(2014) 12 JH CK 0093

In the Jharkhand High Court

Case No : W.P.(C) No. 5056 of 2014

Chhatisgarh Distilleries Ltd. APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 22, 22(1), 22(1)(a), 22(D), 42
Constitution of India, 1950 — Article 14, 19(1)(g), 226, 32
Penal Code, 1860 (IPC) — Section 120(B), 420, 465, 467, 471
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(2)

Citation : (2015) 1 AJR 767 : (2015) 1 JLJR 530

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Krishnan Venugopal, Sr. Advocate, Siddhartha, Advocate Dilip Kumar Prasad, Advocates for the Appellant; Rajesh Kumar, G.P. and Vaibhav Kumar, J.C. to A.G, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Initially, the writ petition was filed seeking quashing of Clause 15(xix) of the notice inviting tender (NIT) as ultra vires Rule 53(a) contained in Notification No. 471-F dated 15.01.1919 and for quashing the list issued on 11.09.2014 whereby, the petitioner-company has been declared ineligible and with further prayers seeking direction upon the respondents to open the financial bid of the petitioner-company and not to grant exclusive privilege of wholesale supply of liquor to other tenderers during the pendency of the writ petition. Later on, an amendment application being I.A. No. 5678 of 2014 was filed for addition of a further prayer seeking quashing of licenses issued in favour of M/s. Maa Tarini Natural Resources Pvt. Ltd. and M/s. Kumar Bottlers. I.A. No. 5678 of 2014 was allowed vide order dated 07.11.2014 and thus, the licenses issued in favour of the respondent Nos. 6 & 7 are also under challenge.

BRIEF FACTS

2. M/s. Chhatisgarh Distilleries Ltd., a company duly incorporated under the Companies Act, 1956, is engaged in the manufacturing of portable spirit, country liquor and Indian Made Foreign Liquor. Claiming sufficient financial, technical and infra-structural capacity, the petitioner has asserted that it was awarded tender for supply of country liquor and foreign liquor in the State of Chhatisgarh and for supply of country liquor in the State of Jharkhand and Bihar and the execution of tenders awarded to it has been extremely satisfactory. In the State of Chhatisgarh more than 60 % of the total requirement of country liquor is catered by the petitioner-company. Pursuant to NIT dated 14.08.2014 published in the Gazette on 19.08.2014 for grant of exclusive privilege of the wholesale supply of country liquor in bottle/sachet, the petitioner submitted its technical and financial bids in separate sealed cover on 03.09.2014. The technical bid was opened on 04.09.2014 when the Secretary-cum-Commissioner, Excise Prohibition Department asked the tenders to submit objection, if any, in writing. On coming to know that one M/s. Gajanand Impax Pvt. Ltd. has made allegation against the petitioner-company vide letter dated 04.09.2014 that it has submitted a false affidavit, the petitioner made request on 06.09.2014 for supply of a copy of the complaint sent by M/s. Gajanand Impax Pvt. Ltd. Vide letters dated 08.09.2014 and 10.09.2014, the petitioner-company refuted that it has submitted a false affidavit. It was asserted by the petitioner-company that it fulfilled eligibility criteria and it has substantively complied the requirement of tender conditions. However, a list of eligible and ineligible tenderers was issued on 11.09.2014, in which the petitioner-company has been declared "ineligible" on the ground that the affidavit submitted by it was not in terms of the tender conditions. Claiming loss of about 35 crores to the public exchequer on account of non-grant of license to the petitioner-company because its bid was lower by 0.61 per sachet than the awardee and alleging action of the respondents in disqualifying the petitioner-company as illegal and arbitrary besides, ultra vires Rule 53(a) of the Rules, the present writ petition has been filed.

3. A counter-affidavit has been filed on behalf of the respondent-State of Jharkhand questioning bona fide of the petitioner in filing the writ petition challenging Clause 15(xix) of NIT, after participating in the tender process. It is stated that the writ petition has been filed with malafide intention to disrupt the process for grant of exclusive privilege to the successful tenderers. The duration of the license for supplying country liquor is 3 1/2 years and therefore, if a tenderer against whom a criminal case is pending, is permitted to participate in the tender and if the tenderer is convicted by the Court during the tender period, a situation may arise which would ultimately hamper revenue of the State. The vacuum thus created would encourage illicit manufacture of country liquor which ultimately would be detrimental to the health of the people. The condition under Clause 15(xix) of NIT is well thought out condition which was incorporated in NIT in the interest of revenue. It is stated that in M/s. K.D. Liquor and Fertilizer Pvt. Ltd. (L.P.A. No. 309/2011 and batch cases), it has been held that the Board of Revenue has jurisdiction to prescribe tender conditions and the terms and

conditions fixed by the Board of Revenue cannot be challenged. It is further stated that Rule 53 contained in Notification dated 15.01.1919 is not applicable for grant of exclusive privilege rather, it is applicable only for retail shops. Before NIT was issued, the Department took approval of each condition in NIT from the Department of Law and Finance Department. A 5-Member Tender Committee constituting the Secretary-cum-Excise Commissioner and members from Vigilance Department, Commercial Taxes Department and Finance Department, scrutinized the bids of ten companies which participated in the tender process. The proceeding of the tender committee is freezed in videography. It was found that the bids of 3 tenderers including the petitioner-company was not in terms of NIT and finally only 5 candidates were declared successful in the technical bid and accordingly, a list of eligible and ineligible candidates was issued on 11.09.2014. The petitioner''s application has been rejected by the Tender Committee on the ground that it has not submitted affidavit in terms of NIT conditions. A C.B.I. case of bank forgery is pending against the petitioner-company and this fact was concealed in the affidavit filed by it. The provisions of the Bihar Excise Act, 1915 (as adopted by the State of Jharkhand) make it abundantly clear that no one can sell liquor except, under the authority and subject to the terms and conditions of license granted under the Act. The petitioner has not disclosed the reason why it did not submit its affidavit on specified points. None of the conditions of NIT is ultra vires the Act or the provisions of the Constitution. It is not in contravention of any statutory provision nor the conditions in NIT were incorporated in bad faith. It is stated that dealing in intoxicant is not trade or business within the meaning of Article 19(1)(g) of the Constitution of India. The restrictions which are not permissible with other trades are lawful and reasonable so far as, the liquor trade is concerned. The State possesses the right of complete control over all aspects of manufacture, collection, sale, consumption etc. of intoxicants. Business in liquor is not a fundamental right of a citizen. It is the exclusive right of Government. It is asserted that the candidature of the petitioner-company has been rejected by the Tender Committee for sufficient reasons.

4. M/s. Maa Tarini Natural Resources Pvt. Ltd. has filed counter-affidavit stating that the petitioner-company with deceitful intention suppressed the information with regard to pendency of (i) C.B.I. Trial No. 29 of 2003 and, (ii) C.B.I. Trial No. 375/CP of 2002 both, under section 120(B), 420, 465, 467 and 471 I.P.C. and under section 13(2) read with Section 13(1)(c) & (d) of the Prevention of Corruption Act, 1988. The petitioner-company has not denied the pendency of criminal cases against it. The petitioner being aware of the tender of respondent Nos. 6 & 7 being successful and also of the order of grant of license, yet chose to file the writ petition without impleading the intervenor and other licensee as party respondents, in whose absence no effective order could have been passed in the writ petition. The condition under Clause 15(xix), in matters of trade which is deleterious, obnoxious and res extra commercium was rightly deemed necessary to incorporate in NIT by the respondent-authority. For coming to the

conclusion whether a tenderer against whom criminal case was instituted or pending, should or should not be conferred the grant of license, the tenderers were required to disclose the pending case/cases against them. It does not automatically follow from the condition in Clause 15(xix) of NIT that institution of criminal case would dis-entitle the tenderer from being considered for grant of license rather, upon disclosure of such information a decision can be taken depending on the nature of the offence. The petitioner failed to submit an affidavit in terms of NIT which mandatorily required a tenderer to give affidavit. After its technical bid was rejected for failure to submit an affidavit in terms of Clause 15(xix) read with Clause 16 of NIT, the petitioner cannot be permitted to turn around and challenge the validity of Clause 15(xix) of NIT. The Hon''ble Bombay High Court while hearing petition for quashment of the criminal cases against the petitioner-company and its directors, has passed severe remarks against the conduct of its directors. The terms of tender and the terms of invitation to tender are for the authorities to formulate and it is not open to judicial scrutiny. Section 22(1)(a) of the Excise Act makes Government the sole repository of power to grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege of manufacturing or selling liquor wholesale or retail, or both. The State Government has conferred upon the Board of Revenue, power to fix terms and conditions in as much as, the power under Section 22(1) of the Act has been delegated to the Board of Revenue.

5. In its counter-affidavit M/s. Kumar Bottlers has stated that from condition in Clause No. 15(xix), it does not automatically follow that institution of a criminal case would dis-entitle the tenderer from consideration rather, the consideration would depend on the nature of the offence alleged. The petitioner despite a criminal case pending against it, suppressed the information and thus, it was ineligible for being considered. In the earlier NIT dated 22.02.2011 also, a pari-materia clause in Clause 15(xix) was incorporated and the petitioner though participated in NIT dated 22.02.2011, filed a false affidavit stating that no criminal case was pending against it. And, thus the writ petition is liable to be dismissed on that count alone, without entering into the merits of the case. In view of the nature of the trade or business in liquor, which is res extra commercium being inherently harmful, a large measure of latitude is granted to the State Government in determining its policy for regulating manufacture and trade in liquor. Moreover, the grant of license for manufacture and sale of liquor are matters of economic policy and its validity cannot be tested on any rigid, a priori considerations or on the application of any straight-jacket formula. The bid of the petitioner was not in consonance with Clause 15(i), Clause 12(CHA), Clause 15(xxv) and Clause 3(Kha) besides, the fact that the conduct and management of the petitioner was not satisfactory in the previous NIT. The grant of retail license is an ordinary privilege as opposed to "exclusive privilege" granted under Section 22 of the Bihar Excise Act, 1915.

6. A supplementary counter-affidavit has also been filed by the respondent- M/s. Maa Tarani Natural Resources Pvt. Ltd.

7. A rejoinder to the counter-affidavit of respondent Nos. 1 to 3, has been filed by the petitioner stating that the NIT for granting exclusive special right for wholesale supply of country-made liquor was issued under Section 22(D) of the Bihar Excise Act, 1915 and the applicable Rules made thereunder. Clause 15(xix) is analogous to Section 42 of the Act. There cannot be two parallel pre-conditions, one under the Act and another under the NIT. Rule 53 makes it clear that the Legislature could not have contemplated two different standards or criteria for grant of retail sale and wholesale sale and thus, the respondents could not have unilaterally introduced absence of "pending criminal cases" as pre-condition for participating in the tender for grant of special rights for wholesale supply of country-made liquor. A company with vast experience, cannot be rendered ineligible to participate in the tender merely because a criminal case is pending against one or more of the Directors of the company. There is a fundamental presumption of innocence of an accused till the charges levelled against him are established and he is found guilty beyond reasonable doubts. The petitioner filed complaint against M/s. Maa Tarani Natural Resources Pvt. Ltd., M/s. Bhattacharya Bottlers Plant Pvt. Ltd., M/s. Farini Eleven Up, M/s. Kumar Bottlers and M/s. Genuine Bottlers, however, inspite of specific and genuine complaints against the aforesaid companies, the Tender Committee ignored the complaints merely by observing that the petitioner did not produce any document in support thereof. Though, M/s. Maa Tarani Natural Resources Pvt. Ltd. and M/s. Kumar Bottlers do not fulfill the conditions of NIT, they have been declared successful and licenses have been issued in their favour and thus, certain mandatory conditions have been relaxed for them. The bid of the petitioner is much lower than the bid of the successful tenderers and thus, those tenderers would be profiting by illegal elimination of the petitioner, which would surely mean unjust enrichment of those tenderers. The Board of Revenue cannot impose condition contrary to the provisions of Section 42 of the Act. It was beyond the jurisdiction of the Board of Revenue to impose the impugned condition No. 15(xix). It is stated that the delegated legislation cannot go beyond the provisions of the Act. Since no case was pending against the petitioner-company, it did not submit affidavit to that effect. The case is pending against certain Directors of the company and therefore, it cannot be construed as concealment of the fact of pendency of criminal case against it.

SUBMISSIONS, DISCUSSION AND CONCLUSION

8. Mr. Krishnan Venugopal, the learned Senior counsel appearing for the petitioner submitted that, the condition contained in Clause 15(xix) of NIT is not a condition provided under either the Statute or Rules framed thereunder and thus, it could not have been incorporated in NIT. The condition under Clause 15(xix) is arbitrary and thus, violative of Article 14 of the Constitution in as much as, mere pendency of a criminal case has been made a ground of ineligibility for a tenderer. There is no nexus between the condition under Clause 15(xix) and the object sought to be achieved by the Government. It is further submitted that in ignoring the serious deficiencies in the bids of M/s. Maa Tarini Natural

Resources Pvt. Limited and M/s. Kumar Bottlers while rejecting the bid of the petitioner-company on the ground of non-fulfillment of a void condition, the Tender Committee has applied unequal yardstick while scrutinising the bids of the tenderers and thus, decision making process was vitiated, warranting cancellation of the entire tender process.

9. Mr. Pinaki Mishra, the learned Senior Counsel appearing for respondent No. 7- M/s. Kumar Bottlers has submitted that by the above referred provisions, a class of tenderers has been debarred from grant of license and/or participation in the tender process whereas, Clause 15(xix) does not debar the petitioner from participating in the tender process. Under Clause 15, all participating tenderers were required to furnish certificate/document/affidavit as mentioned in various clauses thereunder and, it has been made amply clear to all the intending tenderers that if the document/certificate/affidavit as required under Clause 15 of NIT is not furnished, the bid of such tenderer would not be considered. Under Clause 16, again it has been reiterated that all records/documents/papers mentioned in condition No. 15 must be annexed with Annexure-2 and if the documents are not annexed, such bids would not be considered.

10. Mr. Pinaki Mishra, the learned Senior Counsel further submitted that there was no serious complaint against respondent No. 7 which would appear from the proceeding of the Tender Committee whereas, the seriousness of the cases registered against the petitioner-company and its Directors is apparent from the order passed by the Bombay High Court. The list of share holders of the petitioner-company as on 30.09.2009 would disclose that Mr. K.P. Kedia holds 75% of the shares in the company and thus, may be the composition of the Directors of the Company has changed, the majority share holders are still the previous Directors who are accused of defrauding a nationalised bank and against whom an Interpol look out notice was issued at one point in time. It is submitted that pendency of a criminal case against the tenderer may not be a bar for considering its bid however, in cases were a tenderer has suppressed material facts, its bid must be excluded from consideration.

11. It is further submitted that if the authorities in their wisdom decided to seek certain information more particularly pendency of a criminal case against a tenderer, a tenderer cannot question the relevancy of the information required to be furnished. A perusal of list dated 11.09.2014 makes it abundantly clear that the petitioner was not disqualified on the ground of pendency of a criminal case rather, its bid was not considered because its bid was not in terms of the condition of NIT. Since the petitioner failed to disclose in its affidavit registration or non-registration of a criminal case and merely stated that none of its Directors has been convicted in a criminal case, the affidavit submitted by the petitioner-company was found not in terms of Clause 15(xix) of NIT and thus, rightly rejected.

12. Mr. Jitendra Singh, the learned Senior Counsel appearing for the respondent No. 6- M/s. Maa Tarini Natural Resources Pvt. Limited submitted that Clause (xix)

of condition No. 15 requires a tenderer to submit an affidavit in original disclosing whether a criminal case was registered or is pending and whether the tenderer has not been convicted by a criminal court. Reading a disqualification, on the ground of registration of/or pendency of a criminal case under Clause (xix) of condition No. 15, would be adding words to Clause (xix) which is not permissible in law. A tenderer is not automatically disqualified merely on registration of a criminal case rather, upon furnishing such information by the tenderer, an appropriate decision was to be taken by the Tender Committee.

13. In reply, Mr. Krishnan Venugopal, the learned Senior Counsel appearing for the petitioner referred to paragraph No. 6 of the counter-affidavit filed on behalf of respondent-State of Jharkhand and submitted that the State of Jharkhand has admitted in its counter-affidavit that pendency of a criminal case is a disqualification for an intending tenderer. It is submitted that a criminal case was registered against some of the Directors of the Company for alleged offences committed in the year, 1999 and 2001 and in the meantime, the constitution of the Board of the Company has changed. The Directors against whom criminal cases were lodged, have all resigned from the Board of the Company long back. The criminal cases were registered with respect to transfer of shares and lease finance facility and thus, the allegation in the criminal case would have no nexus with the capacity of the petitioner-company in successfully executing the work under NIT. The contention of the respondent-State of Jharkhand that conviction of a tenderer subsequent to grant of exclusive privilege for manufacture and wholesale supply of country made liquor would have caused vacuum and resulted in loss to the excise revenue is not tenable rather, Sections 43, 44 and 46 of the Excise Act take care of such a situation.

14. I have carefully considered the submissions of the counsel for the parties and perused the documents on record.

15. Section 22 of the Bihar Excise Act, 1915 deals with power of the State Government to grant the exclusive privilege of manufacturing or supplying wholesale or manufacturing and supplying wholesale country liquor or any intoxicating drug. Section 22 puts no fetter on the power of the State Government to prescribe conditions as well as period for which the exclusive privileges may be granted in favour of any person. The expressions "such condition" and "for such period" indicate that the Act gives complete freedom to the executive to prescribe conditions for grant of exclusive privilege. In State of Orissa and Others Vs. Harinarayan Jaiswal and Others, , it has been held by the Hon''ble Supreme Court that the power given to the Government to sale the exclusive privilege in a manner as it thinks fit, is a very wide power. Mr. Jitendra Singh, the learned Senior Counsel appearing for the respondent No. 6 has submitted that by now it is well settled that the State Government has power under Section 22 of the Bihar Excise Act, 1915 to grant exclusive privilege on such terms and conditions as it may deem fit. The power under Section 22 of the Act has been delegated to the Board of Revenue and thus, the power of Board of

Revenue to prescribe various conditions under Condition No. 15 cannot be questioned. Referring to a decision in M/s Farinni Eleven Up and Others Vs. State of Jharkhand and Others, , it is submitted that it has been affirmed by the Division Bench that vide notification dated 15.01.1919 the State has delegated its power to Board of Revenue to lay down conditions for grant of exclusive and special privilege. I find that though no Rule has been framed by the Board of Revenue in exercise of powers under Section 90(9) of the Act, it is not in dispute that under Section 22 power to grant exclusive privilege of manufacture or supply of wholesale or manufacture and supply of wholesale has been specifically conferred upon the State Government and the power under Section 22 of the Act has been delegated to the Board of Revenue and therefore, I hold that the Board of Revenue has power to prescribe conditions for grant of exclusive privilege of manufacturing or supplying wholesale or of manufacturing and supplying wholesale of country liquor and spiced country liquor.

16. Mr. Krishnan Venugopal, the learned Senior Counsel appearing for the petitioner further submitted that delegation by notification dated 15.01.1919 does not confer power on the Board of Revenue to make Rules under Section 89. Only the State Government is empowered to frame Rules under Section 89(9) to impose restrictions for grant of exclusive privilege. By incorporating a condition under Clause 15(xix) the Board of Revenue has incorporated an ineligibility, which it is not empowered to prescribe as a condition in NIT. It is thus, submitted that the Board of Revenue can incorporate condition in NIT but it cannot prescribe ineligibility of a tenderer. There can be no dispute that by issuing administrative instructions, the government can fill up the gaps and supplement the rules. The only restriction is that the executive instructions should not be inconsistent with the statutory provisions and it must run subservient to the Rules already framed. In Sant Ram Sharma Vs. State of Rajasthan and Another, , it has been held that to fill up the gaps and supplement the rules, the government can issue instructions not inconsistent with the Rules already framed. In P.H. Paul Manoj Pandian Vs. Mr. P. Veldurai, , the Hon''ble Supreme Court has observed that, "the powers of the executive are not limited merely to the carrying out of the laws. In a welfare State the functions of the executive are ever widening, which cover within their ambit various aspects of social and economic activities. Therefore, the executive exercises power to fill gaps by issuing various departmental orders. The executive power of the State is coterminous with the legislative power of the State Legislature. In other words, if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue government orders with respect to it, subject, however, to the constitutional limitations". However, the difficulty arises in cases where there is no statutory rules framed or the rules are silent on any particular point. The present writ petition was filed seeking quashing of Clause 15(xix) of the NIT on the ground that the said Clause is ultra vires Rule 53(a) contained in notification dated 15.01.1919. By filing a rejoinder affidavit and during the course of hearing, it was contended on behalf of the petitioner

that Rule 53(a) is not attracted in the present case, as the said rule relates to retail sale. The respondent- State of Jharkhand has also taken a stand that Rule 53(a) does not govern the cases for grant of privileges. The private respondents have contended that in view of provision under Section 22 of the Excise Act, the Board of Revenue is competent to prescribe terms and conditions for NIT and thus, the conditions including Clause 15(xix) of NIT are valid conditions. Now, in the above background, this Court is required to decide, whether Clause 15(xix) of NIT has been validly incorporated in the NIT.

17. I find that power under Section 89(2)(g) is confined to retail sale of intoxicants which is not the case in hand. Moreover, under Section 90(9), the Board of Revenue has power for prescribing the restrictions under which or the conditions on which any license, permit or pass may be granted. It is no more in doubt that the Board of Revenue has power to prescribe condition in NIT. In "M/ s. Farinni Eleven UP" case, this Court authoritatively held that the Board of Revenue has authority to fix terms and conditions and the period of grant. For holding the Condition No. 15(xix) ultra-vires to the parent Act and the Rules, it is necessary to take into consideration the purpose of the Bihar Excise Act, 1915 as a whole, starting from the preamble to the last provision thereto, and more particularly provision under Section 22 of the Act. On a reading of the entire enactment read as a whole, the purpose for enacting Bihar Excise Act, 1915 appears to be raising of revenue and regulation and control of liquor trade. Granting a license is to regulate the liquor trade in public interest. In P.N. Kaushal and Others Vs. Union of India (UOI) and Others, , it has been held that, trade in liquor has historically stood on a different footing from other trades. Restrictions which are not permissible with other trades are lawful and reasonable in so far as, trade in liquor is concerned. That is why even prohibition of the trade in liquor is not only permissible but is also reasonable. The State possesses the right of complete control over all aspects of intoxicants. By incorporating Condition No. 15(xix), the said purpose appears to have been carried out and therefore, Condition No. 15(xix) cannot be said to be ultra vires the parent Act. In K. Ramanathan Vs. State of Tamil Nadu and Another, , it has been held that the power to "regulate" carries with it full power over the subject matter of Regulation and in absence of restrictive words, power must be regarded as plenary over the entire subject matter. In my view, the word "condition" itself connotes a limitation. The grievance of the petitioner is only with respect to Clause (xix) in Condition No. 15 however, there are various other clauses such as, furnishing certificate of having good moral character, non-fulfillment of which can also be interpreted as ineligibility of a tenderer however, there is no challenge to those conditions.

18. Referring to Section 42 of the Excise Act and Rule 53 of the Rules contained in notification dated 15.01.1919 and Rule 9 (IV) of Bihar Excise Rules of 2007, it is submitted that the legislative intent reflected in the above provisions clearly indicates that only upon conviction in a criminal case, grant of license can be denied to a tenderer and thus, condition contained in Clause 15(xix) of NIT was

beyond power of the Board of Revenue. I find that, in so far as, Section 42 of the Bihar Excise Act, 1915 is concerned, it deals with "power to cancel, suspend license, permit or pass or impose penalty". It is thus clear that power under Section 42 can be exercised only after grant of a license, permit or pass, under the Act. Obviously, registration of a criminal case subsequent to grant by the authority could not have been made a condition for cancellation of license, permit or pass. Referring to Rule 53 contained in notification dated 15.01.1919, it is noticed that it relates to grant of retail license and it is an admitted position that Rule 53 does not govern the grant of exclusive privilege by the Government in favour of a licensee. Similarly, whether the provisions of Bihar Excise Rules of 2007 have been made applicable in the State of Jharkhand or not, is not known and therefore, the argument referring to Rule 9(IV) also cannot lend assistance to the case of the petitioner.

19. It has been contended by the learned Senior Counsel for the petitioner that a condition which is arbitrary and which has no nexus with the object sought to be achieved, is liable to be struck down being in teeth of Article 14 of the Constitution of India. There cannot be any quarrel on this proposition of law however, simultaneously it has to be kept in mind that a law has to be applied in the facts of the case. Before it is concluded that a particular provision is violative of Article 14 of the Constitution, the nature of the condition sought to be imposed and the nature of the business in issue have to be kept in mind. Keeping in view the injurious nature of business in liquor, the legislature has given wide amplitude and freedom to the executive to prescribe conditions for grant of exclusive privilege. In R.K. Garg and Others Vs. Union of India (UOI) and Others, , it has been held that legislation in economic matters is based on experimentation. There may be possibility of an abuse but on that count alone, it cannot be struck down as invalid. In the said case, it has been held that, "laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as, freedom of speech, religion etc.". Though in the present case, Rules regulating grant of exclusive privileges have not been framed either by the State Government or by the Board of Revenue, the validity of Condition No. 15(xix) of NIT must be tested on the principles applicable to economic matters. And, Condition No. 15(xix) of NIT when tested on the touchstone of Article 14 of the Constitution, considering the object of the Bihar Excise Act, 1915 and the nature of power under Section 22 of the Act, it does not reflect arbitrariness or discrimination. I am of the opinion that Condition 15(xix) of NIT is not arbitrary and it does not violate the equality clause in Article 14 of the Constitution. Further, even though it has not been specifically mentioned that registration/pendency of a criminal case would act as a bar for grant of exclusive privilege under NIT, I am of the opinion that even if a condition that registration/ pendency of a criminal case is a disqualification for grant of privileges of the present kind, is prescribed, it would not violate Article 14 of the Constitution of India. Such a condition would neither be arbitrary nor illegal. The judgments in P.N. Kaushal and Others Vs. Union of India (UOI) and Others, and State of M.P.

and Others Vs. Nandlal Jaiswal and Others, have been cited to contend that Article 14 is available in cases of grant of liquor license. Though, the learned counsel for the private respondents have not disputed the said proposition by citing a contrary judgment of a larger Bench of the Hon''ble Supreme Court, as noticed above, I find that by requiring a tenderer to file an affidavit disclosing registration/pendency of a criminal case, the authorities have not acted in breach of Article 14 of the Constitution. It is by now well settled that the government when it acts in the matter of granting largesse, it cannot act arbitrarily. Whenever any governmental action fails to satisfy test of reasonableness and public interest, it is liable to be struck down as invalid. In In Re: Special Reference No. 1 of 2012, , it has been held that a public authority is ordained, therefore to act, reasonably and in good faith and upon lawful and relevant grounds of public interest. However, it is also well settled that there is no fundamental right to do trade or business in intoxicants. The State has the power to prohibit trades which are injurious to the health and welfare of the public. In State of Madras Vs. V.G. Row, , it has been held that no abstract standard or general pattern of unreasonableness can be laid down as applicable to all cases.

20. Relying on orders passed in Pawan Kumar Vs. The State of Bihar and Others, and in Atlas Transport Company Vs. State of Maharashtra and Others, , the learned Senior Counsel for the petitioner submitted that, pendency of a criminal case cannot be a ground for excluding the bid of a tenderer from consideration. It is further submitted that a person may be implicated on false accusations and, if on the ground of pendency of a criminal case a tenderer is excluded from the zone of consideration, it would lead to most arbitrary result and it would amount to a punishment with irreparable injury. From the materials brought on record, I find that the bid of the petitioner was rejected on the ground that it was not in terms of Condition No. 15(xix) of NIT. Though, from a reading of Clause (xix) of Condition No. 15 and the counter-affidavit filed by the State of Jharkhand it may be inferred that pendency of a criminal case may operate as a disqualification for grant of exclusive privilege under the NIT however, till the time a decision is taken by the Tender Committee rejecting the bid of a tenderer on the ground of pendency of a criminal case, the issue whether pendency of a criminal case can be made a ground for disqualification or not does not fall for consideration of the Court. On a mere apprehension that on the ground of pendency of a criminal case its bid may be rejected, a tenderer cannot decline to submit an affidavit as required by Clause (xix) of Condition No. 15 on the plea that such a condition is ultra vires the Excise Act and the Rules framed thereunder and thus void. I am of the opinion that till the time Clause (xix) of Condition No. 15 of NIT is declared ultra vires or inoperative, it remains a valid condition and a tenderer is required to submit an affidavit disclosing registration/pendency of the criminal case. It has been rightly contended on behalf of the private respondents that relevancy of the terms and conditions of NIT cannot be questioned by a tenderer.

21. In a series of judgments, it has been held that, "a decision is only an authority for what it actually decides". In Union of India (UOI) and Another Vs.

Major Bahadur Singh, , the Hon''ble Supreme Court has held that one additional or different fact may make a world of difference between conclusions in two cases. In State of Orissa and Others Vs. Md. Illiyas, , the Hon''ble Supreme Court has held that a case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In "British Rlys. Board v. Herrington", reported in (1972) 1 All ER 749, Lord Morris observed,

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case".

22. The reliance placed by the learned Senior Counsel for the petitioner on the decision in Patna High Court in "Pawan Kumar" case and "Atlas Transport Company" case is misplaced. The facts in the present case are entirely different from the facts in those cases. The bid of the petitioner has not been rejected on the ground of registration of criminal cases against it. In the cases relied on by the learned Senior Counsel for the petitioner, there is no discussion on the power of the Government to disqualify a tenderer on the ground of pendency of the criminal case.

23. It has been vehemently submitted on behalf of the private respondents that the petitioner is guilty of suppression of material facts. Neither in its representations dated 07.09.2014 and 10.09.2014 nor in the writ petition, the petitioner has disclosed pendency of criminal cases against the company and its Directors. It is further submitted that in the present proceeding also, the petitioner has made a false statement in as much as, in its rejoinder to the counter-affidavit of the State, the petitioner-company has stated that no case is registered against the petitioner or its Directors. Referring to affidavit filed by the petitioner-company in the year, 2011, it is submitted that the petitioner has made false statement while submitting its bid in the year, 2011 also however, it got away with its false affidavit because the judgment of the Bombay High Court was not in public domain and thus, the respondents were not aware of the same. Per contra, it has been submitted on behalf of the petitioner that in the rejoinder affidavit due to typographical error word "of" has crept in place of "or". Though, the petitioner has not disclosed pendency of criminal cases, it would be difficult to infer that the petitioner suppressed the material facts in its representations submitted to the Tender Committee. Moreover, suppression of material facts is not the ground on which the bid of the petitioner has been rejected by the Tender Committee however, Mr. Jitendra Singh, the learned Senior Counsel for respondent No. 6 has rightly contended that in exercising jurisdiction under Article 226 of the Constitution of India, if it is found that a party has not approached the Court with clean hands, the Court may not exercise its equitable jurisdiction in favour of the guilty party.

24. In Prestige Lights Ltd. Vs. State Bank of India, , the Hon''ble Supreme Court has held as under;

33. "It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter. "

25. In K.D. Sharma Vs. Steel Authority of India Ltd. and Others, , the Hon''ble Supreme Court has held as under;

34. "The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim".

26. As noticed above, it has been vehemently contended on behalf of the private respondents that the petitioner-company is still being run by its erstwhile Directors against whom criminal cases have been registered and Mr. Krishnan Venugopal, the learned Senior Counsel has strongly refuted such allegations, the fact remains that the company is an accused in the criminal cases filed by the C.B.I in the year, 1999 and 2001 and those cases are still pending trial. In its representations dated 07.09.2014 and 10.09.2014, the petitioner-company took a conscious plea that incorporation of Clause (xix) of Condition No. 15 of the NIT is arbitrary. Thus, it can be safely inferred that the petitioner was apprehending rejection of its bid on the ground of pendency of criminal cases. The learned Senior Counsel for the petitioner laboured to contend that nature of allegations in two criminal cases registered by C.B.I would indicate that the registration of the criminal cases would have no nexus with the execution of work under NIT and that the composition of the company has changed. In my opinion, such plea could have been taken by the petitioner only after duly disclosing the factum of registration of criminal cases against it. It was only in the counter-affidavit filed by the respondent No. 7 that a copy of the order passed by the Bombay High Court has been brought on record. Moreover, for adjudicating the plea taken by the petitioner that registration of a criminal case cannot be a ground for disqualification and Clause (xix) in Condition No. 15 of the NIT is arbitrary because there may be a situation in which a false criminal case may be registered against a tenderer, the petitioner was required to disclose the contents

of the cases lodged against it and it was under a duty to produce the copies of First Information Report of the cases lodged against it. The expression "material fact" would mean a fact necessary for adjudication of the issue raised in a case. In Arunima Baruah Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court has held that suppression must be of ''material'' fact. The Hon''ble Supreme Court has held thus,

12. "It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question."

27. Stressing on the necessity for disclosing the information under Clause 15(xix) of NIT, Mr. Pinaki Mishra, the learned Senior Counsel for the respondent No. 7 with reference to judgment in Devendra Kumar Vs. State of Uttaranchal and Others, , submitted that it was for the Tender Committee to take a decision whether in view of the pending criminal case against a tenderer, exclusive privilege for manufacturing and supply of country made liquor should be granted or not. In "Devendra Kumar" case, it has been observed that, the information sought by the employer if not disclosed, would definitely amount to suppression of material information. The case pending against a person might not involve moral turpitude, suppression of information itself amounts to moral turpitude.

28. There cannot be any dispute that one who comes to the Court, must come with clean hands. It is the duty of the person who approaches the Court, to come to the Court with a true case. The respondents have contended that the petitioner is not entitled for grant of any relief as, it has not disclosed the pendency of criminal cases against it. It is to be noticed that the petitioner, though has filed rejoinder affidavits and application seeking amendment, it has not either averred or produced the copies of First Information Report of the cases filed against it. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , the Hon''ble Supreme Court has stated;

6. "............ A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party".

29. The dubious conduct of the petitioner company is apparent from the stand

taken by it in its representation submitted to the authorities and the stand taken in the rejoinder affidavit filed to the counter-affidavit of the State. The claim of loss to public exchequer is also untenable. Though, the price quoted by the petitioner is not known to the respondent Nos. 6 and 7, it is pointed out that since the exclusive privilege of manufacturing and supply of country made liquor has been granted @ Rs. 4.68 per sachet, according to the petitioner''s own calculation, the difference in price would be only 3 paise per sachet.

30. One line of judgments cited by the learned Senior Counsel for the petitioner demonstrate that a rule cannot be framed contrary to the express provision of the Act. In the writ petition delegation of power under Section 22 of the Bihar Excise Act, 1915 has not been challenged and during the course of argument it has been admitted by the counsel appearing for the parties that Rule 53 has no application in the present case and thus, the judgments cited by the learned counsel are not relevant. Several judgments have been cited by the learned Senior Counsel for the petitioner to contend that the tendering authority cannot act in a discriminatory and/or arbitrary manner by relaxing the tender condition in favour of certain participants. It is submitted that the decision making process of the Tender Committee is vitiated by gross procedural impropriety and thus, it is open to judicial review. Referring to demand notice dated 14.08.2014, it is contended that the document of the Excise Department itself discloses that a dues of Rs. 17,14,860/- was pending against the respondent No. 6- M/s. Maa Tarini Natural Resources Pvt. Limited. Still, the objection filed by the petitioner has been rejected on the ground that no evidence was produced by the petitioner. It is further submitted that the least what was expected from the Tender Committee was to seek a report from different districts in the State of Jharkhand about pending dues against the respondent No. 6. The learned Senior Counsel for the respondent No. 6 has vehemently disputed the fact that any dues was pending against respondent No. 6 when it submitted its bid. It is submitted that with respect to the Assessment Year 2009-10, a proceeding was initiated and an ex-parte order was passed requiring the respondent No. 6 to pay an amount of Rs. 17,14,860/-. It is further submitted that under the NIT itself there is a provision for making payment of any dues by the tenderer within a prescribed period and thus, it was not a mandatory condition which would have disqualified respondent No. 6. Referring to objections of the petitioner to the eligibility of respondent No. 6, Shri Jitendra Singh, the learned Senior Counsel has submitted that the petitioner himself was not aware of the true facts. It is common knowledge that, in tender matters frivolous complaints are made against the tenderers and therefore, the Tender Committee has rightly rejected the objection of the petitioner. I am of the opinion that the decision of the Tender Committee does not suffer from any procedural irregularity. The condition of NIT has not been relaxed in favour of respondent No. 6 or respondent No. 7. In Siemens Public Communication Networks Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, , it has been held that, "the court should always keep the larger public interest in mind in order to decide whether its intervention is

called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere". The demand notice dated 14.08.2014 is an ex-parte order, is not disputed by the petitioner. Merely because a demand has been raised against respondent No. 6 in an assessment proceeding which has not attained finality, it cannot be concluded that the petitioner was in arrears of excise revenue. The Tender Committee was required to take a decision on the objections against a tenderer, on the basis of materials produced before it. Moreover, no such plea has been taken by the petitioner in the writ petition. Only in its rejoinder affidavit, the petitioner has raised the plea that respondent No. 6 was not eligible because there was a demand of Rs. 17,14,860/- subsisting against it. I find that, the facts disclosed in the present proceeding, do not lead to a conclusion that the proceeding of the Tender Committee suffers from procedural impropriety or that condition of NIT was relaxed in favour of the private respondents. In Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, , it has been held that, even when some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. In Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others, , the Hon''ble Supreme Court has held that, "In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted".

31. There is another aspect of the matter, "whether the State Government can be compelled to do business with a person against whom a criminal case has been registered", which needs to be considered particularly, in cases of grant of exclusive privilege in favour of a tenderer. In Commissioner of Police, New Delhi and Another Vs. Mehar Singh, , dealing with the submission that under the Delhi Police Rules, past involvement of a person in a criminal case is not a disqualification for appointment, the Hon''ble Supreme Court held that even though, Rule 6 does not make a person with criminal antecedent ineligible, to conclude that antecedents of moral turpitude however grave, can be overlooked, does not stand to reason. In Delhi Development Authority and Another Vs. UEE Electricals Engg. (P) Ltd. and Another, , one of the Directors of the Company assaulted the Assistant Engineer of DDA and caused injury to him. The Works Advisory Board decided that the tender of the company should not be considered. The Hon''ble Supreme Court held that, "This is not a case where the Authority can be said to have acted in a malafide manner or with oblique motives. If the Authority felt that in view of the background facts, it would be undesirable to accept the tender, the same is not open to judicial review in the absence of any proved malafide or irregularity".

32. In view of the above discussions, I find no merit in the writ petition and accordingly, it is dismissed.

