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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/948/2026

DIPAK SARMA
S/O JAGDISH CHANDRA SARMA, H. NO. 6, A.K. DEV ROAD, MILAN PATH, FATASIL AMBARI, DISTRICT- KAMRUP(M), ASSAM - 781025

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVERNMENT OFASSAM, PUBLIC WORKS (ROADS) DEPARTMENT, DISPUR, GUWAHATI-06

2:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (ROADS)
CHANDMARI
GUWAHATI
ASSAM- 781003

3:THE EXECUTIVE ENGINEER
PWRD
NALBARI DISTRICT TERRITORIAL ROAD DIVISION
NALBARI
ASSAM- 78133

Advocate for the Petitioner : MD S HOQUE, MR. M DEKA

Advocate for the Respondent : SC, PWD ROAD,

Linked Case : WP(C)/712/2026

DIPAK SARMA
S/O JAGDISH CHANDRA SARMA
H.NO. 6
A.K. DEV ROAD
MILAN PATH

FATASHIL AMBARI
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NALBARI
ASSAM-781335

Advocate for : MD S HOQUE
Advocate for : SC
PWD ROAD appearing for THE STATE OF ASSAM AND 2 ORS.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri K. N. Choudhury, Sr. Counsel.
Shri S. Hoque, Advocate

Advocate for the respondents : Shri B. Gogoi, AAG.

Date on which judgment is reserved : **16.07.2026**

Date of pronouncement of judgment : **03.08.2026**

Whether the pronouncement is of the operative part of the judgment? : NA
Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

Both the writ petitions being connected were heard analogously and are disposed of by this common judgment and order. While the first writ petition was filed to conclude a tender process, the second writ petition has been filed challenging the fresh tender process by cancelling the earlier tender process

2. As per the facts projected, a Tender Notice was floated by the Chief Engineer (Roads) on 17.10.2025 which includes 2 packages under the ASOM MALA. The petitioner was interested in the first package and had accordingly submitted his bid. It is also the case of the petitioner that he had to approach this Court by filing WP(C)/6450/2025 as the site visiting certificate was not given to him and the issue was resolved by this Court vide order dated 19.11.2025. The technical bids were evaluated and the bid offered by the petitioner was found to be technically responsive. Thereafter, the price bids were opened and the bid of the petitioner was found to be L1. However, no Letter of Intent was issued for which the 1st writ petition WP(C)/712/2026 was instituted to conclude the tender process. During the pendency, the re-tender notice was issued on 12.02.2026 which is the subject matter of challenge in the 2nd writ petition WP(C)/948/2026.

3. I have heard Shri K.N. Choudhury, learned Senior Counsel assisted by Shri S. Hoque, learned counsel for the petitioner. I have also heard Shri B. Gogoi, learned Addl. AG, Assam.

4. Shri Choudhury, the learned Senior Counsel for the petitioner has submitted that the impugned action is *ex-facie,* arbitrary, unreasonable and wholly unsustainable in law. By drawing the attention of this Court to the Assam Public Procurement Act 2017, the learned Senior Counsel has submitted that whenever a tender is required to be cancelled, reasons are to be immediately communicated to all the bidders. In this regard, he has referred Section 26 (3) of the said Act. He has submitted that prior to

such cancellation, no reasons were communicated to the petitioner. He has also drawn the attention of this Court to the BOQ and has contended that the price bid of the petitioner is about Rs. 7 crores less than the second bidder. He has also submitted that the State has filed an affidavit-in-opposition and by referring to paragraph 6 of the same, he has submitted that there appears to be a change in the methodology of the construction whereby there is a recommendation to go ahead with the construction by way of Cement Treated Sub-Base (CTSB). He has submitted that the entire impugned action is vitiated by *mala fide* and has been taken only to accommodate blue eyed persons. He has made a specific argument that the competitors to the petitioner are blue eyed persons of the Government who could not compete with the petitioner in the price bid and accordingly, the entire project was sought to be changed. He has also submitted that so far as the other package of the same work is concerned, not only the work order was issued in November, 2025, the same also appears to have been completed. He has submitted that two different yardsticks cannot be applied for two parts of the same work. He has submitted that so far as the 2nd writ petition is concerned, there is an interim order operating.

5. The learned Senior Counsel for the petitioner has submitted that apart from violation of Section 26(3) of the Act, the impugned action clearly appears to be one which has been adopted to oust the petitioner from the competition. He has also submitted that the so-called new policy to go ahead with the construction work by adopting a new construction process was after opening of the financial bids. He has submitted that for similar nature of works, more particularly, the package number 2 of the same work, no change in technology was adopted. He has made a specific averment that the local MLA had intervened in the matter and such intervention gave rise to the impugned action.

6. In support of his submission, the learned Senior Counsel has relied upon the case of ***Subodh Kumar Singh Rathour vs. The Chief Executive Officer & Ors.*** reported in ***AIR 2024 SC 3784*** and the following observations made by the Hon'ble

Supreme Court have been pressed into service:

> "*111. However, we are not impressed with the above submission. As discussed in the preceding paragraphs of this judgment, nothing to this effect is even remotely indicated from the internal file notings of the respondent or the materials on record. There is nothing to suggest that there was a technical fault in the tender resulting in financial losses or that there was a possibility of fetching higher license fees. On the contrary, it can be seen that the respondent itself was of the opinion that the tender for work was financially beneficial to it. This further undermines the claims of technical faults or potential financial losses, and suggests that the decision to cancel the tender was not based on genuine financial concerns but rather on other, possibly extraneous factors.*
>
> *124. Public tenders are a cornerstone of governmental procurement processes, ensuring transparency, competition, and fairness in the allocation of public resources. It emanates from the Doctrine of Public Trust which lays down that all natural resources and public use amenities & structures are intended for the benefit and enjoyment of the public. The State is not the absolute owner of such resources and rather owns it in trust and as such it cannot utilize these resources as it pleases. As a trustee of the public resources, the State owes i) a duty to ensure that community's resources are put to fair and proper use that enures to the benefit of the public as-well as ii) an obligation to not indulge in any favouritism or discrimination with these resources. The State with whatever free play it has in its joints decides to award a contract, to hold up the matter or to interfere with the same should be accompanied by a careful consideration of the harm to public interest.*
>
> *126. The sanctity of public tenders lies in their role in upholding the principles of equal opportunity and fairness. Once a contract has come into existence through a valid tendering process, its termination must adhere strictly to the terms of the contract, with the executive powers to be exercised only in exceptional cases by the public authorities and that too in loathe. The courts are duty bound to zealously protect the sanctity of any tender that has been duly conducted and concluded by ensuring that the larger public interest of upholding bindingness of contracts are not sidelined by a capricious or arbitrary exercise of power by the State. It is the duty of the courts to interfere in contractual matters that have fallen prey to an arbitrary action of the authorities in the guise of technical faults, policy change or public interest etc.*
>
> *128. Cancellation of a contract deprives a person of his very valuable rights and is a very drastic step, often due to significant investments having already been made by the parties involved during the subsistence of the contract. Failure on the part of the courts to zealously protect the binding nature of a lawful and valid tender, would erode public faith in contracts and tenders. Arbitrary*

terminations of contract create uncertainty and unpredictability, thereby discouraging public participation in the tendering process. When private parties perceive that their contractual rights can be easily trampled by the State, they would be dissuaded from participating in public procurement processes which may have a negative impact on such other public-private partnership ventures and ultimately it is the public who would have to bear the brunt thereby frustrating the very object of public interest."

7. Reliance has also been placed on a decision dated 04.02.2025 of a Coordinate Bench of this Court passed in WP(C)/3832/2024 [***Mahalaxmi Enterprises vs. The State of Assam and Ors.***] and the following observations have been pressed into service:

"*It is a settled principle of law that in order to ascertain whether the actions on the part of the Respondent State is arbitrary or not one needs to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, the performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. ..."*

8. *Per contra*, Shri Gogoi, the learned AAG representing the Public Works Department has submitted that the decision to cancel the earlier tender and to go for a fresh tender is based on public interest. He has submitted that before the work order could be issued, there was a recommendation by the local MLA for changing the methodology as the area was low lying and the traffic movement is more. Further, the new technology is better than the earlier technology. He has submitted that simply on being adjudged as L1, no right stood vested on the petitioner. He has also drawn the attention of this Court to the report on the revised estimate dated 29.01.2026.

9. By placing certain papers before this Court, the learned AAG has submitted that there was a representation by the local MLA to the Public Works Department in

December 2025 whereafter fresh estimate by the Superintending Engineer dated 24.12.2025 was made. Thereafter, the Chief Engineer (Roads) had issued the proposal to the Department. He has submitted that the earlier technology was GSB (Granular Sub Base) whereas under the new technology, it is CTSB (Cement Treated Sub Base). He has submitted that the change in technology is in public interest.

10. Responding on the submission pertaining to the rights of the petitioner, the learned AAG has submitted that though the financial bids were opened, no right as such had accrued upon him. He has also submitted that no *mala fide* has been alleged in the writ petition. He has also contended that no party has been made respondent by name and therefore, the oral argument on *mala fide* cannot be countenanced. He has also submitted that the estimate will remain the same and therefore, there would be no adverse financial implication by change of the technology. He has also submitted that in the meantime, the change has been approved by the Government. He has also submitted that there is no specific prayer challenging the new tender and therefore, the writ petitions are liable to be dismissed.

11. In support of his submission, the learned AAG has relied upon the judgment of ***Haryana Urban Development Authority and Ors. vs. Orchid Infrastructure Developers Private Limited*** reported in ***(2017) 4 SCC 243*** in which it has been laid down that the highest bidder would have no vested right for grant of the contract and the following observations have been pressed into service:

> "*13. It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue. We are of the considered opinion that there was no right acquired and no vested right accrued in favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount. …*

12. On the applicability of the Act of 2017, the learned AAG has submitted that though there are certain requirements in Section 26(3), those are not mandatory in

nature. On the other hand, the Act lays down certain other requirements in Sections 27(3) and 27(4) and he has submitted that the stage had not arisen. He had reiterated that violation of the requirement of Section 26(3) would be a procedural violation which will not make the entire process a nullity. He has submitted that the petitioner does not have the experience of CTSB and therefore, cannot maintain the present challenge.

13. By drawing the attention of this Court to the affidavit-in-opposition filed on 18.03.2026 in WP(C)/948/2026, the learned AAG has submitted that DPR was prepared whereafter the representation was received in which the aspect that the area was low lying and there being large traffic movements were taken into consideration. He has also submitted that technical justification was taken and comparison done as per which the new technology is better. He has also relied upon the case of the Hon'ble Supreme Court in ***Silppi Constructions Contractors vs. Union of India*** reported in ***(2020) 16 SCC 489*** and has submitted that the Hon'ble Supreme Court has laid down that reasons are not required to be cited in all cases involving commercial activities. He has however submitted that the reasons, anyways have been given in the affidavit.

14. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

15. It is not in dispute that the tender which was floated by the Chief Engineer (Roads) PWD on 17.10.2025 had two packages and the present work pertains to the first package. It is also not in dispute that so far as the 2nd package is concerned, on the existing technology, i.e., Granular Sub- Base (GSB), the work was allotted and done.

16. The background before filing of this case is also liable to be taken into consideration. As noted above, while preparing to submit the bid, the petitioner was denied of a site visiting certificate for which he had to file WP(C)/6450/2025 and the

dispute was resolved, as observed in the order dated 19.11.2025 passed by this Court whereafter the petitioner had submitted the said certificate. The bid of the petitioner was found to be technically responsive. Thereafter, the financial bids were opened and it is not in dispute that the bid of the petitioner was adjudged as L1. Thereafter, no Letter of Intent was issued for which the petitioner had filed the first writ petition WP(C)/712/2026. In the meantime, the impugned order was issued on 12.02.2026 deciding to go for a re-tender which is the specific matter of challenge in the second WP(C)/948/2026.

17. It is specifically contended by the petitioner that the work in question could be covered by the Assam Public Procurement Act 2017 and this proposition has not been disputed. Section 26(3) of the said Act requires immediate communication of the reasons to the bidders in case of cancelation. Admittedly, no such reasons were communicated to the petitioner. The aforesaid violation has been argued on behalf of the respondents to be mere procedural in nature. Though the said submission may have some force, the same would nonetheless give rise to have an idea regarding *mala fide* in the decision making process.

18. To ascertain the decision making process, this Court had, on more than one occasion directed the learned AAG to produce the original records. The learned AAG has however submitted that no separate file exists and the papers made available from the Office of the Chief Engineer, PWD were the only papers. The learned AAG has, nonetheless produced a bunch of photocopies of certain documents. No file containing any note-sheet was produced.

19. From the papers submitted before this Court, the impugned action clearly appears to be initiated by a representation by the local MLA to the Public Works Department made in December 2025. Though the role of the local MLA to make representation is not questioned, what is required to be seen is with regard to the stage on which such representation has been made. In the instant case, the tender

was floated on 17.10.2025 which presupposes detail survey and study of the area and a DPR. As noted above, so far as the second package of the same work is concerned, it was allotted to another contractor who had done the work following the existing technology as prescribed in the tender. The local MLA had raised the issue that the area in question is low lying and there is heavy traffic and therefore had suggested for changing the technology upon which fresh estimate was made by the Superintendent Engineer on 24.12.2025 and the matter was forwarded to the Government by the Chief Engineer, PWD which was approved. The learned AAG has submitted that no *mala fide* has been alleged as no respondent has been made party by name. However, there is a difference between malice in fact and malice in law. In the instant case there is a clear violation of section 26(3) of the Act as no reasons were communicated to the petitioner before cancelation which is mandated. That apart, the decision to change the technology appears to be adopted only for the present package whereas the other package of the same contract has been done following the prevailing mode of construction notified in the tender.

20. The requirement to examine the decision making process is a sacrosanct duty of a writ court exercising powers of judicial review and such decision making process would be revealed only from the file notings. In the instant case, there are no file notings which could be made available and only certain documents, including the representation of the local MLA were placed on record. There is no indication at all as to how the file had moved and at what stage or who had taken the decision.

21. The learned AAG has emphasized that the new technology of CTSB is a better technology which is more durable. However, no materials were placed before this Court that this new technology has replaced all works done in the State of Assam. In fact, it is admitted that so far as package 2 of the same contract is concerned, the same has been done by following the earlier technology and is already complete. The reasons that the area is low lying and there is more traffic movement cannot be kept confined to the present work only as this work is a part of the same contract having

two packages.

22. In the case of ***Subodh Kr. Singh Rathore*** (supra), the Hon'ble Supreme Court which was in seisin of a similar matter pertaining to cancellation of a tender had laid down certain important principles in law including the exercise of judicial review to examine the decision making process from internal file notings. In the said case, the file notings did not support the impugned decision to cancel the tender process. It has also been held that even a technical fault would not be a cogent reason for cancelling a tender process. The Hon'ble Supreme Court has laid down a caveat in the following manner:

> "*115. What can be discerned from the above is that this Court has consistently underscored that any decision to terminate a contract must be grounded in a real and palpable public interest, duly supported by cogent materials and circumstances in order to ensure that State actions are fair, transparent, and accountable. Public interest cannot be used as a pretext to arbitrarily terminate contracts and there must be a clear and demonstrable ramification or detriment on the public interest to justify any such action."*

23. In the instant case, as noted above, there are no file notings which could be produced in spite of opportunities and the aspect of technical fault was not even present as the other package was already allotted and work had proceeded long back and perhaps concluded.

24. The learned AAG has relied upon the case of ***Haryana Urban Development Authority*** (supra). However, on a careful reading of the said case, it appears that the facts are clearly distinguishable. In the said case, the plaintiff whose bid was the highest was seeking a declaration for illegal rejection of his bid and no injunction was granted. The Hon'ble Supreme Court has held that a declaration that the rejection of the bid was illegal would not itself entitle the plaintiff for a consequential mandatory injunction for issuance of a formal letter of allotment.

25. From the discussions made above, it becomes clear that on every stage there

has been an attempt to limit the competition and oust the petitioner. There is a specific argument made that the same has been done to favor certain blue eyed boys. Though no person has been made party respondent by name, the materials which are placed before this Court and the background circumstances are clear that the petitioner has been sought to be ousted from the competition. As mentioned above the petitioner had to approach this Court even for the issue of site visiting certificate. Secondly, after being adjudged as L1, the Letter of Intent was not forthcoming and therefore another writ petition had been filed followed by the impugned communication dated 12.02.2026 of canceling the earlier tender and going for re-tender with a new technology which is admittedly on the intervention of the local MLA. The aspect that the other package of the same contract has been allotted to another contractor on the existing technology is also a relevant consideration. All the aforesaid action clearly appears to be vitiated by malice in law as well as *mala fide* which clearly does not appear to be fair and transparent. The huge difference in the price bid of the petitioner and the second bidder which is about Rs. 7 crore is also a relevant factor which is directly connected with public interest and public revenue.

26. In the aspect of distribution of State largesse, fairness and transparency are the hallmarks. The State is mandated to act fairly so that no citizens are prejudiced. The present impugned action clearly appears to be accentuated by malice in law whereby the right of the petitioner has been clearly violated.

27. In the conspectus of the aforesaid discussion, this Court has no other option but to allow the writ petitions. The impugned order dated 12.02.2026 stands interfered with and is set aside. The work in question is directed to be allotted to the petitioner who was adjudged as L1 in accordance with law.

28. No order as to cost.

JUDGE

Comparing Assistant