

HIGH COURT OF TRIPURA
AGARTALA

W.P(C) No.273/2020

Smt. Soma Debbarma,
wife of Sri Bikash Kanti Saha, resident of village Amarpur, Ramthakur Ashram, PO -
Amarpur, PS - Birganj, Sub - Division - Amarpur, Pin - 799101.

..... *Petitioner(s)*.

Vrs.

1. The State of Tripura,
Represented by the Commissioner and Secretary to the Finance Department (Excise
and Taxation), Government of Tripura, having its office at New Secretariat Complex,
Gurkhabasti, Agartala, PO-Kunjaban, PS- New Capital Complex, Sub-Division-Sadar,
District- West Tripura

2. The Commissioner and Secretary,
to the Finance Department (Excise and Taxation), Government of Tripura, having his
office at New Secretariat Complex, Gurkhabasti, Agartala, PO- Kunjaban, PS- New
Capital Complex, Sub-Division- Sadar, District- West Tripura.

3. The Commissioner and Secretary,
to the Revenue Department, Government of Tripura, having his office at New
Secretariat Complex, Gurkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex,
Sub-Division- Sadar, District- West Tripura.

4. The Commissioner of Excise,
Government of Tripura, office of the Commissioner of Excise, having his office at P.N
Complex, Gurkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex, Sub-
Division- Sadar, District- West Tripura.

5. The Collector of Excise,
Government of Tripura, office of the Collector of Excise, Gomati Tripura District

..... *Official-Respondent(s)*.

6. Sri Rupan Karmakar,
son of Late Manindra Karmakar, resident of village-Amarpur, Shantipalli, P.O-
Amarpur, P.S- Birganj, Sub-Division-Amarpur, Pin-799101.

..... *Private-Respondent*.

BEFORE

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate.
For Respondent(s) : Mr. D. Bhattacharjee, Govt. Advocate.
Mr. S. M.Chakraborty, Sr. Advocate.
Date of hearing and
Judgment & Order : **23rd March, 2021.**
Whether fit for reporting : NO

JUDGMENT AND ORDER(Oral)

(Akil Kureshi, CJ)

Petitioner has challenged the decision of the official respondents of accepting the price bid of the respondent No. 6 for allotment of rights for sale of liquor at Amarpur F. L. Shop.

[2] Brief facts are as under:

The excise authorities of Government of Tripura issued a notice inviting tenders on 17.01.2020 for retail vending of foreign liquor and country liquor shops under Gomati district. This advertisement was common for 22 different locations where such shops would be granted licenses, one of them was Amarpur F.L. Shop within local limits of Amarpur Nagar Panchayat. The minimum price for duration of the license between the year 2020-21 to 2022-23 was Rs.19,02,775/-. This notice contained an important condition for the location of the shop that a tenderer may offer. This was in terms of Rule 26 of Tripura Excise Rules, 1990 and the condition read as under:

“As per provisions of Rule 26 of Tripura Excise Rules, 1990 (as amended upto 2019).

1) No retail vend of Foreign Liquor and Country Liquor shop shall be located within 100 (one hundred) meters from the following, namely:-

- (a) Recognized Educational Institutions;
- (b) Religious places of worship, bathing ghat;
- (c) Hospitals;
- (d) Factories;
- (e) Office(s) of the recognized political parties;

Provided that no shop for the sale of liquor shall be (i) visible from a national or state highway; (ii) directly accessible from a national or state highway and (iii) situated within a distance of 220 meters in case of areas comprised in local bodies with a population not exceeding twenty thousand people and 500 meters in case of all other areas from the outer edge of the National or State highway or of a service lane along the Highway.

Provided also that if any Recognized Educational Institutions, Religious places of public worship, bathing ghat,

Hospitals, Factories and Offices of recognized Political Parties come into existence subsequent to the establishment of retail vend of Foreign Liquor or Country Liquor, the aforesaid distance restrictions shall not apply.”

[3] The petitioner as well as respondent No.6 participated in the tender process. There are in all five tenderers who had qualified. The authorities opened the price bids of all these tenderers and found that the offer of the respondent No.6 at Rs.85,88,788/- was the highest and that of the petitioner at Rs.53,27,771/- was second highest. It appears that after obtaining the report of verification by a specially constituted committee which was tendered on 17.01.2020, the tender was awarded to the respondent No.6. In this report, copy of which is not produced by the respondents on record, but from the original files made available for our perusal as well as that of the counsel for the petitioner, it emerges that the committee had verified that the location of the proposed shop did not breach the requirements of Rule 26 of the Tripura Excise Rules, 1990 which was incorporated in the tender condition. The committee certified that the proposed site of the shop was beyond 100 meters from any recognized educational institutions, religious places of public worship, bathing ghats, hospitals, factories etc.

[4] The petitioner challenges this decision of the authorities on the ground that the location of the shop offered by the respondent No.6 for running the liquor shop breached the said condition in as much as there was a bathing ghat within the distance of 30.48 meters from the shop. In support of this contention, the petitioner has relied on a surveyor's report whom the petitioner hired for this purpose.

[5] The official respondents had filed his first reply on 29th June, 2020 in which the deponent had stated as under:

“11. That, with regard to paragraphs-2-4 & 2.5, I say that the proposed site location of Amarpur F. L. Shop by the private respondent (i.e. Sri Rupan Karmakar) is situated at a distance of less than 100 meters from a nearby bathing ghat in the eastern side of Amarsagar.”

[6] Second affidavit came to be filed on behalf of the official respondents on 19th February, 2021 in which the above quoted portion of the previous affidavit was sought to be clarified as under:

“11. That, with regard to paragraphs-2.4 & 2.5, it is stated by the petitioner that the proposed site location of Amarpur FL shop by the Private Respondent (i.e. Sri Rupan Karmakar) is situated at a distance of less than 100 meters from a nearby bathing ghat in the eastern side of Amarsagar.”

[7] With respect to the petitioner's averment that there was a bathing ghat within some 30 meters from the proposed shop, in this later affidavit it was clarified as under:

“12. Regarding bathing ghat in the eastern side of Amarsagar opposite of Khudiram pally, it is pertinent to mention here that there is a retain structure which is pucca, from Amarpur bazaar road leading down to Amarsagar. It has 6(six) feet width entrance with 5(five) feet wide pucca steps and there are two steps of 7(seven) feet width at three places i.e. at the beginning after the entrance, in the middle down and at the end. Those pucca steps path from Amarpur bazaar road to Amarsagar opposite side of Khudiram pally are mere stairs, not a bathing ghat. The proposed site location of Amarpur FL shop conforms to Rules 26 of Tripura Excise (Ninth Amendment) Rule, 2014. Therefore, the claim of the petitioner is found devoid of merit. Hence, the contention of the petitioner made in the said paragraph does not have any locus standi and is liable to be dismissed.

13. That, with regard to paragraphs-2.6 to 2.7, I say that the retain structure which is pucca situated in the opposite side of Khudiram Palli Road and near to proposed site/location of Amarpur F. L. shop of Sri Rupan Karmakar as mentioned by the petitioner are mere stairs and not a bathing ghat.”

[8] The respondent No.6 had filed an affidavit dated 10th July, 2020 denying the allegation of the petitioner that any objectionable structure was situated within a distance of thus 100 meters from the proposed shop site. In fact it was stated that the so called bathing ghat is classified as a public road, the said spot has never been used as a bathing ghat.

[9] Based on such averments, learned counsel Sri Somik Deb for the petitioner vehemently contended that the petitioner had established that the proposed shop was situated within less than 100 meters of existing bathing ghats and a mosque. The official respondents committed a serious error in awarding the tender to the respondent No.6. He drew our attention to the admission of the respondents in the first affidavit regarding location of a bathing ghat within less than 100 meters from the shop. He contended that such admission once made cannot be withdrawn.

[10] Learned Govt. Advocate, Sri D. Bhattacharjee and Mr. S. M. Chakraborty, Sr. advocate for the private respondent opposed the petition and contending that the specially constituted committee has examined these factual aspects. The petitioner has produced no reliable evidence to discard these findings. There is no bathing ghat within the distance of less than 100 meters from the shop. Respondent No.6 was the highest bidder and therefore, correctly awarded the contract.

[11] Though in the sketch of the surveyor of the petitioner refers to three sites namely, two bathing ghats and one mosque being situated within less than 100 meters from the proposed shop, the sketch itself shows the location of only one ghat and a mosque. The ghat referred to by the surveyor is in the

northern direction straight above the location of the shop. Further down in the same direction is stated to be a mosque. Thus, the sketch does not show a second bathing ghat which in the foot note of the surveyor's report is referred to. With respect to the so called bathing ghat, the official respondents as well as the private respondent have categorically stated that there is no such ghat in existence and that it is never used or recognized as a ghat. We have nothing to disbelieve such clear averments made by the official respondents on oath.

[12] With respect to the location of the Mosque, the petitioner has not taken up this contention in the petition. The surveyor's sketch does show the location of a mosque at a distance of about 91 meters from the shop. However, in the petition there is no reference to any such shop with or without reference to the sketch. The respondents cannot be expected to reply to a contention, that too, factual in absence of an averment made by the petitioner on oath in the petition.

[13] Coming to the question of the so called admission by the official respondents in the first affidavit dated 29th June, 2020, this position has been clarified in the subsequent affidavit dated 19th February, 2021. Quite apart from contending that the earlier declaration was through oversight, the respondents have elaborately pointed out that there is no bathing ghat in existence nearby the shop and the reference of the petitioner to the bathing ghat location is nothing but a 6ft. by 5ft. steps and is not a bathing ghat. Counsel for the petitioner may be correct in pointing out that the defendant cannot resile from a clear admission made on oath. However, an oversight or typographical error or misunderstanding cannot form the basis for a judicial decision if the error is properly explained. The crux of the matter is, is there a structure in the nature of a bathing ghat

within a distance of less than 100 meters from the proposed shop? If the answer is, as in the present case in the negative, the petition must fail.

[14] In the result, petition is dismissed. Pending application(s), if any, also stands disposed of.

(S. G. CHATTOPADHYAY),J.

(AKIL KURESHI),CJ.

Dipankar



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