



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.M.P. No. 10610 of 2023

in

C.W.P.I.L. No. 45 of 2023

Reserved on : 03.01.2024

Date of decision : 10.01.2024

Abhimanyu Rathor

..Petitioner

Versus

State of H.P. and others

..Respondents

Coram :-

The Hon'ble Mr. Justice M. S. Ramachandra Rao, Chief Justice

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge

Whether approved for reporting ?¹

For the Petitioner : In person

For the respondents : Mr. Anup Rattan, Advocate General, with Mr. Rakesh Dhaulta & Mr. Pranay Pratap Singh, Additional Advocates General and Mr. Arsh Rattan & Mr. Sidharth Jalta, Deputy Advocates General, for respondents No. 1 & 2

Mr. Mukul Sood, Advocate, for respondent No.3.

Mr. Dhananjay Sharma, Advocate, for Respondent No.4.

Ms. Shilpa Sood, Advocate, for respondents No. 5 & 6.

¹ Whether reporters of print and electronic media may be allowed to see the order? Yes.

Mr. Neeraj Gupta, Senior Advocate, with Mr. Pranjali Munjal, Advocate, for respondents No. 7 & 8.

Jyotsna Rewal Dua, Judge

I N D E X

Sr.No.	Particulars	Page Nos.
1.	The case	2
2.	Points raised by the petitioner	3-4
3.	Contentions of the respondents	4-5
4.	On maintainability	6
5.	Consideration	6-7
(i)	Town Hall	7-8
(ii)	Judgment dated 06.09.2019 in CWPII No. 19 of 2016	8-13
(iii)	Subsequent events	13-32
(iv)	Observations and Directions at this stage	32-40

The case

Petitioner is a practicing Lawyer in this Court, who in this Public Interest Litigation filed on 11.08.2023 seeks to quash the tender awarded to H1 bidder-respondent No. 7 for running a 'high-end Cafe' in the Town Hall, The Mall, Shimla. By way of interim relief, petitioner has prayed for restraining the private respondents from running multi-franchise 'food court' in the heritage building- the Town Hall.

2. We heard the matter at length on 3rd & 4th January, 2024.

2(i) The **points raised by the petitioner** in person can be broadly summed up as under :-

2(i)(a) In terms of the judgment passed by this Court on 06.09.2019 in CWPIIL No. 19 of 2016, the Municipal Corporation Shimla-respondent No. 3, in consultation with the State Government, was permitted to run a 'high-end Cafe' with reading facilities, Information Centre, Boutique of traditional art and craft in the Town Hall. However, what has actually been opened in the Town Hall is not a 'high-end Cafe', but a 'food court'.

2(i)(b) This Court in its judgment dated 06.09.2019 had impressed upon the Municipal Corporation Shimla to protect the heritage value of the Town Hall. This direction has been thrown to the winds by the Municipal Corporation by permitting respondent No. 7 to set up a food court instead of a 'high-end Cafe'. The Municipal Corporation has failed to protect & preserve the treasure i.e. the Town Hall. The heritage value of the structure has diminished and is being continuously affected by the opening of food court there.

2(i)(c) The express and clear terms & conditions of the Notice Inviting Tenders, of Request for Proposal (RFP) document, of the Concession Agreement executed between the Municipal Corporation

Shimla and Respondent No. 7 have all been violated with impunity by respondent No. 7. The concerned authorities have, however, chosen to turn blind eye to all the illegalities.

2(ii) The **gist of submissions of the respondents** represented by the learned Advocate General for respondents No. 1 & 2, Mr. Mukul Sood, learned Advocate, for respondent No. 3, Mr. Dhananjay Sharma, learned Advocate, for respondent No. 4, Ms. Shilpa Sood, learned Advocate, for respondents No. 5 & 6 and Mr. Neeraj Gupta, learned Senior Advocate, for respondents No. 7 & 8 is that :-

2(ii) (a) The Municipal Corporation Shimla is owner of the Town Hall, The Mall Shimla. It is for the Municipal Corporation to utilize the property in the manner considered appropriate by it with due regard to the intent of judgment dated 06.09.2019 passed in CWP No. 19 of 2016.

2(ii) (b) This Court in its judgment dated 06.09.2019 did not issue any mandatory direction to the Municipal Corporation Shimla to utilize the ground floor of the Town Hall only for setting up a 'high-end Cafe'. The direction of the Court was non-obligatory & elective in nature. The Municipal Corporation in its wisdom was free to utilize the Town Hall in the manner it deemed fit. The underlying object behind the judgment dated 06.09.2019 was to ensure

preservation of heritage structure-the Town Hall and generation of revenue for the Municipal Corporation, Shimla by the use of heritage structure. Operating a food court in the Town Hall even otherwise does not violate the intent of judgment dated 06.09.2019.

2(ii) (c) If a realistic 'high-end Cafe' in its literal sense is actually set up in the Town Hall, it will be beyond the reach of not only the Shimlaites, but also the tourists. No revenue would be generated by the Municipal Corporation in that case.

2(ii) (d) The expression 'high-end Cafe' is a comparative term relatable to the place. For a town like Shimla, the food court presently set up in the Town Hall can also be called as a 'high-end Cafe' as it contains popular branded outlets of Pizza Hut, KFC, Cream Bell, Costa Coffee and Vaango.

Apart from above, objection about locus-standi of the petitioner to maintain this Public Interest Litigation was also raised by learned senior counsel for respondents No. 7 & 8. It was urged that most of the documents filed alongwith the writ petition were supplied to one Dr. Pawan Kumar Banta ; This shows the writ petition has been filed for the benefit of someone else possibly a competitor. It was also submitted that the petition has not been filed either on the format or within the framework of H.P. High Court Public Interest Litigation Rules 2021.

3. On Maintainability

On preliminary objection, we are of the opinion that merely because some of the documents appended with the writ petition have been supplied under the Right to Information Act to a person other than the writ petitioner, would not in itself be a sufficient ground to throw the writ petition. The writ petition has as its enclosures several documents supplied to the writ petitioner himself under the Right to Information Act. The apprehension of respondents No. 7 & 8 about writ petition having been got filed at the instance and for the benefit of certain vested interests is merely a presumption. It has not been substantiated. The writ petitioner, a practicing Advocate in this Court, has filed this writ petition that concerns the use of Town Hall by the Municipal Corporation Shimla and other respondents. The petition focused about the permissible use of a notified heritage building, is in public interest. At this stage, respondents No. 7 & 8 have not demonstrated the apprehension expressed by them. Bonafides of the petitioner in instituting this petition are not under cloud. We, therefore, proceed further in the matter.

4. Consideration

After hearing learned Counsel for the parties & considering the material made available to us, our prima-facie observations in the matter are as under :-

4(i) The Town Hall

The Town Hall about which this petition has been filed is the most centrally located building on the Mall Road, Shimla. The Town Hall was originally built in 1860. Due to damage caused to some of its portions, it was rebuilt in 1910-11 in Gothic architecture during British regime. It originally housed a library and a few public utility offices. Post independence, the Town Hall building housed offices of the Municipal Corporation, Shimla. The occupation & use of building, with passage of time, brought it to shambles and a need was felt to restore its grandeur. Extensive renovation works that commenced in the year 2014 were completed in the year 2018. The Town Hall is a notified heritage building. Cognizance as to future use of this building was taken by this Court in a pending public interest petition CWPIIL No. 19 of 2016, wherein various orders were passed from time to time. One such order passed on 11.01.2018 recorded assurance of the learned Advocate General that without leave of the Court, possession of the Town Hall would not be handed over to the Municipal Corporation. A conceptual Plan for future use of the Town Hall was asked from the Commissioner, Municipal Corporation as previously proposed shifting of the State Museum from Chaura-Maidan to the Town Hall was not found feasible due to space constraints, total gross floor area of the Town-

Hall being 360 Sq. mtrs. The proceedings in CWPII 19 of 2016 finally culminated on 06.09.2019.

4(ii) The Judgment dated 06.09.2019 in CWPII 19 of 2016

The writ petition revolves around a judgment passed by this Court on 06.09.2019 in CWPII No. 19 of 2016 pertaining to permissible use of Town Hall, The Mall, Shimla. Para 12 onwards of this judgment read as under :-

“12. Pursuant to the directions issued by this Court on 13.12.2017, affidavits were filed on behalf of the respondents. Thereafter, the learned Advocate General appearing for the State, made a statement before this Court on the next date of hearing, namely 11.01.2018 that the possession of the Town Hall building will not be handed over to the Municipal Corporation without the leave of the Court. The Court was also informed by the Director (Tourism) that for the improvement of the Shimla Town, more than 650 ₹ Crores stood sanctioned as Grant by the Asian Development Bank.

13. On 13.11.2018, this Court directed the learned Advocate General and the learned counsel for the Municipal Corporation to submit a conceptual plan of the Town Hall building alongwith details of the area of each room. The respondents were also directed to place on record the proposal as to how the State Government, in consultation with the Municipal Corporation intended to utilize the said premises. Pursuant to the said order, the Commissioner of the Municipal Corporation filed an affidavit.

14. After perusing the same, this Court passed an order on 03.01.2019. This order reads as follows:

“Though the Commissioner, Municipal Corporation has filed the compliance affidavit in terms of our previous order dated 13th December, 2018, but we are not convinced with the idea that some of the senior functionaries would sit in the Town Hall Building, whereas the other officials will be housed in other adjoining areas. This is totally an impractical approach to the efficient functioning of the Corporation. On the other hand, it is suggested that the State Museum, which is housed in a big building with lawn and parking place, can be shifted to the Town Hall building, with a Modern Visitors Gallery to showcase the State of Himachal Pradesh in its entirety with single entry and exit to the building. For such purpose, the final decision will have to be taken by the State Government, for which, learned Advocate General assures the Court to take up the matter at the highest level.”

15. Eventually, a conceptual plan was filed by the Municipal Corporation. On the conceptual plan filed by the Municipal Corporation and on their proposals for the better utilization of the building known as “Town Hall”, we heard the learned Amicus Curiae, Mr. Ashok Sharma, learned Advocate General, and Mr. Ankush Dass Sood, learned Senior Counsel appearing for the Municipal Corporation.

16. The learned Senior Counsel appearing for the Municipal Corporation pleaded that though the building is owned by the Municipal Corporation, they are not able to take possession of the building and put it to appropriate use, on account of a previous order passed by this Court recording the undertaking on the part of the learned Advocate General not to hand over possession. It is argued by the learned Senior Counsel that after having spent a huge amount of money, if the Corporation is not allowed to put up the building to optimum use, the Municipal Corporation will suffer irreparable loss and hardship.

17. We have carefully considered the submissions as well as the conceptual plan and the affidavit.

18. In the conceptual plan filed by the Commissioner of the Municipal Corporation alongwith his affidavit, it is stated :-

(i) that pursuant to a decision taken in a meeting held between the Additional Chief Secretary (Tourism) and Principal Secretary (Urban Development), an Expert in the field of Urban Planning, by name Professor K.T. Ravindran, was consulted.

(ii) that the said Professor K.T. Ravindran inspected the Town Hall on 27.12.2018 and made various suggestions; and

(iii) that on an earlier occasion, this Court had directed the respondents to explore the possibility of shifting the State Museum from its existing location at Chaura Maidan to Town Hall, but the same was not found feasible, as the building in which State Museum is located at present is of an area of about 3304 sq. mtrs. with parking area to the extent of 575 sq. mtrs. and open area/lawn measuring 1320 sq. mtrs., while the area of the Town Hall building is only about 1338 sq. mtrs.

19. It is further stated in the conceptual plan that a meeting was convened under the chairmanship of the Chief Minister on 06.03.2019. It was decided in the said meeting that the attic floor and ground floor should be put to such use that they attract tourists and the public. It was also decided therein that the Municipal Corporation should be able to use the middle floor.

20. After narrating the sequence of events, the conceptual plan contains a proposal, which reads as follows:

“4. Proposal:

In view of the facts and circumstances of the case it is quite evident that the Town Halls across the globe are being predominantly used by the City Councils and moreover this will help in maintaining the Heritage legacy and its traditional use for over the period of more than hundred years.

The Proposal of Municipal Corporation, Shimla regarding its usage of one of the floors housing the office of Mayor, Deputy Mayor and Commissioner and other allied offices have been also endorsed by renowned expert engaged in the field of Architecture

and Urban Planning. Needless to mention that the Hon'ble Chief Minister has also endorsed the proposal of Municipal Corporation, Shimla in the meeting held on 6.3.2019. Further, it is submitted that the best concept of usage of this building will be around mixed use i.e. office floor and **commercial use largely in terms of the public centric activities**. The final decision to run the public oriented activities like High-End Café with reading facilities, Information Centre, Children related facilities and Boutique of Traditional Crafts etc be taken forward by exploring the feasibility as also the commercial interest including viability of proposed ventures by the Municipal Corporation in consultation with the State Government. It is further emphasized that being the owner and possession holder of the property it is the exclusive right of Municipal Corporation to make the best use of it given the sanctity of the constitutional body and historical value attached to the Corporation.

Therefore, it is concluded that the property in question shall be handed over to Municipal Corporation, Shimla for making its best use, in public interest.”

21. While the proposal contained in the conceptual plan is broadly acceptable, there is only one aspect which may be a matter of concern.

While there can be no objection to the location of the offices of the Mayor and the Deputy Mayor in the Town Hall, the location of the offices of the Commissioner and other allied officers will certainly convert the heritage building into a full-fledged Government office.

While the Mayor and the Deputy Mayor may not be required to sit throughout the day in the office, the Commissioner and his Deputies may be required to sit in the office throughout the day for six days a week. They may also have to deal with the public, who may have to seek the services of or the statutory approvals/licenses of the Municipal Corporation for various activities. While tourists who visit a place of interest may stay at the most, in a building for not more than two to three hours, the employees of a Government office may be required to stay for about seven hours at the minimum, every day. **The maintenance and the**

cleanliness of any Government building, especially in a country like ours, leaves much to be desired. Moreover, a huge amount of money has been invested in the renovation of the structure and hence, the Corporation should be able to get some income which will match at least the cost of maintenance and the cost of servicing the loan/investment cost.

22. Therefore, we are of the considered view that while permitting the Municipal Corporation to locate the offices of the Mayor and the Deputy Mayor in the Town Hall, the Municipal Corporation, in consultation with the Government, should come up with innovative ideas to put the Town Hall to best use (i) from the point of view of preserving the heritage, and (ii) so as to derive income from such activities which will showcase the beauty of the hill station and the culture and traditional arts of the people of the State.

23. Therefore, this public interest writ petition is disposed of with the following directions:

(i) The State Government may hand over the property in question to the Municipal Corporation;

(ii) The Municipal Corporation may be permitted to have the offices of the Mayor and the Deputy Mayor in the Town Hall. The offices of the Commissioner or his Deputies need not be located in the Town Hall.

(iii) The Municipal Corporation, in consultation with the State Government may put to use the rest of the area, for housing a high-end Café with reading facilities, Information Centre and Boutique of traditional crafts and arts, attracting tourists, with an entry fee that will provide a handsome revenue to the Corporation to service the loan.

24. While passing the aforesaid order, we have kept in mind two more aspects, namely (a) that this public interest litigation has its genesis in a private litigation about haphazard parking of vehicles in a particular area in the Shimla Town, but in the course of hearing, this Court kept on enlarging its scope; and (b) that the building in question is owned by the Municipal Corporation of Shimla and hence, beyond issuing a direction

to the Corporation to protect the heritage value of the structure, this Court cannot issue directions that will infringe upon the property rights of the statutory body. Insofar as the original writ petition relating to haphazard parking of vehicles is concerned, series of interim orders have taken care of the interest of the petitioners, they shall hold good.”

The directions issued in paras 23 & 24 extracted above are important highlights of this petition. Though this Court in its judgment dated 06.09.2019 had directed the State Government to hand over possession of the Town Hall to Municipal Corporation, Shimla, but the Municipal Corporation, Shimla was permitted to have offices only of its Mayor and Deputy Mayor in the Town Hall. No other office including that of the Commissioner or his Deputies was allowed to function from the Town Hall. Further the Municipal Corporation, in consultation with the State Government, was also permitted to use the remaining area of Town Hall for running a ‘high-end Café’ with reading facilities, Information Centre and Boutique of traditional art & craft.

4(iii) Subsequent Events

4(iii)(a) The Municipal Corporation got back the possession of the heritage property ‘the Town Hall’ under the above orders of the Court. It set-up the offices of Mayor and Deputy Mayor in the Town Hall. Next came the utilization of the rest of the area. In a meeting convened on 29.11.2019 under the chairmanship of the Chief Secretary to the Government of Himachal Pradesh, the Municipal

Corporation decided to utilize the ground floor of the Town Hall for running a 'high-end Café'. The Municipal Corporation invited bids in the year 2020 for opening a 'high-end Café' on the ground floor of the Town Hall, but did not find suitable bidders. On 12.04.2021, the Municipal Corporation requested the H.P. Infrastructure Development Board (HPIDB) to manage the bidding process for leasing out the space for running a 'high-end Café' on the ground floor of the Town Hall. Correspondence thereafter was exchanged between the two entities regarding the modalities. A request for proposal (RFP) document alongwith agreement for selecting the service operator was prepared. On that basis, expression of interest/bids were invited by publishing the advertisement in newspapers on 28.02.2022. The bids were invited for "*Selection of Operator for Setting up, Operation and Maintenance of a 'High-End Café on the Ground Floor of the Town Hall, The Mall, Shimla, H.P. on Public Private Partnership (PPP) mode*".

4(iii) (b) It is manifestly clear from the advertisement, the tender notice & the RFP document that bids were invited only for opening a 'high-end Café' in the Town-Hall. Some clauses from the RFP document are being extracted hereunder :-

*"1.1.4. In pursuance to the Hon'ble High Court's order, the Municipal Corporation, Shimla (the "Authority") is desirous of selecting an operator for setting up of a **High-End Café** with reading facilities, information*

centre and boutique of traditional art and crafts etc. on the ground floor of the Town Hall building under public private partnership (PPP) mode (the "Project Facility").

1.1.5. HPIDB is a statutory Board established under the Himachal Pradesh Infrastructure Development Act, 2001 and is a nodal agency in the State of Himachal Pradesh for facilitating the development of a variety of infrastructure projects on Public Private Partnership (PPP) basis and has been mandated by the State Government for managing the bidding process on behalf of the Municipal Corporation Shimla for "Selection of Operator for Setting-Up, Operation and Maintenance of a High-End-Café on the Ground Floor of Town Hall, The Mall, Shimla, Himachal Pradesh on Public Private Partnership (PPP) mode" (the "Project").

1.1.6. For the information of the Bidders, the ground floor area to be used to set-up the Project Facility, shall comprise of 1 (one) big hall on the one side of the ground floor along with 2 (two) interconnected halls and 1 (one) room on the other side. The walls separating the halls are very thick and have been white-washed. The room and the halls have huge running windows on the 1 (one) side and high ventilators on the other side (overlooking the Ridge) which gives a good view of the Mall road outside. Further, there are inbuilt chimneys in each hall and two tiled washroom/toilet facilities with one having separate provision for ladies and gents. The Town Hall shall be accessible to the Users through the main entry door, however, for 1 (one) hour in the evening on each day, the said entrance shall be closed for a light and sound show to be organized by the Department of Tourism, Himachal Pradesh, and only the side entry door at the ground floor of the Town Hall shall remain open for ingress and egress of the Users/ patrons of the High-End Café. The total gross floor area of the Town Hall is 360 sq. mts.....

1.1.10. The Town Hall Building being a heritage structure from the colonial era, no structural changes, modifications, additions or deletions are allowed in the Building. However, there is a small area in the extreme left corner of the ground floor of the building where currently

there is a small enclosure comprising of a kitchenette and a toilet block (3 toilets each for ladies and gents), which can be temporarily modified by the operator by making minor structural changes to utilize a part of it for kitchen/ pantry purpose. Other than this area, no structural changes or additions are allowed anywhere else within or outside the Building. However, the operator will be free to undertake whitewash and routine/ preventive maintenance works in respect of the ground floor of the Town Hall Building. Further, any damage that may be caused to the heritage building due to the activities of the Operator on the ground floor of the Town Hall Building, the repairs in respect of such damage shall be made at the risk and cost of the Operator.

1.1.11. The broad scope of work of the Selected Bidder/ Operator includes (but is not limited to) :

(i) Submitting a “Fitment Plan” along with complete set of requisite layout plans & drawings in hard copies as well as in such digital form as acceptable to Authority, to the Authority to seek its prior consent/ approval in respect of any internal works to be carried out at the ground floor of the Town Hall Building including making of temporary partitions, sound-proofing, ducting for air conditioning/ heating, ducting for kitchen exhaust, permission for minor civil works in the newly built kitchenette and toilet block area (as a part of the renovation works undertaken) located in the extreme left corner of the Building, and approval for removal/ replacing of any fittings & fixtures belonging to the Authority;

(ii) x x x x x x x x x x x x x x x x x x x x x x x x x x x x x

(iii) Responsibility for furnishing, furbishing, equipping and making the ground floor of the Town Hall ready for operations after carrying out the Works. The Operator shall use new and premium quality materials for the furniture, furnishings, fittings & fixtures, etc. The project facility to be set up by the Operator at Town Hall shall comprise of a high-end Café along with book reading facility, an information center to give general information to public and boutique of traditional arts and crafts of the State of Himachal Pradesh;

*(vi) Ensure that adequate fire protection systems are installed, checked and serviced. Any loss due to the fire as a result of Operator's activities, to the heritage property will be borne by the Operator only. **Being a heritage building, storage of gas cylinders is not allowed.***"

The above clauses give enough indication that Municipal Corporation, in consultation with the State Government, had decided to use the ground floor of the Town Hall for opening a 'high-end Café' with reading facility apart from setting up an Information Centre and Boutique of traditional art and craft. We presently need not go into the question as to whether only a 'high-end Café' could have been opened or the Municipal Corporation Shimla had the liberty to use the ground floor of the Town Hall for some different purpose. The Municipal Corporation, a statutory body, also thought it prudent to comply with the order of the Court and was desirous of opening a 'high-end Cafe' and that is how the subsequent chapters unfolded in form of preparation of RFP document for setting up a 'high-end Cafe', invitation for expression of interest for a 'high-end Cafe' leading to execution of concession agreement for setting up the 'high-end Cafe', while simultaneously caring for preserving the heritage structure of the building and the revenue generation.

4(iii) (c) Following four bidders submitted the bids in response to the tender notice published on 28.02.2022 :-

(a) M/s Jumbo Restaurants Pvt. Ltd. Delhi

- (b) M/s VG Company, Shimla (Joint Venture with M/s Ahuja Plastics Ltd.)
- (c) Sh. Sanjay Thakur, Hotel Marina, Shimla
- (d) Sh. Iqbal Singh, New Delhi (Respondent No.7)

Clause 2.2.2 of the RFP document described the following minimum eligibility criteria for a bidder :-

“2.2.2 To be eligible for pre-qualification and short-listing, a Bidder shall fulfill the following conditions of eligibility (the “Minimum Eligibility Criteria”):

A. Technical Capacity:

For demonstrating technical capacity and experience, the Bidder in the past 7 (seven) years preceding the Bid Due Date should possess experience of at least 2 (two) years (preceding Bid Due Date) of operation and maintenance of 1 (one) or more of the following Eligible Business Venture(s):

- (i) independent Café(s); or***
- (ii) fine-dining restaurant(s); or***
- (iii) multinational chain of restaurants/ fast-foods/ coffee houses; or***
- (iv) resort(s)/ hotel(s) with an in-house Café/ fine-dining restaurant, with each business venture having a minimum seating capacity of 50 (fifty) people at any given point of time.***

Any one or all the business ventures referred to in sub-clauses (i) to (iv) above are hereinafter referred to as the “Eligible Business Venture(s)”.

In case of a Joint Venture, any Member can meet the Technical Capacity requirement.

B. Financial Capacity:

For demonstrating financial capacity, the Bidder shall have a minimum Net Worth of Rs.1,00,00,000/- (Rupees One Crore Only) at the close of the financial year preceding the Bid Due Date i.e. on 31.03.2021.

In case of a Joint Venture, any one Member or both Members of the JV collectively, can meet the Financial Capacity requirement.

OR

C. High Net Worth Route:

The Bidder having a Net Worth of Rs.8,00,00,000/- (Rupees Eight Crores Only) or above shall be deemed to have applied through High Net Worth Route and shall be exempted from meeting the Technical Capacity & Financial Capacity as specified above. However, such Bidder shall have to demonstrate this Networth independently, without forming a Joint Venture. The said Bidder must establish that it has the Net-worth of Rs.8,00,00,000/- (Rupees Eight Crores Only) or above, as on March 31, 2021 and accordingly provide details as per format at Annex-III of Appendix-I duly certified by its statutory auditor/ Chartered Accountant.”

In response to the tender notice, respondent No. 7 presented the bid as a natural person. He emerged as the H1 bidder. He had quoted highest annual concession fee of Rs. 1,32,04,428/-. During hearing, it was an admitted position of the parties that respondent No. 7 had only been involved in construction activities, had no experience whatsoever in hospitality sector and did not meet the prescribed technical criteria. According to official respondents, considering respondent No. 7's net worth of Rupees eight crore, the authorities considered respondent No. 7's bid under the High Net Worth Route under Clause 2.2.2 (C) and selected him. We find it quite strange that mere possession of high net worth by an individual can be considered such a strong factor to completely ignore the requirement of possessing technical criteria stipulated in Clause 2.2.2 (A), more so, when under the concession agreement, the selected Operator has not been permitted to allow use of Project facility by any other person. This leads to another question as to

whether setting up a 'high-end Cafe' for showcasing & simultaneously preserving the heritage with generation of revenue for the Municipal Corporation was the aim of Municipal Corporation or the generation of revenue simpliciter was its object. We may also note that the minutes of the meeting held on 19.05.2022 for opening and evaluating the bids refer to a technical evaluation report dated 16.05.2022 as per which "*all four bidders have qualified technical qualification criteria and eligible to participate in the financial bid*". It is not demonstrated before us as to how respondent No.7-the H1 bidder can be said to have satisfied the prescribed technical qualification when he admittedly did not have the requisite technical criteria.

4(iii)(d) The HPIDB in its meeting held on 25.05.2022 directed H1 bidder-respondent No. 7 to make a detailed presentation on the project and demonstrate his concept on 'appropriate use' of the Town Hall in the next Board meeting. When the intended use of the Town Hall was certain, definite & unambiguous i.e. it was to be used specifically for operating a 'high-end Café', why should then the HPIDB ask the H1 bidder to demonstrate on "appropriate use of the Town Hall," is something strange. Be that as it may. It seems that the presentation of H1 bidder was confined only to the HPIDB. Whether the Municipal Corporation Shimla or any other authority

had any role in it, has not been elaborated before us at this stage. The H1 bidder-respondent No. 7 made a presentation before the HPIDB on 06.06.2022, whereafter the Board decided to award the concession in his favour for “operation, maintenance and management (including furnishing, refurbishing and upgrading) of a ‘high-end Café’ in the ground floor of Town Hall, The Mall, Shimla.”

The HPIDB referred the matter for approval to the State Government. The Government approved it on 17.09.2022 with condition that heritage status and structure etc. of the building should not be changed in any manner. No further documents are available on record in respect of approval of the State Government.

4(iii) (e) Letter of award was issued in favour of H1 bidder-respondent No. 7 on 19.09.2022 for setting up, operation and maintenance of a ‘high-end Café’ on the ground floor of Town Hall, The Mall, Shimla. The concession was to be granted for 10 years. Rupees sixty lacs were to be paid by respondent No. 7 to the Municipal Corporation as up-front payment on Commercial Operation Date (COD). Annual concession fee of Rs. 1,32,04,428/- was to be paid to the Municipal Corporation by respondent No. 7 in advance quarterly installments after COD.

Upon handing over of the project site, the service operator was to submit a Fitment Plan to the authority alongwith complete set of requisite layout plans and drawings as acceptable to the authority for its prior consent/approval in respect of any internal work required to be carried out on the ground floor of the Town Hall building.

4(iii) (f) The concession agreement was executed between Municipal Corporation, Shimla and respondent No. 7 on 04.02.2023 for setting up, operation and maintenance of a ‘high-end Café’ on the ground floor of the Town Hall, The Mall, Shimla. Some covenants of the concession agreement are :-

“2. Scope of the Project

2.1 The scope of the Project for the Operator (the “**Scope of the Project**”) shall mean and include during the Concession period :

(i) setting-up a High-End Café at the Project Site by making provisions for fine menu, high quality services and ambience along with the mandatory provision of the reading facilities, information center and boutique of traditional art and crafts etc. for the public.

(ii) –(v) x x x x x x x x x x x x x x x x

3.1.3 *The Operator shall not be entitled to allow the use of the Project Facility by any other person or for any purpose other than as specified in this Agreement. The Operator shall not allow gambling, betting or carry out any activity that is unlawful/ illegal or deemed unlawful under any Indian Act or legislation. Further, the Operator shall not stock, store, exhibit or sell any items which are repugnant to the public order, morality or decency.*

6.1.5 *The Operator shall, at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of, its obligations elsewhere set out in this Agreement, the following:*

(a) – (f) x x x x x x x x x x x x x x x x x x x x x x x x x

(g) not to create any encumbrances, adverse rights or third party rights on the Project Site and also to ensure that the Authority is not adversely affected in any manner;

6.1.7 The Operator shall not be permitted to carry out any structural changes, modifications, additions or deletions are allowed on the ground floor area. However, there is a small area in the extreme left corner of the ground floor of the building where currently there is a small enclosure comprising of a kitchenette and a toilet block (3 toilets each for ladies and gents), which can be temporarily modified by the Operator by making minor structural changes to utilize a part of it for kitchen/pantry purpose. Other than this area, no structural changes or additions are allowed anywhere else within or outside the Town Hall Building. However, the Operator will be free to undertake whitewash and routine/preventive maintenance works in respect of the ground floor of the Town Hall Building. Further, any damage that may be caused to the heritage building due to the activities of the Operator on the ground floor of the Town Hall Building, the repairs in respect of such damage shall be made at the risk and cost of the Operator.

6.1.8 The Operator shall not be entitled to allow the use of the Project Facility by any other person or for any purpose other than as specified in this Agreement. The Operator shall not allow gambling, betting or carry out any activity that is unlawful/ illegal or deemed unlawful under any Indian Act or legislation. Further, the Operator shall not stock, store, exhibit or sell any items which are repugnant to the public order, morality or decency. The Operator shall not carry out any work which mars the beauty of the building.

*10.2.1 The Operator, subject to complying with the terms and conditions of this Agreement, shall have the right of use of the Project Site and the Project Facility during the Concession Period in accordance with the terms of this Agreement and such right shall be limited for the purposes mentioned in this Agreement. **The Operator shall not use the Project Site or Project Facility for any other purpose not intended herein.***

It was intrinsic in the concession agreement that scope of project was “setting up a high-end Café at the project site by making provision for fine menu, high quality service and ambience alongwith mandatory provisions of the reading facility, Information Centre and Boutique of traditional art and craft for the public. The project operator was not entitled to allow use of project facility by any other person or for any other purpose. For further ensuring the preservation of the heritage building, the operator was not permitted to carry out any structural changes, modifications, additions or deletions in the ground floor area of the Town Hall.

4(iii)(g) In terms of Clause 3.4 of the concession agreement, Fitment Plan alongwith layout plan and drawing was to be submitted by the project operator.

Pictorial depiction of the area in the ground floor, as reflected in the RFP document and the Fitment Plan of use of area as submitted by H1 bidder-respondent No. 7 and as approved by the authority is given hereunder :-

Photo No.1

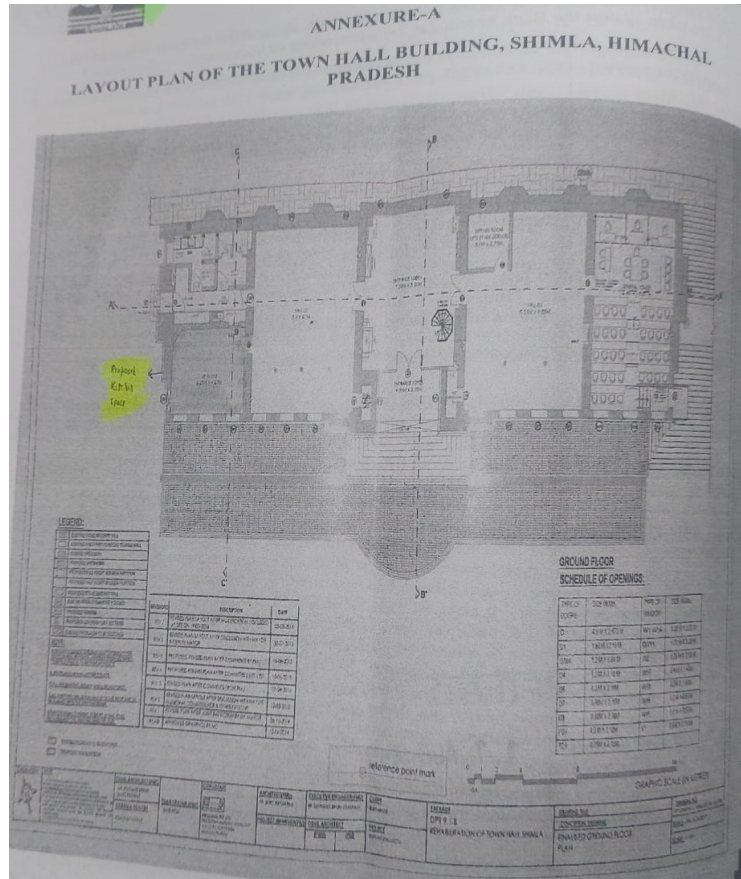
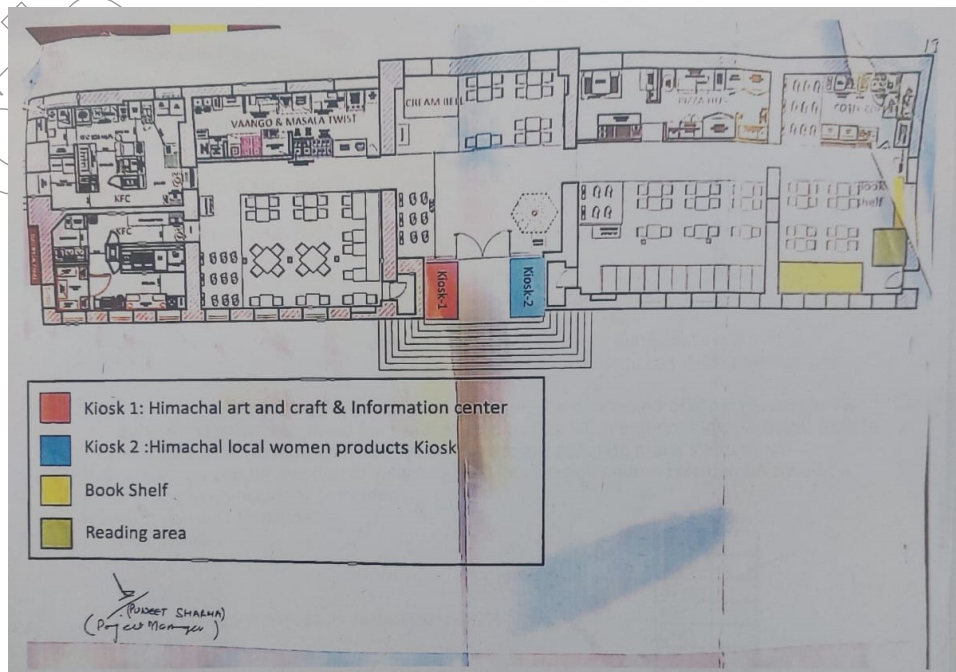


Photo No.2



In March/April, 2023, the H1 bidder-respondent No. 7 submitted his Fitment Plan of photo No. 2 above and also indicated that “in order to establish a ‘high-end Café’, he had made an arrangement with M/s Devyani International Limited (Respondent No.5) ; That M/s Devyani International Ltd. is a franchisee/brand owner of popular brands Pizza Hut, KFC, Cream Bell, Costa Coffee & Vaango in India and shall provide the services for preparation and supply of various foods and beverage items of the above mentioned brands at the ‘high-end Café’. Respondent No. 7 also mentioned that the above arrangement was in accordance with RFP and the concession agreement.

Some noting sheets of officials of Municipal Corporation, Shimla available on record of the case expressed concerns over the entitlement of H1 bidder to allow a third party to use the Town Hall. From the documents on record, it appears that these concerns were not appropriately looked into by higher authorities. Respondent No.7’s revised Fitment Plan was approved with only emphasis upon carrying out internal repairs as per the concession agreement. Whether under the Concession Agreement, respondent No. 7 could have used the ground floor of the Town Hall for setting up of food court as depicted by him in the Fitment Plan, whether respondent No. 7 could have engaged any other service provider for actual

running of the 'food court' were some of many serious issues that emerged, but perhaps were not attractive enough for the authorities to ponder over them. The Concession Agreement did not permit H1 bidder-respondent No. 7 to use the property for purpose other than setting and running a 'high-end Café'. Also, no covenant was brought to our notice authorizing him to create third party rights over the project site. Respondent No. 7 got set up on the ground floor of the Town Hall a food court instead of a high-end Café and it was set up by respondent No.5.

Learned counsel for respondent No. 5-M/s Devyani International Limited, during hearing of the case, produced a document purported to be the agreement executed between H1 bidder-respondent No. 7 and respondent No. 5. The date of execution of the agreement is mentioned as 01.04.2023. The agreement refers to respondent No. 7 as 'Food Court Operator' and respondent No. 5 as 'Food Court Service Provider'. Obligations and rights of the respective parties are covenanted there. Whether execution of such kind of agreement between H1 bidder and respondent No. 5 was in terms of the concession agreement executed between Municipal Corporation, Shimla and H1 bidder, whether this agreement was examined at any stage by the competent official respondents and all other ancillary questions were left un-answered

during hearing of the case. In view of the several provisions of the Concession Agreement, our prima-facie view is that this agreement for setting up a food court read as a whole seems to be beyond the scope of Concession Agreement.

4(iii) (h) The most important facet is whether the 'food court' consisting of Pizza Hut, KFC, Cream Bell, Costa Coffee and Vaango can actually be termed as a 'high-end Cafe', permitted to be set up by the Municipal Corporation in terms of judgment in CWP No. 19 of 2016. Our prima-facie considered view is that 'food court' would not fall within the meaning of a 'high-end Café'.

It has to be first understood that ground floor of the Town Hall was permitted by this Court to be used for setting up a 'high-end Café'. If arguendo the direction of this Court about use of the Town Hall by setting up a 'high-end Café' was not mandatory and the Municipal Corporation could use it for any other purpose, still the fact remains that Municipal Corporation treated the directions as mandatory, understood their intent as such, decided to strictly abide by them and geared up for setting up a 'high-end Café'. The Municipal Corporation took the requisite steps for setting up a 'high-end Café'. The RFP document issued by it through HPIDB was for setting up a 'high-end Café'. The expression of interest/tender notice was invited for setting up a 'high-end Café'.

The bids were invited for setting up a 'high-end Café'. The concession agreement between the parties is for setting up a 'high-end Café'. Nowhere in any of the official documents the word 'food court' figures. It is only in the agreement executed between H1 bidder-respondent No. 7 and M/s Devyani International Ltd.-respondent No. 5 that use of ground floor of the Town Hall building is mentioned by setting up of a food court.

The four bidders, including respondent No.7, who participated in the tender process, were very well aware that they were bidding for setting up a 'high-end Cafe' to be opened in the ground floor of the Town Hall building & not for any 'food court'. In case the Municipal Corporation eventually wanted to set up a food court, then the expression of interest, the bid document, the concession agreement would have all been very different. It cannot be ruled out that in that scenario, number of participating bidders or the bid amount could have varied. The revenue generation under that kind of tender notice could have also varied. In case the Municipal Corporation wanted to set up the food court, the least that would have been expected from it was to seek modification in the judgment dated 06.09.2019 in CWP No. 19 of 2016. This question is now redundant as the Municipal Corporation had actually complied with the directions of this Court in the judgment dated 06.09.2019 and

decided to utilize the ground floor of the Town Hall by reopening a 'high-end Café' and not the food court.

The food court set up by respondents No. 5 & 7 is of popular food & beverages brands Pizza Hut, KFC, Cream Bell, Costa Coffee & Vaago. The photographs of the food court are part of the case record. All these eateries have separate compartments with separate kitchens & different set ups, whereas as per the Concession Agreement, the Operator was not permitted to carry out any structural changes, modifications, additions or deletion in the building ; A small area in extreme left corner of the ground floor comprising of a kitchenette (Photo No.1) and a toilet was allowed to be temporarily modified by making minor structural changes to utilize a part of it for kitchen/pantry purpose. Other than this area, no structural changes or additions were allowed anywhere else within or outside the Town Hall. The underlying intention behind this provision was to maintain & preserve the heritage building. The food court with separate set ups of above named brands, in our view, cannot be said to be in tune with the covenants of the Concession Agreement. The separate set ups of five food joints, with cooking facilities of several places in the ground floor in the heritage building, in our prima-facie view, will impair the heritage value of the Town Hall. Such set-up is not even in consonance with different

provisions of the Concession Agreement. We have been taken through the documents which suggest that respondents No. 5 & 7 have already made structural changes in the building by installing series of air conditioners in M.S. Steel structure at outer façade of the Town Hall towards Scandal Point, the Mall Shimla. On receipt of a complaint in this regard from Dr. Pawan Kumar Banta, a notice was issued on 21.07.2023 by the Municipal Corporation to respondent No. 7 to remove the same. The matter is stated to be pending consideration of a duly notified State Heritage Advisory Committee which in its meeting held on 19.10.2023 has decided to await for the directions of Court in this matter, before proceeding further. Such kind of interference with the building structure is clearly prohibited under the concession agreement. Given the heritage status enjoyed by the building and taking into consideration all the pros & cons, only a 'high-end Café' was permitted by the Court to be opened in the Town Hall & it is keeping in view all these factors that Municipal Corporation had also decided to run a High-End Café in the ground floor of the Town Hall.

5. Observations & directions at this stage

5(i) Based on above discussion, at this stage our prima-facie but considered view is as under :-

5(i)(a) Town Hall, the Mall Shimla is located in the heart of Shimla town. Built in 1860, renovated first in 1910-11 and thereafter during the years 2014-18 in Gothic architectural style, the building has immense historic significance and is a notified heritage structure situated in notified heritage area. To maintain its grandeur and to preserve its heritage, its owner -the Municipal Corporation Shimla has not been permitted even to set up all its offices in this building which it previously housed there. This Court in its judgment dated 06.09.2019 in CWPIIL 19 of 2016 had permitted only the offices of Mayor and Deputy Mayor to function from the Town Hall. Remaining area was permitted to be used as a high-end café with an information centre and boutique showcasing traditional art and craft so that some revenue is generated for the Corporation.

5(i)(b) The Municipal Corporation decided to comply with the directions of this Court and through HP Infrastructural Development Bank(HPIDB) invited bids for selection of operator to operate and maintain a high-end café in the ground floor of the Town Hall. The argument that directions of this Court to set up a high-end café were not mandatory and that Municipal Corporation could have used the ground floor of the Town Hall in any appropriate manner keeping in view its heritage nature, is of no relevance. It is an admitted position that the Municipal Corporation complied with the directions be it

mandatory or non-obligatory in nature and decided to set up a high-end café in the ground floor of the Town Hall.

5(i)(c) The tender notice, the Request for Proposal (RFP) document, the Concession Agreement make it loud and clear that it was a high-end café that was to be set up on the ground floor of the Town Hall. None of the provisions of any of these documents even remotely suggests about setting up a food court in the Town Hall.

5(i)(d) The mode and manner of setting up a high-end café was also described in the RFP document as well as in the Concession Agreement. It was to be set up without making any structural changes in the heritage building. Even the location of kitchen to be set up there, the upscale & premium quality furnishing etc. were all detailed in the RFP document and the Concession Agreement. This was planned in a manner befitting the heritage structure of the historical building. The food court consisting of popular brands of Pizza Hut, KFC, Cream Bell, Costa Coffee and Vaango with their separate compartments and separate kitchenettes etc., actually set up in the ground floor of the Town Hall nowhere fits in those plans. The food court was neither permitted by this Court to be set up in the Town Hall, nor decided by the Municipal Corporation to be set up there.

5(i)(e) There is a world of difference between a high-end café and a food court. Webster's Encyclopedic Unabridged Dictionary of English language defines high-end café as 'being the most expensive and technically sophisticated' whereas food court in Collins dictionary has been defined 'as a place for example in a shopping mall that has several small restaurants, common eating area' and in The Britannica Dictionary as 'an area within a building (such as a shopping mall) where there are many small restaurants that share a large area of tables for their customers'. A high-end café would be a high-end business. The clientele may consist of relatively high net worth individuals, upscale tourists and corporate. Respondents no. 5 and 7's desperate contention that food court if located in Shimla would have to be construed as a high-end restaurant for Shimla standards, is a distasteful and unpalatable argument. A food court would remain a food court irrespective of its location and further Shimla city does not have the poor standards which respondent nos 5 and 7 would want this court to believe for labeling a food court as a high-end café.

5(i)(f) Bids were invited by the Municipal Corporation for setting up a high end café on the ground floor of the Town Hall and not for the food court. The participating bidders were fully aware that they were bidding for operating and maintaining a high-end café

and not some food court. The bids submitted by them were for setting up a high-end café and not the food court.

5(i)(g) The minimum eligibility criteria for qualifying technical and financial bids was also detailed in the tender documents. We find it quite strange that on one hand in terms of the bid document the selected bidder – the operator had not been permitted to create third party rights on the project site, he has also not been allowed to use the project site for any other purpose yet on the other hand bid document provides for exempting a bidder from possessing technical criteria viz. required experience in hospitality sector in case he possesses high net worth of Rs. 8 crores. Just how would mere high net worth can be of any assistance in operating, running and maintaining a high-end café in a heritage building to a bidder when he does not satisfy the required technical criteria and also cannot create third party rights to run the high-end café, is beyond comprehension. This leads to another ancillary question as to whether Municipal Corporation was desirous of only generating income from absolute commercialization of the heritage property or its intention was to showcase the property in a manner befitting the heritage stature of the property with an eye on generation of some income. There is a difference between the two concepts. It has to be kept in mind that this Court had not permitted the Municipal

Corporation to set up all its offices in the renovated Town Hall building, which were established there prior to building's renovation. A conceptual plan for the use of the property was also got prepared under the court order. A previous proposal of shifting the State Museum from Chaura Maidan Shimla to the Town Hall was also dropped in view of space constraints in order to preserve the heritage property. It was not outright commercialization in complete disregard to preserving the heritage value of the building that was intended by the permitted use of the Town Hall. The commercial use was to be largely in terms of public centric activities. It was also brought to our notice during hearing that already notices have been issued by the Municipal Corporation to respondent no.7 about the structural damages allegedly caused to the heritage property by installation of series of air conditioners in M.S. steel structure at the outer façade of the historic building towards Scandal Point, the Mall Shimla. It has also been brought to our notice that respondent No. 7 has also defaulted in payment of advance quarterly installments.

5(i)(h) It is a fact that respondent no.7- the H1 bidder did not set up a high-end café in the ground floor of the Town Hall. Respondent no.7 through respondent no.5 actually set up a Food Court comprising of 5 separate eating joints in the heritage building.

The setting up of a food court instead of a high end café was not in conformity with the directions of the court, with the decision of the Municipal Corporation, with provisions of the tender notice, with provisions of the RFP document and with provisions of the Concession Agreement.

5(i)(i) Whether the selected operator the H1 bidder-respondent no.7 who admittedly had no experience in hospitality sector, had worked only in the construction sector and who prima-facie in terms of covenants of the Concession Agreement was not allowed to create third party rights for running the high-end cafe, could have engaged the services of respondent no.5 for running the food court is another question left unanswered. Whether there was any examination by the competent authorities of the agreement executed between respondent no.7 and respondent no.5 in this regard, whether such agreement is in conformity with the Concession Agreement, are some more questions left unanswered by the respondents.

We have also considered the notices issued by the Municipal Corporation to respondent no. 7 for the structural damages said to have been caused by it to the majestic heritage building within months of setting up a food court there. The case of establishment of external Air Conditioners & Variable Temperature

System by the concessionaire was put up for examination of State Heritage Advisory Committee, which in its meeting convened on 19.10.2023 has decided to consider the matter after orders from this Court in the instant petition.

5(ii) Interim Directions

In view of above discussion , we at this stage are of the considered view that :-

5(ii)(a) A prima-facie case has been established for grant of interim relief against respondent nos.7 & 5. The Town Hall is a much coveted historical landmark of Shimla Town that has been renovated at great cost with investment of funds by Asian Development Bank. Heritage sites are always precious, they are witness of antique era. Heritage building is held in public trust cause it is a treasure. The heritage has to be preserved for it's the heritage. Running of food court in the iconic building will put the property under continued pressure and threat to its heritage value. For the reasons discussed in paras 4 and 5 above, we do not find balance of convenience in favour of respondents no. 5 & 7 for running a food court in the ground floor of the Town Hall. There is overwhelming public interest in the petition that outweighs the conflicting private interests of respondents No. 5 & 7. Irreparable loss and injury shall be caused to the heritage property and in turn to

the public at large in case respondents no. 5 and 7 are permitted to continue to run the food court there. Therefore till the next date of hearing, respondents no. 5 & 7 are forthwith restrained from operating, running the food court in the Town Hall, the Mall Shimla. The Commissioner Municipal Corporation Shimla is directed to ensure immediate compliance of this order.

5(ii)(b) Despite the fact that we heard the matter for two days, many questions indicated above that emerged during hearing were not answered by the official respondents be it the State or the Municipal Corporation or the HP Infrastructural Development Bank. Petitioner has also requested to file a detailed rejoinder to the replies filed by the respondents. He may do so before the next date of listing. The respondents may also supplement their replies if advised to do so. Considering all the above aspects of the case mentioned in para 4 and 5 above, which are the basis for our above prima-facie view, we hereby through the office of Learned Advocate General direct the State Heritage Advisory Committee to look into all the above facets of the case and submit a report to us by the next date of hearing. While considering different angles of the case pertaining to use of the ground floor of the magnificent and majestic Town Hall Shimla, any document, record or assistance required by the Heritage Committee be supplied/provided to it by the concerned quarters.

List on 14.03.2024.

**M. S. Ramachandra Rao,
Chief Justice**

10th January, 2024 (K)

**Jyotsna Rewal Dua
Judge**

High Court of H.P.