

GAHC010069272021



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

Case No. : WP(C)/2674/2021

MD. JIYAU PASA
S/O LATE SALIM PASA, NALBARI TOWN, WARD NO. 8, P.S. AND P.O.
NALBARI, DIST. NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, PUBLIC WORKS ROADS DEPTT., DISPUR, GUWAHATI 06

2:THE CHIEF ENGINEER

PUBLIC WORKS DEPTT. (BORDER ROADS) CHANDMARI
GUWAHATI
ASSAM 781003

3:THE CHIEF ENGINEER

PUBLIC WORKS ROAD DEPTT.
CHANDMARI
GUWAHATI 03
ASSAM.

4:THE ASSTT. EXECUTIVE ENGINEER
PUBLIC WORKS ROAD DEPTT. (PWRD) PLANNING CELL
DISPUR
GUWAHATI 06
ASSAM.

5:BIKASH SARMA

KHARGHULI

GUWAHATI
KAMRUP (M
GUWAHATI 781004

6:NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY

REPRESENTED BY ITS DIRECTOR GENERAL
KRISHI BHAWAN
NEW DELHI 11000

Advocate for the Petitioner : MR. MD S HOQUE

Advocate for the Respondent : SC, PWD ROAD

Linked Case : WP(C)/5562/2022

MD. JIYAU PASA
S/O LATE SALIM PASA

NALBARI TOWN
WARD NO. 8

P.S. AND P.O.- NALBARI

DIST.- NALBARI
ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY
MINISTRY OF RURAL DEPTT.
DEPTT. OF RURAL DEVELOPMENT (RURAL CONNECTIVITY DISION)
KRISHI BHAWAN
NEW DELHI- 110001.

2:THE NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
REP. BY ITS DIRECTOR GENERAL
KRISHI BHAWAN
NEW DELHI- 110001.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPTT.
DISPUR
GUWAHATI- 06.

4:THE CHIEF ENGINEER

PUBLIC WORKS DEPARTMENT (BORDER ROADS)
CHANDMARI
GUWAHATI
ASSAM- 781003.

5:THE CHIEF ENGINEER
PUBLIC WORKS ROAD DEPARTMENT
CHANDMARI
GUWAHATI- 03
ASSAM.

6:THE ASSISTANT EXECUTIVE ENGINEER
PUBLIC WORKS ROAD DEPARTMENT (PWRD)
PLANNING CELL
DISPUR
GUWAHATI- 06
ASSAM.

7:MD. MAHSEN ALI
VILL. AND P.O.- RAMPUR

DIST.- NALBARI
ASSAM- 781312.

Advocate for : MD S HOQUE
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS.

Linked Case : WP(C)/6059/2022

MD. JIYAU PASA
S/O- LT. SALIM PASA
NALBARI TOWN
WARD NO.-8
P.S. AND P.O. NALBARI
DIST.- NALBARI
ASSAM-

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY.
MINISTRY OF RURAL DEVELOPMENT
DEPTT. OF RURAL DEVELOPMENT (RURAL CONNECTIVITY DIVISION)
KRISHI BHAWAN
NEW DELHI- 110001

2:THE NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
REP. BY ITS DIRECTOR GENERAL

KRISHI BHAWAN
NEW DELHI- 110001
3:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPTT.
DISPUR
GHY-06
4:THE CHIEF ENGINEER
PUBLIC WORKS DEPTT. (BORDER ROADS)
CHANDMARI
GHY
ASSAM- 781003
5:THE CHIEF ENGINEER
PUBLIC WORKS ROAD DEPTT.
CHANDMARI
GHY-03
ASSAM
6:THE ASSTT. EXECUTIVE ENGINEER
PUBLIC WORKS ROAD DEPTT. (PWRD)
PLANNING CELL
DISPUR
GHY-06
ASSAM
7:SAILEN BAISHYA
VILL AND P.O. JAGARA
DIST.- NALBARI
ASSAM- 781310

Advocate for : MD S HOQUE

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS.

Linked Case : WP(C)/41/2022

MD MAHSEN ALI
SON OF LATE SAMSER ALI
R/O VILL- RAMPUR
P.O. AND P.S. RAMPUR
DIST. NALBARI
ASSAM
PIN-781312

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY

MINISTRY OF RURAL DEVELOPMENT
DEPARTMENT OF RURAL DEVELOPMENT (RURAL CONNECTIVITY
DIVISION) NEW DELHI-110001.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROAD DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE CHIEF ENGINEER PUBLIC WORKS (BORDER ROADS) DEPARTMENT

CHANDMARI
GUWAHATI-03.
4:THE CHIEF ENGINEER
PUBLIC WORKS ROAD DEPARTMENT
CHANDMARI
GUWAHATI-03
ASSAM

5:THE EXECUTIVE ENGINEER
PUBLIC WORKS ROAD DEPARTMENT
NALBARI
ASSAM.

6:THE ASSISTANT EXECUTIVE ENGINEER

PUBLIC WORKS ROAD DEPARTMENT
PUBLIC WORKS ROAD DEPARTMENT

PLANNING CELL
DISPUR
GUWAHATI-781006

7:THE NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY

REP. BY ITS DIRECTOR GENERAL KRISHI BHAWAN
NEW DELHI-110001.

8:MD. JIYAU PASA
SON OF LATE SALIM PASA

NALBARI TOWN
WARD NO. 8
P.O. AND P.S. NALBARI
DIST. NALBARI
ASSAM.

Advocate for : MR H R A CHOUDHURY
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 7 ORS

Linked Case : WP(C)/2525/2021

MD. JIYAU PASA
S/O LATE SALIM PASA
NALBLARI TOWN
WARD NO. 8
P.S. AND P.O. NALBARI
DIST. NALBARI
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
PUBLIC WORKS ROADS DEPTT.
DISPUR
GUWAHATI 06

2:THE CHIEF ENGINEER

PUBLIC WORKS DEPTT. (BORDER ROADS) CHANDMARI
GUWAHATI
ASSAM 781003
3:THE CHIEF ENGINEER

PUBLIC WORKS ROAD DEPTT.
CHANDMARI
GUWAHATI 03
ASSAM.

4:THE ASSTT. EXECUTIVE ENGINEER

PUBLIC WORKS ROAD DEPTT. (PWRD)
PLANNING CELL
DISPUR
GUWAHATI 06
ASSAM.

5:M/S SUNRISE ENTERPRISE

SIXMILE
PANJABARI
GUWAHATI 781037

6:NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY

REPRESENTED BY ITS DIRECTOR GENERAL
KRISHI BHAWAN

NEW DELHI 110001

Advocate for : MR. MD S HOQUE

Advocate for : SC

PWD ROAD appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : I.A.(Civil)/1683/2021

MD. JIYAU PASA
S/O LATE SALIM PASA
NALBARI TOWN
WARD NO. 8
P.S. AND P.O. NALBARI
DIST. NALBARI
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
PUBLIC WORKS ROADS DEPTT.
DISPUR
GUWAHATI 06

2:THE CHIEF ENGINEER

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CHANDMARI
GUWAHATI 03
ASSAM.
4:THE ASSTT. EXECUTIVE ENGINEER

PUBLIC WORKS ROAD DEPTT. (PWRD) PLANNING CELL
DISPUR
GUWAHATI 06
ASSAM.
5:M/S ENTERPRISE

SIXMILE

PANJABARI
KAMRUP (M)
GUWAHATI 781307
6:NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY

REPRESENTED BY ITS DIRECTOR GENERAL
KRISHI BHAWAN
NEW DELHI 110001
7:THE UNION OF INDIA
REPRESENTED BY SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF RURAL DEVELOPMENT
RURAL CONNECTIVITY(RC) DIVISION
KRISHI BHAVAN
NEW DELHI-110001

Advocate for : MR. MD S HOQUE

Advocate for : SC

PWD ROAD appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/54/2022

M/S SUNRISE ENTERPRISE
SIXTH MILE
PANJABARI
GUWAHATI-781037 REPRESENTED BY ITS PROPRIETOR MAINUL ALI AGED
ABOUT 51 YEARS

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY
MINISTRY OF RURAL DEVELOPMENT
DEPARTMENT OF RURAL DEVELOPMENT (RURAL CONNECTIVITY
DIVISION) NEW DELHI-110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
PUBLIC WORKS ROAD DEPARTMENT
DISPUR
GUWAHATI-06
3:THE CHIEF ENGINEER PUBLIC WORKS (BORDER ROADS) DEPARTMENT
CHANDMARI
GUWAHATI-03
ASSAM

4:THE CHIEF ENGINEER
PUBLIC WORKS ROAD DEPARTMENT
CHANDMARI
GUWAHATI-03
ASSAM

5:THE EXECUTIVE ENGINEER
PUBLIC WORKS ROAD DEPARTMENT
NALBARI
ASSAM

6:THE ASSISTANT EXECUTIVE ENGINEER PUBLIC WORKS ROAD
DEPARTMENT
PUBLIC WORKS ROAD DEPARTMENT
PLANNING CELL
DISPUR
GUWAHATI-781006

7:THE NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
REPRESENTED BY ITS DIRECTOR GENERAL KRISHI BHAWAN
NEW DELHI-110001

8:MD JIYAU PASA
S/O LATE SALIM PASA
NALBARI TOWN
WARD NO 8
P.O AND P.S.-NALBARI
DIST-NALBARI
ASSAM

Advocate for : MR H R A CHOUDHURY

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 7 ORS

Linked Case : WP(C)/5152/2022

MD. JIYAU PASA
S/O- LATE SALIM PASA

NALBARI TOWN
WARD NO-8

P.S AND P.O- NALBARI

DIST- NALBARI
ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.

REP. BY THE SECRETARY MINISTRY OF RURAL DEVELOPMENT
DEPARTMENT OF RURAL DEVELOPMENT

(RURAL CONNECTIVITY DIVISION)

KRISHI BHAVAN
NEW DELHI-110001

2:THE NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
REP. BY ITS DIRECTOR GENERAL

KRISHI BHAWAN
NEW DELHI-110001

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR

GUWAHATI-6.

4:THE CHIEF ENGINEER
PUBLIC WORKS (BORDER ROADS) DEPARTMENT
CHANDMARI
GUWAHATI-03

ASSAM.

5:THE CHIEF ENGINEER
PUBLIC WORKS ROADS DEPARTMENT
CHANDMARI
GUWAHATI-03

ASSAM.

6:THE ASSISTANT EXECUTIVE ENGINEER
PUBLIC WORKS ROADS DEPARTMENT (PWRD)
PLANNING CELL
DISPUR GUWAHATI-06

ASSAM.

7:M/S- CAPITAL ENTERPRISE
C/O- SANBOM TALPODIA

2ND FLOOR
PAMIL PALACE

ZOO ROAD TINIALI
GUWhati-781024

Advocate for : MD S HOQUE

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS.

Linked Case : WP(C)/2626/2021

MD. JIYAU PASA
S/O LATE SALIM PASA
NALBARI TOWN
WARD NO. 8
P.S. AND P.O. NALBARI
DIST. NALBARI
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
PUBLIC WORKS ROADS DEPTT.
DISPUR
GUWAHATI 06

2:THE CHIEF ENGINEER

PUBLIC WORKS DEPTT. (BORDER ROADS)
CHANDMARI
GUWAHATI
ASSAM 781003
3:THE CHIEF ENGINEER

PUBLIC WORKS ROAD DEPTT.
CHANDMARI
GUWAHATI 03
ASSAM.

4:THE ASSTT. EXECUTIVE ENGINEER

PUBLIC WORKS ROAD DEPTT. (PWRD) PLANNING CELL
DISPUR
GUWAHATI 06
ASSAM.
5:MD. MAHSEN ALI

P.O. AND P.S. RAMPUR
DIST. NALBARI
ASSAM 781312

6:NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY

REPRESENTED BY ITS DIRECTOR GENERAL
KRISHI BHAWAN

NEW DELHI 110001

Advocate for : MR. MD S HOQUE

Advocate for : SC

PWD ROAD appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/6157/2022

MD. JIYAU PASA
S/O- LATE SALIM PASA
NALBARI TOWN
WARD NO. 8
P.S. AND P.O. NALBARI
DIST. NALBARI
ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY
MINISTRY OF RURAL DEVELOPMENT
DEPARTMENT OF RURAL DEVELOPMENT (RURAL CONNECTIVITY
DIVISION)
KRISHI BHAWAN
NEW DELHI-110001.

2:THE NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
REPRESENTED BY ITS DIRECTOR GENERAL
KRISHI BHAWAN
NEW DELHI-110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR
GUWAHATI-06.

4:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (BORDER ROADS)
CHANDMARI
GUWAHATI
ASSAM-781003.

5:THE CHIEF ENGINEER
PUBLIC WORKS ROAD DEPARTMENT
CHANDMARI
GUWAHATI-03

ASSAM
6:THE ASSISTANT EXECUTIVE ENGINEER
PUBLIC WORKS ROAD DEPARTMENT (PWRD)
PLANNING CELL
DISPUR
GUWAHATI-06
ASSAM
7:M/S. SUNRISE ENTERPRISE
SIXMILE
PANJABARI
GUWAHATI-781037

Advocate for : MD S HOQUE
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS.

Linked Case : WP(C)/2656/2021

MD. JIYAU PASA
S/O LATE SALIM PASA
NALBARI TOWN
WARD NO. 8
P.S. AND P.O. NALBARI
DIST. NALBARI
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
PUBLIC WORKS ROADS DEPTT.
DISPUR
GUWAHATI 06

2:THE CHIEF ENGINEER

PUBLIC WORKS DEPTT. (BORDER ROADS) CHANDMARI
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3:THE CHIEF ENGINEER

PUBLIC WORKS ROAD DEPTT.
CHANDMARI
GUWAHATI 03
ASSAM.

4:THE ASSTT. EXECUTIVE ENGINEER

PUBLIC WORKS ROAD DEPTT. (PWRD) PLANNING CELL
DISPUR
GUWAHATI 06
ASSAM.
5:M/S ENTERPRISE

SIXMILE
PANJABARI
KAMRUP (M)
GUWAHATI 781307
6:NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY

REPRESENTED BY ITS DIRECTOR GENERAL
KRISHI BHAWAN
NEW DELHI 110001

Advocate for : MR. MD S HOQUE
Advocate for : SC
PWD ROAD appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/6062/2022

MD JIYAU PASA
S/O- LATE SALIM PASA

NALBARI TOWN
WARD NO.8

P.S AND P.O- NALBARI

DIST- NALBARI
ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF RURAL DEVELOPMENT
DEPARTMENT OF RURAL DEVELOPMENT (RURAL CONNECTIVITY
DIVISION)
KRISHI BHAWAN
NEW DELHI- 110001.

2:THE NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY

REP. BY ITS DIRECTOR GENERAL

KRISHI BHAWAN

NEW DELHI-01

3:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

PUBLIC WORKS ROADS DEPARTMENT

DISPUR

GUWAHATI-6

4:THE CHIEF ENGINEER

PUBLIC WORKS DEPARTMENT

(BORDER ROADS)

CHANDMARI

GUWAHATI-03

ASSAM

5:THE CHIEF ENGINEER

PUBLIC WORKS ROADS DEPARTMENT

CHANDMARI

GUWAHATI-03

ASSAM

6:THE ASSISTANT EXECUTIVE ENGINEER

PUBLIC WORKS ROADS DEPARTMENT

PLANNING CELL

DISPUR

GUWAHATI-6

ASSAM

7:MD. MAHSEN ALI

VILL AND P.O- RAMPUR

DIST- NALBARI

ASSAM

PIN-781312

Advocate for : MD S HOQUE

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS.

Linked Case : WP(C)/2495/2021

MD. JIYAU PASA

S/O LATE SALIM PASA

NALBARI TOWN

WARD NO. 8

P.S. AND P.O. NALBARI

DIST. NALBARI

ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
PUBLIC WORKS ROADS DEPTT.
DISPUR
GUWAHATI 06

2:THE CHIEF ENGINEER

PUBLIC WORKS DEPTT. (BORDER ROADS) CHANDMARI
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3:THE CHIEF ENGINEER

PUBLIC WORKS ROAD DEPTT.
CHANDMARI GUWAHATI 03
ASSAM.
4:THE ASSTT. EXECUTIVE ENGINEER

PUBLIC WORKS ROAD DEPTT. (PWRD)
PLANNING CELL
DISPUR
GUWAHATI 06
ASSAM.

5:SAILEN BAISHYA
VILL. AND P.O. JAGARA
DIST. NALBARI
ASSAM 781310

6:NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY

REPRESENTED BY ITS DIRECTOR GENERAL
KRISHI BHAWAN
NEW DELHI 110001
7:UNION OF INDIA
REP. BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY OF RURAL DEVELOPMENT
RURAL CONNECTIVITY (RC) DIVISION
KRISHI BHAVAN
NEW DELHI- 110001.

Advocate for : MR. MD S HOQUE

Advocate for : SC

PWD ROAD appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/7371/2021

M/S SUNRISE ENTERPRISE
SIXTH MILE
PANJABARI GUWAHATI-781037 REP. BY ITS PROPRIETOR MAINUL ALI.

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY
MINISTRY OF RURAL DEVELOPMENT
DEPTT. OF RURAL DEVELOPMENT (RURAL CONNECTIVITY DIVISION)
NEW DELHI-110001.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
PUBLIC WORKS ROAD DEPTT. DISPUR
GUWAHATI-06.
3:THE CHIEF ENGINEER PUBLIC WORKS (BORDER ROADS) DEPTT.

CHANDMARI
GUWAHATI-03
ASSAM.
4:THE CHIEF ENGINEER PUBLIC WORKS ROAD DEPTT.

CHANDMARI
GUWAHATI-03
ASSAM.
5:THE EXECUTIVE ENGINEER PUBLIC WORKS ROAD DEPTT.

NALBARI
ASSAM.
6:THE ASSTT. EXECUTIVE ENGINEER PUBLIC WORKS ROAD DEPTT.

PUBLIC WORKS ROAD DEPTT.
PLANNING CELL
DISPUR
GUWAHATI-781006.
7:THE NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
REP. BY ITS DIRECTOR GENERAL KRISHI BHAWAN
NEW DELHI-110001.
8:MD JIYAU PASA
S/O. LT. SALIM PASA
NALBARI TOWN WARD NO.8
P.O. AND P.S. NALBARI
DIST. NALBARI
ASSAM.

Advocate for : MR. M DUTTA

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 7 ORS

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (ORAL)

Date : 07/02/2023

Heard Md. S. Hoque, the learned counsel appearing on behalf of Md. Jiyaaur Pasa, who is the writ petitioner in W.P.(C) No. 2674/2021 in W.P.(C) No. 2525/2021, W.P.(C) No. 2494/2021, W.P.(C) No. 2626/2021, W.P.(C) No. 2656/2021, W.P.(C) No. 5038/2022, W.P.(C) No. 5562/2022, W.P.(C) No. 6059/2022, W.P.(C) No. 6062/2022 and W.P.(C) No. 6157/2022. The learned counsel also appears for the private respondent No.8 in W.P.(C) No. 7371/2021, W.P.(C) No. 41/2022 and W.P.(C) No. 54/2022. I have also heard Mr. M. Dutta, the learned counsel appearing on behalf of the respondent No. 5 in W.P.(C) No. 2674/2021, W.P.(C) No. 2525/2020, W.P.(C) No. 2626/2021 and W.P.(C) No. 2656/2021. He further appears for the writ petitioners in W.P.(C) No. 7371/2021, W.P.(C) No. 41/2022 and W.P.(C) No. 54/2022. Mr. M. Dutta also appears for the private respondent No. 7 in W.P.(C) No. 5038/2022, W.P.(C) No. 5562/2022, W.P.(C) No. 6062/2022 and W.P.(C) No. 6157/2022. I have also heard Mr. A.C. Sarma, the learned senior counsel assisted by G.Bharadwaj, the

learned counsel for the respondent No. 5 in W.P.(C) No.2495/2021 and the Respondent No. 7 in W.P.(C) No. 6059/2022. Mr. B. Gogoi, the learned Standing Counsel appears on behalf of the PWRD and Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India and Mr. A.K. Dutta, learned Asstt. Solicitor General of India for the Central Government and the National Rural Infrastructure Development Agency.

2. The Chief Engineer , Public Works Roads Department, Government of Assam had issued a notice inviting tender in electronic tendering system for construction of Roads under the Pradhan Mantri Gram Sadak Yojna for the works mentioned in the E-Notice Inviting Tender including their maintenance for 5 years from approved eligible contractors registered with the Assam Public Works (Roads) Department. The petitioner Md. Jiyaur Pasa had submitted his bids in pursuance to the said E-Notice Inviting Tender in respect to various packages including the packages being numbered as AS 20-185, AS20-189, AS 20-194, AS20-198 and AS20-199. It is also relevant to take note of that various tenderers also participated in the said tender process. In all the packages mentioned hereinabove, the petitioner Md. Jiyaur Pasa admittedly was found to be technically qualified and the rate quoted by the petitioner-Md. Jiyuar Pasa were found to be lowest. However, the respondent authorities in respect to Packages No. AS20-198 awarded the contract to the one Shri Bikash Sarma, the

respondent No.5 in W.P.(C) No.2674/2021; in respect to package No. AS20-185 awarded the contract to one Sri Sainen Baishya, the respondent No. 5 in W.P.(C) No. 2495/2021; in respect to package No.AS20-189 awarded the contract to one M/S Sunrise Enterprise, the respondent No. 5 in W.P.(C) No. 2525/2021; in respect to package No. AS20-194 awarded the contract to one Md. Mahsen Ali, the respondent No. 5 in W.P.(C) No. 2626/2021 and in respect to Package No. AS20-199, the contract was awarded to M/S Sunrise Enterprise, the respondent No. 5 in W.P.(C) No. 2656/2021.

3. It is the case of petitioner- Md. Jiyuar Pasa that he being the lowest bidder and being technically qualified the contract in respect to the said packages ought to have been awarded to him for which he filed writ petitions being W.P. (C) No. 2674/2021, W.P.(C) No. 2495/2021, W.P.(C) No. 2525/2021, W.P.(C) No. 2626/2021 and W.P.(C) No. 2656/2021 challenging the actions of the Respondent Authorities in awarding the contracts to the second lowest bidder i.e. the respondent No. 5 in the above mentioned writ petitions. Before further proceeding, let this Court deal with each of the writ petitions.

W.P.(C) No.2674/2021

(i) This writ petition relates to Package No. AS20-198. Both the writ petitioners and the respondent No. 5 were found to be technically qualified by the Technical

Committee. The Petitioner was the lowest bidder but the contract was awarded to the Respondent No. 5 and Letter of Acceptance issued on 25/2/2021 in favour of the Respondent No. 5.

(ii) The Respondent No. 5 had filed affidavit-in-opposition stating that Letter of Acceptance, was issued on 25/02/2021, performance security was submitted, Agreement entered into on 26/02/2021, notice to proceed was issued on 26/02/2021 and as per the work progress certificate 60% of the work have been completed.

(iii) The State respondents as well as the respondent No. 6 & 7 have filed affidavits. Details of the same would duly taken into account in the subsequent paragraphs of the instant judgment. Replies by way of affidavit have also been filed.

W.P.(C) No. 2495/2021

(i) This writ petition relates to Package No. AS20-185. Both the writ petitioners and the Respondent No. 5 were found to be technically responsive by the Technical Committee. The petitioner though was the lowest bidder but the contract was awarded to the Respondent No. 5 and the Letter of Acceptance was issued on 25/2/2021.

(ii) The Respondent No. 5 had filed Affidavit-in-Opposition stating that the

Letter of Acceptance was issued on 25/2/2021 and the Performance Security dated 6/3/2021 was submitted. It was mentioned in Paragraph 5 of the Affidavit-in-opposition that 25% of the work have been completed. Interesting to note that in respect to the instant case, no work order was issued. Agreement as well as the notice to proceed were also not issued. The State Respondents as well as the Respondent Nos. 6 & 7 have also filed Affidavit, the details of which this Court would dealt with it at the later stage of the instant judgment.

W.P.(C) No. 2525/2021

This writ petition relates to package No. AS 20-189. Both the writ petitioners and the Respondent No. 5 were found to be technically responsive by the Technical Committee. The petitioner though was the lowest bidder but the contract was awarded to the Respondent No. 5 and the Letter of Acceptance was issued on 25/2/2021.

(ii) The Respondent No. 5 had filed Affidavit-in-Opposition stating that the Letter of Acceptance was issued on 25/2/2021 and the Performance Security dated 6/3/2021 was submitted. It was mentioned in Paragraph 5 of the Affidavit-in-opposition that 30% of the work have been completed. Interesting to note that in respect to the instant case, no work order was issued.

Agreement as well as the notice to proceed were also not issued. The State Respondents as well as the Respondent Nos. 6 & 7 have also filed Affidavit, the details of which this Court would deal with it at the later stage of the instant judgment.

W.P.(C) No. 2626/2021

This writ petition relates to package No. AS 20-194. Both the writ petitioners and the Respondent No. 5 were found to be technically responsive by the Technical Committee. The petitioner though was the lowest bidder but the contract was awarded to the Respondent No. 5 and the Letter of Acceptance was issued on 25/2/2021.

(ii) The Respondent No. 5 had filed Affidavit-in-Opposition stating that the Letter of Acceptance was issued on 25/2/2021 and the Performance Security dated 6/3/2021 was submitted. It was mentioned in Paragraph 5 of the Affidavit-in-opposition that 30% of the work have been completed. Interesting to note that in respect to the instant case, no work order was issued. Agreement as well as the notice to proceed were also not issued. The State Respondents as well as the Respondent Nos. 6 & 7 have also filed Affidavit, the details of which this Court would deal with it at the later stage of the instant judgment.

W.P.(C) No. 2656/2021

This writ petition relates to package No. AS 20-199. Both the writ petitioners and the Respondent No. 5 were found to be technically responsive by the Technical Committee. The petitioner though was the lowest bidder but the contract was awarded to the Respondent No. 5 and the Letter of Acceptance was issued on 25/2/2021.

(ii) The Respondent No. 5 had filed Affidavit-in-Opposition stating that the Letter of Acceptance was issued on 25/2/2021 and the Performance Security dated 6/3/2021 was submitted. It was mentioned in Paragraph 5 of the Affidavit-in-opposition that 30% of the work have been completed. Interesting to note that in respect to the instant case, no work order was issued. Agreement as well as the notice to proceed were also not issued. The State Respondents as well as the Respondent Nos. 6 & 7 have also filed Affidavit, the details of which this Court would deal with it at the later stage of the instant judgment.

4. It appears on record that the respondents in the Public Works (Roads) Department have taken a stand that in view of the notification issued by the Public Works Department on 12/7/2018 vide No. RBPC.85/2017/25 as the petitioner(Md.Jiyaur Pasa) quoted rate was found below 10% of the approved

estimated cost of the Civil Work, the petitioner's (Md. Jiyaur Pasa) financial bid was found to be financially non-responsive and accordingly L2 bidders who were the respondent No. 5 in the above mentioned writ petitions became the L1 bidders and were awarded the contract in question. It is the further case of the Public Works (Roads) Department that in all the cases, the respondent No 5 have been issued letter of acceptance and it is only in the Package No. AS20-198 (W.P.(C) No. 2674/2021 that the Work Order, Agreement and the notice to proceed with the work have been issued.

5. It is the further stand of the respondent Public Work (Roads) Department that the private respondent No. 5 in W.P.(C) No.2674/2021 pursuant to the issuance of the notice to proceed with the work have completed certain portions of the work till status-quo orders were passed by this Court.

6. The respondent No. 6 and 7 in all the five writ petitions are the National Rural Infrastructure Development Agency and the Union of India represented by the Secretary to the Government of India Ministry of Rural Development The said authorities have filed affidavits in some of the cases and their specific stand can be seen from paragraph No. 5 of the affidavit filed in W.P.(C) No. 2674/2021 which is quoted herein below:-

“5. That with reference to the statements made in paragraph Nos. 4,5,6 and 7 the deponent begs to state that the provisions of the notification dated 12.07.2018 by

which variations in the bid price over and above 10%(positive or negative) of the estimated bid value was made a disqualification criteria, has been examined in the Ministry of Rural Development, Government of India, and the same has not been found to be consistent with the existing provisions of the Programme Guidelines of PMGSY as well as the Standard Bidding Documents(SBD), As per the SBD clause 26.3 "If the Bid of the successful Bidder is seriously imbalanced in relation to the Engineer's estimate of the cost of the work to be performed under the contract, the Employer may require the Bidder to produce detailed price analysis for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices. After evaluation of the price analysis, the Employer may require that the amount of the Performance Security set forth in Clause 30 of the Instructions of Technical Bid(ITB) be increased at the expense of the successful Bidder to a level sufficient to protect the employer against financial loss in the event of default of the successful Bidder under the Contract. The amount of increased Performance Security shall be final, binding and conclusive on the Bidder." As such, the concerned authority in the Government of Assam has been requested by the Government of India, Ministry of Rural Development vide its letter dated 13/05/2021 to kindly follow the provisions of SBD in the matter of deciding L-1 and bring their tender documents in sync with SBD. In no case any variation would be allowed or any limits placed on the quantum of the bid which can be submitted for a particular work. The practice of prescribing a limit to bids and not accepting bids below it goes against the GFR and also against the advisory issued to the states. It was, therefore, requested to cancel the award of works awarded using the provisions of the notification dated 12/7/2018 and start the process of award of these works afresh. It has further been clarified that till such time as these works are re-awarded as per the guidelines, they are being frozen on the online Management, Monitoring and Accounting System portal of PMGSY for any payment."

7. To the said affidavit, the respondent No. 6 and 7 have enclosed the Communication dated 13/5/2021 issued by the Deputy Secretary to the Government of India, Ministry of Rural Development, Rural Connectivity(RC) Division. A perusal of the said document reveals that the said document was issued making a specific reference to the award of PMGSY-III work by the Government of Assam on the basis of the provisions mentioned in the notification No. RGPC.85/2017/25 dated 12/7/2018. It is stated in the said communication that the provisions of the said notification dated 12/7/2018 were

examined by the Ministry and found to be inconsistent with the existing provisions of the Programme Guidelines of PMGSY as well as the provisions of the Standard Bidding Document.

8. Before further dealing with the Communication dated 13/5/2021, this Court finds it relevant to take note of Clauses 25, 26 and 27 of the said Standard Bidding Document which are quoted herein below :-

“25 Examination of Bids and Determination of Responsiveness

25.1 During the detailed evaluation of “Part-I of Bids”, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in Clauses 3 and 4; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents. During the detailed evaluation of the “Part-II of Bids”, the responsiveness of the bids will be further determined with respect to the remaining bid conditions, i.e. priced bill of quantities, technical specifications and drawings.

25.2 A substantially responsive “Financial Bid” is one which conforms to all the terms, conditions and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way, the scope, quality, or performance of the works; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer’s right or the bidder’s obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

25.3 If a bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.”

“Clause 26 Evaluation and Comparison of bids.

26.1 The employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 25 of ITB.

26.1 In evaluating the bids, the Employer will determine for each Bid, the evaluated bid price by adjusting the bid price through making an appropriate adjustment for any other acceptable variation, deviations or price modifications offered in accordance with sub-clause 21 of ITB.

26.3 If the bid of the successful Bidder is seriously unbalanced in relation to the

Engineer's estimate of the cost of work to be performed under the contract, the employer may require the Bidder to produce detailed price analysis for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices. After evaluation of the price analysis, the Employer may require that the amount of the Performance Security set forth in Clause 30 of ITB be increased at the expense of the successful bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the Contract. The amount of the increased Performance Security shall be decided at the sole discretion of the Employer, which shall be final, binding and conclusive on the bidder.

Clause 27 Award Criteria

27.1 Subject to Clause 30 of ITB, the Employer will award the Contract to the Bidder whose Bid has been determined :

(i) to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of Clause 3 of ITB, and (b) qualified in accordance with the provisions of Clause 4 of ITB;

(ii) to be within the available bid capacity adjusted to account for his bid price which is evaluated the lowest in any of the packages opened earlier than the one under consideration."

9. From a perusal of the above quoted clauses of the Standard Bidding Document would reveal that in terms with Clause 25.1 the employer is required to determine whether each bid (a) meets the eligibility criteria defined in Clauses 3 and 4; (b) has been properly signed; (c) is accompanied by the required securities; (d) and is substantially responsive to the requirements of the bidding documents. As regards the detailed evaluation of the "Part –II of the bids", the responsiveness of the bids will be further determined with respect to the remaining bid conditions i.e. priced bill of quantities, technical specifications and drawings.

10. Clause 25.2 stipulates what is a substantially responsive "financial bid' to

mean a bid which conforms to all the terms, conditions and specifications of the bidding documents, without material deviation or reservation. It has been further mentioned that a material deviation or reservation is one (a) which affects in any substantial way, the scope, quality, or performance of the works; (b) which limits in any substantial way, inconsistent with the bidding documents the employer's right or the bidder's obligations under the contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

11. It has also been mentioned in Clause 25.3 that if a bid is not substantially responsive, it will be rejected by the employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

12. Clause 26 refers to the evaluation and comparison of the bids. It has been mentioned in terms with Clause 26.1 that the employer shall evaluate and compare only those bids determined to be substantially responsive in accordance with Clause 25 of the ITB.

13. In terms with Clause 26.2, it has been mandated that in evaluating the bids, the employer will determine for each bid, the evaluated bid price by adjusting the bid price through making an appropriate adjustment for any other

acceptable variation, deviations or price modifications offered in accordance with sub-clause 21 of ITB.

14. Clause 26.3 is very relevant for the purpose of the instant dispute inasmuch as the if the bid of the successful bidder is seriously unbalanced in relation to the Engineer's estimate of the cost of work to be performed under the contract, the Employer may require the bidder to produce the detailed price analysis for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices. After evaluation of the price analysis, the Employer may require that the amount of the Performance Security set forth in Clause 30 of the ITB be increased at the expense of the successful bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the contract. The amount of the increased Performance Security shall be decided at the sole discretion of the Employer, which shall be final, binding and conclusive on the bidder. Therefore, from Clause 26.3 of the Standard Bidding Document, it is apparent that the respondent/Public Work (Road) Department, who is the employer in the instant case having found an unbalanced bid in relation to the cost of the work to be performed is required to take action in terms with Clause 26.3 of the Standard Bidding Document. Any other action so taken or for that matter applying the notification dated 12/7/2018 would be contrary to Clause 26.3 of the Standard

Bidding document of the PMGSY. At this stage, it may also be mentioned that the Standard Bidding Document for Pradhan Mantri Gram Sadak Yojana is in terms with the format of the Ministry of Road, Transport and Highway Bidding Document which is similar to the format for National Competitive Bidding for works(India Version) as approved by the Ministry of Finance for World Bank Aided Projects.

15. Clause 27 stipulates as to what should be the Award Criteria. It has to be determined on the basis that the bidder has to be substantially responsive to the bidding documents and who has offered the lowest evaluated bid price, provided that such bidder has been determined to be (a) eligible in accordance with the provisions of Clause 3 of the Instruction to the Bidder (ITB), and (b) qualified in accordance with Clause 4 of the Instruction to the Bidder. Further to that, the bid of the bidder has to be within the available bid capacity adjusted to account for his bid price which is evaluated the lowest in any of the packages opened earlier than the one under consideration.

16. Now coming back to the Communication dated 13/5/2021, the Deputy Secretary to the Government of India by quoting Clauses 25, 26 and 27 of the Standard Bidding Document for PMGSY observed that all works sanctioned under the PMGSY has to be awarded in accordance with the provisions of the

Standard Bidding Document circulated by National Rural Infrastructure Development Agency(NRIDA). It was further mentioned that the Standard Bidding Document had laid down detailed criteria for deciding the L1 bidder and in terms with Clause 26.3 if the bid of the successful bidder is seriously unbalanced in relation to the Engineer estimate of the cost of the work, Employer may require that the amount of the performance security set forth in Clause 30 of the ITB be increased at the expense of the successful bidder to a level sufficient to protect the employer against financial loss in the event of default of the successful bidder under the contract. It was further mentioned in the said Communication dated 13/5/2021 that in no case, any variation would be allowed or any limits placed on the quantum of the bids which can be submitted for a particular work. It was mentioned that the practice of prescribing a limit to bids and not accepting bids below it, goes against the GFR and also against the Advisory issued to the States previously by the Ministry vide letter dated 30/10/2019 of the Additional Secretary, Rural Development. It was further mentioned that in case of violation/deviation by the State/UTs of the above Standard Bidding Document provisions, such works shall be frozen on OMMAS, and no payment would be allowed on OMMAS from PMGSY funds. A further direction was issued to cancel the award of contract awarded using the State's notification dated 12/7/2018 and start the process of award of these

works afresh and till such time these works are re-awarded as per the guidelines they are being frozen on OMMAS for any payment. Paragraphs 2, 3 & 4 of the Communication dated 13/5/2021 is quoted herein below :-

“2. From the above provisions in the guidelines and SBD it is clear that all works sanctioned under PMGSY will specifically be awarded in accordance with the provisions of SBD circulated by NRIDA. Further SBD has laid down detailed criteria for deciding the L-1 bidders as detailed in Para 27. According to this, to be declared as A-1, bid should be responsive to the bidding documents and the bidder should have offered lowest evaluated Bid price. Further in terms of Para 26.3 if the Bid of the successful bidder is seriously unbalanced in relation to the Engineer’s estimate of the cost of work Employer may require that the amount of the Performance Security set forth in Clause 30 of ITB be increased against financial loss in the event of default of the successful Bidder under the Contract.

3. The State is therefore requested to kindly follow the above provisions of SBD in the matter of deciding L-1 and bring their tender documents in sync with SBD. In no case, any variations would be allowed or any limits placed on the quantum of the bid which can be submitted for a particular work. The practice of prescribing a limit to bids and not accepting bids below it goes against the GFR and also against the advisory issued to the States previously by this Ministry vide letter dated 30.10.2019 of Additional Secretary, RD. In case of violation/deviation by States(UTs of the above SBD provisions, such works shall be frozen on OMMAS, and no payment would be allowed on OMMAS from PMGSY funds.

You are therefore requested to cancel the award of works awarded using the above provision of the State’s notification and start the process of award of these works afresh. Till such time these works are re-awarded as per the guidelines, they are being frozen on OMMAS for any payment.”

17. In W.P.(C) No. 2674/2021, the respondent No. 2 i.e. the Chief Engineer, PWD(Border) Roads had filed an additional affidavit. In the said additional affidavit, it has been mentioned that out of 342 packages, financial bids were opened for 290 packages. Out of these 290 packages, there were seventeen(17) packages where the bidders quoted less than 10% below which

were not accepted as per the Assam Gazette Notification dated 12/7/2018. The 17 packages have been detailed in paragraph No. 4 of the said Additional Affidavit. It appears from a perusal of paragraph No.4 of the additional affidavit that out of the said 17 packages, in respect to 11 packages on account of the bid being less than 10%, the tender process for those packages have been cancelled, re-tendered and awarded as per the modified notification dated 8/6/2021. However, in respect to the 6 packages which includes the 5 packages in the instant batch of writ petitions, the same has been held up on account of the Court cases. At this stage, it may also be relevant to take note of that to the said additional affidavit a notification dated 8/6/2021 has been enclosed as Annexure-II. In terms with the said notification, the Government Notification No.RBPC.85/2017/25 dated 12/7/2018, was modified whereby all PMGSY civil works contract were exempted from the purview of the said notification with immediate effect until further orders. It was further mentioned that the unbalanced bids on account of this waiver may be subjected to additional performance security in accordance with the provisions of the PMGSY of the Standard Bidding Document Therefore, from the stand taken in the additional affidavit by the Public Works (Road) Department they have accepted the communication dated 13/5/2021.

18. At this stage, this Court would also like to take note of that meanwhile the

Director(RC), Ministry of Rural Development, Government of India had issued a Communication dated 3/6/2021, whereby there was a direction to the Commissioner-cum-Special Secretary, Public Works Department to cancel the award of works under the PMGSY-III which were awarded in violation to the prescribed Standard Bidding Document of the PMGSY guidelines. The State Government was therefore directed to cancel tender with Reference No.AS20-183, **AS20-185, AS20-189, AS20-194, AS20-198, AS20-199**, AS20-203 and AS20-202 immediately as those works have been frozen on OMMAS for any payment.

19. It is not known as to whether on the basis of the Communication dated 3/6/2021 issued by the Director(RC) Government of India, Ministry of Rural Development that the respondent State had taken any action inasmuch as the additional affidavit filed by the respondent No.2 i.e. the Chief Engineer, Public Works (Road) Department, Government of Assam have stated that out of the 17 packages, 11 packages were cancelled, re-tendered and on the basis of the Notification dated 8/6/2021. However the as regards the remaining 6 packages nothing has been done as the matter is pending before the Court.

20. The Communication dated 13/5/2021 as well as the communication dated 3/6/2021 however has been put to challenge by the respondent No. 5 in W.P.(C)

No. 2525/2021, W.P.(C) No. 2626/21021, W.P.(C) No. 2656/2021 by filing separate writ petitions which was registered and numbered as W.P.(C) No. 7371/2021, W.P.(C) No. 41/2022 and W.P.(C) No. 54/2022. A perusal of the said writ petitions discloses that the said communication dated 13/5/2021 and 3/6/2021 issued by the Ministry of Rural Development have been put to challenge on the ground that the technical bid of the respondent No. 8 therein (Md. Jiyuar Pasa) was not technically responsive in view of Clause 4.7 (ii) of the Standard Bidding Document. It was therefore the specific stand of the petitioners in W.P.(C) No. 7371/2021, in W.P.(C) No. 41/2022 and W.P.(C) No. 54/2022(the pleadings in the said writ petitions being akin) that the respondent No. 8 therein (Md. Jiyaur Pasa) had not completed the work pertaining to the Pradhan Mantri Gram Sarak Yojna 2017-18 Package No. AS01-310 in Barpeta District and he had only completed 95% of the work. It was also mentioned therein that the fact that the Executive Engineer, PWD, Barpeta, Baghbor and Cengha Territorial Road Division had issued a Communication to the respondent No. 8 (Md.Jiyaur Pasa) dated 31/8/2020 that the contracts awarded to the Respondent No. 8 (Md. Jiyuar Pasa) were rescinded. Paragraphs 20 & 21 of W.P.(C) No. 7371/2021 which is paramateria in the other two writ petitions being relevant is quoted herein below :

“20. That in terms of Clause 4.7 of the Standard Bidding Document, the

respondent No. 8 stands disqualified as he had not been able to complete some of the works awarded to him earlier. The respondent No. 8 had contended in his petition that one of the work allotted to him under PMGSY 2017-18 Package No. AS-01-310 was completed in time. The respondent No. 2 in paragraph 4 of the affidavit in opposition filed in W.P.(C) No. 2495/2021 (common affidavit in all cases) had taken a specific stands that the writ petitioner was not able to complete the said work awarded to him on time. The work completion certificate relied upon by the dated 30/11/2019 had shown that the work was only 95% complete on the date of issuance of the said certificate. The said work was even not completed in 2021 and on 23.06.2021 the petitioner was asked to complete the said work along with another work vide package No. AS-01-247 allotted to him vide letter dated 23.06.2021. Both the said works were under PMGSY-2017-2018.

21. The respondent No. 8 also failed to complete some other works in time as would be evident from a communication dated 31.08.2020 issued by the Executive Engineer, PWD, Barpeta Baghbar & Chenga Territorial Road Division. By the said letter the contracts awarded to Respondent No. 8 were rescinded."

21. This Court also finds it relevant to quote the reliefs sought for in W.P.(C) No. 7371/2021 which are also akin in W.P.(C) No. 41/2022 and W.P.(C) No. 54/2022 except the difference in the package number.

“(i) A writ in the nature of certiorari setting aside and quashing the orders/letters dated 13.05.2021 and 03.06.2021 issued by the respondent No. 1.

(ii) A writ in the nature of Mandamus directing the respondents to allow the petitioner to complete the works under package No. AS 20-189 for TO2-Panigaon-Gangapur Road (Sanimandal Road) under the Nalbari district in terms of the NIT dated 04.02.2021.

(iii) A writ in the nature of Mandamus directing the respondents authorities to pay the bills to the petitioner in connection with Package No. AS 20-189 for TO-Panigaon-Gangapur Road (Sanimandal Road) under the Nalbari district in terms of the bills raised after completion of the necessary formalities."

22. Taking into account the importance of Clause 4.7, it is relevant to reproduce Clause 4.7 of the Standard Bidding Document infra:-

“4.7. Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have :

- (i) Made misleading or false representations in the forms, statements affidavits and attachments submitted in proof of the qualification requirements ; and/or
- (ii) record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failures etc; and/or
- (iii) participated in the previous bidding for the same work and had quoted unreasonably high or low bid prices and could not furnish rational justification for it to the Employer.”

From a perusal of the above quoted Clause 4.7 it reveals that a bidder even if is eligible in terms with the qualifying criteria mentioned in the Standard Bidding Document but is subject to disqualifications on the grounds set out in sub-clauses (i), (ii) and (iii).

23. Taking into account the specific challenge being made in the writ petitions i.e. W.P.(C) No. 7371/2021, W.P.(C) No. 41/2022 and W.P.(C) No.54/2022 to the effect that the respondent No. 8's bid is not technically responsive in view of Clause 4.7(ii), it is therefore relevant to take note of what Clause 4.7(ii) specifies. A perusal of Clause 4.7 (ii) would show that a bidder even though qualified in terms with the criteria mentioned in the foregoing clauses of the ITB would be disqualified if the bidder has **Record of Poor Performance**. Clause 4.7(ii) further elaborates the instances of poor performance as abandoning the works, not properly completing the contract, inordinate delay in completion, litigation history or financial failures etc.

24. In the backdrop of the above, let this Court further elaborate the allegations made in the above three writ petitions on the basis of which it had been contended that the bidder 's (Md. Jiyaur Pasa) bid was not technically responsive. It had been mentioned in the said writ petition that the bidder (Md. Jiyaur Pasa) was allotted a work under the PMGSY 2017/2018 Package No. AS01-310. However, as per the work completion certificate relied upon dated 30/11/2019, only 95% was shown to have been completed on the date of issuance of the said certificate. It was contended that even as on 2021, the bidder namely, Md. Jiyaur Pasa had not completed for which a communication was issued on 26/3/2021 asking him to complete the said work along with another work. It was further contended that as it would appear from the letter dated 26/3/2021 issued by the Executive Engineer, Barpeta Baghbor and Chenga Territorial Road Division, the petitioner as on 26/3/2021 was further directed to complete the PMGSY package No. AS01-247.

25. It was further contended that there was a letter issued on 31/8/2020 by the Executive Engineer, PWD, Barpeta Baghbor and Chenga Territorial Road Division whereby two works i.e. (A) Construction of R.C.C. side drain at Mandia Dighirpam Road(Mandia Bazar Area) under SOPD for the year 2018-19, Package No.SENL/SOPD/2018-19/BAR-129 and (B) Improvement of road from Baghbar Thana to Baghbar Xatra under SOPD for the year 2018-19, Package No.

SENL/SOPD/2018-19/BAR-128 were rescinded. It was therefore contended that the above works the bidder (Md. Jiyaur Pasa) having failed to complete and on account of rescission ought to have been disqualified. It is however, relevant to mention that in all the three writ petitions, the petitioners however have not challenged the decision of the technical committee to hold that the bidder's (Md. Jiyaur Pasa) bid was technically responsive.

26. It appears on record that the respondent No. 8 (the bidder-Md. Jiyaur Pasa) in the three writ petitions has filed affidavit-in-opposition. In the affidavit-in-opposition at paragraph No. 15 which was in reply to paragraphs 20 & 21 of the writ petition, it was mentioned that in respect to the construction of the R.C.C. side drain at Mandia Dighirpam Road(Mandia Bazar Area) under SOPD-C for the year 2018-19 vide Package No. ACN/SOPD/2018-19/BAR-129, the Executive Engineer, Barpeta Rural Road Division, Barpeta could not hand over the site to the respondent No. 8(Md. Jiyuar Pasa) for carrying out the construction of the R.C.C. side drain at Mandia Dighirpam Road(Mandia Bazar Area) and having no other alternative the respondent No. 8 vide his letter dated 26/8/2019 had requested the said Executive Engineer, PWRD, Barpeta Rural Road Division, Barpeta for handing over the said site for carrying out the construction work and subsequently the said Executive Engineer, PWRD, Barpeta Rural Road Division, Barpeta vide his letter dated 3/12/2021 had requested the

Chief Engineer, PWRD, Barpeta Rural Road Division, Barpeta for issuing permission for preparation of Re-working estimate for the work of "Construction of R.C.C. side drain of Mandia Dighirpam Road(at Mandia Bazar Area) under SOPD for the year 2018-19", and subsequently the Chief Engineer, Roads PWRT, Assam vide his letter dated 16/12/2021 had allowed the Executive Engineer, PWRD, Barpeta Road, Baghbar and Chenga Territorial Road Division, Barpeta to prepare the working estimate after personally visiting the site and submit working estimate. It was therefore stated that the allegation of non-completion of the said work by the respondent No. 8 in time was out rightly denied.

27. It further appears that an additional-affidavit-in-opposition was filed by the respondent No. 8, Md. Jiyaur Pasa wherein as regards the package No. AS01-247, he had stated that the work had started but due to the flood as well as Covid-19 situation, those works were affected and caused significant damage to those works twice which is well known to the said Executive Engineer. It was further mentioned that due to not including one R.C.C. bridge in the said package as well as earth filling, the work pertaining to package No. AS01-247, the modified BOQ along with the modified tender agreement for the package No. AS01-247 was communicated by the Office of the Chief Engineer, PWD(Border) Road vide its letter dated 3/6/2022 which was communicated to the Executive Engineer, PWRD, Barpeta Road, Baghbar and Chenga Territorial

Road Division, Barpeta. It was also mentioned that the work is more than 95% completed. To the said effect, the respondent No. 8 has enclosed certain documents which confirm to the pleadings in the Additional-Affidavit-in-Opposition pertaining to work AS01-247. It would however, appear from a perusal of the PMGSY work execution certificate issued by the Junior Engineer as well as the Assistant Executive Engineer on 20/06/2020 that 87.5% of physical progress have been attained.

In the said Additional-Affidavit-in-Opposition as regards package No. AS01-310, it was mentioned that although the work is 100% completed but till date the working estimate was not issued by the respondent authorities and as such under the above facts and circumstances the allegation of not completing the work was denied by the respondent No. 8. In that regard the respondent No. 8 again relied upon the work completion certificate dated 30/11/2019 in respect to the package No. AS01-310 wherein it has been mentioned that the respondent No. 8 has completed 95% of the work.

It is further relevant to take note of that as per the letter dated 31/08/2020 issued by the Executive Engineer, PWD Barpeta, Baghbar and Chenga Territorial Road Division(Annexure-14) to W.P.(C) No. 7371/2021, it was mentioned that two of the works were rescinded. In the affidavit in opposition filed by the

respondent No. 8, he had explained in respect to the work i.e. construction of R.C.C. side drain at Mandia Dighirpam Road (Mandia Bazar Area) under SOPD for the year 2018-19, Package No. SENL/SOPD/2018-19/BAR-129. In the Additional-Affidavit-in-Opposition, the respondent No. 8 has further explained that as regards the work for improvement of road from Baghbar Thana to Baghbar Xatra under SOPD for the year 2018-19, Package No. SENL/SOPD/2018-19/BAR-128 he stated that the work could not be started as the site was not handed over to the respondent No 8 by the Executive Engineer, PWD, Barpeta Rural Division and accordingly the respondent No. 8 vide his letter dated 26/8/2019 had requested the Executive Engineer to handover the said site to the respondent No. 8. Subsequently an agreement was executed to that effect between the respondent No 8 and the Superintendent Engineer, PWD, Barpeta Road Circle on 6/7/2022 and the work estimate for the said package was approved on 28/7/2022 and the said work has already been completed successfully by the respondent No. 8 and as such the said allegation which has been mentioned on the basis of the Communication dated 31/8/2020 has been denied.

28. It further appears that the respondent No.1 and 7 have also filed an affidavit. In the said affidavit, it has been mentioned that the office of the National Rural Infrastructure Development Agency had received a complaint

addressed to the PMO, Central Secretariat and NRIDA through E-mail dated 3/3/2021 from the respondent No. 8(Md. Jiyaaur Pasa) regarding issuance of E-Tender to the other than the lowest bidder even after acceptance of the financial and technical bid in the PMGSY technical tender dated 15/2/2021 and 18/2/2021 having Tender Reference No. AS20-183, 185, 189, 194, 198, 199, 201 and 202 of Assam. It was further mentioned that in pursuance to the said complaint , the Advisory dated 13/5/2021 was issued by the Ministry of Rural Development, Government of India and the state was directed by the above mentioned advisory to follow the provisions of the Standard Bidding Document in the matter of deciding L1 and bring their tender documents in sync with the Standard Bidding Document and PMGSY guidelines. It was further mentioned that the action taken by the authority for the works in question which have been allotted to different contractors by the implementing department were found inconsistent with the existing provisions of the guidelines of PMGSY as well as the provisions of the Standard Bidding Document.

29. At this stage, this Court finds also pertinent to refer to the Affidavit-in-Opposition filed by the State Respondents. In paragraph Nos. 4 & 8 of the said Affidavits, it was the specific stand of the Respondents that the Department had issued no work order to the petitioners therein and as such the question of execution of 30% of the work did not arise. The reason for not issuing the work

order was due to the direction of the Central Government to cancel the works.

30. Before further proceedings, it is also relevant to take note of the 5 writ petitions filed by the petitioners (Md. Jiyuar Pasa) in W.P.(C) No. 5038/2022, W.P.(C) NO. 5562/2022, W.P.(C) No. 6059/2022, W.P.(C) No. 6062/20222 and W.P. (C) No. 6157/2022. These writ petitions have been filed challenging the communication dated 13/5/2021 and 3/6/2021 issued by the Ministry of Rural Development, Government of India whereby there was a direction to cancel the entire tender process in respect to Packages AS 20-198, AS 20-185, AS 20-189, AS 20-194 and AS 20-194. The grievances of the petitioner herein is that the petitioner being the lowest bidder and in terms with Clause 27.1 of ITB, the contracts ought to have been awarded in favour of the petitioner and if necessary by applying Clause 26.3 of ITB but the directions to re-tender the said packages would affect his right of legitimate expectation.

31. I have heard the learned counsels for the parties at length.

32. This Court while hearing the matter on 2/2/2023 had directed the Standing Counsel on behalf of the PWRD to take instructions as regards the veracity of the Communication dated 31/08/2020 issued by the Executive Engineer, PWD, Barpeta, Baghbar and Chenga Territorial Division. This Court further directed the Standing Counsel to obtain instructions as to when the

communication dated 13/5/2021 as well the communication dated 3/6/2021 were received by the Commissioner and Secretary to the Government of Assam, PWD Department and as to when the various tenders were cancelled as stated in paragraph No. 4 of the additional affidavit filed on 2/9/2022. Further to that, the learned Standing Counsel was also directed to produce the records of the technical committee along with the bids submitted by the petitioner Md. Jiyuar Pasa. The Standing Counsel appearing on behalf of the PWRD had placed on records the evaluation made by the technical committee as well the bids so submitted by the petitioner Md. Jiyaur Pasa as well as the respondent No. 5 today in pursuance to the directions issued on 2/2/2023.

33. From a perusal of the records so placed, it transpires that the Technical Evaluation Committee has taken into consideration Clause 4.7 of the ITB and had come to a finding on the basis of the materials before it that the bids of the petitioner Md. Jiyuar Pasa and the respondent No. 5 in the various writ petitions filed by Md. Jiyuar Pasa, neither were misleading nor suffered from poor performance.

34. In the backdrop of the above, let this Court first take into consideration as to whether the bids of the petitioner Md. Jiyuar Pasa stood disqualified in terms

with Clause 4.7(ii) of the Standard Bidding Document. This Court had already noted the reasons why the petitioners in W.P.(C) No 7371/2021, W.P.(C) No. 41/2023 and W.P.(C) No. 54/2022 mentioned that the bids submitted by Md. Jiyuar Pasa ought to be disqualified on account of record of poor performance. This Court has also taken note of the reply so submitted by the respondent No. 8 in the above noted three writ petitions wherein in the affidavit-in-opposition as well as in the additional affidavit in opposition the allegations so made in the writ petitions were refuted with details and supporting documents. It is also apparent from a perusal of the records so produced by the Standing Counsel, PWRD that the Technical Evaluating Committee had duly taken note of the packages pertaining to AS 20-247 and AS20-310, the work completion certificate issued on 30/11/2019 in respect to the contract work pertaining to

AS01-310 as well as the work done certificate issued by the Executive Engineer, PWD, Barpeta, Rural Roads Division dated 5/12/2019 in respect to both the packages AS 01-310 and AS 01-247. It further appears that in respect to the contract work pertaining to construction of R.C.C. side drain at Mandia Dighir Pump Road (Mandia Bazar Area) under SOPD-G for the year 2018-19, vide package SENL/SOPD/2018-19/BAR-129 the very Executive Engineer had issued a Communication on 3/12/2021 to the Chief Engineer stating inter alia that the contractor started the work but during execution time

it was seen that there was no outlet to pass drain water and there were some patta land on both sides of the road alignment and as such sought the permission for preparation of working estimate as per the site condition within the sanctioned amount. It further appears that in respect to the said work the Chief Engineer Roads, PWRD has also allowed the working estimate after personally visiting the site and to submit working estimate vide a communication dated 16.12.2021. In respect to the other work as mentioned in the communication dated 31/8/2020 in the additional affidavit in opposition filed by the Respondent No. 8 (Md. Jiyuar Pasa) relating to the improvement of road from Baghbar Thana to Baghbar Xatra under SOPD for the 2018-19 under Package No.SENL/SOPD/2018-19/BAR-128, it is seen that the agreement was only entered into between the Superintendent Engineer, PWD Barpeta Road Circle on 6/7/2022 and the work estimate for the said package was approved on 28/07/2022. Therefore on the basis of the Communication dated 31/8/2020, the petitioner i.e. Md. Jiyuar Pasa's bid cannot be said to suffer disqualification on the ground of poor performance. Further to that, taking into account the well settled principle of law to the effect that the tendering authority being the author of the document is the best person to know the requirements and the technical evaluation committee having taken into consideration the materials on record and had come to a finding that the petitioner- Md. Jiyuar Pasa's bids

cannot be disqualified in terms with Clause 4.7, this Court is of the opinion that this is not a fit case wherein any interference can be made in the said three writ petitions in W.P.(C) No. W.P.(C) No. 7371/2021, W.P.(C) No. 41/2022 and W.P.(C) No. 54/2022 in so far as the bids so submitted by the respondent No. 8(Md. Jiyuar Pasa) are concerned .

35. In the back drop of the above, therefore the question which arises as to when the petitioner i.e. Jiyuar Passa bid was technically qualified could the respondent authorities resort to the notification dated 12/7/2018 and thereby hold that the financial bid of the petitioner Md. Jiyuar Pasa in respect to the five packages in question are not responsive. The answer to the same can be seen from the communication dated 13/5/2021 issued by the Deputy Secretary to the Government of India, Ministry of Rural Development wherein it has been categorically mentioned that the Notification dated 12/7/2018 could not have been taken into account as the said notification runs contrary to the Standard Bidding Document more particularly to Clause 26.3 of the Standard Bidding Document. It further appears from the additional affidavit filed on 2nd of September,2022 by the Public Works Road Department wherein they have duly accepted the said decision as incorporated in the letter dated 13/5/2021 and accordingly have cancelled 11 packages out of the 17 packages where the

lowest bidder was rejected in terms with the notification dated 12/7/2018. Further to that, the State Respondents have also amended the notification dated 12/7/2018 vide another notification dated 8/6/2021 stating inter alia that the notification dated 12/7/2018 would not be applicable insofar as the works pertaining to PMGSY work. It further appears from Clause 27.1(i) that the Employer would award the contract to the bidder whose bid has been determined to be substantially responsive to the Standard Bidding Document and who has offered the lowest evaluated bid price. Taking into consideration that the bids of the petitioner-Md. Jiyuar Pasa was the lowest evaluated bid and his bids were technically responsive in respect to the five packages to which the instant petition relates, the respondent authorities therefore ought to have awarded the contracts in respect to the five packages in favour of the petitioner-- Md. Jiyuar Pasa. However, the respondents most illegally and in violation to the Standard Bidding Document had awarded the contract to the private respondent in the writ petitions so filed by the petitioner-Jiyuar Pasa. Accordingly the awarding of the contracts to the respondent No. 5 in five writ petitions i.e. W.P.(C) No. 2674/2021, W.P.(C) No. 2495/2021, W.P.(C) No. 2525/2021, W.P.(C) No. 2626/2021 and W.P.(C) No. 2656/2022 are interfered with. Consequently the Letters of Acceptance dated 25/2/2021 issued to the Respondent No. 5 in the above five writ petitions are also stands interfered with

and set aside.

36. Now a very pertinent question arises in view of the challenge made to the communication dated 13/5/2021 and 3/6/2021 through the subsequent writ petitions filed in the year 2022 by the petitioner –Md. Jiyuar Pasa as to whether the said contracts can be awarded to the petitioner -Jiyuar Pasa as he was unjustly deprived of the contract inspite of him being technically qualified and his bids being the lowest. At this this Court finds it relevant to take note of the specific query made to the learned counsel for the PWRD as to whether it is possible to award the contracts to the petitioner on the basis of his bids so submitted for the packages in question taking into account that in respect to package No. AS 20-198, almost 60-70% work have been completed and in respect to the other packages some percentage of works have been completed. The learned Standing Counsel for the PWRD submitted that the bids in respect to the packages in question are submitted item wise and as such the work which have been already completed can be segregated and fresh work order can be issued after making the measurement. He submitted that the same principles would also apply if the work is re-tendered.

37. This Court deems it appropriate at this stage to take note of Clause 26.3 of the Standard Bidding Document which have been already quoted

hereinabove, whereby if in the estimation of the Engineer, the bid of the bidder is found to be seriously unbalanced, then the employer may require the bidder to produce detailed price analysis of all the items of the bid quantities to demonstrate the internal inconsistencies of those prices. Further to that, the employer has also been empowered after evaluation of the price analysis to require that the amount of performance security set forth in Clause 30 of the Instructions to the Bidder be increased at the expense of the successful bidder to a level sufficient to protect the employer against the financial loss in the event of the default of the successful bidder under the contract. Further to that, in terms with the said clause, the Employer has also been given the sole discretion to increase the performance security which shall be final, binding and conclusive upon the bidder. At this stage, this Court also needs to take that the communication dated 13/5/2021 as well as the communication dated 3/6/2021 were issued by the Ministry of Rural Development to the Commissioner and Secretary to the Government of Assam, Public Works Road Department to cancel the various packages on the ground that there was non-compliance to clause 26.3. It is the case of the petitioner Md. Jiyuar Pasa that as he is the lowest bidder in respect to the five packages in question, the respondents instead of going for a fresh bid can resort to the provisions of Clause 26.3 of the Standard Bidding Document and if the respondents are of the opinion that the

bids so submitted by Md. Jiyuar Pasa were seriously unbalanced. Taking into consideration the same and the specific submission of the Standing Counsel for P.W.R.D. as recorded herein above and also the scope and ambit of Clause 26.3, this Court is of the opinion that it would in the interest of justice to set aside the communication dated 3/6/2021 issued by the Director (RC) Government of India, Department of Rural Development whereby there was a request to cancel the tender in reference to the packages AS20-185 AS 20-198, AS20-199, AS201-94 and AS201-99. It is also note worthy to mention that the letter dated 13/5/2021 was an advisory to sync the terms of the tender with the Standard Bidding Document. In fact a perusal of the Bid documents clearly show that it is in terms with the Standard Bidding Document. However, the respondent PWRD instead of following the terms of the Bid Documents choose to follow its Notification dated 12/7/2018 which had resulted in the present litigations. Taking into consideration that the petitioner-Md. Jiyuar Pasa' bids were technically responsive and the lowest, this Court finds no reason why upon measurement of the works so completed in pursuance to the Letter of Acceptance dated 25/2/2021 issued which have been set aside hereinabove, the remaining work cannot be awarded to the petitioner by applying Clause 26.3 of the Standard Bidding Document. Consequently, this Court therefore directs the PWRD to make measurement of the work done in pursuance to the Letters of

Acceptance dated 25/2/2021 and thereupon award the contracts pertaining to the remaining work in respect to the said packages i.e. AS 20-185, AS 20-198, AS 20-189, AS 201-94 and AS 20-199 in favour of the petitioner Md. Jiyuar Pasa. Liberty is given to the respondent PWRD to take such action as envisaged in Clause 26.3 of the Standard Bidding Document if in the estimation of the Engineer the bid so submitted by Md. Jiyuar Pasa is unrealistic. It is further made clear that in the eventuality the Petitioner-Md. Jiyuar Pasa is not agreeable in terms with the exercise carried out under Clause 26.3 of the ITB, as well as to the measurement of the works carried out by the Respondent PWRD. The Respondents would be at liberty to issue fresh tender for the remaining portion of the work in respect to the packages. In that regard, the Petitioner shall be entitled to the full refund of his earnest money deposit

38. The next question which arises in the instant proceedings is as regards the payment to be made to the three writ petitioners in W.P.(C) 7371/2021, W.P. (C) No. 41/2022 and W.P.(C) No. 54/2022 for the work completed by them in respect to the packages Nos. AS 20-189, AS 20-194 and AS 20-199. The learned counsel appearing on behalf of the PWRD submitted that although the contracts were awarded to the said writ petitioners by the issuance of the Letter of Acceptance dated 25/2/2021 but they were not allowed to go ahead with the work in question. The learned counsel Mr. B. Gogoi on the basis of the

paragraph Nos. 4 and 8 of the affidavit-in-opposition so filed in W.P.(C) 7371/2021 reiterated the stand of the State Respondents on the ground of no formal work order issued which were required before commencing the contract work in question. Therefore, he submits that the question of making payment of any work so done do not arise in the facts and circumstances of the case. However, he further submitted that in respect to the contract pertaining to package Nos. AS 20-198, the contractor Mr. Bikash Sarma who is the respondent No. 5 in W.P.(C) No.2674/2021, the department had issued the work order on 25/2/2021 and in pursuance to that agreement was entered into as well as the notice to proceed was also issued and accordingly substantial work have been completed. In that regard it has also been mentioned that 70% of the amount has been released to the said respondent No. 5. Mr. B. Gogoi, therefore submits that in respect to other packages, there were no work order issued unlike the work order issued to the respondent No. 5 in W.P.(C) No. 2674/2021 for which the petitioners were not entitled to the payment.

39. Mr. M. Dutta, the learned counsel appearing on behalf of the petitioners in Writ Petitions(C) No. W.P.(C) No. 7371/2021, W.P.(C) No. 41/2022 and W.P.(C) No. 54/2022 submitted that in these cases the letter of acceptance have been duly issued to the petitioners on 25/2/2021. Thereupon the petitioners have also submitted the performance security which was duly received by the

respondents/PWRD Department. He referred to Clause 29 of the Instructions to Bidder and submitted that the notification of the award will constitute the formation of the contract subject only to furnishing of a performance security in accordance with the provisions of Clause 30. He therefore submitted that with the submission of the performance security pursuant to the notification of the award of the contract by the letter of acceptance, the contract have already been formed and accordingly the petitioners herein are entitled to the amount of work they have completed. He further submitted that the issuance of the work orders or the notice to proceed is completely foreign to the Standard Bidding Document and as such on the ground that the formal work orders have not been issued or for that matter, the notice to proceed have not been issued, the respondent/PWRD Department cannot deprive the petitioners for their legitimate claims for the work they have completed.

40. To adjudicate the said issue this Court finds it relevant to refer to Clause 29 of the Standard Bidding Document for PMGSY. The said Clause is quoted herein below:-

“29. Notification of award and Signing of Agreement.

29.1 The bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by cable, telex or facsimile confirmed by registered letter. This letter (hereinafter and in the Part I General Conditions of Contract called the Letter of Acceptance”) will state the sum that the Employer will pay to the Contractor in consideration of the

execution, completion and the routine maintenance of the works for five years, by the Contractor as prescribed by the Standard Bidding Document for PMGSY by the Contract (hereinafter and in the Contract called the "Contract Price").

29.2 The notification of award will constitute the formation of the Contract, subject only to the furnishing of a Performance Security in accordance with the provisions of Clause 30.

29.3 The Agreement will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and the successful Bidder after the Performance Security is furnished.

29.4. Upon the furnishing by the successful Bidder of the Performance Security, the Employer will promptly notify the other Bidders that their Bids have been successful."

41. A perusal of the above quoted Clause would show that in terms with Clause 29.1 that the Bidder would be notified upon acceptance of the bid by issuance of a Letter of Acceptance wherein it would be mentioned that the amount the Employer would pay to the contractor in consideration of the execution, completion and the routine maintenance of the works for five years. Clause 29.2 is very relevant in as much as it stipulates that the notification of the award would constitute the formation of the contract, subject only to the furnishing of the Performance Security in accordance with the provisions of Clause 30. Clause 29.3 stipulates about the Agreement. Clause 29.4 stipulates that upon furnishing of the Performance Security, the other bidders would be informed about their bids have been unsuccessful. The learned Standing Counsel for PWRD could not show during the course of the arguments that the Standard Bidding Document envisage issuance of the formal work order as well as the notice to Proceed or for that matter sans the Agreement entered into, the

contract is not formed. Under such circumstances, this Court is of the opinion that as the Standard Bidding Document does not envisage the issuance of a work order or for that matter issuance of a specific order to proceed with the work but the contract is formed on the basis of the letter of acceptance subject to furnishing the performance security as could be seen from a perusal of Clause 29.2, this Court is of the opinion that the petitioners having taken into consideration that time was the essence for completion of the contract have rightly proceeded with the work for the petitioners in W.P.(C) No. 7371/2021, W.P.(C) No. 54/2021 and W.P.(C) No. 41/2021 and as such would be entitled to the amounts for the work which the petitioners have completed. Accordingly the respondents herein are directed to make measurement of the works so completed in respect to the packages AS 20-189, AS 20-194 and AS 20-199 and thereupon on the basis of the measurement so carried out shall make the payments in terms with the Standard Bidding Document.

42. In view of the above, the writ petitions herein stand disposed off with the following observations and directions :-

- (i) The minutes of the Executive Meeting of the Assam State Road Board(ASRB) held on 24/2/2021 insofar as awarding the contract in respect to the packages AS20-185, AS 20-198, AS 20-

189 and AS 20-194 and AS 20-199 in favour of the respondent No. 5 in W.P.(C) No. 2674/2021, W.P.(C) No. 2495/2021, W.P.(C) No. 2525/2021, W.P.(C) no. 2626/2021 and W.P.(C) No. 2656/2021 stands interfered with and set aside.

(ii) The Letter of Acceptance issued to the private respondent No. 5 in W.P.(C) No.2674/2021, W.P.(C) No.2495/2021, W.P.(C) 2525/2021 W.P.(C) No. 2626/2021, W.P.(C) No. 2656/2021 all dated 25/2/2021.

(iii) The directions in the communications dated 13/5/2021 and 3/6/2021 issued by the Ministry of Rural Development in so far as the direction to cancel the entire tender process in respect to the packages No.AS 20-185, AS 20-189, AS 20-198 and AS 20-194 and AS 20-199 stands interfered with and subject to the directions hereinafter.

(iv) Taking into consideration that the petitioner- Md. Jiyuar Pasa is the lowest bidder in respect to packages No. AS 20-185, AS 20-189, AS 20-194 and AS 20-198 and AS 20-199 and in terms with Clause 27.1 of the Standard Bidding Document, the award of the contracts ought to have been awarded to the

lowest bidder who is otherwise technically responsive, in the peculiar circumstances of the case, the respondents/PWRD after making measurement of the works so done by the contractors on the basis of the Letters of Acceptance issued on 25/2/2022 in respect to the package Nos. AS 201-85, AS 20-189, AS 20-194, AS 20-198 and AS 20-199 shall award the contract for the remaining work to the petitioner i.e. Jiyuar Pasa and in doing so, the respondent/PWRD shall also be at liberty to act in terms with Clause 26.3 of the Standard Bidding Document.

- (v) The writ petitioners i.e. in W.P.(C) 7371/2021, W.P.(C) No. 41/2022 and W.P.(C) No.54/2022 would be entitled to the amounts in respect to the works so completed taking into account that in pursuance to the formation of the contract in terms with Clause 29 of the Standard Bidding Document, they have completed certain portion of the works. Such measurements be carried out by the respondent/PWRD within 30 days from the date of the instant judgment and thereupon such payments be released to the said petitioners in accordance with the terms of the Standard Bidding Document.

- (vi) It is made clear that in the eventuality the Petitioner-Md. Jiyuar Pasa is in disagreement with the exercise of powers under Clause 26.3 of the Standard Bidding Document and/or is in disagreement with the measurement of the work, the Respondent-PWRD shall be at liberty to get the works in respect of the five packages in question completed by issuing fresh tenders and awarding the contracts in terms with the Standard Bidding Document and the guidelines applicable to PMGSY projects. In such circumstances, the petitioner-Md. Jiyuar Pasa shall be entitled to his Bid Security so submitted against each of the five packages.
- (vii) Taking into account that the work in respect to the five packages, in question pertain to Infrastructure Projects, the Respondent –PWRD shall take appropriate steps for completion of the said projects as early as possible in as much as on account of the pendency of the instant writ petitions, delay have been caused to the said projects.
- (viii) With the above directions all the petitions stands disposed off. Pending applications also stands disposed in terms of this

judgment.

- (ix) The Registry of this Court is directed to serve a copy of this judgment to Mr. B. Gogoi, Standing Counsel, PWRD and to Mr. R.K.D. Choudhury, Deputy Solicitor General of India for effective compliance.

JUDGE

Comparing Assistant