

GAHC020000282025

2025:GAU-NL:225



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

Case No. : WP(C)/12/2025

M/S VERTEX CONSTRUCTION
REPRESENTED BY THE PROPRIETOR SHRI Y. AKATO ZHIMOMI
R/O LOWER PWD
H.NO. 334
BELOW LOTH CHURCH, KOHIMA NAGALAND
EMAIL- vertexinfra417@gmail.com

VERSUS

STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
GOVT. OF NAGALAND
DEPT. OF WORK AND HOUSING
NAGALAND KOHIMA

2:THE CHIEF ENGINEER
PWD (R AND B)
NAGALAND KOHIMA

3:THE EXECUTIVE ENGINEER
PHEK DISTRICT
NAGALAND

4:M/S S.N. ENTERPRISE
REPRESENTED BY THE PROPRIETOR SHRI SHEVOLU NIENU
R/O TOULAZOU VILLAGE
DIMAPUR NAGALAN

Advocate for the Petitioner : JOSHUA SHEQI, RUBICA KIHU, TUNATO YEPHO, R
WONCHIBENI TSANGLO, KIVITOLI SWU, YEKA SUMI, KEVI KIRE, KETHO
SEKHOSE, P MHONBENI EZUNG, K LILY SWU, KEDI KOSO, ATOKA, MIKA H
AYE, CHINGMEI KONYAK, NAGALI SHOHE
Advocate for the Respondent : GOVT ADV NL,

**BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER**

For the Petitioner	: Mr. Joshu Sheqi
For the State Respondents	: Mr. E. Thiba Phom (R-1, 2 & 3)
For the Respondent No. 4	: Mr. Moa Jamir (R-4)
Date of Hearing	: 13.05.2025
Date of Judgment	: 23.05.2025

JUDGMENT & ORDER (CAV)

This writ petition has been filed by the petitioner, who is the proprietor of M/s Vertex Construction challenging the Work Order dated 14.01.2025 for execution of the work under PMGSY-III, Package No. NG050321 in connection with T02-01 to Chilo *via* Tsupfume, Razeba and Zhavame, Phek District issued to the private respondent no. 4 (R-4).

2. Learned counsel, Mr. Joshua Sheqi appears for the petitioner and states that a Notice Inviting Tender (NIT for short) along with the Standard Bidding Documents (SBD for short) for Pradhan Mantri Gram Sadak Yojana (PMGSY for short) dated 22.10.2024 was issued inviting tenders for eligible Class-1 contractors for five different construction works under PMGSY-III Batch-I (2024-25). The petitioner, as well as the private respondent applied for the work and submitted the bid documents. In the technical bid three firms were shortlisted by the State respondents namely: M/S Vertex Construction, M/S S.N. Enterprise and M/S LPSS INFRA; in other words, these three firms technically qualified in the technical bid to be eligible for participating in the financial bid. M/S Vertex

Construction is the firm of the petitioner and M/S S.N. Enterprise is the firm of R-4.

3. The case of the petitioner is that in the financial bid, the petitioner's firm was shown as L-1 and the firm of the respondent no. 4 was shown as L-2. The petitioner learned that the Work Order was issued to the firm of the R-4, and efforts were made to extract the Work Order along with the technical score marks which were allotted to the bidders. However, the Office of the State respondents refused to divulge any of the information. Through an RTI application, the Work Order dated 14.01.2025 was obtained along with the comparative statement of the scores of all the three bidders and the petitioner was also informed that the calculations were made as per Meeting Minutes dated 10.08.2023 which had nothing to do with the SBD.

4. The petitioner states that in the Quality and Cost Based Selection (QCBS for short) evaluation method followed for contractual works in India marks are to be allotted for completion of similar works. In the present case, it is only the firm of the petitioner that has completed similar works; however, despite that no additional marks have been allotted to the firm of the petitioner. It is stated that the petitioner's firm has more expertise and machineries/equipment than the R-4. The firm of the R-4 is learned to be executing two similar projects at the moment, which is yet to be completed and the same is not eligible to get additional marks. Despite this shortfall, the Comparative Statement Sheet which was obtained through RTI shows that the firm of the R-4 scored a perfect technical score of 100 marks. Learned counsel for petitioner states that

this ground alone is sufficient in itself to quash and set aside the Work Order dated 14.01.2025. Learned counsel for the petitioner has also stated that as per the required equipments/machineries which each bidder must possess, the firm of the petitioner fell short in respect of two items (machineries) whereas the firm of the R-4 fell short of seven items (machineries). This itself is proof that gross illegality has been committed not only against the firm of the petitioner but also against public interest as the same amounts to colourable exercise of power by the authorities.

5. Learned counsel for the petitioner further submits that as per Sub-section 22.6 of the SBD, the result of evaluation of Part-1 of the bid is to be made public on e-Procurement System. The bid document of all the participating firms was made public on the e-Procurement System; however, the result of the evaluation was not published. That it is stated that in the financial bid the petitioner's firm had quoted a rate lower than the other two firms, and, therefore, the petitioner's firm is shown as L-1 and the firm of the R-4 is shown as L-2. It is further submitted that the firm of the petitioner having five more items of equipments/machineries than the firm of the R-4, is expected to score higher in the technical score, however, the score given to the firm of the petitioner is only 70 out of 100.

6. Another ground taken by the petitioner is that the State respondents, in order to favour the R-4, has applied a yardstick unknown to law in the technical bid. He submits that the Sub-section 22.6(e) in the SBD clearly shows that result of evaluation shall be made public. However, the Comparative Score Sheet was not made public. Even after award of the contract to the respondent no. 4, the Comparative Score Sheet was made

available to the firm of the petitioner only when he filed an application through RTI.

7. Section 1(17) of the SBD states that if any information furnished by the tenderer is found incorrect then at a later stage he would be liable to be debarred from taking up work under NPWD for five years. Further, Sub section 25 states that authority can seek clarification on any issue pertaining to the bid at any stage of the bid process and the bidder shall furnish required clarification within seven days. In the present case, no clarification was sought from the firm of the petitioner at any stage as to whether there was any shortcoming in his bid documents. Learned counsel states that it is, therefore, clear that the official respondents have turned a blind eye to the misleading information submitted by the respondent no. 4 regarding possession of Paver Finisher (100 Tph) which was actually leased and not owned by him, and has awarded him the contract. Learned counsel, therefore, submits that the perfect technical score of 100 marks awarded to the firm of the R-4 is discriminatory and arbitrary.

8. It is further submitted that the State respondents furnished the Meeting Minutes dated 10.08.2023 to the petitioner only when he applied for the same through RTI application and came to know that the technical score was based on the said Meeting Minutes. Learned counsel submits that the Meeting Minutes dated 10.08.2023 was never brought to the notice of the petitioner in the entire bidding process. Further, it is not known as to how the technical score was computed or calculated. Learned counsel submits that the requirements and the conditions given in the NIT and the SBD has to prevail over the conditions/evaluation criteria given in

the said Meeting Minutes of 10.08.2023. Learned counsel states that the petitioner is qualified and is eligible as per the requirement in the SBD which was put in the website. However, the State respondents have taken a decision to award the contract to the R-4 basing on the requirements/criteria as laid down in the Meeting Minutes of 10.08.2023.

9. Learned counsel further submits that transparency is the paramount consideration in such matters of contract and there is to be no hidden criteria. However, in the present case, the State respondents have awarded the contract to the R-4 based on criteria/requirements which were never made public and never uploaded on the concerned website.

10. Learned counsel for the petitioner has relied on the following authorities in support of his submissions:

(i) **(2012) 10 SCC 1** in the case of ***Natural Resources Allocation, IN RE, Special Reference No. 1 of 2012,***

(ii) **(2009) 6 SCC 171** in the case of ***Meerut Development Authority Versus Association of Management Studies And Another,***

(iii) **2017 (3) GLT 696** in the case of ***Minku Hazarika Versus State of Assam And Others,***

(iv) **(2012) 8 SCC 216** in the case of ***Michigan Rubber (India) Limited Versus State of Karnataka And Others.***

11. Learned counsel for the petitioner, relying on the above cited authorities, submits that the action of the State where it relates to distribution of largesse, grant of contracts or allotment of land is to be decided on the touchstone of Article 14 of the Constitution. State action is to be fair, reasonable, non-discriminatory, transparent, non-capricious,

unbiased, without any favouritism, in pursuit of promotion of healthy competition and equitable treatment. A criteria or procedure has to be adopted so that the choice among those falling in the same category is based on reason, fair-play and non-arbitrariness. Even if there are only two tenderers falling in the zone of consideration there should be a clear, transparent and objective criteria or procedure to indicate which out of the two is to be preferred. It is this, which would ensure transparency.

12. Learned counsel for the petitioner, relying on the case of ***Meerut Development Authority (supra)***, states that a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bid process. And the bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bidders offered by interested persons in response to notice notifying tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. Learned counsel submits that the evaluation criteria in this case were also tailor-made to suit the R-4.

13. Learned counsel, relying on the case of ***Minku Hazarika (supra)***, further submits that the criteria for awarding marks in a tender process is required to be notified in detail at the threshold, i.e., while issuing the tender notice but if such criteria is not notified at the beginning the same should be made known to all the interested bidders at least before the

submission of the bids by duly informing them about the proposed criteria to be applied and the methodology to be adopted in awarding marks to evaluate the technical and commercial bids as the same is essential requirement of the rule of transparency and fairness. In the cited judgment, a Coordinate Bench of this Court held that in the absence of such communication to the bidders, the contention that the decision makers applied a hidden criteria evolved as tailor-made to suit the private respondent acquires legitimacy. The Court further held that the evaluation of the bids cannot be made on the basis of criteria evolved after the opening of the tenders so as to work to the advantage of a particular bidder since such a process would not only be wholly arbitrary but would also amount to changing the rules of the game after the game had begun. Learned counsel therefore submits that the present case is squarely covered by the said judgment passed in ***Minku Hazarika (supra)***.

14. Learned counsel relying on the case of ***Michigan Rubber (India) Limited (supra)*** submits that the Court can interfere in tender or contractual matters when:

(i) The process adopted or decision made by the authority is mala fide or intended to favour someone or the decision made is so arbitrary and irrational that the court can say that no responsible authority acting reasonably and in accordance with law could have reached such a decision and;

(ii) When public interest is affected.

15. Learned counsel, therefore, submits that this Court can interfere in the present case as the decision made by the authority had no

transparency, was mala fide and intended to favour the R-4. In view of the submissions made herein above and the authorities relied upon, learned counsel for the petitioner prays that the Work Order dated 14.01.2025 for execution of the work under Package No. NG050321 in connection with T02-01 to Chilo *via* Tsupfume, Razeaba and Zhavame, Phek District issued in favour of the R-4 may be quashed and set aside and the State respondents may be directed to issue a fresh work order in favour of the firm of the petitioner.

16. Learned Government Advocate, Mr. E. Thiba Phom appearing for the State respondent has made his submissions basing on the affidavit-in-opposition filed on behalf of the respondent nos. 1, 2 and 3. Learned Government Advocate submits that Rule 192 (iii) of General Financial Rules, 2017 (GFR for short) states that the Request For Proposal (RFP for short) shall specify the minimum qualifying score for the quality of technical proposal and also the relative weightages to be given to the quality and cost (determined for each case depending on the relative importance of quality vis-à-vis cost aspects in the assignment, e.g. 70:30, 60:40, 50:50 etc). Hence, there is no fixed criterion followed universally on allocation of weightages adopted in QCBS as claimed by the petitioner. But the weightages need to be determined for each case depending on the relative importance of the project. Therefore, the Tender Committee, after considering all the aspects on quality and cost as per the GFR have fixed the qualifying score and weightage as mentioned in the Meeting Minutes of 10.08.2023.

17. Learned Government counsel also submits that the Tender Committee awarded the weightage for machine, equipments and

personnel after taking into account all the parameters associated with the execution of the work as mandated in Clause 4.9.1A of the Manual for Procurement of Works, 2022. Therefore, any other machineries, equipments and personnel other than those mentioned in the Meeting Minutes of 10.08.2023 were not considered for evaluation although required for the works. The awarding of additional marks to the R-4 is also admitted by the State respondents. It is submitted that the R-4 had submitted a lease document of the said Paver Finisher machine, and for the sake of evaluation since leased or owned carries the same merit; the Tender Committee considered the declaration of the R-4 stating that the machine is 'owned' as a mere clerical error and not a misleading statement as alleged by the petitioner.

18. Learned Government counsel also submits that as per the Manual for Procurement of Works, 2012, a special technical committee namely Tender Committee/Technical Committee was constituted on 04.08.2023 by the authorities. The Committee took cognizance of the fact that the FDR technology is more of quality and technical oriented work and, therefore, decided to adopt the QCBS system for works related to PMGSY-III among the many established methods by which the tender can be evaluated. The L-1 system is only one of the methods wherein the commerce aspect decides the award of the work. Therefore, in this system the lowest bidder is awarded the work subject to fulfilment of all other criteria laid down in the SBD. However, the FDR being more technical and quality oriented the Tender Committee decided to adopt the QCBS and not the L-1 method. And, therefore, the assessment based on the established equation adopted for QCBS has been clearly shown in the comparative statement

which is at Annexure-G of the writ petition.

19. Learned Government counsel has referred to his affidavit-in-opposition wherein the assessment procedure has been shown as under:

Assessment procedure:

A. Technical mark evaluation chart:

*Petitioner scored 70 but out of that weighted score of 60% i.e. 42 has been considered and whereas, private respondent had score 100 but weighted score of 60% has been considered i.e. 60. Thus, in the technical mark the petitioner rank in **2nd place** and private respondent is at **Rank 1st**.*

B. Financial mark calculation: (lowest price/own price)*100 but weighted score considered 40%)

*Petitioner quoted price : 1834.14 Lakhs (**Rank-II**)*

*Respondent no 4 quoted price : 1900.66 Lakhs (**Rank-I**)*

*Petitioner financial mark calculation : $(1834.14/1834.14)*100=100$ marks*

C. Combined score calculation: (Score a+b i.e. technical + financial)

For petitioner :

60% of technical mark : 42

40% of financial mark : 40

Combined score is Rank-II: 82 (42+40)

For Respondent No 4 :

60% of technical mark : 60

40% of financial mark : 38.60

Combined score is Rank-I: 98.60(60+38.60)

v). Respondent No 4 has more combined score of 98.60 marks against 82 marks for petitioner. Therefore, respondent no 4 was awarded the work as mandated by QCBS RULE.

vi). Assigning weight age: Rule 192 of GFR 2017, clause 4.9.1A (iv)b (v), (vi) of Manual for procurement of works 2022)

20. As per this assessment/comparative statement learned Government counsel submits that the Committee has awarded the weightage for machine, equipments and personnel after taking into account all the parameters associated with the execution of the work as mandated in the

Manual for Procurement of works, 2022. Therefore, any other machineries, equipments and personnel other than those mentioned in the Meeting Minutes dated 10.08.2023 were not considered for evaluation although required for execution of the work. The Government counsel further submits that the conditions, weightages and other parameters for the tender evaluation was already decided on 10.08.2023 and the NIT for the work was issued on 22.10.2024. It is therefore, very clear that the decision for evaluation criteria was taken even before sanctioning of the said project by the Ministry of Rural Development (MoRD for short) or by the State respondents. In fact, the said Meeting Minutes dated 10.08.2023 was issued when the State respondents had absolutely no knowledge of who the intending bidders would be; and hence, the allegation of adopting an approach or laying down conditions only to favour the firm of the R-4 is baseless and misplaced.

21. Learned Government counsel further submits that the works covered by the present impugned NIT dated 22.10.2024 is the second batch sanctioned by the MoRD under PMGSY-III. The first batch of 40 works was already sanctioned on 28.04.2023 for which NIT was called on 26.08.2023 and work orders were issued on 23.03.2024. These 40 roads were clubbed into 16 batches and out of these 16 batches, in four packages the lowest bidder (L-1) could not be awarded the work due to the fact that they were not the most qualified amongst the bidders as per the QCBS evaluation criteria. However, there is no complaint about the award of work in the above mentioned Work Orders as all the bidders were aware of the evaluation system and the works are progressing smoothly.

22. The State respondents also state that a pre-bid meeting as mandated in the SBD was to be held to give additional information, clarifications, etc. This meeting was notified to be held on 12.01.2024, however, the petitioner for reasons best known to him did not attend this meeting. Therefore, his ignorance regarding the vital information in the Meeting Minutes dated 10.08.2023 is not the fault of the respondent authorities. Learned Government counsel further submits that the petitioner has not challenged the Meeting Minutes dated 10.08.2023, by which the conditions and the requirements/criteria were laid down and on the basis of which the R-4 was awarded the contract. It is submitted that without challenging the Meeting Minutes dated 10.08.2023, the petition is liable to be dismissed.

23. Learned Government counsel contends that the petitioner has not been able to show that there is any discrimination in the Meeting Minutes dated 10.08.2023, and moreover, there is no arbitrariness in the criteria laid down by the Tender Committee. The learned Government counsel states that the criteria laid down by the Meeting Minutes dated 10.08.2023 was issued and decided much before the issuance of the NIT on 22.10.2024.

24. The State respondents further contend in the affidavit in opposition that information was sought by the petitioner during the evaluation of tender, which according to Clause 23.1 of the SBD, should be kept confidential. Later, the documents were provided to the petitioner by way of RTI reply.

25. Learned Government counsel has relied on the case of the following:

(i) ***Jagdish Mandal Versus State of Orissa And Others*** reported in **(2007) 14 SCC 517 and**

(ii) ***Silppi Constructions Contractors Versus Union of India And Another*** reported in **(2020) 16 SCC 489**

26. Learned Government counsel, referring to the case of ***Jagdish Mandal*** (*supra*) submits that the Hon'ble Supreme Court in the said judgment has laid down that the power of judicial review in respect of contracts can only be exercised when there has been infirmity in the decision making process and when the decision making process is arbitrary and violative of Article 14 of the Constitution. The Hon'ble Supreme Court stated that there are inherent limitations in the exercise of power of judicial review in matters of contract and the State has the right to reject the lowest or any other tender provided it tries to get the best person or the best quotation and the power to choose is not exercised for any collateral purpose or in infringement of Article 14. Even when some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when the Court comes to a conclusion that overwhelming public interest requires interference, the court should intervene. It was further laid down that attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self,

and persuade courts to interfere by exercising power of judicial review, should be resisted. Learned Government counsel, placing reliance on the case of ***Silppi Constructions*** (*supra*) submits that the Hon'ble Supreme Court in that case has also laid down that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters and the court should not interfere in contractual matters unless a clear cut case of arbitrariness or mala fide or bias or irrationality is made out. The courts must realize their limitations and the havoc caused by needless interferences in commercial matters should not be allowed.

27. The learned Government counsel also submits that the work order was issued on 14.01.2025 and as per the Progress Report dated 05.05.2025, the work has already started and it is going on in full swing and, therefore, any interference at this stage will gravely affect public interest and the public exchequer would also suffer. Learned Government counsel, therefore, prays that the petition may be dismissed as the petitioner has not been able to make out a case warranting interference of this Court.

28. Mr. Moa Jamir, learned counsel for R-4 has raised certain preliminary objections with regard to the maintainability of the writ petition. Learned counsel submitted that there are only two tests to determine the extent of judicial interference in contract/tender matters. Firstly, where the process adopted or decision made by the authority is mala fide or intended to favour a particular person/firm or where the process adopted or the decision made is so arbitrary and irrational that the court says that the

decision is such that no responsible authority acting reasonably and in accordance with law could have reached; and secondly, where public interest is affected. If the answers are in the negative there should be no interference under Article 226. Learned counsel submits that in the present case, the petitioner has neither pleaded nor proved that the process adopted or decision made by the authority is mala fide or intended to favour a particular person/firm. It is also submitted that the petitioner has failed to prove that public interest is affected by not awarding the work to him. Hence, the petition deserves to be dismissed as not maintainable.

29. Submitting on the merits of the case, learned counsel for the R-4 has stated that the Meeting Minutes dated 10.08.2023 had decided on the criteria/requirements long before the issuance of the NIT dated 22.10.2024. Therefore, the petitioner cannot allege that the same was a hidden criteria. Learned counsel also states that he has not given any misleading statement that it was 'owned' with regard to the Paver Finisher (100 Tph) as the lease document was also enclosed. He submits that the Tender Committee vide its Meeting dated 10.08.2023 has decided that the weightage shall be 100% for both owned and leased equipment and 0% for any other category in respect of machineries. Hence the issue of the R-4 procuring the Paver Finisher on lease was an irrelevant factor.

30. Learned counsel also submits that Clause 20(v) of the NIT permits the use of five Specialized Stabilization Machineries amongst others and R-4 possesses all the requisite machineries and equipment as specified in the said clause.

31. It is further submitted by R/4 that the State can choose its own methods to arrive at a decision to award the contract. It is a settled principle of law that the authorities can fix their own terms of inviting to tender which is not open to judicial scrutiny. Though such decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found to be vitiated by mala fide and arbitrariness. In the instant case, the petitioner has failed to establish that the decision making process was coupled with mala fide or arbitrariness. The R-4 has also filed affidavit-in-opposition denying all the averments made by the writ petitioner.

32. The learned counsel further submits that in pursuance of the Work Order dated 14.01.2025, the R-4 has already initiated and commenced the execution of the work and as on 15.04.2025, the overall physical progress is more than 50%. It is also stated that the civil work has been completed to an extent of 93.33% and more than 60% of the supply work of the project in totality has been completed. In paragraph-6 of the rejoinder affidavit of the R-4 to the affidavit-in-reply filed by the petitioner, the R-4 has categorically stated that as on 05.05.2025 the quarry and installations of crusher plant; procurement and laying HP culvert and resource mobilization has already been completed. It is stated that these works have already incurred significant expenditure resulting in substantial costs for the R-4 and, therefore, it would not be in public interest to allow the writ petition at this stage.

33. Learned counsel would submit that the State respondents have conducted the entire tender proceedings in strict compliance with all the

applicable rules and regulations ensuring complete transparency and the petitioner's allegation of "hidden criteria" or favouritism towards the R-4 is entirely baseless and unsupported by any evidence on record. Learned counsel for the R-4 further states that if this Court interferes with the impugned Work Order, it would mean that there has to be a new tender proceeding, which would entail huge financial loss for the State exchequer and also considerable delay in the execution of the work which would ultimately not be in public interest as the rainy season has already started in Nagaland.

34. Learned counsel for the R-4 has relied on the following authorities to support his submissions:

(i) ***Banshidhar Constructions Private Limited Versus Bharat*** reported in **(2024) 10 SCC 273**.

"37. While exercising the power of judicial, in respect of contract, the court is concerned primarily to whether there has been any infirmity in the decision-making process."

(ii) ***Michigan Rubber (India) Limited Versus State of Karnataka And Others*** reported in **(2012) 8 SCC 216**.

Para 23 and 24- "If the Govt acts in conformity with certain healthy standards and norms such as awarding contracts by inviting tenders, the interference of courts is very limited. -If the state act reasonably, fairly and in public interest, Interference is restrictive"

(iii) ***Jagdish Mandal Versus State of Orissa And Others*** reported in **(2007) 14 SCC 517**.

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters

relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out."

(iv) ***Tata Cellular Versus Union of India*** reported in **(1994) 6SCC 651.**

"71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy..."

94. ... Black's Law Dictionary, 6th Edn. at page 162, bias is defined as under :

"Inclination; bent; prepossession; a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction."

(v) ***Raunaq International Ltd. Versus IVR Construction Ltd.*** reported in **(1999) 1 SCC 492.**

"11. ...unless the court is satisfied that there is a substantial amount of public interest, ...the court should not intervene."

(vi) ***Kirloskar Ferrous Industries Ltd. And Another Versus Union of India And Another*** reported in **(2025) 1SCC 695.**

"56. ...Policy decisions often require the expertise of professionals and specialists in several fields. These domains involve specialised knowledge that Judges, as generalists in legal matters, may lack."

57. ...Judicial review is not absolute."

(vii) ***State of Bihar And Another Versus P.P. Sharma, IAS And Another*** reported in **(1992) Supp (1) SCC 222** wherein at paragraph nos. 50 and 51 the definition of mala fide has been defined as: *"Mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose."*

(viii) ***Prabodh Sagar Versus Punjab State Electricity Board And Others*** reported in **(2000) 5SCC 630.**

“13. ...Mere use of the word ‘mala fide’ by the petitioner would not by itself make the petition entertainable.”

(ix) ***NG Projects Ltd. Versus Vinod Kumar Jain*** reported in **(2002) 6SCC 127.**

“13. ... In contracts involving technical issue, the court should be more reluctant. The Court should not use a magnifying glass while scanning the tenders and value every small mistake appearing like a big blunder.

23. ... The writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of NIT.”

(x) ***Silppi Constructions Contractors Versus Union of India And Another*** reported in **(2020) 16SCC 489.**

“16. In Montecarlo vs. NTPC Ltd it was held that where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint.

19. ... This Court is normally loathe to interfere in contractual matters unless a clear cut case of arbitrariness or mala fides or bias or irrationality is made out.

22. ...the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority...

... The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted.”

(xi) ***Meerut Development Authority Versus Association of Management Studies And Another*** reported in **(2009) 6SCC 171.**

“27. ...the bidders have no right to challenge the terms and conditions of the tender except the right to equality and fair treatment in the matter of evaluation of bids.”

(xii) **Tata Motors Ltd.** reported in **(2023) SCC Online SC 671**

“48. ...Courts do not have the necessary expertise to adjudicate upon technical issues and should not use magnifying glass while scanning tenders.

52. ... a writ court should refrain itself from imposing its decision over the decision of the employer.

The financial implications on the public exchequer that the state may have to meet if the court directs for a fresh tender, should be one of the guiding factors that the court should keep in mind.

54.... evaluation of tenders and awarding of contracts are essential commercial functions and principles of equity and natural justice stay at a distance in such matters.”

35. In view of the submissions made above, and the various authorities relied upon, learned counsel for the R-4 submits that no bias or malafide has been made out in the instant case and hence the present petition may be dismissed as the impugned Work Order does not warrant interference of this Court under any circumstance.

36. I have considered the submissions made by the opposing counsels and the pleadings have been perused in detail, as well as the authorities relied upon by the learned counsels. In the case of **Tata Cellular Versus Union of India** reported in **(1994) 6SCC 651** the Hon'ble Supreme Court has laid down as under:-

“77. The duty of the court is to confine itself to the question of legality. Its concern should be :

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. Committed a breach of the rules of natural justice,*
- 4. Reached a decision which no reasonable tribunal would have reached or,*

5. Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case”.

37. The authorities relied upon by the petitioner as well as the respondents have shown the parameters in relation to the scope of judicial review in contractual matters. In the case of ***Subodh Kumar Singh Rathour vrs The Chief Executive Officer & Ors*** reported in ***2024 SCC OnLine SC 1682/(2024) 7 SCR 532***, a three-judge bench of the Supreme Court while examining the scope of judicial review in contractual matters, especially in the context of 'State' actions reaffirmed that judicial review is only permissible in cases where decisions of the 'State' affect public interest, involve unfair trade practices or exhibit procedural improprieties.

In ***Jagdish Mandal Versus State of Odisha*** (*supra*) the Supreme Court held that judicial interference in tender processes should not take place if the following questions lead to a negative response:

- whether the process adopted, or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted, or decision made is so arbitrary and irrational that the court can say the decision is such that no responsible authority acting reasonably and in line with relevant law could have reached it; and
- whether public interest is affected.

38. The law operating in the field is no longer res integra. The application of law, however, would depend upon the facts and circumstances of each

case. Having heard the learned counsels appearing for the parties and having gone through the materials on record, the only question that falls for the consideration of this court is whether the impugned work order and the evaluation criteria in meeting minutes dated 10.08.2023 could be termed as violative of Article 14 of the Constitution or could be termed as arbitrary, unjust or prescribed only with a view to favour the respondent No.4.

39. It goes without saying that the methods adopted, the NIT and the subsequent bidding procedure has to be fair and transparent providing an opportunity to all the interested persons to participate in the process. The authority also has the right not to accept the highest bidder and even to prefer a tender other than the highest bidder if there existed good and sufficient reason, but there cannot be any doubt that the action of the State authorities in accepting or refusing the bid must be free from favouritism. This Court has observed that the evaluation conditions/criteria, weightage and other parameters were decided by the Tender Committee on 10.08.2023. The court has also taken note of the fact that the NIT for the present work in the petition was issued on 22.10.2024. Therefore, there was a period of about 14 months in between the Meeting minutes dated 10.08.2023 and the NIT dated 22.10.2024. It is also not denied that there was a pre-bid meeting on 12.01.2024, as per the SBD, for the bidders in order to give additional information, clarifications etc. The statement by the state respondents that the petitioner did not attend the said meeting on 12.01.2024 is not rebutted by the petitioner. Therefore, it cannot be said that the evaluation criteria adopted by the State respondents was a hidden agenda or a deceitful act.

Not uploading the impugned work order on the website would at best be a procedural lapse. The case of ***Minku Hazarika*** (*supra*) does not help the petitioner inasmuch as in the cited case the evaluation criteria were evolved not only after the submission of the bids but they were evolved only after those bids were opened. Whereas in the present case the evaluation criteria was laid down much before the NIT was published.

40. It is observed that the Tender Committee had taken cognizance of the fact that FDR technology is more to do with technology oriented work, and therefore, had decided to adopt the QCBS (Quality Cum Cost Based Selection) system for all the works under the PMGSY-III under the QCBS evaluation system. The tender Committee on 10.08.2023 had decided that the technical weightage was to be 60% and the financial weightage was to be 40%. Therefore, the evaluation and the subsequent comparative statement were made on these criteria. The State respondents have also specifically stated that the Committee had decided to adopt the QCBS system over the works allotted to PMGSY-III and not the L-1 system. This Court cannot direct the authorities to adopt a certain system by which the tender can be evaluated as the court does not have the expertise to adjudicate upon the technical issues which is beyond the domain of this Court. And the petitioner cannot have any grievance against the adoption of one method over the other. The Court only has to see that fair opportunity has been given to all the bidders and to ensure that the rules of the game are not changed after the match has begun.

41. In the present case, the evaluation criteria were already decided in the Meeting on 10.08.2023 and the NIT was issued much later on

22.10.2024. Other Work Orders under the same PMGSY-III Package had already been issued earlier to the instant impugned work order wherein the same evaluation criteria and parameters were followed, i.e., the QCBS evaluation methodology. On 10.08.2023, when the Tender Committee laid down the evaluation criteria, the official respondents would have had no knowledge about who would be the bidders when the NIT was issued. Therefore, this court is not impressed by the allegations of favouritism or bias. In fact, there is no foundation in the petition to level such allegation. Mere pleadings in the writ petition as regards favouritism are not sufficient. There has to be something more on the basis of which the Court can come to a definite conclusion that the eligibility criteria has been prescribed only with a view to eliminate others and favour the R/4. As discussed above, there is a rationale which has been explained by the state respondents for providing such eligibility criteria. By no means can it be termed as discriminatory or arbitrary.

42. Another important factor that the Court also has to consider is the fact that the work has already progressed substantially which can be also seen from the affidavits which the learned Government Advocate as well as the private R-4 have produced before this Court. The Court also has in mind that the working season in Nagaland is very limited and the rainy season has already commenced. If the Work Order is to be interfered with at this stage it would cause a considerable delay in execution of the work as the entire tender process has to be started afresh. In ***Tata Motors (supra)***, the Hon'ble Supreme court held that the financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one

of the guiding factors that the Court should keep in mind. There would be huge financial implications if the present tender process has to be executed all over again.

43. This Court is of the view, therefore, that the impugned Work Order does not warrant the interference of this Court under Article 226 of the Constitution as the petitioner has not been able to show that the decision made by the official respondents was illegal or arbitrary or mala fide or intended to favour the R-4. In fact, public interest would be affected if the Work Order is interfered with.

The writ petition being devoid of merit stands dismissed.

No orders as to cost.

JUDGE

Comparing Assistant