



IN THE GAUHATI HIGH COURT

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

(1) WRIT APPEAL No.82 OF 2023

M/S Rana Construction and Engineer Private Limited, Suraj Complex, Ulubari Chariali, Kamrup (Metro), Guwahati - 781007, Assam, represented by one of its Directors Rana Zaman, aged about 51 Years, Son of Alhaz Rahman Ali, Resident of House No.62, Rahman Mansion, South Sarania, PO: Ulubari, District: Kamrup (Metro), Assam, Guwahati- 781007.

.....Appellant

-Versus-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Rural Development, New Delhi, PIN – 110066.

2. The Secretary to the Government of India, Ministry of Finance, Department of Expenditure Procurement Policy Division, 512, Lok Nayak Bhawan, New Delhi.

3. The Chairman, National Rural Infrastructure Development Agency, Ministry of Rural Development, Government of India, NBCC Tower, 5th Floor, Bhikaji Cama Place, Ram Krishna Puram, New Delhi PIN – 110066.

4. The Commissioner & Special Secretary to the Government of Assam, Public Works Roads Department, Dispur, Guwahati - 781006.

5. The Chief Engineer, Public Works Department (Border Roads), Assam Chandmari, Guwahati – 781003.

.....Respondents

(2) WRIT APPEAL No.83 OF 2023

M/S Rana Construction and Engineer Private Limited, Suraj Complex, Ulubari Chariali, Kamrup (Metro), Guwahati - 781007, Assam, represented by one of its Directors Rana Zaman, aged about 51 Years, Son of Alhaz Rahman Ali, Resident of House No.62, Rahman Mansion, South Sarania, PO: Ulubari, District: Kamrup (Metro), Assam, Guwahati- 781007.

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5. The Chief Engineer, Public Works Department (Border Roads), Assam Chandmari, Guwahati – 781003.

.....Respondents

(3) WRIT APPEAL No.85 OF 2023

M/S Rana Construction and Engineer Private Limited, Suraj Complex, Ulubari

Chariali, Kamrup (Metro), Guwahati - 781007, Assam, represented by one of its Directors Rana Zaman, aged about 51 Years, Son of Alhaz Rahman Ali, Resident of House No.62, Rahman Mansion, South Sarania, PO: Ulubari, District: Kamrup (Metro), Assam, Guwahati- 781007.

.....Appellant

-Versus-

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4. The Commissioner & Special Secretary to the Government of Assam, Public Works Roads Department, Dispur, Guwahati - 781006.

5. The Chief Engineer, Public Works Department (Border Roads), Assam Chandmari, Guwahati – 781003.

.....Respondents

(4) WRIT APPEAL No.86 OF 2023

M/S Rana Construction and Engineer Private Limited, Suraj Complex, Ulubari Chariali, Kamrup (Metro), Guwahati - 781007, Assam, represented by one of its Directors Rana Zaman, aged about 51 Years, Son of Alhaz Rahman Ali, Resident of House No.62, Rahman Mansion, South Sarania, PO: Ulubari, District: Kamrup (Metro), Assam, Guwahati- 781007.

.....Appellant

-Versus-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Rural Development, New Delhi, PIN – 110066.
2. The Secretary to the Government of India, Ministry of Finance, Department of Expenditure Procurement Policy Division, 512, Lok Nayak Bhawan, New Delhi.
3. The Chairman, National Rural Infrastructure Development Agency, Ministry of Rural Development, Government of India, NBCC Tower, 5th Floor, Bhikaji Cama Place, Ram Krishna Puram, New Delhi PIN – 110066.
4. The Commissioner & Special Secretary to the Government of Assam, Public Works Roads Department, Dispur, Guwahati - 781006.
5. The Chief Engineer, Public Works Department (Border Roads), Assam Chandmari, Guwahati – 781003.

.....Respondents

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

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| For the Appellant(s) | : Mr. K.N. Choudhury, Sr. Advocate
assisted by Mr. R.M. Deka, Advocate. |
| For the Respondents | : Mr. B. Deka, Advocate for
respondent Nos.1 to 3. |
| | : Mr. D. Saikia, Advocate General,
Assam assisted by Mr. B. Gogoi,
Standing Counsel, Finance Deptt.
for respondent Nos.4 & 5. |

Date of Judgment & Order : **20th March, 2023.**

JUDGMENT & ORDER (ORAL)

[Sandeep Mehta, C.J.]

These 4(four) intra-Court writ appeals are directed against the common judgment & order dated 07.02.2023 whereby, WP(C) No.5294/2022; WP(C) No.5297/2022; WP(C) No.5298/2022 and WP(C) No.5301/2022 preferred by the writ petitioners/appellants were dismissed. As these appeals involve identical issues of facts, they are being heard and decided together.

2. The appellant herein submitted separate bids in pursuance of a Notice Inviting Tender (NIT) dated 08.04.2022 issued by the Chief Engineer, Public Works Department (PWD) for construction of 155 roads under Pradhan Mantri Gram Sadak Yojana (PMGSY). The appellant's bids were accepted for the following packages as the price quoted by the appellant was found to be the lowest:-

"WP(C)/5294/2022"

Name of the work - upgradation of roads from T04-Abhyapuri Pachnia Road including cross drainage works and routine maintenance of the works for five years under Package No.AS-02-187, PMGSY-III, Batch-1, 2022-23.

Letter of Acceptance dated -06.08.2022

Contract price - Rs.10,22,40,436/-

Performance Security- Rs.25,57,000/-

Additional Performance Security- Rs.3,78,64,000/-

WP(C)/5297/2022

Name of the work - upgradation of roads from MRL11-Road from Majirgaon to Borjhar via Agchia including

cross drainage works and routine maintenance of the works for five years under Package No.AS-11926, PMGSY-III, Batch-1, 2022-23.

Letter of Acceptance dated -06.08.2022

Contract price - Rs.3,60,67,998/-

Performance Security- Rs.9,02,000/-

Additional Performance Security- Rs.1,33,06,000/-

WP(C)/5298/2022

Name of the work - upgradation of roads from MRL07-Tetelia Lakhitari to Maheswari Mitani including cross drainage works and routine maintenance of the works for five years under Package No.AS-11929, PMGSY-III, Batch-1, 2022-23.

Letter of Acceptance dated -06.08.2022

Contract price - Rs.4,85,46,891/-

Performance Security- Rs.12,14,000/-

Additional Performance Security- Rs.1,79,96,000/-

WP(C)/5301/2022

Name of the work - upgradation of roads from T05-Dimaruguri Kamarpur Road including cross drainage works and routine maintenance of the works for five years under Package No.AS-17-260, PMGSY-III, Batch-1, 2022-23.

Letter of Acceptance dated -06.08.2022

Contract price - Rs.18,39,13,378/-

Performance Security- Rs.45,98,000/-

Additional Performance Security- Rs.2,12,29,000/-."

3. After issuance of the Letters of Acceptance (LoA), the appellant was asked to furnish Performance Security and Additional Performance Security (for short, hereinafter referred to as "APS") for the reason that the prices quoted by the appellant in its bids were much below the estimated construction costs. Being aggrieved by the demand of APS, as indicated above, the appellant filed the captioned

4(four) writ petitions, which came to be dismissed by the common judgment & order dated 07.02.2023, which is assailed in the instant bunch of intra-Court writ appeals.

4. Addressing the Court for admission of appeals and stay of the impugned judgment & order, Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. R.M. Dekka, learned counsel for the appellant, vehemently and fervently urged that the employer being the Chief Engineer, PWD, was totally unjustified in imposing the APS, which is against the terms and conditions of the NIT. His further submission was that pursuant to the letters dated 24.06.2022 proposing imposition of APS issued by the Chief Engineer, Border Roads, Assam, the appellant/writ petitioner forwarded a rational justification for the lower bid amount with a detailed financial analysis and reasons for the appellant's quoting prices below the estimated costs. However, the respondents failed to consider the price/financial analysis report submitted by the appellant and hence, the entire process whereby, APS was demanded from the appellant, is vitiated. He thus, implored the Court to exercise the extra-ordinary writ jurisdiction and quash the impugned demand of APS against the 4(four) successful bids of the appellant/writ petitioner.

5. Per contra, Mr. D. Saikia, learned Advocate General, Assam, assisted by Mr. B. Gogoi, learned standing counsel, PWD, vehemently and fervently opposed the submissions advanced by the learned counsel representing

the appellant. During the course of his arguments, Mr. Saikia referred to Condition No.26.3 of the NIT and contended that under this condition, in case of an unbalanced bid of the successful bidder, the employer is empowered to require the bidder to produce the detailed price analysis and after evaluation thereof, APS can be demanded. He further submitted that upon receiving the detailed price analysis of the appellant vide communication dated 26.06.2022, a meeting of the Executive Committee of the Assam State Road Board was convened on 08.07.2022 and after due deliberation of the detailed price analysis submitted by the appellant and other similarly placed successful L-1 bidders, who had offered unbalanced bids for different packages of the roads, a well considered decision was taken to award the works to the competent L-1 bidders at their quoted rates with demand for Additional Performance Security as per the relevant Clauses of the Standard Bidding Document (SBD). He urged that the employer has diligently exercised the discretion conferred upon by the SBD while demanding the APS in relation to unbalanced bids. The decision was taken after due consideration of the detailed price analysis submitted by the appellant and hence, the impugned demand of APS cannot be called into question while exercising the extraordinary writ jurisdiction conferred upon this Court. He further submitted that the learned Single Judge has already considered the entire factual scenario while dismissing the writ petitions and has assigned unassailable reasons

justifying the demand of APS made by the employer and hence, this Court should not feel persuaded interfere in such well reasoned judgment of the learned Single Judge, which is impugned in these appeals.

6. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned order and the materials placed on record.

7. A bare perusal of the Condition No.26.3 of the NIT/SBD would make it clear that in case of unbalanced bid, the employer has the absolute discretion to call for a detail financial analysis of the successful bidder and after consideration thereof, a demand can be made from the qualifying L-1 bidder to furnish APS. This power as conferred upon the employer by the SBD so as to save it from serious financial harm is to be exercised by recording a subjective satisfaction after evaluating the financial details/explanation submitted by the successful bidder. In making this consideration, neither exhaustive reasoning is warranted nor the discretion so exercised can be called into question in a Court of law, unless the same is tainted by malafides or vitiated on account of non-adherence to any specific legal provision.

8. Having considered the minutes of the meeting dated 08.07.2022, the original record whereof was produced for the Court's perusal and a copy of which has been placed on record of the appeals, we are of the affirmative opinion that the Executive Committee consisting

of the **(i)** Special Commissioner & Special Secretary to the Government of Assam, PWRD; **(ii)** Secretary to the Government of Assam, PWRD; **(iii)** Chief Engineer, PWD (Border Roads), Assam; **(iv)** Chief Engineer, PWD (Roads), Assam; **(v)** Chief Engineer, PWD (EAP), Assam and the **(vi)** Senior Financial Advisor, PWD has duly and diligently considered the price bid analysis of not only the appellant but various other L-1 bidders, who had made unbalanced bids and thereafter, a considered decision was taken requiring such bidders to furnish APS. The decision so taken is not vitiated on test of fairness and reasonableness.

9. The impugned order passed by the learned Single Judge whereby, the decision requiring the appellant to furnish APS was affirmed, does not suffer from any infirmity warranting interference in these intra-Court writ appeals. Hence, the writ appeals fail and are dismissed as being devoid of merit. All pending applications, if any, are also disposed of.

10. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant