(2025) 11 TP CK 1787

In the Tripura High Court

Case No : Writ Petition (C) No. 421, 423, 446 Of 2025

Dipjoy Biswas & Ors. APPELLANT

Vs

State Of Tripura & Ors RESPONDENT

Date of Decision : 04-11-2025

Acts Referred:
Tripura Excise Rules, 1990 — Rule 22, 29A, 154

Citation : (2025) 11 TP CK 1787

Hon'ble Judges : M.S. Ramachandra Rao, CJ;S. Datta Purkayastha, J

Bench : Division Bench

Advocate : Purusuttam Roy Barman, Samarjit Bhattacharjee, Dipjyoti Paul, S.M. Chakraborti, P. Gautam, Dipankar Sarma, Pinki Chakraborty

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao, CJ

1. Heard Mr. Purusuttam Roy Barman, learned Senior Counsel assisted by Mr. Samarjit Bhattacharjee, counsel appearing for the petitioners as well as Mr. S.M. Chakraborti, learned Advocate General assisted by Mr. P. Gautam, Senior Government Advocate and Mr. Dipankar Sarma, Addl. Government Advocate appearing for the respondents-State.

2. In these three Writ Petitions, common questions of fact and law arise for consideration. Therefore, they are being disposed of by this common order.

Background facts

3. The Collector of Excise, Dhalai District [respondent No.5 in WP(C) No.421 of 2025] issued a Notice Inviting Tender on 07.02.2024 for the settlement of retail vend of Santirbazar Foreign Liquor Shop under Dhalai District in terms of the provisions of Rule 154 read with Rule 22 and Rule 29A of the Tripura Excise Rules, 1990.

4. Similarly, the Collector of Excise, West Tripura District [respondent No.5 in

WP(C) No.423 of 2025] had issued a Notice Inviting Tender on 13.10.2023 for the settlement of retail vend of Champaknagar Foreign Liquor Shop under West Tripura District under the same provisions.

5. Likewise, he [respondent No.5 in WP(C) No.446 of 2025] had also issued a Notice Inviting Tender on 13.10.2023 for period 1.12.2023 till 31.3.2023 and again on 19.11.2024 for the settlement of retail vend of Anandanagar Foreign Liquor Shop under West Tripura District under the same provisions for the period up to 31.3.2025.

6. The petitioners in WP(C) No.421 of 2025, WP(C) No.423 of 2025 and WP(C) No.446 of 2025 submitted their bids with regard to the aforesaid tenders on 28.02.2024, 06.11.2023 and in November, 2024 respectively for getting allotment of license of the respective Foreign Liquor Shops.

7. Vide separate letters dt. 13.06.2024, 01.03.2024 and 24.12.2024 respectively, the petitioners in these three Writ Petitions were informed by the respective Collectors of Excise that their bids had been accepted and they were asked to submit details of locations.

8. On 20.06.2024, 15.03.2024 and 01.01.2025 respectively, petitioners in the three Writ Petitions gave particulars about the location of the proposed Foreign Liquor Shops along with copies of relevant documents.

9. However, on 13.05.2025, 24.06.2025 and 24.06.2025 respectively, the respondents informed the petitioners that the respective tenders were cancelled. These communications have been filed by the petitioners as Annexure-6, Annexure-5 and Annexure-8 in the three Writ Petitions.

Contentions of petitioners

10. Petitioner in WP(C) No.421 of 2025 contends that the cancellation of the respective tenders for the Foreign Liquor Shop for which he had submitted his bid was sudden, irrational and arbitrary, that the e-mail communication issued was mechanical and cryptic and he had a legitimate expectation of being appointed as licensee of the Foreign Liquor Shop since he had complied with all the relevant terms and conditions. He contends that there is absolutely no reason for cancellation of the NIT and that the cancellation was ex facie arbitrary, illegal and irrational and there was no genuine ground or bona fide reason for the respondents to arbitrarily cancel the tender process all of a sudden after calling for investment and participation by the petitioner. According to him, the respondents had acted arbitrarily and whimsically and there was no rationale behind cancelling the tender process and they have acted unfairly.

11. Similar plea is also raised by the petitioner in WP(C) No.423 of 2025.

12. As regards WP(C) No.446 of 2025, the e-mail issued by the respondents on 24.06.2025 mentions that the bid of the petitioner in that Writ Petition was rejected during Financial Evaluation by the duly constituted committee.

While reiterating the submission of the petitioners in the other Writ Petitions, counsel for the petitioner in this Writ Petition contended that through a letter dt.24.12.2024 he had been informed that he was the successful highest bidder for the Anandanagar Foreign Liquor Shop and his bid could not have been rejected during Financial Evaluation by the duly constituted committee. According to him, the cancellation of the tender was ex facie arbitrary, illegal and irrational.

13. The petitioners contend that they had incurred substantial expenditure and the details of the expenditure allegedly incurred by the petitioners is stated to be as under:

WP(C) No.421 of 2025

Statement of Expenditure in c/w Notice Inviting Tender, dt.07.02.2024.

Sl.

Particulars

Amount (in Rupees)

1.

Deducted Earnest Money

10,000/-

2.

Shop Rent from June 2024 for 1 year @ Rs.6,000/- per month

72,000/-

3.

Security deposit to Owner for availing Lease

10,000/-

4.

Monthly salary paid to Staffs for 1 year @ Rs.10,000/-

1,20,000/-

5.

Expenses on Shop infrastructure and renovation

5,00,000/-

6.

Legal Expenses

50,000/-

7.

Total=

Rs.7,62,000/-

WP(C) No.423 of 2025

Statement of Expenditure in c/w Notice Inviting Tender, dt.13.10.2023.

Sl.

Particulars

Amount (in Rupees)

1.

Deducted Earnest Money

10,000/-

2.

Shop Rent from June 2024 for 1 year @ Rs.5,000/- per month

60,000/-

3.

Security deposit to Owners for availing Lease

1,00,000/-

4.

Monthly salary paid to Staff for 1 year @ Rs.10,000/-

1,20,000/-

5.

Expenses on Shop infrastructure and renovation

5,00,000/-

6.

Legal Expenses

50,000/-

7.

Total=

Rs.8,40,000/-

WP(C) No.446 of 2025

Statement of Expenditure incurred by the petitioner in c/w NIT dt.12.10.2023.

Sl.

Particulars

Amount (in Rupees)

1.

Shop Rent from December, 2024 to September, 2025 @ Rs.12,000/- per month

1,20,000/-

2.

Legal Expenses (approx.)

60,000/-

3.

Infrastructure (approx.)

1,56,000/-

4.

Interest on EMD Deposit of Rs.1,70,000/- @ 12% per annum from date of deposit to date of return

5.

Miscellaneous expenses

25,000/-

6.

Total Expenses=

Rs.3,61,000/-

14. Counsel for the petitioners have placed reliance on the judgment of the Supreme Court in Subodh Kumar Singh Rathour v. Chief Executive Officer & others AIR 2024 SC 3784 and have contended inter alia that arbitrary, unfair or unreasonable action on the part of the State in cancellation of a tender can be interfered with in exercise of judicial review powers by the High Court. According to them, judicial review is permissible to prevent arbitrariness of public authorities and to ensure that they do not exceed or abuse their powers in contractual transactions. They contend that when contractual power is being used for public purpose, it is amenable to judicial review. They also contend that cancelling of the tender carries a corresponding public duty to act in a reasonable

and rationale manner.

15. They also point out that the NITs which are subject matter WP(C) No.421 of 2025 and WP(C) No.423 of 2025 were valid for 16 months from 01.12.2023 to 31.03.2025.

16. They contend that there is no reason assigned for the delay in conclusion of the tender process in WP(C) No.421 of 2025 after the petitioner submitted his bid on 28.02.2024 and after he was informed on 13.06.2024 that his bid was the highest bid.

17. Petitioner in WP(C) No.423 of 2025 contended that petitioner had submitted his bid on 06.11.2023 and again the process was dragged on unreasonably beyond 15.03.2025 and abruptly cancelled on 24.06.2025.

18. It is also pointed out that in WP(C) No.446 of 2025, respondents though issued a tender on 12.10.2023, reissued an NIT on 19.11.2024 for the period up to 31.03.2025 and they ought to have processed the tender quickly and instead unreasonably delayed it beyond 31.03.2025.

The stand of the respondents

19. Counter affidavits have been filed on behalf of the respondents in the three Writ Petitions.

20. It is admitted in para-11 of the counter affidavit filed in WP(C) No.421 of 2025 that the petitioner submitted his bid on 28.02.2024 in response to the Notice Inviting Tender and that after opening the technical bid it was found that he was the highest bidder. It is also admitted that the Collector of Excise, Dhalai District, Jawaharnagar had issued a letter on 13.06.2024 informing the petitioner of the same and asking the petitioner to submit details of the proposed location and description of the building with all required documents within two weeks. It is also admitted that the petitioner submitted the said documents on 20.06.2024 for field verification.

21. It is contended that Award of Contract/Agreement had to be executed between the dealer and the licensing authority and that unless and until any agreement in the form of an Award of Contract was signed by both parties, no right accrues in favour of the bidder to get the license of the Foreign Liquor Shop.

22. It is further contended that liquor is Res Extra Commercium and there is no fundamental right to trade or do business with liquor. According to the respondents, citizens do not have a fundamental right to engage in the trade or business of liquor as such activities are considered outside the scope of ordinary commerce, and the State has authority to entirely prohibit any trade or business involving potable liquor or may establish a monopoly over it.

23. It is further contended that the tender rules and the Notice Inviting Tender explicitly stipulate that the State reserves the absolute right to cancel the tender process at any stage without assigning any reason and in exercise of this

contractual right, the respondents had validly cancelled the tender.

24. It is stated that the cancellation occurred due to expiry of the tender period as provided in the tender documents and the EMD was returned to the petitioner through online system.

25. In WP(C) No.423 of 2025 similar stand is taken while admitting that the Writ Petitioner was offered on 01.03.2024, the settlement of Champaknagar Foreign Liquor Shop when the highest bidder backed out for the remaining part of the financial year, and he also submitted the requisite documents on 15.03.2024 in response to the letter dt.01.03.2024 sent by the respondents. It is again reiterated that the cancellation of the tender occurred due to expiry of the tender period as provided in the tender documents.

26. In WP(C) No.446 of 2025 it is admitted that a letter dt. 24.12.2024 was addressed to the petitioner in the said Writ Petition informing him that he is the successful highest bidder, that he was asked to submit certain documents through the same letter, the respondent No.5 in the said Writ Petition even recommended to the Commissioner of Excise for acceptance of his highest bid and that the petitioner even submitted the said documents. It is also stated that the recommendation was only in connection with the settlement of the Anandanagar Foreign Liquor Shop for the remaining period of the financial year 2024-25, but the petitioner had proposed two locations and ultimately the Commissioner of Excise on 30.04.2025 had informed that the tendering period having expired, the EMD deposited by the bidders should be released by cancelling the e-tender.

27. The learned Advocate General appearing for the respondents sought to contend that there is no fundamental right to do business in liquor and placed reliance on the Supreme Court judgment in State of Tamil Nadu represented by Secretary and others v. K. Balu and another (2017) 6 SCC 715. He also placed reliance on the decision in Prakash Asphaltings and Toll Highways (India) Limited v. Mandeepa Enterprises and others [Civil Appeal No.11418 of 2025] dt. 12.09.2025 to contend that Constitutional Courts should exercise utmost restraint in interfering with a tender process unless the threshold of judicial review is met.

28. He reiterated the contentions raised in the counter affidavits filed in the Writ Petitions.

Consideration by the Court

29. The plea of the respondents that petitioners have no fundamental right to trade with the State in liquor is not in dispute.

30. But It is not the case of the respondents that they have suddenly brought in a law prohibiting sale and consumption of liquor in the State and the petitioners therefore have no right to file the Writ Petitions.

31. Having issued NITs asking people to bid for operating liquor outlets in various parts of the State, the respondents are estopped from raising this plea.

32. We hold that therefore the petitioners are entitled to file Writ Petitions challenging the cancellation of the NITs asking this Court to judicially review this decision.

33. Merely because the agreement/Award of Contract document is not executed by the parties, the respondents cannot take advantage of the same, because they asked each of the petitioners to submit documents where the business is to be conducted. So each of the petitioners had a legitimate expectation of award of the respective outlets to them and had changed their position by incurring considerable expenditure for (a) taking premises on lease after paying security deposits to the owners of the premises leased, (b) for purpose of infrastructure, (c) legal expenses for fulfilling the formalities and for this litigation apart from (d) paying EMD to the respondents. Having induced the petitioners to change their position by telling them that they are highest bidders, which would normally lead to execution of the agreements, the respondents cannot take advantage of the non-execution of the agreement and cause loss to petitioners.

34. Also from the facts narrated above, the following is apparent:

The duration of the NIT in W.P.(C) No.421 and 423 of 2025 was from 01.12.2023 to 31.03.2025.

Writ

Petition

Date of

Issuance

of NIT

Date of

petitioner’s application

Date of communication

to petitioner

that his bid is

the highest bid

Date of

Cancellation

of NIT

421

Of

2025

7.2.2024

28.2.2024

13.06.2024

13.5.2025

423

Of

2025

13.10.2023

6.11.2023

01.03.2024

24.6.2025

35. A perusal of the Counter affidavit filed by respondents in W.P.(C) No.421 of 2025 does not disclose why, after communicating to petitioner that he is highest bidder on 13.6.2024, nothing was done by respondents till 13.5.2025; and on that day the NIT was cancelled on ground that the NIT has lapsed on 31.3.2025. The respondents are aware that the petitioner would have to keep paying the rent to the leased premises and maintain the infrastructure all this time up to 13.5.2025. Their inaction for almost a year is inexplicable, arbitrary, unreasonable and violates Art.14 of the Constitution of India.

36. As regards the W.P.(C) No.423 of 2025, the case of the respondents was that to the NIT dt.13.10.2023, initially 7 people submitted bids and bid of one Smt. Jhumpa Debnath was accepted, but she did not show the premises for operating the outlet. So on 1.3.2024, petitioner was offered the said outlet. Petitioner was asked to submit documents, which he complied on 15.3.2024, but nothing was done till 24.6.2025, on which date the NIT was cancelled on ground that it had lapsed on 31.3.2025. The respondents are aware that the petitioner would have to keep paying the rent to the leased premises and maintain the infrastructure all this time up to 24.6.2025. Their inaction for more than a year is inexplicable, arbitrary, unreasonable and violates Art.14 of the Constitution of India.

37. As regards, W.P.(C) No.446 of 2025, initially an NIT was issued on 13.10.2023 for settlement of retail vends of Foreign liquor Shops from 1.12.2023 to 31.12.2023, but later on 19.11.2024, another NIT was issued for settlement of Anandanagar Foreign liquor Shop for remaining period of financial year 2024-25 i.e. for the period up to 31.3.2025. Thus the life of the NIT was very short – only for 4 months and 11 days.

Having informed the petitioner therein that he was the highest bidder on 24.12.2024, and after asking him to submit documents regarding the location of the shop, which he did on 1.1.2025, it is inexplicable how on 24.6.2025, the NIT was cancelled for the ostensible reason that it was 'rejected during the financial evaluation'.

38. In paras 5 and 10 of the counter affidavit of respondents it is stated that the letter dt.24.12.2024 was issued after technical and financial evaluation. So it is impermissible to reject the NIT on ground of 'financial evaluation' because if the financial evaluation was bad, the said letter could not have been issued.

39. Moreover at para 19, a totally new reason that on 30.4.2025, the State Government had informed that the tender period lapsed is given, contradicting the reason given in the email dt.24.6.2025.

40. When the tender period itself is very short i.e. from 19.11.2024 to 31.3.2025, hardly 4 ½ months, the respondents could not have sat idle for this entire period without taking any decision and abruptly cancel the NIT by giving wrong and arbitrary reasons.

41. In Subodh Kumar Singh Rathour (1 supra), the Supreme Court considered the scope of judicial review of an executive action challenging a tender and held:

" 60. Now coming to the facts of the case at hand, the appellant has challenged the cancellation of the tender at the instance of the respondent on the ground of being manifestly arbitrary and influenced by extraneous considerations…..

61. … … …

62. Thus, the present dispute even if related to a tender, cannot be termed as a pure contractual dispute, as the dispute involves a public law element. Although there is no discharge of a public function by the respondent towards the appellant yet there is a right to public law action vested in him against the respondent in terms of Article 14 of the Constitution. This is because the exercise of the executive power by it in the contractual domain i.e., the cancelling of the tender carries a corresponding public duty to act in a reasonable and rationale manner. Thus, we find that the writ petition filed by the respondent was maintainable and the relief prayed for could have been considered by the High Court in exercise of its writ jurisdiction.

… …

67. To enthuse efficiency in administration, a balance between accountability and autonomy of action should be carefully maintained. Overemphasis on either would impinge upon public efficiency. But undermining the accountability would give immunity or carte blanche power to act as it pleases with the public at whim or vagary. Whether the public authority acted bona fide would be gauged from the impugned action and attending circumstances. The authority should justify the action assailed on the touchstone of justness, fairness and reasonableness.

Test of reasonableness is more strict. The public authorities should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion has been established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason. [See: Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors. : (1993) 2 SCC 279]

… …

69. To ascertain whether an act is arbitrary or not, the court must carefully attend to the facts and the circumstances of the case. It should find out whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to State action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non-application of mind without due regard to the rights of the parties and public interest may be a clear indicator of arbitrary action.

70. One another way, to assess whether an action complained of could be termed as arbitrary is by way of scrutinizing the reasons that have been assigned to such an action. It involves overseeing whether the reasons which have been cited if at all genuinely formed part of the decision-making process or whether they are merely a ruse. All decisions that are taken must earnestly be in lieu of the reasons and considerations that have been assigned to it. The Court must be mindful of the fact that it is not supposed to delve into every minute details of the reasoning assigned, it need not to go into a detailed exercise of assessing the pros and cons of the reasons itself, but should only see whether the reasons were earnest, genuine and had a rationale with the ultimate decision. What is under scrutiny in judicial review of an action is the decision-making process and whether there is any element of arbitrariness or mala fide.

71. Thus, the question to be answered in such situations is whether the decision was based on valid considerations. This is undertaken to ensure that the reasons assigned were the true motivations behind the action and it involves checking for the presence of any ulterior motives or irrelevant considerations that might have influenced the decision. The approach of the court must be to respect the expertise and discretion of administrative authorities while still protecting against

arbitrary and capricious actions. Thus, now the only question that remains to be considered is whether the action of the respondent to cancel the tender could be termed as arbitrary?"

42. Judged by the tests laid down in the above decision as to scope of judicial review of cancellation of a tender, we are of the view that the respondents, though fully aware of the duration for which the Foreign Liquor vends in question were to be settled on successful bidders, were guilty of deliberate inaction during the respective periods of the NITs for inexplicable reasons after informing each of the petitioners who submitted tenders that their tenders were the highest tenders, and asking them file documents showing the location etc. They cannot take advantage of their own deliberate inaction and justify the cancellation of the NITs on the ground that the periods of the NITs had lapsed.

43. In Kusheshwar Prasad Singh v. State of Bihar (2007) 11 SCC 447, at page 451, the Supreme Court explained the application of the principle commodum ex injuria sua nemo habere debet (NO ONE CAN TAKE UNDUE ADVANTAGE OF HIS OWN WRONG) in the following manner:

"12. So far as the contention of the appellant that the proceedings had been initiated in 1973-1974 and final order was passed on 7-1-1976 is not disputed and cannot be disputed. If it is so, submission of the appellant is well founded that final statement as required by sub-section (1) of Section 11 ought to have been issued and effect ought to have been given to the final order. Admittedly, no appeal was filed. Nor the order was challenged by any party. The appellant is right in contending that final statement ought to have been issued immediately or in any case within "reasonable time". The authority cannot neglect to do that which the law mandates and requires doing. By not issuing consequential final statement under Section 11(1) of the Act, the authority had failed to discharge its statutory duty. Obviously, therefore, the appellant is justified in urging that such default in discharge of statutory duty by the respondents under the Act cannot prejudice him. To that extent, therefore, the grievance of the appellant is well founded.

13. The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.

14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal AIR 1961 SC 1353 wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the

Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).

15. In Union of India v. Major General Madan Lal Yadav 1996) 4 SCC 127 the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:

"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong"."

44. For the aforesaid reasons, we are of the view that the cancellation of the NITs by the respondents amounts to them take undue advantage of their own inaction and is thus arbitrary, unreasonable and unsustainable.

45. The Writ Petitions are accordingly allowed with costs of Rs.50,000/- each to be paid to the petitioners in these Writ Petitions; and the cancellation of the NITs by respondents is declared arbitrary, unreasonable and violative of Art.14 and 300-A of the Constitution of India. The petitioners are given liberty to approach the Civil Court to claim losses sustained by them consequent on such cancellation by proving the losses claimed by them with evidence.

46. Pending miscellaneous applications stand disposed of.

