents did not file any to the rejoinder where the petitioner has raised a categorical objection relating to the unauthorised construction. Neither they did seek any leave of the court for filing such reply.

[11] Mr. S. Lodh, learned counsel appearing for the petitioner has submitted that technical bid of the respondent No.5 ought to have been rejected on the face of it, for non-compliance of Clauses 4(ii) & (iii) of the DNIT. According to Mr. Lodh, learned counsel, those conditions are essential and the standards laid by the tendering authority, once, cannot be departed whimsically. But in the case in hand, the respondents No.1 to 4, particularly the respondent No.3, has departed from the standard by not appreciating the documents relating to the immovable property including the unauthorized construction thereon and the banking transactions fairly. If there were fair assessment, the tendering authority would have come to an inference that the financial ability of the respondent No.5 cannot generate confidence in them to

settle the said M.G. Bazar F.L. Shop No.3. Mr. Lodh, learned counsel has further submitted that no tenancy agreement has been uploaded by the respondent No.5. Even the touji number that has been referred by him does not exist in that area and that information has been confirmed by Agartala Municipal Corporation in the disclosure made to one Tapas Saha [the bidder for M.G. Bazar F.L. Shop No.4 under the same DNIT] under Right to Information Act. That apart, according to the records, the premises which was taken on rent for setting up of the FL Shop is not suitable in terms of Rule 26(3) of Tripura Excise Rules as the said rule provides that the premises must be pucca or semi-pucca construction. But in the touji, the premises is shown as kutcha hut. He has also indicated that another person had also uploaded the documents relating to the said premises for another FL Shop. But the area as recorded against the touji is inadequate to accommodate both the shops. Thus, the bidder has not placed the correct statement about the premises. Mr. Lodh, learned counsel thereafter, has categorically stated that the physical verification committee has categorically observed that the construction in which both the shops have been proposed to be set up is an authorized construction inasmuch as neither the respondent No.5 nor the touji holder could produce the sanction order for such construction. Such sanction order is mandatory for construction of building in terms of

Tripura Municipal Act, 1994 and the Building Rules as brought into force, thereunder.

[12] Mr. D. Bhattacharjee, learned GA appearing for the respondents No.1 to 4 has quite categorically submitted that the respondent No.5 made a clear statement that he does not have any immovable property, but he had uploaded the bank transaction and the certificate of the Bank Manager to show that in his account a cash balance of Rs.50,49,697.96/- was available. Neither the Excise Statute nor the DNIT required that the bidder must have immovable property and a certain amount of the bank balance. Clause 4(ii) of the DNIT has been incorporated to assess the financial ability of the bidder. One person may not have the immovable property but his sound financial ability can be gathered from his bank transactions. The respondents No.1 to 4 were satisfied about the financial ability of the respondent No.5. So far the objection relating to the proposed shop premises is concerned, the statement of the petitioner is grossly superfluous and without having any reference to the present status of the said premises. From the physical verification report submitted by the designated committee as constituted for that purpose it would be apparent that the total area of the said premises is 407.745 square feet and out of that the premises measuring 150 square feet has been agreed to

be let out to the respondent No.5. The tenancy agreement has not been asked to be uploaded. The words which are appearing in Clause 4(iii) of the DNIT are that a no objection certificate from the owner of the premises be submitted with supporting documents and those documents be attested by the Notary. The respondent No.5 has complied that requirement. Thus, the objection relating to the tenancy agreement does not have any foundation to stand upon. For purpose of appreciating the rival contentions as surfaced, it would be apposite to gainfully reproduced the provisions of Clause 4(ii) and 4 (iii) of the DNIT. Those provisions read as under:

> **"(ii) 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.**
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> **(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] It is evident that it is not the case of the petitioner that no document as required by the Clauses 4(ii) & (iii) of the DNIT have been uploaded by the respondent No.5. The petitioner's challenge as it emerges is in respect of adequacy of the documents. In this regard, this court cannot be oblivious of its jurisdictional limit in the matter of judicial review.

[14] The court does not have omnibus powers to intervene a decision on merit. Its power is limited to examine the process to see whether the fair play principles, at that stage so far a tendering process is concerned, was 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 principle which has since been applied by the apex court in a number of cases. The said 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."**
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> **[Emphasis added]**

[15] Advent of the said principle is attributed to Justice Frank Frankfurter of the U.S. Supreme Court but the same has been approvingly stated in **A.S. Ahluwalia vs. State of Punjab,** reported in **(1975) 3 SCC 503** and in the subsequent decision of the apex court in **Sukhdev Singh vs. Bhagatram Sardar Singh Raghuvanshi**, reported in **(1995) 1 SCC 421**. In both the reports

observation of Justice Frank Frankfurter has been quoted as the authority. It may be noted also that the apex court has observed that rule, though can be ratified by the provisions of Article 14, but the same 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 powers by the executive authority. If we turn to the judgment of 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 administrative law is in that direction as is evident from what has been commented in his celebrated work, titled as, Prof. Wade *Administrative Law*, 4th edition, pages 540-41. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law.

[16] In **G. J. Fernandez vs. State of Karnataka and others,** reported in **(1990) 2 SCC 488**, the apex court had occasion to revisit that 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.”**
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> **[Emphasis added]**

[17] We are inclined to apply the said principle in the present case. The respondents No.1,2,3 & 4 cannot take a stand that they can depart from the standard by which they professed 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 & 4 have asserted in their reply that the Clauses 4(ii) & (iii) of the DNIT are not essential and

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 on the touchstone of Clauses 4(ii) & 4(iii) of the DNIT. What we have observed that the respondent No.5 has clearly stated that he does not have any immovable property but he 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.5 maintained his savings. There is no dispute that the said documents were duly notorized.

[18] So far the question of the tenancy agreement is concerned, we are of the considered view that what is required in terms of the Clauses 4(iii) of the DNIT is a no objection certificate from the owner of the building along with supporting documents duly attested by the Notary Public. It is an admitted fact that no objection certificate and touji records had been uploaded with the technical bid. So far the mismatch of number of touji is concerned, the official respondents have clarified their position by stating that, that was a typographical mistake. When the document itself was available the tendering authority can waive such objection by taking into consideration of the document itself and that cannot be stated arbitrary.

[19] So far the objection relating to Rule 26(3) of the Tripura Excise Rules is concerned, what is relevant is the status of the building not what was status earlier at the time of opening of the touji. The description in the touji in respect of the building or tenement cannot be treated as a perennial document for status of the building. It may change. We find that the official respondents did not find any difficulty in accepting the field inquiry report. So far the area of the premises is concerned, it has been well-explained how the requirement has been met.

[20] But we are really taken aback that the official respondents did not consider the field verification report submitted by the designated committee headed by Addl. District Magistrate & Collector, West Tripura where they have a serious objection in respect of the construction in an appropriate manner. The respondent No.5 proposed his shop in the said construction. Hence, their observation deserved serious consideration. They have clearly stated in their report that neither the bidder nor the touji holder could produce any permission order at the time of field verification for construction of [two storied building] and in they have remarked that the authority might take decision on the matter as reflected in Point Nos.5(i) and 5(iv) of the said report, as reproduced before. It appears to us that there was consideration in

this regard, at least in the reply filed by the official respondents. There is no reply from the official respondents in this regard. Even from the records as produced by the official respondents we do not find any record that the said observation of the designated committee was taken care of. It is no doubt a serious issue as it offends the public policy that the state shall not extend any sort of benefits/privilege against any unauthorized construction or formation.

[21] Even though we do not find any element, except the absence of due consideration of the field inquiry report in the writ petition to extend our power of judicial review based on the objection raised in terms of Clauses 4(ii) and 4 (iii) of the DNIT. It is required to be noted that in exercise of the powers of judicial review, the constitutional court cannot embark on roving inquiry. The precincts of the judicial review are well defined that it should be confined its ambit in respect of the process as delineated by the competent authority or by law but should not essay the merit of the decision, unless of course, it is shown that such decision is so perverse and so unreasonable that non-interference will make the judicial process a farce. So far the satisfaction of the tendering authority is concerned, it cannot be substituted by the satisfaction of the court while exercising its power under judicial review.

Apparently, the respondent No.5 has conformed to the requirement as prescribed by Clauses 4(ii) and 4(iii) of the DNIT. Hence, the challenge structured upon non-compliance of the requirement of Clauses 4(ii) & (iii) of the DNIT is bound to fall through unless is held back by other relevant factor. But we cannot say that the official respondents had taken all relevant considerations for coming to that decision. The official respondents were bound to take a decision on the observation of the filed verification committee as reproduced before during the time of opening of the technical bids inasmuch as the State cannot extend its patronage to any illegal act in whatever form. They were under obligation to take a decision on the observation of the said designated committee in respect of non-production of the sanction for construction of the building from the competent authority as required under law. The non-production may mean absence of sanction of plan. In that event, the construction was grossly unauthorized. The state patronage in the form of granting licence to run a foreign liquor shop from such unauthorized construction would mean burial of the public policy.

[22] Having regard to the said observation, the respondent No.3 shall take a fresh call and decide on the observation made by the field verification committee as constituted by him. Till then the

decision to grant the licnece to the respondent No.5 shall be put on hold. If the respondent No.3 arrived at a decision that the said construction relating to the proposed shop had been carried out unauthorizedly and there had been no sanction of plan for such construction on the date when the bid was uploaded in response to the DNIT, he shall take a decision appropriate in the circumstances. A decision as would be taken be communicated to the petitioner forthwith. In the interregnum the petitioner as the existing licenceee be allowed to continue and necessary permits for import etc. shall be issued in his favour.

[23] In terms of the above, the writ petition stands disposed of.

There shall be no order as to costs.

Copy of the records as produced be made part of the judicial records.

JUDGE **JUDGE**

Sujay

HIGH COURT OF TRIPURA
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