(2006) 08 GAU CK 0096

In the Gauhati High Court

Nilu Singha Roy and Others APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 301, 304

Citation : (2007) 2 GLT 740

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—In Writ petition (C) No. 118 of 2006, the petitioners have challenged the Advertisement and Notice Inviting Tender (called ''NIT'' in short hereinafter) for settlement of Foreign Liquor and Counrty Liquor shops by auction method under Notification F. 1(25)-Ex/S/2006/39 dated 21.01.2006 (Annexure-2 to the writ petition) and for renewal of their licenses under South Tripura District for the financial year 2006-2007, however the petitioners have not challenged any corrigendum.

2. In W.P.(C) No. 117 of 2006 three (3) petitioner (Sri Bishnu Chandra Pal, Petitioner No. 1, who participated in the settlement process but was not successful, Petitioner No. 2, Sri Swapan Deb did not participate, Petitioner No. 3, Sri Tapan Deb said to have participated but was not declared successful) have challenged the advertisement and Notification No. 3688-89/F.IV-1(52) CEW/96(P-1) dated 18.01.2006, whereby, retail vend foreign liquor and country liquor shops proposed to be settled through auction method (emphasis supplied) in district West Tripura with further prayers for issuing directions to the respondents to renew the licenses of their shops.

3. In W.P.(C) No. 115 of 2006, the petitioners have prayed for renewal of their licenses and setting aside or quashing the ''NIT'' of retail vend of Foreign liquor and Country liquor shops proposed to be settled by advertisement and

Notification No. 3688-89/F.IV-1(52)CEW/96(P-I) dated 18.01.2006 (Annexure-2) through auction method (emphasis supplied) for the year 2006-2007 in West Tripura, Agartala. Both the petitioners had participated in the auction process and were not declared successful, however, corrigendum if any is said to be not under challenge.

4. In W.P.(C) No. 77 of 2006 the petitioners have challenged the (NIT) and Advertisement notice dated 21.01.2006 proposed to settle retail vend of foreign liquor and country liquor shops under South Tripura District though auction method (emphasis supplied) for the financial year 2006-2007. The bids were to be submitted with specific documents indicated in the notification with certain conditions.

Corrigendum dated 21.01.2006 was issued on 01.02.2006. The relevant paragraphs of the corrigendum are given as below:

i) In heading please read "Notice Inviting Tender for settlement of existing retail foreign liquor and country liquor shops"

ii) In para 1 the term Tender may be substituted in place of term auction.

iii) In Para 6 the following may be incorporated. The bid money quoted by the successful bides shall be treated as license fee for the year 2006-07 and successful tenderers may get the facility of further extension on year to year basis subject to 3(three) years in all in the following method. For 2nd year license fee would be increased 20% on the 1st year''s (2006-07). License fee. For 3rd year license fee would be increased 20% on the 2nd year''s (2007-08) license fee for foreign liquor shops and in the same method License fee for country liquor shops would be increased @ 15% for the 2nd and 3rd year.

iv) In para 7 (seven) of the term bid may be deleted. However, the said corrigendum dated 01.02.2006 was not challenged by the petitioner. It is necessary to mention that out of five petitioners Shri Sujit Kumar Lodh, Shri Barun Chandra Sarkar, Shri Swapan Pal and Shri Joy Sankar Bhowmik, i.e., petitioners No. 1, 2, 3 & 5 respectively have participated in the process and were declared successful bidder, whereas, Shri Dilip Majumder did not participate.

5. In W.P.(C) No. 76 of 2006, the petitioners have prayed for setting aside/ quashing the advertisement and ''NTT'' dated 18.01.2006 (Annexure-3) for settlement of retail vend of Foreign liquor and Country liquor shops by auction method for the year 2006-2007 and seeking further directions for the renewal of licence of the petitioners for their respective sites under Tripura West. Out of four petitioners Shri Dulal Guha Roy, Smt. Mayarani Debnath and Shri Harisadhan Debnath have participated in the process and were declared successful. However, Shri Dwijapada Saha, the petitioner No. 4 however had participated but was not declared successful. The corrigendum said to have been issued is not under challenge.

6. In W.P.(C) No. 57 of 2006 the ''NIT'' and advertisement dated 18.01.2006 for

settling the existing retail Foreign liquor and Country liquor shops through auction method for the year 2006-2007 is under challenge, however, the corrigendum dated 31.01.2006 published in Dainik Sambad dated 01.02.2006 is not under challenge. It is necessary to mention that the sole writ petitioner had participated in the process but was not declared successful.

7. In W.P.(C) No. 55 of 2006, the writ petitioner has challenged the ''NIT'' and advertisement dated 18.01.2006 (Annexure-2) for settling the Foreign liquor and Country liquor shops by auction method for the year 2006-07 in West Tripura and corrigendum dated 31.01.2006 published in Dainik Sambad dated 01.02.2006 with further prayer not to open sealed tender forms.

8. In W.P.(C) No. 54 of 2006, the ''NIT'' and advertisement dated 18.01.2006 (Annexure-2) for the settlement of existing retail Foreign liquor and Country liquor shops by auction method for the year 2006-07 in West Tripura, and corrigendum dated 31.01.2006 published in Dainik Sambad dated 01.02.2006 (Annexure-3) are under challenge. The sole petitioner had participated in the process and was declared successful.

9. In W.P.(C) No. 53 of 2006, the ''NIT'' and Advertisement dated 18.01.2006 (Annexure-2) for settlement of existing retail Foreign liquor and Country liquor shops "by auction method for the year 2006-07 in West Tripura, published in Dainik Sambad dated 19.01.2006 and corrigendum dated 31.01.2006 published in Dainik Sambad dated 01.02.2006 (Annexure-3) are under challenge. The corrigendum is said to have prescribed as below:

3. The existing retail Foreign liquor and Country liquor shops will be settled through tender in an around existing sites/locations under the provision of Rule 29A of the Tripura Excise Rules, 1990 for the year 2006-2007 subject to fulfillment of certain terms and conditions as required under Tripura Excise Act/ Rules.

5. The bidder shall deposit 50% of the bid money in favour Collector of Excise, West Tripura Agartala in the form of deposit at all on any branch of State Bank of India.

It is necessary to mention that the sole petitioner participated in the process and was declared successful.

10. For and on behalf of the petitioners common arguments have been advanced in all the writ petitions as below:

(a) The petitioners were issued licenses to set up foreign liquor shops under the provisions of Tripura Excise Act, 1987, and Tripura Excise Rules, 1990, and under valid licenses issued to them they were carrying the trade of country made liquor for the last more than a decade and their licenses were being renewed from time to time by way of selection and while holding such licenses, the petitioners have never flouted or violated any of the terms and conditions prescribed by the State Government and its authorities.

(b) The petitioners have since made heavy investments in their establishment and out of earnings from these liquor shops, the livelihood of their families are being maintained.

(c) In reference to the advertisement and ''NIT'' the retail vend of foreign liquor and country liquor shops initially were to be settled by auction method with some conditions in reference to the Rule 19(A) of Tripura Excise Rules 1990(for short ''Rules 1990'')however, subsequent indications in corrigendum for settlement by tender process with other conditions are beyond the scope of the provisions of the Tripura Excise Act, 1987 (for short (Act, 1987'') as the settlement of shops by way of tender process was not contemplated under the provisions of ''Rule'' 154 of ''Rules, 1990'' as well as under the Amendments brought through Tripura Excise Rules, (for short ''Rules, 1991'') and Tripura Excise Third Amendment Rules, 1996 (for short ''Rule 1996). Since settlement of shops by selection process has become the established practice of past therefore the settlement by tender process are inconsistent to the provisions of the ''Act'' as well as the ''Rules''.

(d) The change in the mode of settlement of shops by way of tender can not be proper justification of policy of the State Government and in the interest of public at large when such change or switch over from the mode of settlement by selection to the tender process is going to deprive the fundamental/legal rights and livelihood of petitioners guaranteed under Article 21 of the Constitution of India.

(e) Prescribing the condition of depositing 50% of the bid amount as indicated in the ''NIT'' shall not be in the interest of the confidentiality of all the participants and the petitioners.

(f) Irrespective of the fact that on the strength of the interim order of High Court, the petitioners have participated in the settlement process and have been declared successful bidder, still they are aggrieved by the mode of settlement of the shops for foreign liquor as well as country made liquor as the same was not made by way of selection process but was made by way of tender process.

(g) The State Government in the garb of implementation of policy measures, and in the name of enhancing the State revenue cannot be allowed to resort to the change of settlement process from selection to the tender method which is not provided in the statute or the Act or the Rules applicable for settlement of the shops for issuance and renewal of licence of liquor. According to the petitioners they were allocated licenses for foreign and country made liquor by selection process and they are carrying such trade/business for more than a decade, as such, under protection of legitimate expectations they are entitled to be allocated licenses by the selection process only.

11. On the other hand, it has been argued by Mr. U.B. Saha, learned Senior Government Advocate for the State that the petitioners have no case at all, as all most all the petitioners have already participated in the process of settlement of

shops on the strength of the interim order of High Court and most of them have also been declared successful and those petitioners who had not chosen to participate in the settlement process of shops, and those who participated and failed however did not come to this Court, the cause of action in their matter have become infructuous after settlement of shops in question. In order to enhance the state revenue and keeping in view the observations of the High Court made in different writ petitions from time to time and in reference to the clear declaration and disclosure of switching over to the tender process, finalization of settlement of shops and issuance of licenses in respect of liquor as a matter of policy measure indicated in different counter affidavits of the earlier writ petitions, the State Government by a conscious decision has come forward to settle the shops by tender process and for this purpose by empowering the Collector of different districts of the State Government within the provisions of the Act and ''Rules, 1991'' and ''Rules 1996''. As argued on behalf of the State, there cannot be any fundamental right to carry on liquor trade or business. The issue of maintaining the families from liquor business is also not a fundamental right. Issuance of licenses in favour of the petitioners in past cannot give any right for further allocation of licenses to them by selection or some process in the name of legitimate expectation. The procedure adopted by the State Government cannot be said as arbitrary or malafide or unreasonable or unfair as the petitioners could not indicate any of the point or could not demonstrate any way as to how they have been treated unfairly or arbitrarily, where as, many of the petitioners have not even challenged the corrigendum. According to Mr. Sana, every Advertisement/NTT under challenge in the writ petitions had initially indicated settling of the shops for the year 2006-2007 by way of auction method only, therefore, challenge to such settlement becomes redundant unless the corrigendum subsequently issued for settling these shops by tender process is challenged specifically for which majority of petitioners have failed and that too cannot be allowed as switching over to tender process is an outcome of conscious decision of State Government under policy measure. Tender is one of the aspects or modes of selection. The majority of petitioners have also participated in the settlement process and have been declared successful bidder, as such their cause of action does not survive at all.

12. The relevant provisions of Act and Rules, which are necessary and have also commonly been referred by the learned Counsel of both the sides, are provided as below:

In Tripura Excise Act, 1987:

2.(m) "Intoxicant" means--

i) any liquor; or

ii) any substance from which liquor may be distilled and which is declared by the State Government by notification in the Tripura Gazette to be an intoxicant for the purpose of this Act; or

iii) any intoxicating drug;

*** *** *** 2(o) "Liquor" means intoxicating liquor and includes all liquid consisting of or containing alcohol and any substance which the State Government, by a notification may declare to be liquor for the purpose the Act.

*** *** *** 2(t) "Prescribed" means prescribed by rules made under this Act.

"Section 18": License required for sale:- No intoxicant and no portion of a hemp plant (Cannabis Sativa) from which an intoxicating drug can be manufactured or produced, shall be sold except under the authority and subject to the terms and conditions of license granted in that behalf by the Collector in conformity with general instructions issued by the State Government in respect of settlement of any class or classes of vend Licenses;

Provided that:

1) a license for such sale in more than one district shall be granted only by the Excise Commissioner or by a Collector specially authorized in that behalf by the Excise Commissioner;

2) a cultivator or owner of any hemp plant (Cannabis Sativa) may sell without license, those portions of the plant from which an intoxicating drug can be manufactured or produced, to any person licensed for the purpose under this Act, to any officer whom the Excise Commissioner may authorize to purchase or receive the same.

3) No license shall be required for any of the following sales. Namely,

a) the sale of foreign liquor lawfully procured by any person for his private use, within the permissible limit when such sale is made by such person himself or on his behalf upon his quitting station, or on behalf of his representatives in interest after his decease.

*** *** *** "Section 27": Payment for Grant of Exclusive Privilege:

Instead of, or in addition to any duty livable under this Act, the State Government may, direct payment of a sum to be fixed by it in consideration of the grant of any exclusive privilege under section.

"Section 28": Preparation for list of places for which it is proposed to grant license for the retail of spirit:

Before the expiry of every period for which existing licenses for the retail sale of spirit are in force the Collector shall prepare a list in a form prescribed by the Excise Commissioner showing what license it is proposed to grant for the retail sale of spirits for consumption on the vendors'' premises, for the next period of settlement.

"Section 36": Fees for terms, conditions, and form of, and duration of licenses, permits and passes--Every licenses, permit or passed under this Act--

a) shall be granted--

i) on payment of such fees (if any), and

ii) Subject to such restrictions and on such conditions and

b) shall be in such form and contain such particulars as the State Government may direct.

"Section 37": Grant of license, permit etc.:

Every license, permit or pass under this Act shall be granted for such period as may be prescribed.

"Section 43": Bar to right of renewal and to compensation:

No person to whom license has been granted under this Act shall have any claim to the renewal of such license, or, save as provided in Section 41 any claim to compensation on determination thereof.

13. Relevant provisions of Tripura Excise Rules, 1990, (in short called Rules 1990) are quoted as under:

"Rule 22" DURATION AND NUMBER OF LICENSES.

Licenses for the wholesale or retail vend of intoxicants may be granted for one year, from the 1st April to 31st March or for any shorter period within that year, subject to the following provisions:

(1) Licenses for the retail vend of country spirit in Tripura may be granted for three years beginning on the 1st April;

(2) Licenses for the retail vend of pachwai may be granted for any number of years up to three beginning on the 1st April, in cases where the Excise Commissioner considers this advisable;

(3) season licenses for the sale of fresh tari may be grant for period fixed by the Collector;

(4) Wholesale licenses for the supply and sale of intoxicants may be granted for any number of years not exceeding five, as the Government may decide in each case.

(5) License for the sale of foreign liquor may be granted for one year, from the 1st April to the 31st March or for any shorter period within that year;

The amendment of Rule 22 of ''Rules 1990'' was subsequently substituted under Tripura Excise (Third Amendment) Rules, 1996 (in short called Rules 1996) given as below:

22. Licenses for the wholesale or retail vend of intoxicants may be granted for one year, from the 1st April to the 31st March or for any shorter period within that year or for any period longer than a year, subject to the following provisions:

*** *** *** 2. *** *** *** 3. *** *** *** 4. *** *** *** 5. License for the sale of Foreign liquor may be granted for a maximum period of three years from the 1st April to the 31st March or for any shorter period within three years.

"Rule-29A" : Prohibition of Grant of Retail Licenses to Certain Persons.

License for the sale of Foreign liquor, may, with the previous sanction of the Excise Commissioner, be granted by the Collector either by selection or auction or by tender.

"Rule 154." Fees in Respect of License Permits or Passes, Granted under the Act.

The fees for licenses for the retail vend of the following intoxicants shall be fixed by auction, subject to a reserved fee sanctioned in each case by the Excise Commissioner, and no sale shall be final unless confirmed by the later Officer.

1) Country spirit,

a) The Collector shall not be bound to accept the highest or any bid, he may exclude persons of notoriously bad character or who are reasonably suspected of having resorted to illicit practices and may refuse any bid deemed to be reckless or purely speculative.

b) in exceptional cases the Collector may, with the previous sanction of the Excise Commissioner, settle shops generally or a particular shop by selection without auction. Amendments of ''Rule 154'' was brought by Tripura Excise (Amendment) Rules, 1991 dated 14th November, 1991 (in short called "Rules 1991")

(i) In the principal Rules, after Clause (i) of Rules 154 the following new clause shall be inserted namely --

(2) Indian Made Foreign liquor

(ii) After Clause (b), the following new clauses shall be inserted namely--

(c) For settlement of shops on auction, the minimum reserved fee will be notified by the Excise Commissioner for each such shop keeping in consideration the quantity of the intoxicant estimated to be sold during the current year and/or the actuals of the preceding three years, as the case may be

(d) In case of settlement of a shop on selection basis, the annual license fees shall be fixed by the Excise Commissioner with the approval of the Government which should not be less than the minimum reserved fees for a particular shop as determined under Clause (C) above.

Substitution of Clause (C) of Rule 154 of "Rules 1991" by the Tripura Excise (Third Amendment) Rules, 1996 dated 24th May, 1996 (in short called "Rules 1996") is under:

(3) In Rule 154 of the Principal rules for Clause (c), the following clause shall be

substituted, namely:

(c) For settlement of shops on auction, the minimum reserved fee will be notified by the Excise Commissioner for each such shop keeping in consideration the quantity of the intoxicant estimated to be sold during the current year or the actual of the preceding three years in a business area to be notified by the State Government at the beginning of the every year.

14. Mr. Talapatra learned senior Advocate submitted as below:

(a) Rule 22(5) or original Rules 1990 as stands after amendment by ''Rules 1996'' provides that the license for the sale of Foreign liquor may be granted for a maximum period of three years, from the 1st April to the 31st March or for any shorter period within three years.

(b) According to ''Rule 154'' by way of Amendment in Rules, 1991'' even Indian made foreign liquor was also said to be settled by auction method and in respect of settlement of shops, the minimum reserved fees was to be notified by the Excise Commissioner.

(c) As provided in the amended provision of ''Rule 154 (c)'' in ''Rules 1991'' in case of settlement of shops on selection basis in terms of ''Rule 154(d)'' of ''Rule 1991'', the annual license fees was to be fixed by Excise Commissioner with the approval of the Government which was not to be less than the minimum reserved fees for a particular shops determined under ''Rule 154(c)'' of "Rules 1991".

15. It has been argued by Mr. S. Talapatra, learned senior counsel on behalf of the petitioners that ''Rule 29A'' of "Rules 1990" has provided the prohibition of grant of retail licenses to certain persons and has further provided that licence for the sale of Foreign liquor may, with the previous sanction of the Excise Commissioner, be granted by the Collector either by selection or by auction or by tender. And since more than a decade licenses for sale of foreign liquor were being settled and renewed in favour of the petitioners for different shops by way of selection, keeping in view their performance. However, according to Mr. Talapatra, the license of the country made liquor cannot be granted under ''Rule 29A'' for which there is separate specific provision available under "Rule 154" The ''Rule 154'' of ''Rules 1990'', ''Rules 1991'', "Rules 1996" and in "Rules 1999" have consistently provided the license for retail vend for country liquor as well as foreign liquor (IMFL) under ''Rules 1991'', be settled by way of auction and fees in respect of such settlement and the provisions and fixing fees u/s 154 has also been provided under different ''Rules, 1999'' from time to time. In any case, the country spirit/country liquor as well as foreign liquor (IMFL) after 04.11.1991 cannot be settled by any other mode other than the auction method, according to Mr. Talapatra, and in view of ''Rule 154(b)'' only in an exceptional case, the collector may, with the previous sanction of the Excise Commissioner, settle shops generally, or a particular shop by selection without sanction. According to Mr. Talapatra, subsequent Rules, namely, 1991 onwards prescribed different

mode for settlement of shops and issuance of license then it shall be said to be superseding the previous procedure by doctrine of deeming provision and the provision made as indicated under ''Rule 29A'' for settling foreign liquor by way of tender shall have to be done away with only where mode of auction has been prescribed. In support of this contention reliance was placed on to the decision of Supreme Court (Constitution Bench) in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, which indicates as below:

In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits. The rule of law form this point of view means that decisions should be made by the application of known principles and rules and, in general such decisions should be predictable and the citizen should know where he is.

16. According to Mr. Talapatra, the corrigendum is part and parcel of the original ''NIT'' and once the main tender is challenged, it is not necessary to challenge the corrigendum separately and by demanding 50% bid money apart from spoiling the confidence of the petitioners the long established legal rights under legitimate expectation are being taken away and the entire process of settling the shops and issuance of licenses in respect of foreign as well as country liquor were whimsical. There is no source of power for available to the State machinery for settling the shops and issuance of licenses by way of tender, therefore, by saying that non-mentioning or wrong mentioning any provision in the NTT/Tender notice is meaningless.

According to Madras City Wine Merchants'' Association and Another Vs. State of T.N. and Another, followed in Secretary to Govt., Tamil Nadu and Another Vs. K. Vinayagamurthy, the legitimate expectation may arise--

a) if there is an express promise given by a public authority or

b) because pf the existence of a regular practice which the claimant can reasonably expect to continue

c) Such an expectation must be reasonable.

However, if, there is a change in policy or in public interstate position is altered by a rule or legislation, no question of legitimate expectation would arise.

17. It has been argued by Mr. U.B. Saha, learned Senior Government Advocate that it is not that the corrigendum was brought in for rectifying any illegality or inaccuracy in original advertisement/notice, however, as the State authorities have taken the conscious decision as a matter of policy and have made corrections thereby indicating through corrigendum the settlement of shops by tender method. The corrigendum was never intended to oust the petitioners. According to he Blaks'' dictionary ''policy'' is defined as general principle by which the Government is guided in its management of public affairs or the legislative in its measure. According to Mr. Saha, the present tender or settlement for the year 2006-07 and ''Rule 22'' provides duration and'' number of licenses whereas "Rule

29 A" provides prohibition of grant of retail licenses to certain persons and since the liquor business is not fundamental right and cannot be carried for livelihood, it could be done only after fulfilling the requirement and conditions as prescribed by licensing authority and Government has every power to regulate the trade or liquor shop. Grant of licence, permit of liquor under the ''Act, 1987'' is subject to such period as may be prescribed by the State Government in terms of Section 37 of the ''Act 1987'' and even for terms, conditions and duration licence of permits are also subject to the provision of Section 36 and Section 43 is specifically bar to right of renewal for issuance of licence granted under the ''Act, 1947''. According to Mr. Saha, under Section-43, no person whom the licence of liquor shop was granted shall have any claim for renewal. From this point of view, any of the representation for renewal made by the petitioner cannot be entertained. According to Mr. Saha, the meaning of selection as provided in the Lexicon dictionary that policy also covers and include process of tender and auction as selection is a broad term. According to Mr. Saha, before enactment of Tripura Excise Act, 1987 foreign liquor/country liquor were dealt with under the provisions of Bengal Excise Act, 1999. The Rule 88 of the ''Act, 1987'' has empowered the State Government to make rules to carry out the objects of the Act, hence, Tripura Excise Rules 1990 was enacted. It has also pointed out by Mr. Saha that in three (3) writ petitions bearing No. W.P.(C) No. 164 of 2005, W.P.(C) No. 172 of 2005 and W.P.(C) No. 173 of 2005 of similar nature, the State Government in its general counter affidavit/affidavit in opposition has submitted before this Court that the State has introduced tender method for settlement of foreign liquor/country liquor shops and in CM. Application No. 60/2006 in W.P.(C) No. 52 of 2006, this Court was pleased to direct by an order dated 08.02.2006 to the State authorities that the tender process shall be subject to the result of the main writ petition and even in Writ petition No. 232 of 2004 the tender process was not stayed. According to Mr. Saha, by way of policy measure and for bringing more transparency and for raising more revenue, the process of tender has been adopted. As already indicated all the observations made by this Court on 07.09.2005 while deciding collectively the Writ Petition No. 164 of 2005 (Sri Benoy Bhusan Das v. The State of Tripura and Ors.) W.P(C) No. 172 of 2005 (Sri Kanu Bhusan Datta, v. The State of Tripura and Ors.) and W.P.(C) No. 173 of 2005 (Smt. Bijoy Laxmi Sen v. The State of Tripura and Ors.) reported in 2006 (Supp) GUT 9, this Court has observed that in respect of settlement of not a single shop but in respect of all the shops, the State Government is at liberty to go ahead with any method prescribed by law including the tender method, but such change of policy or method should not be only for a few but should be for all and for that purpose, the introduction of the new method or policy should be made within a definite time frame even if it is intended to be done in a phased manner.

18. Learned Senior Government Advocate Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, where it was observed that reasonable restriction could be determined keeping in view the

nature of business and the conditions prescribed in the trade. The legislature of a State is fully competent to regulate the business of vending intoxicating liquor to mitigate its evils or to suppress it entirely. There is no inherent right of a citizen to sell intoxicating liquors by retail, it is not a privilege of a citizen. In State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another, it was held that trade in liquor is not a fundamental right. It is a privilege of the State. Article 301 and 304 are inapplicable to trade commerce and inter course in liquor because it is noxious substance injurious to public health, order and morality. In Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, , it was held that the State is not precluded from regulating the trade and business in potable liquor. The State can prohibit completely trade or business in potable liquor. Since trade or business in liquor as a beverage is res-extra-commercium and authorities which are extra-comercium cannot be carried on by any citizen. In view of M.R. Patel Vs. State of Bihar and Others, "it was observed by the Supreme Court that if and when the licenses were renewed with effect from the next licensing year, the proper security should be demanded from the licensee as a condition of the renewal. No exception can be taken to this direction. The licensee had no vested right to a renewal of the license. The licensing authority was not bound to renew the license. If in its discretion, it granted a renewal it could require the licensee to give proper security as a condition of the renewal.

19. In the light of the decision of Supreme Court in AIR 1994 512 (SC) once the period of licence granted in favour of the petitioners have already since been expired in the financial year 2005-2006, therefore they have no right for renewal of licenses in the year 2006-2007.

20. According to Mr. Sana, prayers made in the writ petition by the petitioners are defective and applicability of legitimate expectations can not be urged as a matter of right and the prayer for renewal of license were also not permissible. Mr. Saha has argued that it is well settled that non-mentioning or wrong mentioning of a provision of law does not invalidate an order in the event it is found that a power therefore exists in view of the observations by the Supreme Court in Union of India Vs. Khazan Singh, subsequently followed in (2003) 4 SCC 712 (High Court of Gujarat and Anr. v. Gujrat Kishan Mazdoor Panchayat and Ors.) at Page 738 providing that non-mentioning or wrong mentioning of a provision of law would not invalidate an order if a source therefore can be found out either under general law or a statute law; the same principle was dealt in Lok Nath and Company, The Mall, Shimla Vs. Commissioner of Wealth Tax, Patiala, as well as subsequently affirmed by the Supreme Court in AIR 2004 SC 504(M.T. Khan v. Government of A.P.). According to Mr. Saha, it was held by the Supreme Court inAIR 2003 SC 6271 Para 35 (Prohibition & Excise Supdt. A.P. v. Toddy Tappers Corporation Secretary and Ors.) that no citizen has any fundamental right to carry out trade in liquor an it is the Government to evolve the excise policy. The terms of inviting tender is not open to judicial scrutiny in view of the decision of the Supreme Court AIR 2005 SC 2875 (Global Energy Ltd. v. Adai Exports Ltd. and Ors.). The provisions of ''Rule 29 A'' as well as Section 43 are

not under challenge and since the petitioners have participated in the tender process and have been declared successful bidder, however, it was the prime duty of the petitioners to apprise this Court by way of affidavit. When the State Government under its policy to regulate liquor business under the Statute and the Act and under the relaxation clause of ''Rule 154(d)'' has finalized and settled the liquor shops including foreign as well as country liquor by way of selection by auction and later on by way of tender method then no unsuccessful bidder has come forward to challenge the process then the present petitioners have no right to challenge, once after participation they have been declared successful bidder. According to Mr. Saha, firstly the petitioners have become infructuous in view of the subsequent development as many of the petitioners have already got relief, secondly even if for the sake of an argument the petitioners'' case has not become infructuous then the petitioner is not entitled to any relief for only non-mentioning or wrong mentioning of certain provisions in Advertisement/NIT Notice, thirdly, the petitioners have no legal right for renewal of licenses in the name of the enforcement of their fundamental rights. Fourthly, the settlement of liquor shops by way of tender process including foreign and country made has come as an outcome of policy measures of State Government in the interest of revenue therefore, has not to be interfered with. I find force in the submission of Mr. Saha, learned Senior Government Advocate for the State.

21. It is necessary to note that in many of the writ petitions the advertisement and Notices for settling the shops by auction method were under challenge, however, corrigendum were issued in many cases (to settle the shops including foreign liquor and country made liquor by way of tender method, but such corrigendum have not been challenged in many of the writ petitions. The writ petitioners who have participated in the settlement process and had either failed or become successful but have also challenged the settlement made by way of auction method, their writ petitions are defective as no relief could be granted in their favour for non-survival of cause. Many of the writ petitioners have challenged the settlement of shops (by auction method) as well as by the tender process as indicated in the corrigendum but have also been declared successful bidders therefore their cause and writ petitions have become of only academic importance also for non-survival of cause. For grievances for the settlement of shops (foreign liquor as well as country made liquor) by way of tender method, the writ petitioners have to challenge specifically the corrigendum (issued for settling the shops by tender method.) However, the State Government while preferring affidavits as response from time to time in different writ petitions, namely, Writ Petition No. 164/2005, W.P. (C) No. 172 of 2005 and W.P.(C) No. 173 of 2005 has stated that it has introduced tender method for settlement of foreign liquor/country made liquor shops and in the light of such submission of State, the above indicated writ petitions were decided by this Court by a common judgment dated 07.09.2005 with an observations that it is not a single shop which is to be settled by a particular mode but the State Government, is at liberty to go ahead with any method prescribed by law including tender method,

and the mode of settlement of shops were not to be only for a few but was to be applicable for all and for that purpose, introduction of the new method or policy was to be made within a definite time frame even if intended to be done in a phased manner.

22. Since it is well settled that no citizen has fundamental right to carry out the trade of liquor and it is the State Government to evolve the excise policy to regulate the same, therefore, no individual has fundamental right. The claim of the writ petitioners for renewable of their license on the ground that in previous years licenses were settled in their favour by way of selection method cannot be a good ground of legitimate expectation as such they are not entitled for renewable of licenses in future. Since the carrying the trade of liquor as well as its renewal, cannot be a fundamental right. The trade/business and renewal of liquor shop is subject to the procedures, policy and statutory provisions of the State Government. For the purpose of enhancement of State Exchequer or revenue, alone, switching over from one mode to another i.e., from mode of auction method to tender method for settling the shops of liquor may not be appropriate, however, the State Government may evolve or frame an appropriate policy or evolve a scheme in the grate public interest to prescribe mode of settlement by any mode including the tender process. It is also necessary that while granting the licence the State has to observe the Constitutional and statutory obligation and to ensure strict compliance of the statutory requirements of law, as indicated by the Supreme Court in Ashok Lanka and Another Vs. Rishi Dixit and Others, . The Tripura Excise Rules, 1991 as amended from time to time have prescribed ''Rule 29 A'' to settle foreign liquor by selection or by auction or tender method and subsequently ''Rule 154'', has also provided to settle shops including country made and foreign liquor by auction method, however, settlement of shops by any mode including by auction method, is directory and not mandatory requirement in the facts and circumstances and in reference to the language used in ''Rule 29 A'', as well as in ''Rule 154'' amended from time to time. However, for enforcement of a particular mode or switching over from one mode to another or from auction method to tender process, the State Government has to come with clear cut policy or notification or amendment inconsonance to the prevailing policy of the State Government. If the mode of settlement of shops inconsonance to the policy is not given statutory effect undergoing legislature measures by bring required amendment in relevant rule or necessary amendment in law; the same may not be legally justifiable, even if the State is free to adopt any appropriate mode of settlement out of three well known modes i.e., selection or auction or tender process but in all modes fairness in action has to be reflected on the part of the State Government.

23. The writ petitioners consciously at their sweet will have participated in the settlement process of shops by tender method and large number of them have already been declared successful and no unsuccessful person has come forward to challenge or to show their positive grievance, in these circumstances also no cause in respect of the successful writ petitioners is surviving except the issue

becomes an academic question and the writ petitioners who on their conscious participation have been declared successful, their cause also does not survive on the ground of acquiescence. The initial advertisement and notice were issued by the State Government for settlement of shops of foreign/country liquor by way of auction method and subsequently by issuance of corrigendum in respect of some shops, the notices were said to have been issued in reference to ''Rule 29A'' of Tripura Excise Rules, however, by merely wrong mentioning of a provision of law does not invalidate a notice or an advertisement in the event, it is found that a power therefore exists, in view of the settled position of law by the Supreme Court as indicated above. Since selection process is very broad term and three processes acknowledged under Tripura Excise Rules, are selection, auction or tender. The purpose of these modes are to allocate the shops in favour of to a person who has a good background, free from adverse materials and in all fairness who has indicated higher bid. The State Government, if in prevailing circumstances, more so in the light of directions of this Court (granted by common judgment dated 07.09.2005 while disposing of above batch of writ petitions) settled the shops by tender method in an anticipation that new mode of settling the shops by tender method would be brought in or shall be given effect to by legislative measure or by notification of State Government to be made in a definite time or in phased manner, then the present settlement of shops by tender process cannot be said to be unjustifiable or illegal. Now for deciding the question in the garb of facts that many of the writ petitioners, after their participation in the tender process have been declared successful and their cause does not survive therefore, the issue of settlement of shops has become an academic issue.

24. However, the mode of settlement of shops by tender method under a policy measure of the State Government is not found to be contrary to the public interest or the policy of State, therefore this Court is not to interfere with the policy measure of settlement of shops by tender method and this Court has no occasion to strike down any mode or settlement on the ground that one mode is superior to another mode or some mode is fairer or better than other mode, therefore this Court is not inclined to interfere with the policy decision of the State Government in respect of the settling shops in view of the decision in BALCO Employees Union (Regd.) Vs. Union of India and Others, and cannot invoke its extra ordinary jurisdiction to interfere in the academic issues and, therefore, this present writ petitions are dismissed.

