

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)No.125/2020

Sri Subrata Nath.

..... Petitioner(s).

Vs.

The State of Tripura and Ors.

..... Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Advocate,
Mr. Anujit Dey, Advocate.

For Respondent(s) : Mr. D Bhattacharjee, Govt. Advocate.

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE ARINDAM LODH**

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18.02.2020

(A Kureshi, CJ)

Petitioner has challenged a circular dated 3rd February, 2020 issued by the Commissioner of Excise, Government of Tripura under which it is clarified that an Indian Passport will also be accepted as a valid document as a proof of citizenship in lieu of Citizenship Certificate/Permanent Resident of Tripura Certificate('PRTC' for short).

[2] Brief facts are as under :

Petitioner is engaged in the business of selling liquor in West Tripura District. Petitioner has various licensed liquor shops from where he regularly does such vending business. Sub-Divisional Magistrate, Sadar, West Tripura, has issued a PRTC on 21st November, 2007.

[3] Under tender inviting notice dated 15th January, 2020 which was published in the local newspapers on 18th January 2020, the Government authorities invited interested renderers to apply within 21 days for granting licence for retail vending of country as well as India made foreign liquor in the State of Tripura. The closing date of the tender was 7th February, 2020. The details inviting such tender required the intending tenderer to submit several documents including the following :

“(i) Attested copy of Citizenship Certificate/Permanent Residential Tripura Certificate, Voter I-Card, PAN Card and AADHAAR Card of the tenderer.”

[4] Under impugned circular dated 3rd February, 2020 the Commissioner of Excise made the above noted clarification which has aggrieved the petitioner as to file the present petition. The contents of this circular read as under :

“Sub : Acceptance of Indian Passport as a valid alternative document in lieu of Citizenship Certificate/PRTC-clarification thereof.

It had been brought to the notice of the Commissionerate of Taxes & Excise by the Collectorates on whether Indian Passport can be accepted as a valid document as a proof of Citizenship in lieu of Citizenship Certificate/PRTC.

Accordingly, the issue was clarified vide this office letter No.F.II-7(20)-Ex/2019(Khowai)/17323-30 dated 04-12-2019 mentioning that Indian passport can be accepted as a suitable and valid document as a proof of Citizenship.

Now, the issue as pointed out above is once again clarified and reiterated that the Tendering Authority i.e., the Collector(s) of Excise may accept copy of Indian Passport as a Valid alternative tendered document in lieu of Citizenship Certificate/PRTC as a proof of Citizenship.

The Tendering Authority should ensure that wide publicity is made regarding the documentary proof requirement through necessary channels.

This is issued with the approval of the State Government in the Finance Department."

[5] Learned counsel for the petitioner vehemently contended that the respondents have expanded the scope of qualification of that prospective tenderers. This was done after the tender process had begun. On the principle of the rules of game cannot change after the game has begun, the same was wholly impermissible. He submitted that with the aid of impugned circular even a non-Indian would be qualified to bid. In this respect, he relied on Section 20 of the *Passports Act, 1967* which authorises the Central Government to issue a passport or a travel document to a person who is not a citizen of India, if the Government is of the opinion that it is necessary to do so in public interest. He relied on the decision of learned Single Judge of Bombay High Court in the case of ***Motimiya Rahimmiya And Etc. Vs. State of Maharashtra and Anr.*** reported in ***AIR 2004 Bombay 460*** in which it was observed that the passport is not a conclusive proof of citizenship of the passport holder.

[6] We have heard Mr. Debalaya Bhattacharjee, learned Government Advocate, appearing on advance copy. He clarified that there is no intention on the part of the State Government to expand the net of possible tenderers so as to include even a non-citizen.

[7] In our opinion, the petitioner has not made out any case for interference. This is for the following reasons :

As noted in the tender inviting notice, one of the requirements for technical qualification was that the tenderer must produce attested copy of citizenship certificate/PRTC, Voter I-Card, PAN Card and AADHAAR Card. The requirement was thus split in two parts. First part was production of citizenship certificate or PRTC. The remaining documents were additional. In other words, a tenderer had to produce either a citizenship certificate or PRTC and in addition produce Voter I-Card, PAN Card and AADHAAR Card.

[8] The first of the requirements in the alternative namely, citizenship certificate or PRTC would be essentially to establish the citizenship of the tenderer. It was in this respect that the Government issued a clarificatory circular dated 3rd February, 2020 in which it has been now provided that the tender authority may accept copy of Indian Passport as a valid alternative tender document in lieu of the Citizenship Certificate or PRTC as a proof of citizenship. All that this clarification thus provides is that instead of only two documents namely, the citizenship certificate or PRTC which would establish the citizenship of a person, even a Passport

would achieve the same purpose and would be accepted in lieu of either of these two documents.

[9] Firstly, this clarification, by no means expands the scope of the net of intending tenderers since the very purpose of showing the Passport is to verify the citizenship status of the tenderer. Secondly, such minor modification which is nothing but an interpretative or clarificatory process and touches the non-essential requirement is always open for the tender inviting authority to do in the tender process. In case of ***Poddar Steel Corporation Vs. Ganesh Engineering Works and Ors.***, reported in **(1991) 3 SCC 273** it was observed that minor technical irregularity can always be waived by the tender inviting authority and a deviation from non-essential or ancillary or subsidiary requirement would not vitiate the process. It is not the case of the petitioner that since such a clarification was issued at a late stage, he was prevented from taking advantage of this clarification whereas others successfully did. His case is the reverse. He argues that no person who now comes forward to apply for the tender with the proof of citizenship being demonstrated with the aid of his Passport, should be allowed to participate in the tender. This argument for obvious reasons cannot be accepted.

[10] The observations of the learned Single Judge of the Bombay High Court in case of ***Motimiya Rahimmiya***(*supra*) are made in the context of civil proceedings concerning the deportation

of a person where his citizenship was under doubt. It was in this context, above noted observations were made.

[11] Before closing, it is clarified that by virtue of the impugned clarification we do not think that the Government intends to permit any non-citizen to participate in the tender process. No such intention can be read into the clarificatory circular, none can be imputed.

In view of this clarification, the petition is dismissed.

(ARINDAM LODH), J

(AKIL KURESHI), CJ

