GAHC010162652025

2026:GAU-AS:16342

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

Case No. : WP(C)/4289/2025

DILIP CHANDRA KALITA
S/O LATE BALAI KALITA, VILL- PAYALA, P.O.- BARDIGHELI, P.S.- NALBARI, DIST- NALBARI, PIN-781334, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, IRRIGATION DEPARTMENT, DISPUR, GUWAHATI-06

2:CHIEF ENGINEER
IRRIGATION
ASSAM
CHANDMARI
GUWAHATI-03

3:THE DISTRICT COMMISSIONER
NALBARI
PIN-781335

4:THE EXECUTIVE ENGINEER
DHARMAPUR BARKHETRI NALBARI DIVISION (IRRIGATION)
NALBARI
PIN-78133

Advocate for the Petitioner : MR. S SAHU, S SHAHI

Advocate for the Respondent : SC, IRRIGATION, SC, FINANCE AND TAXATIONMR. B GOGOI, LD. ADDL. A.G., ,GA, ASSAM

Linked Case : WP(C)/3279/2025

ANJAN JYOTI DEKA
S/O LATE KALICHARAN DEKA
R/O NALBARI TOWN
WARD NO. 12
BISHNUPUR
P.S.- NALBARI
DIST- NALABRI (ASSAM)
PIN-781335

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
IRRIGATION DEPARTMENT
DISPUR
GUWAHATI-06
ASSAM

2:THE CHIEF ENGINEER
IRRIGATION
ASSAM
CHANDMARI
GUWAHATI-03

3:THE SUPERINTENDING ENGINEER
NALBARI CIRCLE (IRRIGATION)
NALBARI
PIN-781335
OFFICE OF THE EXECUTIVE ENGINEER (IRRIGATION)
NALBARI-781335

4:THE EXECUTIVE ENGINEER
DHARMAPUR-BARKHETRI-NALBARI DIVISION (IRRIGATION)
NALBARI
PIN-781335

5:THE DISTRICT COMMISSIONER
NALBARI
PIN-781335

Advocate for : MR. A ROSHID
Advocate for : SC

IRRIGATION appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

06-11-2026

1. Heard Mr. R.K.D.Choudhury, learned Senior counsel assisted by Mr. A. Roshid, learned counsel for the petitioner in WP(C) No. 3279/2025 and Ms. S. Shahi, learned counsel for the petitioner in WP(C) No. 4289/2025.Also heard Mr. B. Choudhury, learned Standing counsel, Finance and Taxation Department and Mr. R.M. Das, learned Standing counsel, Irrigation Department for the respondents.

2. The controversy arises out of a Notice Inviting Tender (NIT) inviting tenders for four components relating to the construction of two solar powered MDTW schemes under SOPD-SCSP for the year 2023-24. The four components comprise of (i) " Boring & Installation of Tube Well & Installation and Commissioning Solar PV Modules including Mounting Structure at Construction of 1 No Solar Powered MDTW Scheme at 2. No Ghorathal village under SOPD-SCSP for the year 2023-24; (ii) Final Survey, Construction of Approach Road, Rest Room, Underground PVC Distribution System, Spout Chamber, Boundary wall & Sign Board at Construction of 1. No Solar Powered MDTW Scheme at 2. No Ghorathal village under SOPD-SCSP for the year 2023-24; (iii) Boring & Installation of Tube Well & Installation and Commissioning Solar PV Modules including Mounting Structure at Construction of 1 No Solar Powered MDTW Scheme at 2. No Galdighala village under SOPD-SCSP for the year 2023-24 and (iv) Final Survey, Construction of Approach Road, Rest Room, Underground PVC Distribution System, Spout Chamber, Boundary wall & Sign Board at Construction of 1. No Solar Powered MDTW Scheme at 2. No Galdighala village under SOPD-SCSP for the year 2023-24.

3. Pursuant to the aforesaid NIT, the petitioner in WP(C) No. 4289/2025 was awarded the works described at serial Nos. (i) & (ii), whereas the petitioner in WP(C) No. 3279/2025 was awarded the works described at serial Nos. 3 and 4. Work orders were accordingly issued in their favour and formal agreements in F-2 Form were executed upon deposit of the requisite security amounts and performance guarantees.

4. However, before the site could be handed over and execution works could commence, complaints were lodged by certain intending contractors alleging irregularities in the tender process, particularly that the composite work had been divided into separate components with a view to avoiding the mandatory requirement of electronic procurement under the Assam Public Procurement Act, 2017 (hereinafter referred to as the Act, 2017) and the rules framed thereunder.

5. Aggrieved by non-hand over of the site, the petitioners have approached this Court.

6. Since the issues raised in both the writ petitions arise out of the same tender process and involve common questions of fact and law, these writ petitions are taken up together for disposal by this common order.

7. Be that as it may, based on such complaints, the Chief Engineer constituted a committee by order dated 12/11/2024 to inquire into the complaints. On the basis of the inquiry report, the Chief Engineer, by communications dated 29/5/2025 and dated 21/6/2025, directed cancellation of the NIT on the ground that valid bid documents had not been prepared and proper tendering procedure had not been followed. The Executive Engineer, in consequence thereof, cancelled the tender process and subsequently, by communication dated 05/10/2025, cancelled the work order issued in favour of the petitioners, declaring the same null and void with immediate effect.

8. Being aggrieved, the present writ petitions are filed.

9. The statutory framework governing the public procurement in the State is contained in the Act, 2017 and the rules framed thereunder.

10. Section 4 of the Act, 2017 mandates transparency, fairness, and equality in the procurement process. Section 5 requires an objective determination of the need, scope, and estimated value of the procurement. Sub-Section (3) of Section 8, prohibits division or balking of procurement or adoption of a particular method of valuation with the object to avoid statutory obligations or limiting competition amongst bidders. Sub-Section (2) of Section 28 empowers the State Government to make electronic procurement compulsory beyond certain threshold value by notification which has also been issued by the State. The Assam Public Procurement Rules 2020, particularly Rules 3 and 4, further require objective assessment of the scope and estimated cost of procurement.

11. The aforesaid provisions leave little room for doubt that a procuring authority cannot artificially divide a composite work into separate components merely to bring down the estimated value of its components and thereby avoid the prescribed mode of procurement. If the aggregate value of the works attracted the notified threshold for mandatory electronic procurement, such fragmentation would defeat the very object of the statutory scheme. The legality of the procurement, therefore, must be examined with reference to the composite nature and aggregate estimated value of the works and not merely by the individual value assigned to each component.

12. The Court is conscious that the procurement process undertaken in violation of the mandatory statutory requirements cannot acquire legitimacy merely because agreements have subsequently been executed. The public interest in ensuring transparency and fair competition in the award of public contracts cannot be subordinated to the contractual interest of successful bidders. However, the situation is different in the present proceedings, inasmuch as the challenge in the proceedings also relates to the manner in which the respondent authorities have proceeded to bring the concluded contractual arrangement to an end.

13. Admittedly, before the inquiry was completed and an impugned decision was taken, the petitioners had been declared successful; work orders had been issued, formal agreements had been executed, and the requisite security deposit and performance guarantees had also been furnished. Although the possession of the site had not been handed over and the actual execution of the works had not commenced, the contractual relationship between the parties had already come into existence.

14. Once the tender process culminates in the execution of an agreement, the matter ceases to remain at the stage of mere tender process. The rights and obligations of the parties thereafter become governed by the terms of the concluded agreement and applicable law. The employer having entered into a contractual relationship cannot revert the pre-contractual stage and bring the agreement to an end merely by cancelling the NIT. If the employer intends to terminate the concluded contract on account of irregularities in the antecedent procurement process, it must invoke the relevant contractual provisions and/or any other enabling provisions of law and follow the procedure prescribed thereunder.

15. The discovery of irregularities in the procurement process may in a given case furnish a ground for the employer to examine whether the agreement ought to be terminated. However, such discovery shall not dispense with the requirement of following the procedure prescribed under the agreements. The cancellation of the NIT cannot automatically operate as the termination of the contractual relationship already brought into existence. The subsequent declaration of the work order as null and void without demonstrating compliance with the contractual provision therefore cannot be sustained.

16. In these circumstances, the petitioners cannot claim an indefeasible right to insist upon execution of the works merely because the agreements had been

executed in their favour.

17. Equally, the respondent authorities cannot disregard the contractual obligations assumed by them and terminate the agreements, otherwise than in accordance with law. In the circumstances, the appropriate course would be to interfere with the impugned cancellation while leaving it open to the employer to take such action as may be permissible under the respective agreements. The employer shall be at liberty to examine the findings of the inquiry committee and take appropriate decision strictly in accordance with the terms & conditions of the agreements and the procedure prescribed thereunder. The Court expresses no opinion on the ultimate entitlement of the petitioners to continue with the contracts or on the merit of any proposed action of termination.

18. Accordingly, the impugned orders cancelling the tender process and consequential communication cancelling the work orders are interfered with and set aside, insofar as they purport to bring the concluded contractual agreement to an end without following the due procedure prescribed under the respective agreements and the applicable law, the respondent authorities shall, however, be at liberty to take such action as may be permissible in law, strictly in accordance with the terms and conditions of the respective agreements and by following the procedure prescribed thereunder, if they consider it necessary to bring the contractual relationship to an end.

19. Accordingly, the present writ petitions stand disposed of in the above terms.

20. The interim order passed on 11.06.2025 in WP(C) No. 3279/2025, stands vacated.

JUDGE

Comparing Assistant