

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA NO. 1344 of 2024

**Excel Vincom Private Limited & Anr.
VS.
State of Mizoram&Ors.**

For the petitioners	:	Mr. Rajarshi Dutta, Mr. Neelesh Choudhury, Mr. Shounak Mukhopadhyay, Ms. Anuradha Poddar
For the respondents	:	Mr. Biswajit Deb, Ld. A.G. of Mizoram, Mr. Sudip Kumar, Mr. Sayan Dev Kumar
Hearing concluded on	:	18.03.2024
Judgment on	:	02.04.2024

Sabyasachi Bhattacharyya, J:-

1. The writ petitioner participated in a public tender floated on July 10, 2023 by the respondent no.1, the State of Mizoram. The said tender was for sale of a plot of land belonging to the Government of Mizoram situated at 24, Ashutosh Chowdhury Avenue, Ballygunge, Kolkata - 700019.
2. The petitioners came out successful, being declared the highest bidder on July 19, 2023. Its bid was accepted on the very next date, that is on July 20, 2023.
3. A Letter of Intent was issued in favour of the petitioners on August 4, 2023. Subsequently, an unregistered agreement for sale was executed in favour of the petitioners on October 6, 2023.

4. A draft sale-deed was prepared and the petitioner was directed to proceed on October 31, 2023. A Letter of Award was issued on December 1, 2023. The petitioners paid the full amount of consideration, along with delay interest in terms of Clause 5.6 of the agreement on December 7, 2023.
5. Subsequently, upon the petitioner making full payment, the respondent no.1, on December 8, 2023, intimated the petitioners that the latter would hear from the respondent no. 1 soon on the execution of sale deed and matters regarding TDS.
6. Thereafter, the Legislative Assembly elections were held in the State of Mizoram and there was a change of regime in the State. After formation of the new Government on December 21, 2023, the respondent no.1 informed the petitioners that the process of sale of the property would also be slightly affected and would be carried forward only in the month of January, 2024.
7. Thereafter, by the impugned communication dated January 4, 2024, the respondent no.1 cancelled the bid process, allegedly in the "larger interest of the general public".
8. Learned counsel for the petitioners argues that the bid process under the tender was closed in July, 2023, the agreement for sale executed on October 6, 2023, draft sale deed approved and finalized on October 31, 2023 and full payment of sale consideration was made by December 7, 2023.

9. Thus, it is argued that a right has accrued in favour of the petitioners to have the approved sale deed executed as per Clause 6.7 of the tender document.
10. It is argued that the petitioner salted their position on the basis of the representations made by the respondents and cannot now be prejudiced and deprived thereof. The cancellation of the tender is vitiated by the doctrine of promissory estoppel. In support of such contention, the petitioners rely on a judgment reported at 2020 SCC OnLine SC 968 [*State of Jharkhand and others Vs. Brahmputra Metalics Limited, Ranchi and another*].
11. It is argued that the decision of the respondents is *ex facie* arbitrary and politically motivated and violative of Article 14 of the Constitution of India. By virtue of a change of regime, a Government cannot undo promises, obligations and actions of the prior Government, since the State is a continuing body in its dealings in the public contractual field.
12. It is alleged that the cancellation is a result of “regime revenge” and abuse of bureaucratic power. The mere use of the ground of alleged public interest cannot undo obligations of the prior regime of the same authority. In support of such contention, the petitioners cite 2021 SCC OnLine SC 1141 [*Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. and Another Vs. Shishir Realty Private Limited and others*].

13. Even after the change in Government, assurance was given to the petitioner to go through the process with the execution of sale deed in January, 2024.
14. Clause 3.1.11 read with Clauses 5.5 and 6.2 of the tender document is relied on by the petitioners. Cogent reasons are essential even when exercising wide and blanket powers of cancellation under the tender terms under Clause 3.1.11, it is contended. In support of the said proposition, the petitioners rely on *Mihan India Ltd. Vs. GMR Airports Ltd. And Others*, reported at 2022 SCC OnLine SC 574 and an unreported judgment dated January 6, 2022 in the matter of *P.K.F Shridhar and Santanam Vs. Airports Economic Regulatory Authority of India*.
15. The alleged reason, “general public interest”, is vague and cryptic and without any basis. After execution of the sale deed and payment of full consideration, the bid process cannot be cancelled.
16. Clauses 5.5 and 6.2, it is argued, are irrelevant inasmuch as the right accrued in favour of the petitioner to have a final draft sale deed cannot be cancelled.
17. It is argued that no case of public interest has been made out by the respondents to justify the cancellation of the bid process. The letter dated January 4, 2024 tends to improve on the initial stand taken by the respondent no.1.
18. Two purported representations dated December 22 and December 27, 2023 relied on by the respondents also do not specify any use that the property has been serving for the State of Mizoram. Mere

dissatisfaction of one Calcutta Mizo Welfare Association, whose constituents are unknown, and alleged sentimental attachment to the property cannot establish any public interest.

- 19.** The language of the said letters also evinces political undertones and were issued post-regime change.
- 20.** The representation dated December 27, 2023 proceeds on the premise that with the formation of a new Government, there is still hope and belief that there is a ground of cancellation of the bid process of selling of the Ballygunge land as it had not reached its final stage.
- 21.** No prejudice has been established by the respondents to warrant cancellation.
- 22.** The subject-tender was publicly floated and the respondents during the submissions admitted that the people of Mizoram learnt of the plan to sell the land in October, 2023. However, no writ petition was filed or decision to cancel taken at the said point of time.
- 23.** The property is admittedly in a dilapidated state, covered with bush and thick grass and even as per the agreed and admitted draft sale deed it consists of old out-houses, servants' quarters and darwan's room, thus, evidently not being required for any purpose as alleged by the respondents. Nothing has been produced to show that the property is being used in any manner for any purpose by either the State of Mizoram or its citizens.
- 24.** Learned counsel for the petitioners next argues that the respondents have not shown that the sale was not sanctioned or was contrary to the decision of the Council of Ministers. The documents disclosed to

the petitioners' advocate under the cover of a letter dated March 12, 2024, bear dates only till February, 2023, much prior to the floating of the subject-tender in July, 2023.

- 25.** Though it has been argued by the respondents that the tender was floated without sanction of the Council of Ministers, the documents produced do not establish the same. The note-sheets in and around the tender period between February, 2023 and December, 2023 have not been disclosed. It is impossible to ascertain any decision that may have been taken by the State Government or Council of Ministers regarding disposal or sale of the plot of land at Ballygunge after February, 2024.
- 26.** Learned counsel relies on Section 114(g) of the Indian Evidence Act, 1872 (hereinafter referred to as, "the 1872 Act") and argued that it may be presumed that the evidence, if produced, would have been unfavourable to the respondents, for which it was withheld.
- 27.** The note-sheets are not public documents and cannot be relied on in matters concerning contractual/tender matters. It is contended that non-disclosure of relevant documents leads to the inevitable conclusion that the tender was floated inconsonance with law.
- 28.** The General Financial Rules, 2017 applies to Government Departments and Bodies and not to the legal relationship between the State and a private party in contractual matters.
- 29.** The disclaimer in the e-tender Notice does not mention any caveat for a bidder to suspect that previous sanction of the Government for

disposal of the land at Ballygunge has not been taken by the General Administration Department of the Government of Mizoram.

30. In any event, the petitioner participated and came out successful in the tender process and made payment of the entire sale consideration. Thus, from the documents relating to the tender process, it is evident that there was and is no suspicion surrounding the tender process to establish any irregularity therein. In support of the said contention, the petitioners cite *MRF Ltd. v. Manohar Parrikar and others*, reported at (2010) 11 SCC 374.
31. Learned counsel for the petitioner argues that although the respondents have set up an alleged decision of the Government not to sell the property to the petitioners, even from the letter dated December 21, 2023 issued to the petitioners it is evident that the newly formed Government expressed its opinion that there might be some delay in sale of the property since the new Government has taken oath and was in the process of the scrutinizing the documents, but there was no decision to stop the sale.
32. On the issue of existence of an arbitration clause, learned counsel cites an unreported judgment of this Court dated December 22, 2022 in the matter of *Lords Bluetech Co. Private Limited and Anr. Vs. State of West Bengal and Ors. [WPA No. 9535 of 2020]* and the judgment of the Supreme Court in *Godrej Sara Lee Ltd. Vs. Excise & Taxation Officer-cum-Assessing Authority and another*, reported at 2023SCC OnLine SC 95, to argue that arbitrary action of the State authorities causing grave injustice to the petitioners may furnish a fit case for

exercise of jurisdiction under article 226 of the Constitution irrespective of the existence of such a clause.

- 33.** Learned counsel also seeks to distinguish the judgments cited by the respondents.
- 34.** The Learned Advocate General of the State of Mizoram, arguing for the respondents, submits that the people of the State at large came to know about the agreement for sale and there was deep resentment from various organizations representing the interests of the people of the State of Mizoram. Several NGOs, civil society members and social organizations raised their protests on the issue of sale, some of which have been produced before this Court. Since the General Elections had been announced in the state in the month of October 2023 and the Model Code of Conduct came into force, followed by the Elections on November 7, 2023, the new Government, which was sworn in on December 8, 2023, could not take any steps at that juncture.
- 35.** However, the Kolkata Mizo Students, an organization of the students of Mizoram in Kolkata, gave a representation on December 22, 2023 to the Chief Minister of Mizoram expressing their strong objections in view of the historical and sentimental significance of the property-in-question, which has served as a refuge to the Mizo students, professionals residing in Kolkata and others of the State.
- 36.** On December 27, 2023, another representation was submitted by the Calcutta Mizo Welfare Association in similar tune.

37. As such, the Government of Mizoram, in exercise of its power provided in Clause 3.1.11 read with Clauses 5.5 and 6.2 of the tender document, cancelled the bid process in larger interest of the public.
38. It is argued that change of government is not a reason for cancellation and it has been a burning issue in the State since after the execution of the agreement for sale on October 6, 2023. Mizoram is a small State located in the remote north-east part of the country, having neither any Multi-Specialty Hospital nor Super-Specialty Hospital for treatment of patients. The other two houses being the Salt Lake Mizoram House and New Town Mizoram House are already over-crowded with officials and patients. A plan for construction of G+3 building on the 26 kathas of the land-in-question had already been sanctioned by the Kolkata Municipal Corporation on August 25, 2022, which is valid for 5 years.
39. Thus, to accommodate the critical patients travelling to Kolkata, the Government had to take the stand of cancelling the entire process of sale.
40. On the issue of larger public interest prevailing over private interests, the Learned Advocate General of Mizoram cites *Yamuna Expressway Industrial Development Authority Etc. Vs. Shakuntala Education and Welfare Society and others*, reported at 2022 LiveLaw (SC) 536, *Barak Valley Cement Limited Vs. Union of India and others*, reported at (2020) 20 SCC 57 as well as *Shree Sidhbali Steels Limited and another Vs. State of Uttar Pradesh and others*, reported at (2011) 3 SCC 193 and *Sales Tax Officer and another Vs. Shree Durga Oil Mills and*

another, reported at (1998) 1 SCC 572 . On the strength of such judgments, it is argued that promissory estoppel, being an equitable doctrine, can be moulded to suit the particular situation, giving way to public interest.

41. The previous Government, it is argued, did not adhere to the Rules stipulated in the General Financial Rules (GFR), 2017 in particular Rule 309 thereof. In-principle approval of Council of Ministers had not been obtained to sell the land.
42. The Learned Advocate General cites *MRF Ltd. (supra)* to argue that under Articles 166(3), 77(3), 166 sub-Articles(1) and (2) and other provisions as well as Article 167, Rules of Business framed under Articles 166(3) and 77(3) of the Constitution are mandatory. Decisions taken at the Minister's without submitting it to the Council of Ministers and obtaining concurrence of the Finance Department are not sustainable in law.
43. The Learned Advocate General of Mizoram reiterates the provisions of Clauses 3.1.11, 5.5 and 6.2 of the tender document to argue that the State has ample power to cancel the process of tender before the sale deed was executed.
44. The responds next cites *Renaissance Distilleries and Breweries Ltd. v. Government of NCT of Delhi & Ors.*, reported at 2007 SCC OnLine Del 1134 in which it was propounded that there is a bar to challenge of tender process after participation. In the same context, The Learned Advocate General cites *New Bihar Biri Leaves Co. And others Vs. State of Bihar and others*, reported at (1981) 1 SCC 537.

45. If a person accepts a contract on certain terms, he cannot resile from the said position, for which the respondents also cite *Indotech Group v. Union of India and others*, reported at 2009 SCC OnLine Del.
46. The court does not sit in appeal over the merits of the terms and conditions of the tender and the State is free to fix its own terms and conditions for invitation of tenders.
47. The tender being awarded in the Month of September, 2008, the tender conditions cannot now be challenged by the petitioners.
48. The learned Advocate General of Mizoram further argues that there is no arbitrariness, discrimination or *mala fides* in the subject tender. The respondents cite *Silppi Constructions Contractors v. Union of India and another*, reported at (2020) 16 SCC 489 in support of the above proposition. Court should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. The Tender Issuing Authority is the best judge of its requirements, it is argued.
49. On alternative remedy, the Learned Advocate General of Mizoram places reliance on *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir*, reported at (2022) 5 SCC 345, *United Bank of India v. Satyawati Tondon and others*, reported at (2010) 8 SCC 110 and *South Indian Bank Ltd. and others v. Naveen Mathew Philip and another*, reported at 2023 SCC OnLine SC 435.
50. Clause 14 of the agreement for sale dated October 6, 2023 mentions about the dispute resolution and as such it is argued that the writ petition is not maintainable.

51. Certain important issues have arisen in the present case.
52. Over a period of time, the right to property in India has undergone substantial changes. The right to property as a fundamental right has been deleted from the Constitution. Through legal evolution, the right to property has been watered down.
53. However, in the same breath, a parallel development has taken place in India on the contractual rights of parties, strengthening such rights in recent times by virtue of relevant amendments. In this context, particular reference is required to be made to the amendment of Section 20 of the Specific Relief Act, 1963 in the year 2018. By such amendment, the previously wide discretion of courts not to grant decrees of specific performance on issues of equity, conduct, etc. has been taken away. Thus, by necessary implication, the contractual rights of the parties to the contract and the right to enforce the same has been given an upper-hand by such amendment to the Specific Relief Act.
54. Seen from such prospective, the element of public interest has to be extremely strong to upset the contractual rights of the parties.
55. However, the contours of the interplay of rights between the parties vis-à-vis the present dispute are to be ascertained first from the terms and conditions of the tender document itself.
56. Clause 3.1.11 of the tender document provides that the authority reserves the right to cancel e-Tender-cum-e-Auction process “at any stage prior to the signing of the Sale Deed”. In such case, the amount deposited till such date by the allottee including EMD shall be returned

and the authority shall not be liable to pay compensation or interest for loss.

- 57.** However, the said Clause cannot be read in isolation of the other provisions of the tender document. The respondents have also relied heavily on Clauses 5.5 and 6.2. Clause 5.5 stipulates that issuance of L.O.I (Letter of Intent) or LOA (Letter of Award) shall not give the right to the successful bidder to have the ownership of the property Clause 6.2, on the other hand, provides that the ownership and possession of the property will be transferred only after execution of the sale deed.
- 58.** Taking last things first, Clause 6.2 is rather irrelevant in the context. Even the general law of the country provides that ownership and possession of the property stands transferred only after the execution of the sale deed. The Transfer of Property Act, in specific terms, enumerates that mere execution of an agreement does not so transfer. There cannot be any quarrel with such proposition.
- 59.** However, the clauses of the tender document immediately following Clauses 5.5 and 6.2 are also relevant in the context.
- 60.** Although Clause 5.5 speaks about issuance of LOI or LOA not conferring right to have ownership, in the scheme of things as contemplated by the tender, the said provision does not affect the petitioners in the present case. Clause 5.6 provides that in case is the successful bidder fails to pay the amount mentioned as per Clause 4.3, the authority may extend the time-limit. If the payments are not made within the extended time, the authority may take necessary

action for cancellation of the allotment and forfeiture of the amount deposited by the allottee. Hence, Clause 5.5 is circumscribed by Clause 5.6.

- 61.** In the present case, the petitioners have not only paid the full consideration amount but also the penalty for delayed payment, both of which have been accepted by the respondent authorities. Thus, Clause 5.5 loses significance, since the stage of issuance of LOI and LOA has been far exceeded, by subsequent award of the tender to the petitioners and execution of agreement for sale as well as draft sale deed being prepared.
- 62.** Even if the issuance of LOI, LOA does not confer ownership in the property, the subsequent acts have created an actionable claim and a vested interest in favour of the petitioners regarding the property.
- 63.** Clause 3.1.1 cannot be culled out independently and read in isolation but has to be seen in proper perspective, on a comprehensive reading of the tender terms.
- 64.** Although the authority reserves the right to cancel the e-tender cum auction process at any stage prior to signing of the sale deed as per the said clause, in the present case, the e-tender cum auction process has reached fruition by virtue of execution an agreement for sale, preparation of draft sale deed and payment of full consideration as well as delayed payment penalty by the petitioners.
- 65.** That apart, the respondents-authorities themselves have made several communications pursuant to the tender, even in the month on December 2023, whereby assurance was given to the petitioners that

the authorities are taking some time but shall proceed with the finalization of the sale transaction.

- 66.** Thus, the ground made out by the petitioners is extremely strong and not limited to promissory estoppel. Promissory estoppel lies somewhere in between estoppel and contractual rights. In the present case, not only did promissory estoppel come into play by respondents having floated the tender, the same has subsequently taken the shape of contractual rights by entering into an agreement between the parties and also estoppel in its unadulterated form as the petitioners have taken steps pursuant to the promise and conduct of the respondents by depositing the entire consideration amount and delay penalty by acting upon the impression given by the respondents.
- 67.** In the case of *Shishir Reality Private Limited (supra)*, the Supreme Court categorically observed that the doctrine of promissory estoppel is an equitable doctrine and must yield when equity so requires. For such purpose, the Government has to establish that it would be inequitable to hold the Government to the promise made by it. The burden, however, even as per the said judgment, would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise “is so overwhelming that it would be inequitable to hold the Government bound by the promise”. The Supreme Court held that the court would insist on a “highly rigorous standard of proof” in the discharge of this burden.
- 68.** In *Yamuna Expressway Industrial Development Authority (supra)*, the Supreme Court held that there was a clear public interest of the

farmers at stake. The matter related to project work undertaken by the Government which would displace the farmers, in which context the compensation was sought to be re-worked. As distinguished from the present case, in the said case the Supreme Court was dealing with a Government project which collaterally affected the farmers and not contractual obligations entered into between the parties. There, the State did not have a contract with the farmers but the rights of the farmers would be affected by a project undertaken unilaterally by the Government.

- 69.** As opposed thereto, in the present case the Government itself floated a tender, pursuant to which a contract was entered into between the parties and acted upon fully by the petitioners. Hence, the part to be performed by the petitioners was fully complied with, giving rise to contractual rights of the petitioners.
- 70.** In *Barak Valley Cement Limited (supra)*, the court was speaking about industrial policies in general. A policy decision was upheld by the Supreme Court, even if it overrides restricted and limited private interest.
- 71.** The present case does not involve a policy decision as such but a commercial transaction, as admitted by the respondents in their arguments, entered into by the State of Mizoram with the writ petitioners. There is no ingredient of any public policy to deter the completion of the sale transaction in the present case. The Government, having floated a tender and acted in terms thereof, making the petitioners complete their part of the performance of such

contract as well, is now seeking to resile from such position which is quite different from implementation of an industrial policy, which falls within the public domain.

- 72.** In *Shree Sidhballi Steels Limited(supra)*, the Supreme Court proceeded on the premise that normally promissory estoppel is applied against the Government and executive necessity is no defence, which proposition works in favour of the present petitioners. The exception carved out was that promissory estoppel cannot override public interest or law. Here, no law is violated. The only question which remains is whether there is overwhelming public interest which can displace the contractual obligations of the State of Mizoram as well as the estoppel which operates in favour of the petitioners.
- 73.** In *Shree Durga Oil Mills (supra)*, a change of policy of trade on the basis of reasonable grounds was being considered by the Supreme Court. The balance of equity or public interest was taken into consideration, not contractual obligations of the State.
- 74.** Again, in *New Bihar Biri Leaves (supra)*, the Supreme Court proceeded on the premise that a party cannot take advantage of one part of a contract but not the other.
- 75.** Such question loses relevance here in view of the discussion made above about the context in which Clause 3.1.11 has to be interpreted.
- 76.** It is well settled that the said clause *per se* cannot create an arbitrary right in favour of the State to cancel an agreement entered into in terms of the tender floated by itself.

- 77.** In this context, *Mihan India Limited (supra)*, cited by the petitioners, acquires relevance where it was held that cogent reasons have to be given even if a blanket power of cancellation is there in the tender clauses.
- 78.** In any event, it is now cliché that the State, even in the field of private contract, has to act in a fair, transparent and reasonable manner and cannot arbitrarily cancel contracts. Moreover, the present right of the petitioners is not merely based on a private contract but an agreement which flows from a public tender, floated in the public domain, by the State of Mizoram.
- 79.** The respondents have raised another bogey of the tender process and the consequential agreement being suspect, being not in consonance with the GFR. The learned Advocate General of Mizoram cites Rule 309 pertaining to transfer of land and buildings, which says that save as otherwise provided in any law, Rule or order relating to the transfer of Government land, no land belonging to the Government or any of its bodies shall be sold without previous sanction of the Government.
- 80.** Such argument is defeated by the tender document itself, which clearly denotes that it was floated by the General Administration Department (GAD) of the Government of Mizoram.
- 81.** The offer was made by the GAD of Mizoram itself. A corrigendum/addendum dated May 31, 2023 thereto was signed by the Commissioner and the Secretary to the Government of Mizoram, GAD. The Under Secretary to the Government of Mizoram and the

Deputy Secretary to the Government of Mizoram, both coming within the fold of GAD, have made several communications in pursuance of the tender and the subsequent agreement with the petitioners. Hence, there is no reason why the said tender or the subsequent acts of the Government should be vitiated by any irregularity just because the new regime, after coming to political power, raises such issue post facto.

- 82.** It is to be kept in mind that the State or a Government is an entity in perpetuity. It is not subjected to the vicissitudes of political or populist motivations, which sways with every wind of popular opinion.
- 83.** The Government acting for the State within the definition of Article 12 of the Constitution of India, has to act on a much higher pedestal of transparency and fairness than an individual vendor.
- 84.** Thus, the mere populist measures sought to be taken by the new regime after coming into power cannot be a valid ground of cancelling the valuable rights accrued to the petitioners in terms of a tender floated by the Government itself, in its previous pre-election Avatar of a different political dispensation.
- 85.** Although the Learned Advocate General of Mizoram has sought to make out a strong case to dispel the clear impression of interference by the newly incumbent political leadership, such argument is betrayed by the chronology of events around the election, as discussed above.
- 86.** Let us now come to the question as to whether there is really any public interest involved in the matter, so strong as to displace the

petitioners' rights, flowing not only from contract, preceded by an open tender, but estoppel due to the several acts of the Government in pursuance of the agreement entered into.

- 87.** Certain purported letters by certain social organizations, which arrogate to themselves the interests of the entire populace of the State of Mizoram, have been cited by the respondents. However, the mere opinion of certain bodies of students or others sections of civil society cannot displace the action taken by an elected government, which, in the first place, is supposed to represent and reflect the wishes of the polity which has brought it in power.
- 88.** The tender document, in no uncertain terms, describes the property to be a "land". By the letter dated August 10, 2023, the Under Secretary to the Government of Mizoram directed the petitioners to take necessary action regarding clearance of the plot, which admittedly was covered with bush and thick grass, and then to schedule a survey of the land.
- 89.** Thus, the plot-in-question is a fallow, vacant land, which defeats the very premise of the respondents' argument that it is an invaluable property which is being used by the students, patients and officials of the State of Mizoram as a stop-over at the gateway from the north-eastern State to the rest of India.
- 90.** The land, it is clearly evident from the admitted position, is a merely vacant and unused land having no immediate utility whatsoever. The proposed future use of the land does not furnish present public interest of so strong a level that it has to displace the valuable rights

already accrued in favour of the petitioners. Rather, the interest of the respondents seems to be more commercially motivated than by public interest.

91. More importantly, the very grounds which are now being cited to cancel the sale deed were all along available to the State of Mizoram even at the time of floating of the tender and the subsequent acts done by the parties in pursuance of the said tender. No change of circumstance has been pleaded or established to indicate that public interest has out-grown the contractual liabilities of the State all on a sudden, compelling the Government to cancel the sale process.
92. As already indicated above, the Supreme Court made it amply clear in *Mihan India limited (supra)* that sufficiently cogent reason has to be given for cancelling an agreement even if there is blanket power of cancellation conferred of one of the parties.
93. Inequity or overwhelming public interest is completely absent in the present case, thus denuding the arguments of the respondents, justifying the cancellation of the sale, of credibility.
94. It is well-settled, as also is established by the judgments cited by the petitioner, that alternative remedy is not an absolute bar to judicial review under Article 226 of the Constitution of India. Moreover, in the present case, the arbitration clause-in-question finds place not in the tender document but in the agreement entered into pursuant thereto.
95. The respondent seeks not to cancel the agreement itself or to interpret any terms of the agreement but to cancel the e-tender process in its entirety. As such, the issues involved here much exceed the limited

scope of dispute resolution contemplated in the arbitration clause provided in the agreement.

- 96.** The reliance of the respondents on the concerned GFR is flimsy since there is no reason why the presumption under Section 114 (e) of the Evidence Act should not be applied. The official act in floating the tender and subsequent action of the Government of Mizoram pursuant to the same has to be presumed to be regularly performed and the burden of proof to displace such presumption lies on the respondents. There is no rebuttal whatsoever worth the name in the present case, to displace such presumption or discharge of such burden by the respondents. The State of Mizoram, being the only authority which has special knowledge about its transactions, as contemplated in Section 106 of the Evidence Act, was to discharge the burden as to overwhelming public interest or discrepancy or illegality/irregularity in the floating of the tender which has not been done in the present case.
- 97.** The respondents have hinted that the agreement was unregistered. However, the rights of the petitioners do not flow merely from the agreement but the source of such right is the open and public tender floated by the Government, of which the agreement was only a step in furtherance, as was the subsequent communication and correspondence by the respondents urging the petitioners to undertake the work of clearing the land and preparing the draft sale deed. The same having been done and the petitioners having paid the consideration in full along with delay penalty, which was accepted

without demur by the respondents, there is no scope of resiling from such position by the respondent-authorities.

98. Hence, on a comprehensive appreciation of the facts of the case, I do not find any justification on the part of the respondents for cancellation of the bid by seeking shelter under Clause 3.1.11 of the tender document. Hence, the impugned act of cancellation of the e-tender and the sale process is palpably arbitrary, unreasonable and motivated by commercial political and populist interests rather than valid public interest or inequity.
99. In such view of the matter, WPA No. 1344 of 2024 is allowed on contest, thereby setting aside the impugned cancellation of the tender process in favour of the petitioners by the respondents. As a consequence, the respondents are directed to immediately execute a sale deed in terms of the agreement, pursuant to the said tender, in favour of the petitioners with regard to the subject land at 24, Ashutosh Chowdhury Avenue, Ballygunge, Kolkata-700019, within six weeks from date. The respondents shall also co-operate in the registration of the same in favour of the petitioners at the earliest thereafter.
100. There will be no order as to costs.
101. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(**Sabyasachi Bhattacharyya, J.)**