



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

W.P.(C) NO. 7967/2022

Hemanta Karmakar, S/o- Moni Mohan Karmakar, proprietor of
M/s J.K. Group and Company having its registered office at A.K.
Dev Road, Ganeshpara in the District of Kamrup (M), Assam

.....Petitioner

-Versus-

1. The Union of India represented by the Secretary, Ministry of Human Resource Development, Department of School Education and Literacy, 124(C) Wing, Shastri Bhawan, New Delhi- 110001
2. The Secretary Finance Government of India Ministry of Finance Department of Expenditure, New Delhi- 110001
3. The State of Assam represented by the Commissioner and Secretary to the Government of Assam, Department of Education, Dispur, Guwahati – 06
4. The Mission Director, Samagra Shiksha, Assam Kahilipara, Guwahati - 01

.....Respondents

W.P.(C) NO. 523/2023

Hemanta Karmakar, S/o- Moni Mohan Karmakar, proprietor of
M/s J.K. Group and Company having its registered office at A.K.
Dev Road, Ganeshpara in the District of Kamrup (M), Assam

.....Petitioner

-Versus-

1. The Union of India represented by the Secretary, Ministry of
Human Resource Development, Department of School Education
and Literacy, 124(C) Wing, Shastri Bhawan, New Delhi- 110001
2. The Secretary Finance Government of India Ministry of Finance
Department of Expenditure, New Delhi- 110001
3. The State of Assam represented by the Commissioner and
Secretary to the Government of Assam, Department of Education,
Dispur, Guwahati – 06
4. The Mission Director Samagra Shiksha, Assam, Kahilipara,
Guwahati – 14

.....Respondents

Advocates :

Petitioner [W.P(C) 7967/2022] : Mr. K.P. Pathak, Senior Advocate
Mr. S.K. Goswami, Advocate

Petitioner [W.P(C) 523/2023] : Mr. K.N. Choudhury, Senior Advocate
Mr. N. Gautam, Advocate

Respondent nos. 1 & 2 : Mr. R.K. Deb Choudhury, DSGI

Respondent no. 3 & 4 : Mr. D. Saikia, Advocate General, Assam

Mr. S. Bora, SC, Samagra Shiksha

Respondent no. 5 : Mr. D.K. Das, Advocate

Date of Hearing : 13.10.2023

Date Judgment & Order : 22.12.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

The same writ petitioner has preferred both the writ petitions – W.P.[C] no. 7967/2022 & W.P.[C] no. 523/2023 – under Article 226 of the Constitution of India to challenge two separate tender processes initiated by the same authority, that is, Mission Director, Samagra Shiksha, Assam [the respondent no. 4 in both the writ petitions].

2. The tender process, as assailed in the writ petition, W.P.[C] no. 7967/2022 [hereinafter also referred to as 'the 1st Writ Petition', at places, for easy reference], has been initiated by a Notice Inviting Tender [NIT] dated 01.11.2022 for Tender no. GEM/2022/B/2693580. The concerned tender process, as challenged in the writ petition, W.P.[C] no. 523/2023 [hereinafter also referred to as 'the 2nd Writ Petition', at places, for easy reference], has been initiated by a Notice Inviting Tender [NIT] dated 13.01.2023 for Tender no. GEM/2023/B/2982233. Both the tender processes are initiated for procurement of Dual Desks and Benches.
- 2.1. In the both the writ petitions, the petitioner has made more or less similar prayers. In the 1st Writ Petition, the petitioner has sought for setting aside and quashing of the tender process initiated by the NIT dated 01.11.2022 for Tender no. GEM/2022/B/2693580 for Supply and Installation of Dual Desks and Benches and also for a direction to the respondent authorities to issue a fresh Notice Inviting Tender [NIT] in conformity with the provisions of the Financial Management and Procurement Manual and the General Financial Rules, 2017 of the Government of India as well as in conformity with the

provisions of Section 11 of the Micro, Small and Medium Enterprises Development Act, 2006.

- 2.2. In the 2nd Writ Petition, the petitioner has sought for setting aside and quashing of the tender process initiated by the NIT dated 13.01.2023 for Tender no. GEM/2022/B/2982233 for Supply and Installation of Dual Desks and Benches and also for a direction to the respondent authorities to issue fresh Notice Inviting Tender [NIT] in conformity with the provisions of the Financial Management and Procurement Manual and the General Financial Rules, 2017 of the Government of India as well as in conformity with the provisions of Section 11 of the Micro, Small and Medium Enterprises Development [MSMED] Act, 2006.

The writ petitioner :-

3. The petitioner has stated that he is the proprietor of a firm by the name and style, **M/s JK Group and Company**, which has its registered office at Guwahati, Kamrup Metropolitan District. The petitioner's firm is holder of a Trade License no. GMC/WZ/7/GTL/202021/45233 dated 28.12.2020, issued by the Gauhati Municipal Corporation [GMC] and the said Trade License has been renewed from time to time. The petitioner's firm is also registered with the Ministry of Micro, Small and Medium Enterprises, Government of India as a micro enterprise in terms of the provisions of the Micro, Small and Medium Enterprises Development [MSMED] Act, 2006 and it has been issued a UDYAM Registration Certificate with Registration no. UDYAM-AS-03-0002664 for manufacture of furniture. It is stated that the petitioner's firm is also registered under the Goods and Services Act, 2017 vide Registration Certificate no. GSTIN-18AOWPK0867P1ZVP11. The petitioner has claimed that the firm has been in the business of steel furniture and fabrication since its inception.

Notice Inviting Tender [NIT] dated 01.11.2022 for Tender no. GEM/2022/B/2693580 :-

5. By publication of the NIT dated 01.11.2022 for Tender no. GEM/2022/B/2693580, the Mission Director, Samagra Shiksha, Assam had invited bids from eligible bidders for Supply and Installation of Dual Desks and Benches. The relevant excerpts of the concerned Bid Document read as under :-

BID DOCUMENT
For Supply of Dual Desk & Bench
BID DOCUMENT

<i>Bid details</i>	
*	*
<i>Ministry/State Name</i>	<i>Govt. of Assam</i>
<i>Department Name</i>	<i>Education Department, Govt. of Assam</i>
<i>Office/Organisation Name</i>	<i>Office of the Mission Director, Samagra Shiksha, Assam Kahilipara-19.</i>
<i>Total estimated Quantity</i>	<i>31730 sets</i>
<i>Item Category</i>	<i>Dual desk and bench</i>
<i>Item size</i>	<i>As described in bid document</i>
<i>Bidder details</i>	<i>Bidder must be a reputed Manufacturer of furniture/sole Authorised dealer of the manufacturer</i>
<i>Bidder Turnover</i>	<i>Average annual turnover Rs. 9.52 crores in last three years</i>
<i>Experience Criteria</i>	<i>As mentioned in the BID</i>
<i>EMD</i>	<i>Rs. 2% of the estimated value in the form an Account Payee Demand Draft, Fixed Deposit Receipt from a Commercial Bank, Bank Guarantee from a Commercial Bank in favour of “THE MISSION DIRECTOR, SSA, ASSAM” payable at GUWAHATI</i>
<i>Performance Security</i>	<i>5% of the contract value in the form an Account Payee Demand Draft, Fixed Deposit Receipt, Bank Guarantee from a Commercial Bank in favour of “THE MISSION DIRECTOR, SSA, ASSAM” payable at GUWAHATI</i>
<i>Document required from the seller</i>	<i>As mentioned in the BID</i>
<i>Past performance</i>	<i>As mentioned in the BID</i>
<i>Bid for RA enabled</i>	<i>As mentioned in the BID</i>
<i>Time allowed for technical clarifications</i>	
<i>Evaluation method</i>	<i>As per bid requirement</i>
DELIVERY PERIOD & PLACE OF DELIVERY :	
<i>Time of Delivery</i>	<i>90 Days</i>

Delivery place			At 1443 schools in 30 districts	
Consignees/Reporting Officer and Quantity				
Sl No.	Consignees/Reporting Officer	Address	Quantity in sets	Delivery period
1	* * *	Office of the Mission Director, Samagra Shiksha, Assam Kahilipara, Guwahati-19	31730	90 days from the date of order

2. ELIGIBILITY CRITERIA :

- [a] The Bidder must be reputed manufacturer of furniture/sole Authorised dealer of the manufacturer [any of one can only participate].*
- [b] The bidder shall have to submit Upto date Trade License.*
- [c] The bidder shall have to submit Upto date GST Registration Certificate.*
- [d] The Bidder shall have to submit Upto date Income Tax Return for the Financial 2021-2022.*
- [e] The bidder shall have to submit Power of Attorney to the authorized Signatory of the bidder to sign the bid document.*
- [f] The bidder shall have to submit Bank Solvency Certificate from Nationalised Banks.*
- [g] The bidder should have experience and past performance on similar contracts for last 2 years to any Central / State Govt. Organization / PSU.*
- [h] Profile of Bidder.*
- [i] The bidder must have an average annual turnover of minimum Rs. 9.52 crores from furniture for last three financial years [FY 2019-2020, FY 2020-2021 & FY 2021-22]. Audited Balance Sheet and CA certificate to be furnished accordingly with UDIN No.*
- [j] Bidder participating as sole Authorised dealer of the manufacturer shall have to submit dealership certificate of the Manufacturer.*
- [k] The bidder has to submit BIFMA, Green Guard, IGBC and AIOTA certificate of the Manufacturer.*
- [l] The bidder has to submit ISO: 45001 : 2018, ISO 14001 : 2015, ISO 9001 : 2015, ISO 50001 : 2018 certificates of the manufacturer certified by National Accreditation Board of Certifying Bodies.*
- [m] The bidder must have positive net worth as on the closing dates of each of the last three Financial Years [FY 2019-2020, FY 2020-2021 & FY 2021-2022] Certificate from the Statutory Auditor/CA need to be provided with UDIN No.*
- [n] The Bidder should not have been blacklisted by Central/State Government/PSU entity in India for unsatisfactory past performance, corrupt, fraudulent or any other unethical*

business practices as on date of submission of the proposal - Undertaking by the authorized signatory need to be provided duly Notarised.

[o] Bidder financial standing : The bidder should not be under liquidation, court receivership or similar proceedings, should not be bankrupt. Bidder to provide undertaking to this effect with the bid.

[p] Data Sheet of each product[s] offered in the bid, are to be submitted along with the bid documents. Buyers can match and verify the Data Sheet with the product specifications offered. In case of any unexplained mismatch of technical parameters, the bid is liable for rejection. Any deviation on product specification will not be considered.

[q] Bidder's offer is liable to be rejected if they don't upload any of the certificates / documents sought in the Bid document.

3. TERMS AND REFERENCE

* * * * *

iii. Contentions arising out of issues not mentioned in this tender document will be resolved as per GFR, 2017, CVC, Ministry of Finance, Govt. of India and Assam Public Procurement Rule, 2020.

iv. Mission Director, Samagra Shiksha, Assam shall be under no obligation to accept the lowest quotation. Further the Mission Director, Samagra Shiksha, Assam, reserves the right to reject any or all of the tenders without assigning any reasons.

21. PRODUCT DETAILS :

Item Name Technical Specification : Supply and Installation of Dual Desk and Bench as per specification.

Sl No.	Particulars	Specification
1.	Materials [Desk/Bench/Backrest]	Table top [Desk], Seat [Bench] and Backrest shall be made up of 18.0 mm thick MDF Board [IS : 12406 : 2003 or latest] with 0.5 mm all side laminated and all edges to be fitted with 2 mm thick injection molded virgin polypropylene copolymer. The desk shall be Green guard certified for low chemical emission of VOCs [Voltage Organic Compounds] and carcinogens, contributing to a healthier room environment. Front Modesty Panel : 18 mm Thick MDF Board [IS : 12406 :

		<i>2003 or latest] with 0.5 mm all side laminated, 200 mm width 2 mm Thick PVC Edge banded.</i>
2.	<i>Frame [Under Structure]</i>	<i>Frame Structure : All side metal frames and cross connectors are made from 25.4 mm x 25.4 mm thick CRCA tubes as per IS 513 : 2008, base which are welded to the desk and seat support. Stiffeners that are provided between the 2 vertical frames at base and back of seat are made from 25.4 x 25.4 x 1.2 mm. The back support are provided at the rear back are made of 50.8 x 25.4 x 1.2 mm rectangular CRCA tubes as per IS 513 : 2008 tubes.</i> <i>Additional horizontal supports 20.0 mm x 20.0 mm x 1.2 mm thickness CRCA tubes as per IS 513 : 2008 tubes sections are placed below the desk and seat to add to the rigidity of the structure.</i> <i>The storage shelves are to be made from 0.8 mm thick CRCA sheet [as per IS 513 : 2008] fixed below desk top panel.</i> <i>Hooks are to be provided on vertical side frames on both side of the desk made of 2 mm MS sheets for hanging bags and bottles.</i> <i>The under structure is to be assembled using M6 Tribular screws.</i> <i>Plastic caps made of PP copolymer [grade 3530] are to be provided.</i> <i>The under structure metal component shall have to be coated with 45 micron thickness of epoxy polyester coating.</i>

*24. Places of Delivery : Dual Desk and Bench are to be supplied and installed at the 1443 schools.
The list of schools will be provided along with the work order.*

Notice Inviting Tender [NIT] dated 13.01.2023 for Tender no. GEM/2022/B/2982233 :-

6. By publication of the NIT dated 13.01.2023 for Tender no. GEM/2022/B/2982233, the Mission Director, Samagra Shiksha, Assam had invited bids from eligible bidders for Supply and Installation of Dual Desks and Benches. The relevant excerpts of the concerned Bid Document read as under :-

BID DOCUMENT

For Supply of Dual Desk & Bench

BID DOCUMENT

Bid details				
*	*	*	*	*
Ministry/State Name		Govt. of Assam		
Department Name		Education Department, Govt. of Assam		
Office/Organisation Name		Office of the Mission Director, Samagra Shiksha, Assam Kahilipara-19.		
Total estimated Quantity		69350 sets		
Item Category		Dual desk and bench		
Item size		As described in bid document		
Bidder details		Bidder must be a reputed Manufacturer of furniture/Authorised distributor of the manufacturer		
Bidder Turnover		Annual turnover Rs. 21.00 crores		
Experience Criteria		As mentioned in the BID		
BID documentation charge		Rs. 5,000/- [Five Thousand] only, in the form of Demand Draft in favour of “THE MISSION DIRECTOR, SSA, ASSAM” payable at GUWAHATI, which is non-refundable		
EMD		2% of the estimated value in the form an Account Payee Demand Draft, Fixed Deposit Receipt from a Commercial Bank, Bank Guarantee from a Commercial Bank in favour of “THE MISSION DIRECTOR, SSA, ASSAM” payable at GUWAHATI		
Performance Security		5% of the contract value in the form an Account Payee Demand Draft, Fixed Deposit Receipt, Bank Guarantee from a Commercial Bank in favour of “THE MISSION DIRECTOR, SSA, ASSAM” payable at GUWAHATI		
Document required from the seller		As mentioned in the BID		
Past performance		As mentioned in the BID		
Bid for RA enabled		As mentioned in the BID		
Time allowed for technical clarifications				
Evaluation method		As per bid requirement		
DELIVERY PERIOD & PLACE OF DELIVERY :				
Time of Delivery		45 Days		
Delivery place		At 4039 schools in 33 districts		
Consignees/Reporting Officer and Quantity				
Sl No.	Consignees/Reporting Officer	Address	Quantity in sets	Delivery period

1	* * *	Office of the Mission Director, Samagra Shiksha, Assam Kahilipara, Guwahati-19	69350	45 days from the date of issue of work order

2. ELIGIBILITY CRITERIA :

- [a] The Bidder must be reputed manufacturer of furniture or authorised distributor duly certified by the principal manufacturer.
- [b] The bidder shall have to submit Upto date Trade License/Factory License/UDYAM registration certificate.
- [c] The bidder shall have to submit Upto date GST Registration Certificate.
- [d] The Bidder shall have to submit Upto date Income Tax Return for the Financial 2021-2022.
- [e] The bidder shall have to submit Power of Attorney to the authorized Signatory of the bidder to sign the bid document.
- [f] The bidder shall have to submit Bank Solvency Certificate from Commercial Banks.
- [g] The bidder or their Principal Manufacture [Themselves or though reseller] must have experience in supply of desk and bench of similar specification for at least 20% of the bid quantity in either of the last 3 [three] financial years [FY 2019-2020, 2020-2021, 2021-2022] to any Central Govt./State Govt. Organisatin/PSU.
- [h] Profile of Bidder.
- [i] The bidder must have a minimum turnover of Rs. 20.80 crores in five financial years [FY 2017-2018, FY 2018-2019, FY 2019-2020, FY 2020-2021 & FY 2021-2022]. Audited Balance Sheet and CA certificate for last four financial years to be furnished accordingly with UDIN No.
- [j] The bidder must have positive net worth in three financial years out of last five financial years [FY 2017-2018, FY 2018-2019, FY 2019-2020, FY 2020-2021 & FY 2021-2022]. Audited Balance Sheet and CA certificate for last four financial years to be furnished accordingly with UDIN No.
- [k] Bidder participating as sole Authorised dealer of the manufacture shall have to submit dealership certificate of the Manufacturer.
- [l] The bidder has to submit BIFMA, Green Guard and Green Pro certificate. AIOTA certificate for Educational Furniture Range.
- [m] The bidder has to submit ISO: 45001 : 2018, ISO 14001 : 2015, ISO 9001 : 2015, ISO 50001 : 2018 certificates of the manufacturer certified by National Accreditation Board of Certifying Bodies.

- [n] The Bidder should not have been blacklisted by Central/State Government/PSU entity in India for unsatisfactory past performance, corrupt, fraudulent or any other unethical business practices as on date of submission of the proposal - Undertaking by the authorized signatory need to be provided duly Notarised.
- [o] Bidder financial standing : The bidder should not be under liquidation, court receivership or similar proceedings, should not be bankrupt. Bidder to provide undertaking to this effect with the bid.
- [p] Data Sheet of each product[s] offered in the bid, are to be submitted along with the bid documents. Buyers can match and verify the Data Sheet with the product specifications offered. In case of any unexplained mismatch of technical parameters, the bid is liable for rejection. Any deviation on product specification will not be considered.
- [q] Bidder's offer is liable to be rejected if they don't upload any of the certificates / documents sought in the Bid document.

3. TERMS AND REFERENCE

* * * * *

- iii. Contentions arising out of issues not mentioned in this tender document will be resolved as per GFR, 2017, CVC, Ministry of Finance, Govt. of India and Assam Public Procurement Rule, 2020.
- iv. Mission Director, Samagra Shiksha, Assam shall be under no obligation to accept the lowest quotation. Further the Mission Director, Samagra Shiksha, Assam, reserves the right to reject any or all of the tenders without assigning any reasons.

21. PRODUCT DETAILS :

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		<i>Compounds] contributing to a healthier room environment.</i> <i>Front Modesty Panel : 18 mm Thick MDF Board [IS : 12406 : 2003 or latest] with 0.5 mm all side laminated, 250 mm width 2 mm Thick PVC Edge banded.</i>
2.	Frame [Under Structure]	<i>Frame Structure : All side metal frames and cross connectors are made from 25.4 mm x 25.4 mm x 1.2 mm thick CRCA tubes as per IS 513 : 2008, base which are welded to the desk and seat support. Stiffeners that are provided between the 2 vertical frames at base and back of seat are made from 25.4 x 25.4 x 1.2 mm. The back support are provided at the rear back are made of 50.8 x 25.4 x 1.2 mm rectangular CRCA tubes as per IS 513 : 2008 tubes.</i> <i>Additional horizontal supports 20.0 mm x 20.0 mm x 1.2 mm thickness CRCA tubes as per IS 513 : 2008 tubes sections are placed below the desk and seat to add to the rigidity of the structure.</i> <i>The storage shelves are to be made from 0.8 mm thick CRCA sheet [as per IS 513 : 2008] fixed below desk top panel.</i> <i>Hooks are to be provided on vertical side frames on both side of the desk made of 2 mm MS sheets for hanging bags and bottles.</i> <i>The Table to [Desk], Seat [Bench] and Backrest is to be assembled at under structure using M6 Tribular screws.</i> <i>Plastic caps made of PP copolymer [grade 3530] are to be provided.</i> <i>The under structure metal component shall have to be coated with 45 micron thickness of epoxy polyester coating.</i>

*24. Places of Delivery : Dual Desk and Bench are to be supplied and installed at the 4039 schools.
The list of schools will be provided along with the work order.*

7. I have heard Mr. K.P. Pathak, learned Senior Counsel assisted by Mr. S.K. Goswami, learned counsel for the petitioner in the 1st Writ Petition, W.P.[C] no. 7967/2022 and Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. N. Gautam, learned counsel for the petitioner in the 2nd Writ Petition, W.P.[C] no. 523/2023. I have also heard Mr. R.K. Deb Choudhury, learned Deputy Solicitor General of India for the respondent nos. 1 & 2 in the both the writ petitions; Mr. D. Saikia, learned Advocate General, Assam assisted by Mr. S.

Bora, learned Standing Counsel, Samagra Shiksha for the respondent no. 3 & 4 in both the writ petitions; and Mr. D.K. Das, learned counsel for the respondent no. 5 in both the writ petitions.

Submissions of the petitioner in the 1st writ petition :-

8. Mr. K.P. Pathak, learned Senior Counsel appearing for the petitioner has submitted that the tender process initiated vide the NIT dated 01.11.2022 is in violation of the provisions of, **firstly**, the Financial Management & Procurement [FMP] Manual framed specifically for the Scheme of Samagra Shiksha [Marked as Document – 'A' and kept in the case records]; **secondly**, the General Financial Rules, 2017 ['the GFR-2017', for short]; **thirdly**, the Right of Children to Free and Compulsory Education Act, 2009 ['the RTE Act, 2009', for short]; and **fourthly**, the Micro, Small and Medium Enterprises Development Act, 2006 ['the MSMED Act, 2006', for short].
- 8.1. Mr. Pathak has submitted that the Ministry of Human Resource Department [MoHRD], Government of India [GoI] by its Letter bearing D.O. no. 1-1/2018-EE-15 dated 12.09.2018, addressed to the Secretaries of the Education Department of all the States/Union Territories, had pointed out that the provisions of the Financial Management & Procurement [FMP] Manual shall be mandatory and thereby, the State Governments were requested to follow the Guidelines provided in the FMP Manual in financial matters pertaining to the Scheme of Samagra Shiksha. By referring to Clause 1.7 of the FMP Manual, it is submitted that the FMP Manual is mandatory and no deviation is permitted. Moreover, it has been provided that the FMP Manual follows the GFR-2017 and in case of any contradiction, the GFR-2017 would prevail. He has further submitted that the MoHRD, GoI has conceived of a participatory planning process in the Scheme of Samagra Shiksha by envisaging a bottom-up approach of planning including financial planning. The tender inviting authority here, that is, the respondent no. 4 is only the State Implementing Society [SIS] for the State of Assam and as an implementing agency, it cannot deviate from the provisions of the FMP Manual. In support of his such submissions, Mr. Pathak, has referred to a number of clauses in the FMP Manual, about which reference would be made in the later part of the order, for the sake of brevity. He has laid specific stress on Chapter 7 : Procurement of the Manual of FMP, more particularly, Clause 7.3, Clause 7.4, Clause 7.5, Clause 7.6, Clause 7.7, Clause 7.8, Clause 7.14.2[I], Clause 7.14.2[II], Clause 7.16.1 and Clause 7.16.2 thereof. It is his contention

that the said clauses contain the mandate and policy of the MoHRD, GoI that the procurement of furniture has to be done by the School Management Committee [SMC]/School Management and Development Committee [SMDC] of the particular Government School and none else.

- 8.2. He has further submitted that the FMP Manual contains a detailed methodology including financial planning and discipline to be followed by the concerned stakeholders. As the matter of procurement of furniture is to be done through the SMC/SMDC, it clearly attracts the provisions of Rule 153[iii] of the GFR-2017 and Rule 153[iii] of the GFR-2017 is also relatable to Section 11 of the MSMED Act, 2006. Since SMC/SMDC are bodies constituted under the provisions of the RTE Act, 2009, it is not open for the implementing agency of the State to deviate from the methodology mandated in the FMP Manual and the GFR-2017 to utilize the funds of the Central Government, that too, without any kind of concurrence from the MoHRD, GoI.
- 8.3. It has been contended that since fund sharing pattern between the Central and the State in so far as the State of Assam is concerned is 90 [Central] : 10 [State], it is not open for the State or the State Implementing Society [SIS] to deviate from the mandatory procedure of procurement laid down by the FMP Manual. He has submitted that Chapter 7 of the FMP Manual has dealt with procurement and as per Clause 7.1, the procurement activities under the Samagra Shiksha Scheme shall be governed by the Procurement Guidelines provided in the FMP Manual only, subject to the overriding provisions, if any, as contained in the GFR-2017. The FMP Manual providing for a comprehensive procurement procedure, has underlined for procurement activities at various levels and has emphasized that all the procurement would be regulated by the SIS. Clause 7.6 of Chapter 7 has made it mandatory to follow the procurement procedure prescribed in the FMP Manual for all the procurement and Clause 7.7, following the provisions of the GFR-2017, has provided for the financial threshold vis-à-vis the type of procurement. It has envisaged for Limited Tender for financial limit above 2.50 lakhs and up to Rs. 25 lakhs whereas for financial limit above Rs. 25 thousand and up to Rs. 2.50 lakhs, the procurement can be made by a three-member committee, with the stipulation that it has to furnish a certificate in terms of Rule 146 of the GFR-2005. It is only in case the financial limit is above Rs. 25 lakhs, the procurement is to be done through open tender. It is the submission of Mr. Pathak that since the Dual Desks and Benches are to be procured for each school separately which, by no stretch, can exceed

the financial limit of Rs. 25 lakhs, the procurement procedure initiated by the Notice Inviting Tender [NIT] dated 01.11.2022 is in clear deviation from the provisions of the FMP Manual. In view of the provisions contained in Chapter of 7 of the FMP Manual, more particularly, Clause 7.7 and Clause 7.14.2 [I] thereof, read with Rule 153 and Rule 155 of the GFR-2017, the procurement of furniture for each school is to be done through the SMC/SMDC equivalent bodies and not in the manner contemplated in the impugned NIT.

- 8.4. By referring to Claus 7.14 : *Levels of Procurement* in the FMP Manual, learned senior counsel has submitted that the procurement of goods, works and services for implementing the Samagra Shiksha Scheme has been envisaged at four levels : [a] School/Community Level, [b] Cluster Resource Centre [CRC]/Block Resource Centre [BRC], [c] District Level, and [d] State Level. As per Clause 7.14.2 [II][iii] : Procurement of Furniture to the Government Upper Primary Schools/Secondary Schools/Higher Secondary Schools is normally to be done by the SMC/SMDC equivalent bodies for rural/urban areas. He has further submitted that though it was open for the State to follow their own financial rules in some situations but such deviation can be made only with prior intimation to the MoHRD, GoI at the beginning of the Scheme, which apparently was not done in the case in hand.
- 8.5. Mr. Pathak, learned senior counsel has relied on a decision of this Court rendered in a writ petition, W.P.[C] no. 1984/2019 [**Chakradhar Das and 2 others vs. the State of Assam and 2 others**], decided on 13.12.2019, in support of his submission that the tender process adopted by the respondent authorities for procurement of furniture through one entity, like in the case in hand, is not contemplated under the Samagra Shiksha Scheme. Submitting that Clause 7.4 and Clause 7.7 of the FMP Manual have already been considered by this Court in **Chakradhar Das** [supra]; that it has been found that the said clauses have laid down a policy statement of the Government which has encouraged community participation in procurement process, and that the implementing agency/SIS cannot ignore the same while choosing a procurement process, he has further contended that the ratio of the decision in **Chakradhar Das** [supra] is also applicable in *toto* to in the case in hand. Referring to the Bid Document, he has submitted that there is no purchase preference for the Micro and Small Enterprises [MSEs] and the same is in clear violation of mandate contained in the provision of Section of 11 of the MSMED Act, 2006. Desks and benches are items which can be supplied by and should be procured from small scale units registered under the MSMED Act, 2006, Mr. Pathak has submitted.

Submissions of the petitioner in the 2nd Writ Petition :-

9. Mr. Choudhury, learned senior counsel appearing for the petitioner in the writ petition, W.P.[C] no. 523/2023 has submitted that the submissions advanced in the 1st Writ Petition are also applicable to the case in the 2nd Writ Petition and his submissions are to supplement the same. He has referred to the bidder's eligibility criteria set forth in Clause 2 of the Bid Document, more particularly, Clause 2 [a][g][i] & [j] thereof. By Clause 2[a], the tendering authority has sought to restrict the competition only within few manufacturers of furniture or their authorized distributors who meet [i] the steep experience criteria of having experience in supplying desks and benches of similar description for at least 20% of the bid quantity in either of the last 3 [three] Financial Years [Clause 2(g)]; and [ii] stringent turnover criteria of having minimum turnover of 20.80 crores in 3 [three] Financial Years out of last 5 [five] Financial Years [Clause 2(j)]. Clause 3[iii] of the Terms and Reference of the Bid Document has made it clear that the clauses in the Bid Document are to be interpreted on the basis of the General Financial Rules, 2017 [the GFR-2017] and the Assam Public Procurement Act, 2017 r/w the Assam Public Procurement Rules, 2020. It is his submission that when the MoHRD, GoI in the FMP Manual has clearly emphasized about community participation in the procurement processes, it is not open for the State respondents to resort to an open tender process limiting the participation within few big players and ruling out participation of small scale units/entrepreneurs in the present tender process, which is only for supply and installation of desks and benches. The Scheme for Samagra Shiksha has mandatorily emphasized for a participatory planning process and community participation at every level of procurement. Even though the State has sought procurement of desks and benches in 4039 nos. of Lower Primary Schools vide Tender no. GEM/2023/B/2982233 from fund, stated to be its own, but the same is under the Scheme of Samagra Shiksha and as such, the same mode of procurement is applicable. The State and the SIS are, thus, obligated to follow the same mode of procurement ensuring community participation through the SMC/SMDC equivalent bodies. He has further submitted that the contentions of the State respondents that in the tender process initiated vide Tender no. GEM/2023/B/2982233, the FMP Manual is not applicable and the same would be regulated by the provisions of the Assam Public Procurement Act, 2017 and the Assam Public Procurement Rules, 2020 are misplaced.

- 9.1. Mr. Choudhury has contended that Section 52 of the Assam Public Procurement Act, 2017 has not ruled out applicability of other rules by specifically stating that the provisions of the Assam Public Procurement Act, 2017 are in addition to, and not in derogation of the provisions of any other law. As the tender process initiated by the NIT dated 13.01.2023 is not in accordance with the prescribed procedure outlined in the FMP Manual, the same is clearly a case of mis-procurement in terms of Clause 7.29 of the FMP Manual. It is only a decentralized procurement process through community participation which will subserve the socio-economic policy ingrained in the Scheme and the public interest. The constitution of the SMC has been statutorily provided for in Section 21 of the RTE Act, 2009 and the FMP Manual has suggested about the additional requirement for assisting the SMCs in the financial planning for procurement of goods and services under supervision of the SIS.
- 9.2. It has been canvassed that the Guidelines provided in the FMP Manual of the MoHRD, GoI are mandatory have not only been emphasized in the Foreword dated 06.08.2018 of the FMP Manual but also by a subsequent Letter no. D.O. no. 1-1/2018-EE-15 dated 12.09.2018 of the MoHRD, GoI. It has been set forth therein that the provisions in the FMP Manual are mandatory and are to be followed by the States and the Union Territories to ensure that the funds are disbursed, utilized and accounted for in an efficient and effective manner. He has also relied in the decision in **Chakradhar Das** [supra] to buttress his such submissions.

Submissions on behalf of the respondent Union of India :-

10. Mr. Deb Choudhury, learned Deputy Solicitor General of India appearing for the respondent Union of India authorities, has referred to the statements and averments made in the affidavit, filed on behalf of the respondent no. 1 in the writ petition, W.P.[C] no. 523/2023. He has submitted that the Scheme of Samagra Shiksha was launched during 2018-2019 after subsuming the Centrally Sponsored Schemes of [i] Sarva Shiksha Abhiyan [SSA]; [ii] Rashtriya Madhyamik Shiksha Abhiyan [RMSA]; and [iii] Teacher Education [TE]. Thereafter, various suggestions were recommended by the National Education Policy [NEP], 2020. Accordingly, the Scheme of Samgra Shiksha was revamped as Samagra Shiksha 2.0 to align with the various recommendations of the NEP, 2020. It has been stated that to provide guidance and uniformity in respect of utilization of funds, accounting and auditing requirements and procurement procedure, etc. under the Samagra Shiksha Scheme, the Financial Management and Procurement [FMP] Manual has been developed by the

Department of School Education and Literacy, MoHRD, GoI for its uses by the State/Union Territory Governments and State Implementing Societies [SISs]. The FMP Manual had, therefore, been circulated to all the States/Union Territories by the Letter dated 12.09.2018 for follow-up, subject to the overriding provisions of the GFR-2017.

- 10.1. It has been stated in the said affidavit to the effect that Clause 7.1 of Chapter 7 of the FMP Manual has stipulated that the procurement activities under the Samagra Shiksha Scheme are governed by the procurement guidelines as provided in the FMP Manual, subject to overriding provisions as contained in the General Financial Rules [GFR]-2017, the Manual for Procurement of Goods and Works [MoPG&W] 2017 [now amended as the GFR-2023 and the MoPG&W 2022, respectively]. As the Grants under the Scheme are governed by the various provisions of the GFR, adherence to the provisions of the GFR is also mandatory wherever applicable or may not have been explicitly specified in FMP Manual.

Common submissions on behalf of the State and the State Implementing Society [SIS] Samagra Siksha Axom, in the 1st Writ Petition and the 2nd Writ Petition :-

11. Mr. Saikia, learned Advocate General, Assam has, at first, referred to the Office Memoranda - dated 23.11.2016, dated 13.07.2018, dated 16.12.2021, dated 28.01.2022 & dated 10.01.2023 - of the Finance Department, Government of Assam and has submitted that by the said Office Memoranda, it has been made mandatory for all Administrative Departments of Government of Assam and its subordinate Directorates/Offices/Agencies, etc. to resort to e-Procurement for all tenders of value above a particular limit. While by the Office Memorandum dated 23.11.2016, the limit was fixed at Rs. 20 lakhs and above, the same was changed to Rs. 50 lakhs and above by the Office Memorandum dated 13.07.2018. The threshold was lowered to Rs. 25 lakhs and above subsequently by the Office Memorandum dated 16.12.2021. Again the threshold was fixed at Rs. 20 lakhs and above by the Office Memorandum dated 10.06.2023. As the values of both the 1st Tender Process and the 2nd Tender Process were above the threshold fixed above by the Office Memoranda, the State and the SIS-Samagra Shiksha, Axom are mandatorily required to resort to e-Procurement for such bulk purchases of desks and benches for a large number of schools.
- 11.1. Reference has been made to an Office Memorandum dated 17.12.2022 of the Central Vigilance Commission to submit that the Pre-Qualification Criteria in the two tender

processes have been prescribed in terms of Clause 5[A][i] of the said Office Memorandum. The said Office Memorandum has mentioned that the employer while fixing the eligibility criteria for civil works, should emphasize that a bidder must have an annual average financial turnover of at least 30% of the estimated cost during the last 3 [three] years, ending 31st March of the previous financial year. As the two tender processes are for procurement of dual desks and benches in bulk quantities for a large nos. of schools, the Pre-Qualification Criteria for the bidders have been fixed by taking the aspect of public interest into account.

- 11.2. Controverting the contention advanced on behalf of the petitioner that the procurement activities for such goods like furniture should only be through the SMCs/SMDCs, it has been submitted that Clause 7.4 of the FMP Manual has stipulated that the tender process under the Samagra Shiksha Scheme should be through the GeM route [e-Procurement]. Reference has particularly been made to Clause 7.4[ii] in this regard to contend that though FMP Manual has suggested for procurement of goods, services, civil works [infrastructure], etc. at various levels, yet the discretion has been left to the State to decide the level of procurement by taking into account the aspects of economy and bulk procurement. It is the contention that though procurement of uniform for the respective school is feasible to be purchased by way of community participation through the SMCs/SMDCs, the matter of procurement of furniture is different and from the point of economy, the State and the SIS have found that the financial interest of the State/SIS and the community would be better protected if the procurement of dual desks and benches are done by way of bulk purchase from a single supplier and through the e-Procurement route. Since procurement of furniture is a commercial decision and such procurement are to be done through tender processes, discretion is to be left to the State/SIS to even choose a single entity to deliver desks and benches for the entire State and in such cases, equity and natural justice are to be kept at bay. References have been made to the decisions in **Michigan Rubber [India] Limited vs. State of Karnataka and others**, reported in [2012] 8 SCC 216, and an Order dated 09.10.2023 passed in a writ petition, W.P.[C] no. 5944/2023 [All Assam Police Housing Corporation Contractors Association and another vs. The State of Assam and others] wherein a reference was made of **Michigan Rubber [supra]**, in support of such submissions. It has been submitted that it is a settled proposition that in matters of formulating conditions of a tender document and awarding of a contract, a greater latitude is to be conceded to the tendering authority and unless the action of the tendering

authority is found to be malicious and a misuse of its power, interference by court is not warranted. The decision in **Chakradhar Das** [supra] is not readily applicable to the case in hand as the procurement activities in **Chakradhar Das** [supra] were for uniform whereas in the case in hand, it is procurement of dual desks and benches for schools in different districts in bulk.

11.3. Mr. Saikia has further contended that in neither of the two tender processes, participation has been restricted only to the manufacturers of furniture as participation is open also for the sole authorized dealer or an authorized distributor, duly certified by the manufacturer. Referring to the document, *the Framework for Implementation - Samagra Shiksha*, published by the Ministry of Education, Government of India [Marked as Document - 'B' and kept in the case records], it has been submitted that the goods to be procured under the Samagra Shiksha Scheme have to be of certain design, specification and standard and it has to be conformity with the Bureau of Indian Standard [BIS]. As there cannot be any dilution in those parameters, the decision of the State/SIS to prescribe Pre-Qualification Criteria and participation of bidders is a conscious decision, which cannot be questioned by an intending bidder.

11.4. As procurement of furniture are for a large nos. of schools and consequent delivery in those schools, located in all over the districts of the State, a participatory process with the involvement of SMCs/SMDCs is not feasible as these committees are not well equipped for any e-Procurement process and there are no experts in these committees to deal with at the School-level. The RTE Act, 2009 has prescribed for a particular composition of the SMCs/SMDCs and from the nature of composition of such committees, it is discernible that due to lack of experts from different fields in these committees, it would be difficult, though not impossible, to handle such a task and it would be a difficult process for the SIS-Samagra Shiksha, Axom to monitor the activities of each of the committees like SCMs/SMDCs procuring goods like furniture for the respective school. The matters of financial planning, budgeting, etc. require experts from different fields and those matters are to be handled by the experts. Keeping all these factors in purview, the decision to go for a particular procurement process, out of the many processes suggested by the FMP Manual, has been taken in respect of procurement of furniture. As such decision is not against public interest and is not for any ulterior purpose, question of interference does not arise.

- 11.5. It has been submitted that the clauses of the FMP Manual, referred to and relied on extensively by the petitioner's side, are to be looked at not only from the perspective of a bidder like the petitioner herein but also to be looked from the perspective of the tendering authority, which is the State/SIS-Samagra Shiksha, Axom in the case in hand. While admitting about the fund sharing pattern between the Central Government and the State Government in the Samagra Shiksha Scheme, learned Advocate General has submitted that the same cannot be the lone factor to decide about the manner of procurement and the level at which such procurement is to be made. The level at which procurement of furniture is to be made is well known to all the stakeholders and there is no objection received with regard to the level of procurement.
- 11.6. Lastly, it has been submitted by Mr. Saikia that the 1st Tender Process initiated by the NIT dated 01.11.2022 vide Tender no. GEM/2022/B/2693580 is out of the fund allotted under the Centrally Sponsored Scheme of Samagra Shiksha. Thus, the said tender process has to be in conformity of the provisions of the FMP Manual, GFR-2017, etc. and the tender process is in conformity with the same. In so far as the 2nd Tender Process initiated by the NIT dated 13.01.2023 vide Tender no. GEM/2023/B/2982233 is concerned, learned Advocate General has asserted that the fund in respect of the 2nd Tender Process is not under the Centrally Sponsored Scheme of Samagra Shiksha but is under the State Owned Priority Development [SOPD] Fund of the Government of Assam. As the fund allotted for the 2nd Tender Process is fully out of the State Budget and there is no share of the Central Government, the question of applicability of the provisions of the FMP Manual, does not arise. The 2nd Tender Process is regulated by the provisions of the Assam Public Procurement Act, 2017 and the Assam Public Procurement Rules, 2020.

Submissions of the respondent no. 5 :-

12. Mr. D.K. Das, learned counsel for the respondent no. 5 while adopting the submissions of the learned Advocate General, Assam, has additionally submitted that pursuant to the NIT dated 01.11.2022 for Tender no. GEM/2022/B/2693580 and the NIT dated 13.01.2023 for Tender no. GEM/2022/B/2982233, the respondent no. 5 finding itself eligible to submit bids in terms of the eligibility criteria stipulated in the two NITs, has already submitted its bids in both the tender processes. Along with the bids, the respondent no. 5 has also deposited the

Earnest Money Deposits [EMDs] to the extent of Rs. 1,38,70,000/- and Rs. 63,40,000/- respectively. It is his submission that as per the latest Office Memorandum dated 08.06.2022 of the Finance [Establishment-B] Department, Government of Assam, the GeM has been approved by the Government of India as the National Public Procurement Portal and the same is binding on all the departments of the Government of India, as stipulated by the GFR-2017. By the use of the GeM Portal, the procurement system has ensured quality and transparency. He has submitted that though as per Clause 7.4 [ii] of the FMP Manual, procurement of goods, services and civil works [infrastructure] are possible at various levels but for bulk procurement and economy, the State can decide about the level of procurement. It is his submission that the decision of the State or the SIS to go for a single tender process, by dispensing with procurement of desks and benches through the SMC/SMDC equivalent bodies, cannot be questioned by the petitioner.

Reply submissions by the writ petitioner :-

13. The submissions-in-reply of Mr. Pathak and Mr. Choudhury, learned Senior Counsel appearing in the two writ petitions is that it is not the first occasion that the State respondents had sought procurement of furniture for schools under the Scheme of Samagra Shiksha. By placing a Communication bearing no. RMSA/CW/SMDC-NR/17-18/866/2017/Pt-II/11 dated 03.02.2022 of the Mission Director, Rashtriya Madhyamik Shiksha Abhiyan, Assam [Marked as Document – 'C' and kept in the case records], it has been submitted that by the said Communication, the administrative approval and financial sanction was accorded for procurement of furniture in 31 nos. of Schools in a number of districts through the SMDC of the concerned School. Another document, 'Guideline on Procurement and Distribution of Uniforms for learners of Elementary Level for Academic Year 2021-22' of the Mission Director, Aam Sarba Shiksha Abhiya Mission [Marked as Document – 'D' and kept in the case records], has been placed to submit that guidelines have been laid down therein for procurement of uniforms in a decentralized manner through the SMC/SMDC and a detailed quality control, supervision and monitoring mechanism was put in place. It has thereby contended that there cannot be any impediment on the part of the State respondents to procure furniture for the School/SMC/SMDC level for both rural and urban areas. With such contentions, it has been submitted that both the writ petitions are to be allowed.

14. I have given due consideration to the submissions advanced by the learned counsel for the parties. I have also gone through the provisions of the FMP Manual, the GFR-2017, *the Framework for Implementation - Samagra Shiksha*, the RTE Act, 2009, the MSMED Act, 2006, the Assam Public Procurement Act, 2017 and the Assam Public Procurement Rules, 2020, to which the learned counsel for the parties have extensively referred to.

Analysis and reasons for decision :-

The Samagra Shiksha Scheme :-

15. The Samagra Shiksha Scheme was launched in the year 2018 by the Ministry of Human Resource Development [MoHRD], Government of India [GoI] as an Integrated Scheme for School Education catering from Pre-Primary classes to Senior Secondary classes. It has been launched with the broader goal of improving school effectiveness measures in terms of equal opportunities for schooling and equitable learning outcomes. It had subsumed three other schemes – Sarva Shiksha Abhiyan [SSA], Rashtriya Madhyamik Shiksha Abhiyan [RMSA] & Teacher Education [TE] – within it. The aim of the Scheme is to universalize quality school education. It also aims to support the States and the Union Territories in universalizing access to school education from classes Pre-Nursery [Pre-School] to Class-XII. The Samagra Shiksha Scheme has been envisaged as an additional support to the State and the Union Territories to improve quality of education. However, Education being in the Concurrent List with majority of the schools under the domain of the States and the Union Territories, the primary responsibility of providing accessible, affordable, equitable, inclusive and quality education lies with the State/Union Territory Governments. The Samagra Shiksha Scheme is implemented as a Centrally Sponsored Scheme by the MoHRD, GoI through single State Implementation Society [SIS] at the State/Union Territory level. At the National level, there are a Governing Council [GC] headed by the Minister of Education and a Project Approval Board [PAB] headed by the Secretary, Department of School Education & Literacy. At the State level, there is a Governing Council and an Executive Committee, whose compositions are to be in accordance with the Appendices to the FMP Manual.

The Financial Management and Procurement [FMP] Manual & the Framework for Implementation - Samagra Shiksha :-

16. A number of major interventions have been envisaged under the Samagra Shiksha Scheme. One of the major interventions is infrastructure development in the form of construction of schools, additional class rooms, strengthening of Block Resource Centres [BRCs] and Cluster Resource Centres [CRCs], toilets and drinking water facilities, Science and Math Labs, major & minor repairs of school buildings, etc. As under the Samagra Shiksha Scheme a number of major interventions are envisaged and due to convergence of the three Schemes, mentioned above, the scale and scope of implementation have increased manifold, the MoHRD, GoI in order to guide and assist the Implementing Agencies/SISs in programme management, has brought together the procedure, rules and regulations in the Financial Management and Procurement [FMP] Manual the Foreword of which reads as follows :-

Secretary

Government of India

Ministry of Human Resource Development

Department of School Education & Literacy

Samagra Shiksha – an overarching programme for the school education sector extending from pre-school to Class 12 has been launched w.e.f. 2018-2019 with the broader goal of improving school effectiveness measured in terms of equal opportunities for schooling and equitable learning outcomes. It subsumes the three Schemes of Sarva Shiksha Abhiyan [SSA], Rashtriya Madhyamik Shiksha Abhiyan [RMSA] and Teacher Education [TE].

As the scale and scope of implementation of the Samagra Shiksha has increased due to subsuming of the aforesaid schemes, the challenge of smooth implementation and coordination has grown manifold. In order to guide and assist the implementing agencies in programme management, the Ministry of Human Resource Development, Department of School Education & Literacy has brought together the procedures, rules and regulations at one place in the Financial Management and Procurement Manual [FMP Manual].

The FMP Manual is intended to be used by the State/UTs as a guide for budgeting and financial reporting procedures, accounting and auditing requirements, and procurement procedures to be followed throughout the country. The provisions laid down in the Manual are mandatory and are to be followed by the States and UTs to ensure that funds are disbursed, utilized and accounted for an efficient and effective manner.

I am confident that the FMP Manual will help the States and UTs to bring financial rigour in the implementation of Samagra Shiksha and prove to be a valuable tool as we seek to realize the goals and objectives of the centrally sponsored programme.

New Delhi

Secretary

6th August, 2018

- 16.1. As per Clause 1.7 of Chapter-1 : *Introduction*, the FMP Manual is mandatory for all the activities under the Samagra Shiksha Scheme at all levels of implementation. No deviation from the FMP Manual is permitted. It is further mentioned that while the provisions outlined in the FMP Manual are mandatory, the State Implementing Society [SIS] shall formulate well-defined financial rules and regulations including the delegation of financial powers for effective implementation. It has been further mentioned that the rules, regulations and procedures outlined in the FMP Manual are to be formally adopted by the Executive Committee and the financial rules and regulations are to be framed in accordance with the provisions of the FMP Manual. It has been further mentioned that the FMP Manual has strictly followed the GFR-2017 and in case of any contradiction, the GFR-2017 would prevail.
- 16.2. While Chapter-2 of the FMP Manual has delineated about planning process and financial planning, Chapter-3 has elaborated about financial management, fund flow and reporting. In the Methodology of Planning [Clause 2.5], the FMP Manual has mentioned about selection of suitable persons in the planning teams as the most crucial element in plan formulation and it envisages constitution of core planning teams at Village, Block and District level. The composition of the grassroots level team requires wider representation from all grassroots level structures including community leaders, teachers, parents, etc. It has stressed for a core District team with representatives from various Departments like Education, Health, Public Works, Social Welfare, Woman and Child Development, Tribal Welfare, PHED, NGOs, etc. with at least one person well acquainted with finance and procurement procedures and

about Government financing. From Clause 2.5.2, it is evident that the Scheme envisages a bottom-up approach of planning as opposed to the top-down approach, as it reflects the reality at the grassroots level. It has emphasized for the participatory planning process for the reason that such planning not only creates a sense of ownership among the stakeholders but also creates awareness and helps in the capacity building of personnel at various levels. It has provided for consultative meetings of the core teams with the officials at the Block and District levels for facilitating the core teams in formulating strategies and to address various problems. As per Clause 2.13.1, the FMP Manual is to be read with *the Framework for Implementation - Samagra Shiksha*.

16.3. Fund Sharing Pattern : The fund sharing pattern of the Samagra Shiksha Scheme between Centre and States is in the ratio of 90:10 for the 8 [eight] North-Eastern States viz. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura and 3 [three] Himalayan States/UTs viz. Jammu & Kashmir, Himachal Pradesh and Uttarakhand and 60:40 for all other States and Union Territories with Legislature [except J&K]. It is 100% centrally sponsored for Union Territories without Legislature.

16.4. As per *the Framework for Implementation - Samagra Shiksha*, civil works components include construction of new schools, infrastructure for additional streams, strengthening the existing infrastructure facilities, major and minor repairs, etc. In the component part of strengthening of infrastructure in existing schools, provision for furniture is included. *The Framework for Implementation - Samagra Shiksha* has also recommended about the specification of school furniture, classroom chairs and tables. It has been mentioned that augmentation of existing school infrastructure requires a survey of existing facilities in every school and such a survey can be undertaken with community participation, facilitated by the SMCs/SMDCs, etc. with inclusion of engineers/architects. Once the gaps are identified, criteria for prioritization are to be developed at the District level and to be finalized in consultation with all the stakeholders. The State/SIS is required to compile the District-wise proposal and submit a consolidated plan after updating the data as per the priority and requirements and the State/SIS proposal needs to be approved by the Executive Committee before final submission. Clause 5.7 of *the Framework for Implementation* has provided for the procedure for execution of civil works. As per Clause 5.7[a], construction activities are to be undertaken with community involvement. Planning by the community through the SMC/SMDC in all infrastructure development activities will be mandatory. All works costing

up to Rs. 30 lakh may be executed by the SMC/SMDC. As per Clause 5.7[b], the civil works more than Rs. 30 lakh may be executed by inviting public tender as per latest CPWD Works Manual and/or State PWD works procedures. However, the SMC/SMDC is to be involved in *finalization of tender* and execution of works *at all stages*.

16.5. Clause 3.6.2 of the FMP Manual has provided for fund flow arrangement for various activities as follows :-

3.6.2 Fund flow arrangement for various activities :

*[a] Civil Works upto Rs. 30 lakh may be undertaken through SMCs/SMDCs
GoI – State Government – SIS - SMDC/SMC - Community or contractor*

Or

GoI - State Government – SIS – DPO - SMDC/SMC - Community or contractor

[b] Major Civil works beyond Rs. 30 lakh, could be executed through an external agency [which could be PWD or a State level agency or contractors at State level selected through competitive bidding].

GoI - State Government – SIS – DPO - External Agency

Or

GoI - State Government – SIS – External Agency

16.6. Chapter - 4 of the FMP Manual has laid down about the accounting procedure in detail while Chapter - 5 thereof has provided for the procedure of monitoring, internal control and internal audit. The FMP Manual has envisaged a 4-tier monitoring of the Samagra Shiksha Scheme, which are to be at [i] School/Community level, [ii] District level, [iii] State level, and [iv] National level. It has also provided for transparency of financial flow as regards the amounts spent on civil works at the School level and has suggested for composition of the SMCs/SMDCs. Considering that the specific composition of the SMCs/SMDCs may be decided by the States, the MoHRD, GoI in the FMP Manual has suggested for composition of SMCs/SMDCs in a specific manner vide Clause 5.4.1 which *inter alia* has emphasized for inclusion of experts including members from Audit and Accounts Department. It has, by Clause 5.4.3, made the school building committees/SMCs/SMDCs responsible all the activities including planning, estimation, management, monitoring, supervision, reporting, maintenance of accounts for works relating to civil works. The works at School/community level are to be monitored by the District Level Committee which is to be comprised of all Members of Parliament/Members of State Legislature/Members of the Zilla Parishad, the

Deputy Commissioner/Chief Executive Officer of the Zilla Parishad/Urban Local Body, District Education Officer In-Charge, etc. In Chapter-6 of the FMP Manual, an elaborate procedure for auditing has been laid down.

16.7. Chapter - 7 of the FMP Manual pertains to procurement under the Samagra Shiksha Scheme. As per Clause 7.1, the procurement activities under the Samagra Shiksha Scheme are to be governed by the Guidelines provided in the FMP Manual, subject *inter alia* to overriding provisions as contained in the GFR-2017, the Manual for Procurement of Goods and Works, 2017, etc. It has been stated that as the grants under the Samagra Shiksha Scheme are governed by the various provisions in the GFR-2017, adherence to the provisions of the GFR-2017 is also mandatory, wherever applicable and have not been explicitly specified in the FMP Manual. Procurement of all works, goods and consultancy services under the Samagra Shiksha Scheme are to be carried out in accordance with the principles, rules and procedures outlined in Chapter-7, with a clear statement that compliance with these mandatory procedures would result in efficiency, economy, fairness and transparency in procurement. While providing for the procurement procedure broadly in Clause 7.4, it is mentioned that the procurement activities would be at various levels and the tender process, as far as possible, should be through the GeM route [e-Procurement]. All the procurement activities are to be done through the SIS and as such, the procurement of goods, services and civil works would be regulated by the SIS. It is mentioned that though procurement of goods, services and civil works are to be done at various levels, the State can also decide the level of procurement for economy and bulk procurement. Clause 7.7 has provided for the financial threshold and type of procurement, as provided in the GFR-2017 in the following manner :-

<i>Sl no.</i>	<i>Procurement Type</i>	<i>Financial Limit</i>
<i>1</i>	<i>No Tender or Direct Purchase [Certificate to be furnished as per rule under 145 of GFR 2005]</i>	<i>Up to Rs. 25,000/-</i>
<i>2</i>	<i>Three member committee [Certificate to be furnished as per rule under 146 of GFR 2005]</i>	<i>Above Rs. 25,000/- and upto Rs. 2.50 lakh</i>
<i>3</i>	<i>Limited Tender</i>	<i>Above Rs. 2.50 lakh and upto Rs. 25 lakh</i>
<i>4</i>	<i>Open Tender</i>	<i>Above Rs. 25 lakh</i>

6	<i>Service Contracts</i>	
6 [a]	<i>Direct Contracting [with three quotations]</i>	<i>Upto Rs. 2.50 lakh</i>
6 [b]	<i>Limited tender</i>	<i>Above Rs. 2.50 lakh and upto Rs. 25 lakh</i>
6 [c]	<i>Open tender</i>	<i>Above Rs. 25.00 lakh</i>

Additionally the following financial threshold may be adhered to, if necessary

<i>Open tender using e-Procurement process for civil works, goods and services</i>	<i>Rs. 25.00 lakh or above</i>
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In addition, purchases/procurement of goods and services through GeM portal, the following limits have been prescribed in the GFR.

<i>Sl no.</i>	<i>Financial Limit</i>	<i>Details</i>
<i>1</i>	<i>Upto Rs. 50,000/-</i>	<i>Through any of the available supplier on the GeM, meeting the requisite quality specification and delivery period.</i>
<i>2</i>	<i>Above Rs. 50,000/- and upto Rs. 30 lakh</i>	<i>Seller having lowest price amongst the available seller of atleast three different manufacturers on GeM, meeting the requisite quality specification and delivery period.</i>
<i>3</i>	<i>Above Rs. 30 lakh</i>	<i>Through the supplier having lowest price meeting the requisite quality specification and delivery period. After mandatorily obtaining bids using online bidding.</i>

The State may, however, follow the financial ceiling prescribed by each State for various methods of procurement.

It has been set forth that where financial threshold/level of procurement has already been mentioned in the FMP Manual particularly relating to civil works, it should be adhered to by the State/State Implementing Society [SIS]. Clause 7.8 has stated that the responsibility for implementation of the Samagra Shiksha Scheme rests with the State Government through the designated State Implementing Society [SIS] and the award and administration of

contracts under the Scheme rest with the State Implementing Society [SIS] and the SMCs/SMDCs.

16.8. Clause 7.14 has provided for the levels of procurement. As per Clause 7.14.1, for the implementation of the Samagra Shiksha Scheme goods, works and services are to be procured at [a] School/Community level, [b] CRC/BRC level, [c] District level, and [d] State level. The procurement procedure as laid down in the State Government rules or the Panchayati Raj Institution rules as applicable in each level shall be normally followed for the procurement of civil works, goods and services. It has emphasized that all civil works shall be carried out either through the Committee or the District level or State level agencies as the State may desire but due diligence is to be exercised at all levels of procurement. It has further provided that since all the activities including the civil works have to be implemented through the designated Implementing Society, it is necessary that the State Implementation Society [SIS] shall delegate powers of procurement to districts, sub-districts, schools, SMC/SMDC indicating the activities and the limits of financial powers and the items to be procured. In Clause 7.14.2, indications are given as about the various levels of procurement and items to be procured normally. All funds, as per Clause 7.14.2[I][b], to be used for upgradation, repair and maintenance of school, school grant, teaching learning equipment, KGVV activities and local management should be transferred to School/SMC/SMDC, etc. or any other village/school level arrangements for decentralization adopted by that particular State/Union Territory. The village/school-based body is required to make resolution regarding the best way of procurement. It has specifically incorporated the provision for involvement of the community in the procurement process on the premise that such community involvement not only creates a sense of ownership among the stakeholders it also achieves transparency in procurement. As per Clause 7.14.2[I][c], procurement rules for School/SMC/SMDC have to be either as per the financial rules of the Panchayati Raj Institutions or as determined/prescribed otherwise by the SIS, whichever is applicable. It has been specifically set forth in Clause 7.14.2[II][iii] that procurement of furniture to Government Upper Primary Schools/Secondary Schools/Higher Secondary Schools has to be done by the SMC/SMDC equivalent bodies for rural/urban areas.

16.9. The stand of the MoHRD, GoI in respect of the provisions of the FMP Manual has been conveyed to the Principal Secretaries/Secretaries of the Education Department of all the States/Union Territories has been conveyed by a Letter bearing no. D.O. no. 1-1/2018-EE-15

dated 12.09.2018 issued under the hand of the Joint Secretary, Department of School Education and Literacy, MoHRD, GoI. For ready reference the contents of the Letter dated 12.09.2018 are reproduced hereinbelow :-

*Government of India
Ministry of Human Resource Development
Department of School Education & Literacy
Shastri Bhawan
New Delhi – 110115*

Joint Secretary

DO. No. 1-1/2018-EE-15

Dated, the 12 September, 2018

Subject : Manual of Financial Management & Procurement [FMP] for Scheme of Samagra Shiksha – reg.

Dear Sir/ Ma'am,

As you are aware, the Scheme of Samagra Shiksha has been launched w.e.f. 2018-2019 after subsuming the Centrally Sponsored Scheme of Rashtriya Madhyamik Shiksha Abhiyan [RMSA], Sarva Shiksha Abhiyan [SSA] & Teacher Education [TE]. With a view to provide guidance and uniformity in respect of mode and release & utilization of funds, budgeting & financial reporting, accounting & auditing requirements and procurement procedure etc. under the scheme, this Ministry has developed a FMP Manual for the use of the States/UT Governments and Implementing agencies. A copy of FMP Manual is enclosed and the same has also been uploaded on the website of MoHRD. The provisions of the Manual would be mandatory.

2. Accordingly, it is requested that the guidelines of FMP may be followed in all future financial matter pertaining to the scheme of Samagra Shiksha.

With regards,

Your sincerely

To,

*Principal Secretary/Secretary [Education]
All States/UTs*

The Right of Children to Free and Compulsory Education Act, 2009 :-

17. By the Constitution [Eighty-Sixth Amendment] Act, 2002, Article 21A has been inserted in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education Act, 2009 [‘The RTE Act, 2009’, for short] is the consequential legislation envisaged under Article 21A. Article 21A and the RTE Act, 2009 came into effect on 01.04.2010. It has cast a legal obligation on the Central Government and the State Government to implement the Fundamental Right as enshrined in Article 21A, in accordance with the provisions of the RTE Act, 2009. As per the RTE Act, 2009, the duties of the Government and the local authority, defined in Section 2[h] thereof, include *inter alia* the duty to provide infrastructure including school building, etc. Section 21 of the RTE Act, 2009 has provided for ‘School Management Committee’ and as per Section 21[1], a school other than an unaided school, is required to constitute a School Management Committee [SMC] consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers, stipulating the proportionate reservation therein. As per Section 21[2], the School Management Committee [SMC] is required to perform the following functions, namely :- [a] monitor the working of the school; [b] prepare and recommend school development plan; [c] monitor the utilization of the grants from the appropriate Government or local authority or any other source; and [d] perform such other functions as may be prescribed. Under Section 22, the School Management Committee [SMC] is obligated to prepare a School Development Plan, in such manner as may be prescribed, which becomes the basis for the plans and grants to be made by the Government or local authority, as the case may be. The RTE Act, 2009 has laid down the norms and standards relating *inter alia* to Pupil Teacher Ratios [PTRs], buildings and infrastructure, etc.
- 17.1. The Government of Assam has framed a set of rules under the RTE Act, 2009, ‘the Assam Right of Children to Free and Compulsory Education Rules, 2011 [‘the Assam RTE Rules, 2011’, for short]. The Assam RTE Rules, 2011 have provided for the compositions and functions of the School Management Committee [SMC]. As per the said Rules, the following are the functions of the School Management Committee [SMC] :- [i] Monitor the working of the schools; [ii] Prepare and make recommendations School Development Plan on the basis of the grants made by the Government or other source; [iii] Monitor the utilization of the

grants received from the Government, Autonomous Council or local authority or any other source; and [iv] Perform such other function as may be notified by the Government. The School Management Committee [SMC] in the School Development Plan is required to incorporate *inter alia* the physical requirement of additional infrastructure and equipments, with reference to the norms and standards specified in the Schedule to the RTE Act, 2009. The School Management Committee [SMC] which is to maintain a bank account, is made accountable for transactions of all short of funds/grants received for the development of the school and also to submit the utilization certificate of funds/grants in time to the concerned authority from where the funds/grants are received. The School Management Committee [SMC] is under obligation to do audit of the SMC accounts annually at the end of the Financial Year, or as and when required by the Government or the Competent Authority. If the School Management Committee [SMC] receives any fund/grant from any department/organization, then it has to maintain proper records of the funds received and spent, assets created and liabilities incurred.

The Micro, Small and Medium Enterprises Development Act, 2006 :-

18. Section 29B of the Industries [Development and Regulation] Act, 1951 has provided for notifying reservation of items for exclusive manufacture in the small scale industry sector. Finding growing need to extend policy support for the small enterprises for facilitating their growth and development; for adopting better and higher levels of technology; and for achieving higher productivity to remain competitive, the Parliament has enacted the Micro, Small and Medium Enterprises Development Act, 2006 [‘the MSMED Act, 2006’, for short]. Section 11 thereof has provided for procurement preference policy. As per Section 11, for facilitating promotion and development of micro and small enterprises, the Central Government or the State Government may, by order, notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or Departments, as the case may be, or its aided institutions and public sector enterprises. The definitions of ‘micro enterprise’, ‘small enterprise’, ‘medium enterprise’, etc. have been provided for in various clauses of Section 2 of the MSMED Act, 2006. As per Section 2[e], ‘enterprise’ means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in

the First Schedule to the Industries [Development and Regulation] Act, 1951 [65 of 1951] or engaged in providing or rendering of any service or services.

18.1. One of such public procurement policies, framed under Section 11 of the MSMED Act, 2006, is the 'Public Procurement Policy for Micro and Small Enterprises [MSEs] Order, 2012'. Under the said Order, overall minimum mandatory procurement goal from micro and small enterprises has been fixed at 25%. In the Appendix to the said Order, which has listed the items reserved for purchase from Small Scale Industrial Units, steel chair, steel desk, wooden board, wooden chair, etc. are included. As a matter of policy, it has been incorporated in Order 6 thereof that in tender, participating micro enterprises and small enterprises quoting price within price band of L1+15 per cent are to be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a micro enterprise or a small enterprise and such micro enterprise and small enterprise is to be allowed to supply upto 25 per cent of the total tendered value.

18.2. Thus, from the provisions of the MSMED Act, 2006 and the Public Procurement Policy for MSEs Order framed under Section 11 thereof, it is clearly discernible that in respect of items reserved in the Appendix to the Order, the Central Government as a matter of policy has kept a minimum percentage of items, to be procured by any Ministry, Department/Public Sector Undertaking, reserved for micro enterprises and small enterprises as a mandatory norm. It has been incorporated in Order 10 of the MSEs Order that the MSEs shall be facilitated by providing them the tender sets free of cost, exempting them from payment of earnest money and adopting e-Procurement to bring transparency in tendering process. It has been laid down in the Manual for Procurement of Goods, 2017 that to enable wider dispersal of enterprises in the country, particularly in rural areas, the Government of India shall continue to procure items reserved for procurement exclusively from micro and small Enterprises, which have been reserved for exclusive purchase from them.

The General Financial Rules – 2017 :-

19. The General Financial Rules – 2017, framed by the Government, are executive instructions dealing with matters involving public finances, which are to be observed by all departments/organizations under the Central Government. Rule 153 of the GFR-2017 deals

with reserved items and other purchase/Price Preference Policy [PPP]. In sub-rule [iii] of Rule 153, it is provided that the Central Government may, by Notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services. Rule 155 has laid down to the effect that purchase of goods costing above Rs. 25,000/- and upto Rs. 2,50,000/- on each occasion may be made on the recommendation of a duly constituted local purchase committee consisting of 3 [three] members of an appropriate level. It has been provided in Rule 161 : Advertised Tender Enquiry to the effect that subject to exceptions incorporated under Rules, 154, 155, 162 & 166, Invitation to Tenders by advertisement should be used for procurement of goods of estimated value of Rs. 25 lakhs and above. Advertisement in such cases should be given on the Central Public Procurement Portal [CPPP] and on GeM. Rule 162 has mentioned about Limited Tender Enquiry and the procedure to be followed. It has further mentioned that the Procurement by Limited Tender Enquiry Method may be adopted when estimated value of the goods to be procured is upto Rs. 25 lakhs. The GFR-2017 has provided for the following standard method of procurement viz. [i] Advertised Tender Enquiry; [ii] Limited Tender Enquiry; [iii] Two-Stage Bidding; [iv] Single Tender Enquiry; and [iv] Electric Reverse Auctions.

Notice Inviting Tender [NIT] dated 01.11.2022 vide Tender no. GEM/2022/B/2693580 :-

20. In the 1st Tender Process initiated vide Tender no. GEM/2022/B/2693580, procurement of Dual Desks and Benches for 1443 nos. of schools, located in 30 districts of Assam, has been envisaged. The fund for procurement of the furniture is under the Centrally Sponsored Scheme of Samagra Shiksha. As per the funding pattern of the Samagra Shiksha Scheme, 90% of the fund is of the Central Government and the rest 10% is to be shared by the State Government. From the Foreword dated 06.08.2018 and the contents of the FMP Manual; and the subsequent Letter dated 12.09.2018, it has been clearly conveyed by the MoHRD, GoI that the FMP Manual has to be used by the States/SISs as a guide for budgeting and financial reporting procedures, accounting and auditing requirements and procurement procedures to be followed. It has been further conveyed that the provisions laid down in the FMP Manual are mandatory and are to be followed by the States/SISs to ensure that funds are disbursed, utilized and accounted for in an efficient and effective manner. Having regard to the entitlements under the RTE Act, 2009 and existence of a statutory body in the form of

a School Management Committee [SMC] as per Section 21 thereof, the MoHRD, GoI in the FMP Manual has stressed for the need of community mobilization. In Clause 1.7 of the FMP Manual, it has been stated that the FMP Manual is mandatory for all the activities under the Samagra Shiksha Scheme at all levels of implementation and no deviation from the FMP Manual is permissible. As the provisions outlined in the FMP Manual are mandatory, the States/State Implementing Societies [SISs] have been directed to formulate well defined financial rules and regulations including the delegation of financial powers for effective implementation, with their formal adoption by the Executive Committee. A detailed planning process including financial planning process, has been outlined in Chapter – 2 of the FMP Manual by clearly indicating the policy of the MoHRD, GoI that the planning process has to be participatory in nature and such planning process has envisaged a bottom-up approach, as opposed to the top-down approach, for the purpose of inculcating a sense of ownership amongst the stakeholders and for helping in the capacity building at various levels. The FMP Manual is to be read with *the Framework for Implementation – Samgra Shiksha*.

- 20.1. As per the provisions relating to financial management, fund flow and reporting, contained in Chapter – 3 of the FMP Manual, it is the requirement of the State Implementing Society [SIS] to transfer the funds to the District and the School level bank accounts. The civil works at the School level is to be approved by the appropriate authority and information is to be sent to the State Implementing Society [SIS]. The funds are to be transferred to be school electronically for full or part payment on completion of approved works from the State Scheme Account. For the accountability of transactions of funds under the Samagra Shiksha Scheme, registration of all the agencies is done on Public Financial Management System [PFMS] at State/District and School/SMC/SMDC level. As per the fund flow arrangement for various activities, as extracted in the preceding paragraph 16.5, civil works up-to Rs. 30 lakhs can be undertaken through SMCs/SMDCs and major civil works beyond Rs. 30 lakhs could be executed through an external agency. In order to have strict monitoring and scrutiny of the monitory transactions the FMP Manual in Chapter 4 and Chapter 5 have put in place detail provisions for monitoring at the National level/State level/District level/School-Community level. To have better monitoring at the School level, the FMP Manual has suggested for inclusion of members from the Audit and Accounts department, Panchayat or Urban local body, expert in civil works like Civil Engineer/Consultant. The procurement procedure adopted for civil works, goods and consultancy services are to be reviewed by the internal auditors to ensure that correct procedure has been followed for each procurement

and that the records of all procurement, agreements, work/purchase orders, invoices, receipts, stock registers, etc. are properly maintained, duly linked and retained.

20.2. Clause 7.1 of the Chapter-7 relating to *Procurement* has contained a mandate that the procurement activities under the Samagra Shiksha Scheme shall be governed by the Procurement Guidelines provided in the FMP Manual, subject to overriding provisions contained in the GFR-2017. It has mentioned that since the grants under the Samagra Shiksha Scheme are governed by the various provisions of the GFR-2017, adherence to the provisions of the GFR-2017 is mandatory, wherever applicable and if not explicitly specified in the FMP Manual. It has been made clear that procurement of all works and goods under the Samagra Shiksha Scheme are to be carried out in accordance with the principles, rules and procedures outlined in the Chapter – 7 of the FMP Manual as the Government of India in the MoHRD is of the view that compliance with these mandatory procedures would result in efficiency, economy, fairness and transparency in procurement.

20.3. In Clause 7.4, it has been provided that the procurement activities under the Samagra Shiksha Scheme would be at various levels and the bidding/tender process, as far as possible, should be through the GeM route [e-Procurement] and all the procurements of goods, services and civil works would be through the State Implementing Society [SIS], who would regulate. By the Office Memoranda – dated 23.11.2016, dated 13.07.2018, dated 16.12.2021, dated 28.01.2022 & dated 10.01.2023 – of the Finance Department, Government of Assam, a financial threshold/limit had/has been provided for the Administrative Departments of the Government of Assam and its subordinate Directorates/Offices/Agencies, etc. [including institutions receiving Grants-in-Aid from the Government of Assam] to resort to e-Procurement. The said Office Memoranda had/has also provided that for tender values less than the financial threshold/limit, the tender inviting authority/administrative departments had/has the option to either go for e-Procurement or not to go for e-Procurement. The financial threshold/limit fixed by each of these Office Memoranda has already been indicated in paragraph 11 above and it has emerged therefrom that the minimum of the financial threshold/limit from resorting to e-Procurement had/has been fixed @ Rs. 20 lakhs and above.

20.4. It has been provided in *the Framework for Implementation - Samagra Shiksha* that civil works components include strengthening the existing infrastructure facilities in existing

schools and therein, provision for Furniture is included. It contains the mandate that such construction activities are to be planned, undertaken and executed with community involvement through the SMC/SMDC up-to the limit of Rs. 30 lakhs. The SMC/SMDC is to be involved in finalization of tender and execution of works at all stages. The Table provided in Clause 7.7 of the FMP Manual, as extracted in paragraph 16.7 above, has provided for the financial threshold/limit. For financial threshold/limit above Rs. 25,000/- and up-to Rs. 2.50 lakhs, the procurement is required to be done through a three-member committee whereas for financial limit above Rs. 2.50 lakhs and up-to Rs. 25 lakhs, the procurement type is Limited Tender. If the financial threshold/limit is above Rs. 25 lakhs, the FMP Manual has mandated for an open tender e-Procurement process. As these financial threshold/limit and the type of procurement, contained in Clause 7.7 of the FMP Manual, are stated to be in conformity with the provisions of the GFR-2017, there appears to be no question of conflict between the provisions of the FMP Manual and the GFR-2017. The FMP Manual has further provided that the State/State Implementing Society [SIS] may follow the financial ceiling prescribed for by the State Government for various methods of procurement with the condition that if financial threshold/level of procurement, particularly relating to civil works has already been mentioned in the FMP Manual, then it should be adhered to by the State/State Implementing Society [SIS]. Thus, from a combined reading of the provisions of the FMP Manual and the GFR-2017 r/w *the Framework for Implementation - Samagra Shiksha* and the Office Memoranda of the Finance Department, Government of Assam, it does not emerge that for procurement activities of goods like Furniture beyond a particular financial threshold/limit, the procurement is to be mandatorily done through open tender for choosing one single supplier. As per Clause 7.8 of the FMP Manual, award and administration of contracts under the Samagra Shiksha Scheme rest with the State Implementing Society [SIS] and the SMCs/SMDCs. As per Clause 7.14.1, the goods and works are to be procured at four levels, that is, [i] School/Community level; [ii] CRC/BRC level; [iii] District level; and [iv] State level. In Clause 7.14.2, the various levels and items normally procured under the Samagra Shiksha are given in an indicative manner and the Implementing Agency is given the responsibility to procure the items keeping in view the financial norms prescribed under the Samagra Shiksha Scheme. It has been specifically set forth in Clause 7.14.2[II][iii] that procurement furniture to Government Upper Primary School/Secondary Schools/Higher Secondary Schools are to be done by the SMC/SMDC equivalent bodies for rural/urban areas. In the items to be procured at the State level, as provided in Clause 7.14.2[VI], procurement of furniture for different category of Government

Schools at the State level is conspicuously not included. The method of procurement plan is provided in Clause 7.15 and as per Clause 7.15[f], the method of procurement shall be based on the value of the contract and applicable financial limits as and where mentioned in the FMP Manual. It has been set forth in Clause 7.15 that the limit applicable to the particular procurement procedure shall be strictly adhered to.

20.5. In Clause 7.16[II] of the FMP Manual, it has been provided that irrespective of the method and the financial limits prescribed in the FMP Manual, all purchase should preferably be made on GeM and if anything is not available on GeM, e-Procurement method should be mandatorily adopted to receive all such bids through e-Procurement Portal in respect of all procurements, which are not available on GeM. The State has, however, been given an option to follow their own prescribed financial rules and financial ceiling in place of the GFR-2017, only after due approval of the Executive Committee in that regard and such approval should be mandatorily intimated to the MoHRD, GoI at the very beginning of the Scheme.

20.6. The State respondents in their affidavit-in-opposition is silent on the aspect about due approval of the Executive Committee, the composition of which has been provided for in Appendix-4 of the FMP Manual, to proceed for procurement of the component part of strengthening of infrastructure in existing schools, that is, furniture at the State level at the beginning of the Samagra Shiksha Scheme and for not following the otherwise mandatory procedure of procurement of furniture to the existing Government Schools through the SMC/SMDC equivalent bodies for rural/urban areas. There is nothing also on record that such approval had been intimated to the MoHRD, GoI at the beginning of the Samagra Shiksha Scheme. In the absence of any cogent material to substantiate that there is adherence of both these two conditions, the procedure for procurement of furniture has to be in terms of Clause 7.14.2[II][iii] which contains the mandate that procurement of furniture to the existing Government Schools including Upper Primary Schools is to be done through the SMC/SMDC equivalent bodies for rural/urban areas. Meaning thereby, the level of procurement is not to be at the State level but at the level of the School/SMC/SMDC level, albeit under the strict monitoring of the State Implementing Society [SIS]. With the procurement of furniture is at the level of the School/SMC/SMDC, the method of procurement as per Clause 7.15[f], has to be based on the value of the contract and applicable financial limits prescribed in the FMP Manual. With Clause 7.15[g] of the FMP Manual stressing for strict adherence for the particular procurement procedure applicable to

the financial limit, as indicated in the Table contained in Clause 7.7 thereof, it has clearly emerged that the procurement of furniture at the State level and the procurement procedure through open tender, contemplated in the NIT dated 01.11.2022 for Tender no. GEM/2022/B/2693580, are not in conformity with the mandatory provisions of the FMP Manual and the GFR-2017 r/w *the Framework for Implementation - Samagra Shiksha*.

20.7. The provisions of the FMP Manual and *the Framework for Implementation - Samagra Shiksha* have mandated for a bottom-up approach of planning, as opposed to the top-down approach. The Government of India in the MoHRD is of the view that a bottom-up approach of planning would reflect the reality at the grassroots level and a participatory planning process would not only create a sense of ownership among the stakeholders but would also create awareness and help in the capacity building at various levels. It is of the view that the process of bottom-up planning would not only help the planning team to acquaint themselves with various problems but would also help for providing the solutions. While providing the power and responsibility to the State Implementing Society [SIS] for implementation, monitoring and regulating the activities under the Samagra Shiksha Scheme, the State Implementing Society [SIS] has been asked to delegate powers of procurement to Districts, Sub-districts, Schools, SMCs/SMDCs indicating the activities and the limits of financial powers and the items to be procured.

20.8. There is no dispute to the propositions, as observed in **Michigan Rubber** [supra], that fixation of a value of a tender is entirely within the purview of the executive and the courts hardly have any role to play in the process, except for striking down such action of the executive as is proved to be arbitrary or unreasonable. There is also no dispute to the proposition that in the matter of formulating conditions of a tender document and awarding a contract greater latitude is required to be conceded to the tendering authority unless the action of the tendering authority is found to be a misuse of his statutory powers. It is true that certain pre-conditions or qualifications for the bidders have been laid down to ensure that the bidders have the capacity and the resources to successfully execute the work.

20.9. From the FMP Manual and the GRF-2017 r/w *the Framework for Implementation - Samagra Shiksha*, it has emerged clearly that the Government of India in the MoHRD has laid down a policy of procurement of different goods, works and services through various procurement methods and at various levels. In so far as the procurement of furniture in existing

Government Upper Primary Schools/Secondary Schools/Higher Secondary Schools is concerned, the MoHRD, GoI through the FMP Manual has clearly conveyed its policy to procure the furniture in these schools through the SMC/SMDC equivalent bodies by adhering to the particular procurement procedure based on the value of the contract, which obviously is at the School level, and on the applicable financial limits, as prescribed in the FMP Manual. In the face of such policy and the provisions contained in the FMP Manual providing for procurement of furniture in the manner above, the contention advanced on behalf of the State respondents that it is within their prerogative to fix the value of the tender and to decide about the procurement level are found not in conformity with the policy of the Government of India and the provisions contained in the FMP Manual and the GFR-2017 r/w *the Framework for Implementation – Samagra Shiksha*.

21. The NITs have indicated that the materials to be used for the Desks and Benches must be of particular specification, but they are to be unbranded. In view of the provision contained in *the Framework for Implementation – Samagra Shiksha*, it is definitely within the purview of the State Government/State Implementing Society [SIS] to lay down that the goods to be procured, that is, furniture in the instant case, have to be of prescribed specifications like the ones set forth in the NIT dated 01.11.2022 for Tender no. GEM/2022/B/2693580. The goods to be procured here are Desks and Benches made of wooden boards/metal frames, etc. Steel chairs, steel desks, steel stools, wooden boards, wooden chairs, etc. are items figured in the Appendix :- List of Items reserved for purchase from Small Scale Industrial Units in the MSEs Order framed under Section 11 of the MSMED Act, 2006. Having regard to the definitions of micro enterprise, small enterprise, etc. vis-à-vis the investment/annual turnover, etc. required to be met by such kind of enterprises, the eligibility criteria, set forth in the NIT dated 01.11.2022, to have an average annual turnover of minimum Rs. 9.52 crores from 'furniture' for the last three financial years [FY : 2019 – 2020, FY : 2020 – 2021 & FY : 2021 – 2022] and laying down the estimated Bid Value at Rs. 31,73,00,000/- are stringent and clearly, opposed to the policy and the level of procurement envisaged by the FMP Manual.
- 21.1. Clause 7.11 : *Eligibility for Contracting* in the FMP Manual has contained to the effect that the condition for participation shall be limited to those that are essential to ensure the bidders capability to fulfill the contract of offering goods, works and services required for the Samagra Shiksha Scheme and the condition for participation should be such that it should

foster competition, not to impede competition. It has been further provided that in connection with any contract to be financed under the Scheme, no bidder shall be denied participation in a procurement process or award for reasons unrelated to its capability and resources to successfully perform the contract. In view of such policy, it does appear that the terms and conditions incorporated and the value of the contract contemplated in the NIT dated 01.11.2022 for Tender no. GEM/2022/B/2693580 are clearly at variance with the socio-economic policy of the MoHRD, GoI conveyed through the provisions of the FMP Manual and the GFR-2017 r/w *the Framework for Implementation – Samagra Shiksha*. It is relevant to note that as per sub-section [2] of Section 6 of the Assam Public Procurement Act, 2007, the State Government may provide for mandatory procurement of any subject-matter of procurement from any category of bidders, and purchase or price preference in procurement from any category of bidders, on the following grounds viz. [a] the promotion of domestic industry; [b] socio-economic policy of the Central Government or the State Government; & [c] any other consideration in public interest in furtherance of a duly notified policy of the Central Government or the State Government. In any view of the matter, the provisions of the Assam Public Procurement Act, 2017 are not in derogation of the provisions of any other law for the time being in force like the GFR-2017. Thus, the propositions laid down in *Michigan Rubber* [supra] rather than found assisting the case of the State respondents, are found supporting the policy laid down in the FMP Manual for formulating the qualification criteria for participating bidders *qua* the level of procurement of furniture, which is to be at the level of School/SMC/SMDC for rural/urban areas.

- 21.2. From perusal of the Communication bearing no. RMSA/CW/SMDC-NR/17-18/866/2017/Pt-II/11 dated 03.02.2022 [Document – 'C'], it is noticed that the then Mission Director, Rashtriya Madhyamik Shiksha Abhiyan [RMSA], Assam had accorded administrative approval and financial sanction for an amount of Rs. 1,97,46,446/- for procurement of furniture under the RMSA for 31 nos. of Schools located in a number of districts of Assam. By Document – 'C', the said authority had set forth the specification of furniture which included Desk-cum-Bench. Amounts were approved and sanctioned to be credited in the bank account maintained by the SMDCs of the Schools for which the furniture were procured. From the Guidelines on Procurement and Distribution of Uniforms for learners of Elementary Level for Academic Year : 2021-22, as contained in Document – 'D', it is noticeable that procurement of uniforms in the Academic Year : 2021-2022 were envisaged by a decentralized manner through only the SMCs/SMDCs and no centralized procurement at any level was envisaged.

As per the Guidelines, there were to be a District Level Quality Control Committee, a Block Level Quality Control Committee and a School Level Quality Control Committee for ensuring quality uniforms. The payment was to be made by the SMCs/SMDCs to the supplier through Bank instrument and the SMCs/SMDCs were to maintain proper accounting for audit purposes. A supervision and monitoring mechanism was placed at various levels. The Guidelines for procurement of uniform at SMC/SMDC level was stated to be a part of community involvement and participation. From the above two documents, it can be noticed that the items/goods like uniforms and furnitures were earlier procured through decentralized procurement processes at the level of SMC/SMDC, by doing away with any centralized procurement process.

21.3. With no ambiguity as regards the policy of the Government of India in the MoHRD with regard to the level of procurement of furniture to Government Upper Primary Schools/Secondary Schools/Higher Secondary Schools, which is to be done at the SMC/SMDC level for rural/urban areas, the tender process contemplated by the NIT dated 01.11.2022 for Tender no. GEM/2022/B/2693580 to procure furniture, that is, Desks and Benches for 1443 nos. of Upper Primary Schools in 30 Districts cannot be countenanced. Consequently, this Court is of the view that the tender process in the manner contemplated by the NIT dated 01.11.2022 for Tender no. GEM/2022/B/2693580 is liable to be interfered with. It is accordingly held so. Consequently, the 1st writ petition, W.P.[C] no. 7967/2022 is allowed.

21.4. With the setting aside of the NIT dated 01.11.2022 for Tender no. GEM/2022/B/2693580, it is observed that the State respondents shall proceed with the matter of procurement of furniture, that is, Desks and Benches for 1443 nos. of Upper Primary Schools in 30 Districts of Assam afresh in conformity with the policy of the MoHRD, GoI, as discussed above, and the provisions contained in the FMP Manual and the GFR-2017 r/w *the Framework for Implementation – Samagra Shiksha*, by taking into account the observations made and the findings recorded above along with the reasons assigned.

Notice Inviting Tender [NIT] dated 13.01.2023 for Tender no. GEM/2023/B/2982233 :-

22. In respect of tender process initiated by the NIT dated 13.01.2023 for Tender no. GEM/2023/B/2982233, the State respondents in the counter affidavit have categorically

asserted that the fund to be utilized for Supply to and Installation of Dual Desks and Benches in 4039 schools is not out of the fund sanctioned and released under the Samagra Shiksha Scheme. The State respondents have further asserted that the fund is under the State Owned Priority Development [SOPD] Fund. Such assertions of the State respondents have not been traversed and controverted by the petitioner in any manner.

- 22.1. With the fund to be utilized in the tender process initiated by the NIT dated 13.01.2023 is not out of the Centrally Sponsored Scheme of Samagra Shiksha in which the share of the Central Government for Assam is at 90%, and is entirely out of the State Government Coffers under the SOPD Fund, the State respondents are under no obligation to follow the procurement method mandated in the policy of the Central Government, conveyed through the FMP Manual, the GFR-2017 r/w *the Framework for Implementation – Samagra Shiksha*. It is, therefore, at the discretion of State Government in what manner and at what level, such Dual Desks and Benches are to be procured. Thus, no interference is called for in respect of the tender process initiated by the NIT dated 13.01.2023 for Tender no. GEM/2023/B/2982233. Interim order, if any, stands recalled accordingly.

Conclusion :-

23. The 1st Writ Petition, W.P.[C] no. 7967/2022 is allowed in the manner and to the extent indicated above. In so far as the 2nd writ petition, W.P.[C] no. 523/2023 is concerned, as no interference is made, it is open for the State respondents either to proceed with the tender process already initiated by the NIT dated 13.01.2023 for bringing the process to its conclusion or to initiate a fresh process in tune with the policy of the Government of India envisaged for the Scheme of Samagra Shiksha for procurement of furniture, as the case may be. There shall, however, be no order as to costs.

JUDGE

Comparing Assistant