GAHC010200452025

2026:GAU-AS:16406

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

Case No. : WP(C)/5228/2025

SUROJIT SEN
S/O LT ANIL KUMAR SEN R/O CHANDICHARAN ROAD, J P SARANI, HOUSE NO. 19 SILCHAR, PO RANGIRKHARI PS SILCHAR DIST CACHAR, ASSAM 788005

VERSUS

THE STATE OF ASSAM AND ORS
TO BE REP BY THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT O F ASSAM PWRD, DISPUR, GUWAHATI 6

2:THE CHIEF ENGINEER ROADS
PWRD
CHANDMARI
GUWAHATI 3
ASSAM

3:THE SUPERINTENDING ENGINEER
PWRD
CACHAR ROAD CIRCLE
SILCHAR CACHAR
ASSAM 788001

4:THE EXECUTIVE ENGINEER
PWRD
BORKHOLA AND KATIGORAH TERRITORIAL ROAD DIVISION
KATIGORAH DIST CACHAR
ASSAM 78880

Advocate for the Petitioner : MR. B J GHOSH, MR. A M S MAZUMDER,A W BARBHUIYA

Advocate for the Respondent : SC, PWD ROAD,

Linked Case : WP(C)/4799/2025

SUROJIT SEN
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J P SARANI
HOUSE NO 19
SILCHAR
PO RANGIRKHARI PS SILCHAR DIST CACHAR
ASSAM 788005

VERSUS

THE STATE OF ASSAM AND ORS
TO BE REP BY THE COMMISSIONER AND SPECIAL SECRETARY TO THE
GOVT OF ASSAM PUBLIC WORKS ROAD DEPARTMENT
DISPUR
GUWAHATI 6

2:THE CHIEF ENGINEER ROADS
PWRD
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KATIGORAH
CACHAR
ASSAM 788801

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. B. J. Ghosh, Advocate

For the Respondent(s) : Mr. B. Gogoi, Addl. AG, Assam
: Mr. M. Bhuyan, Advocate

- Date on which Judgment was reserved : NA
- Date of Pronouncement of Judgment : **05.11.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : Yes
- Whether the full Judgment has been Pronounced : NA

JUDGMENT AND ORDER (ORAL)

Heard Mr. B. J. Ghosh, the learned counsel appearing on behalf of the Petitioner in both the writ petitions and Mr. B. Gogoi, the learned Additional Advocate General as well as the Standing counsel of the PWRD appears on behalf of the Respondent Nos. 1 to 4 in both the writ petition.

2. Both the writ petitions are taken up for disposal by this common judgment and order, taking into account that the disputes raised in both the writ petitions are inter-connected.

BRIEF FACTS OF THE CASE:

3. The Office of the Chief Engineer (Roads), PWRD, Assam, had issued a Notice Inviting Tender dated 05.09.2024, thereby inviting bids for various packages for improvement and construction of roads in Tea Garden Areas under RIDF-XXX of NABARD for the year 2024-25. In the said Notice Inviting Tender, there were in total 156 packages and the present writ petition is in respect to Package No.96 (for short 'the package in question') i.e. construction of road from Jellalpore Rymbai Road to Kalaincherra BSF Camp via Nalanpur Garden LP School at Kalaincherra Tea Estate under RIDF-XXX of NABARD for the year 2024-25 and The package number in question is TE_RIDF_XXX_24_25_96. The estimated contract price was Rs.100 Lakhs, the bid security was Rs.2,00,000/-, and the tender processing fee was Rs.2,000/-. The period of completion of the work was 9 (nine) months.

4. The Petitioner, along with various other bidders, submitted their bids for the package in question. The Petitioner's bid was found to be technically responsive and upon opening of the financial bid, it was found that the Petitioner's bid was the lowest i.e. Rs.90,00,000/-. Thereupon, a Letter of Acceptance was issued on 07.03.2025 intimating the Petitioner that the Petitioner's bid was accepted by the agency and the Petitioner was directed to furnish the Performance Security in favour of the Chief Engineer (Roads),

PWRD, Assam, in the form of TDR/FDR/Bank Guarantee, as detailed in Para 34.1 of the Instruction to Bidders (for short "ITB"), for an amount equivalent to Rs.1,80,000/- within 10 (ten) days from the issuance of the Letter of Acceptance valid up to 45 days from the date of expiry of the defects liability period and sign the contract, failing which action as stated in Para 34.3 of ITB would be taken.

5. The Petitioner accordingly furnished the Performance Security in the form of a Term Deposit Advice for an amount of Rs.1,80,000/-, having a value date of 10.03.2025 and a maturity date of 10.03.2030. Verification was carried out by the Respondent Authorities to the said Term Deposit Advice and the Union Bank of India had duly verified the Performance Security so submitted on 11.03.2025.

6. It is the further case of the Petitioner that the Petitioner also signed the contract document and handed it over to the Respondent Authorities on 11.03.2025. The Petitioner further carried out inspection of the site on 18.03.2025. To the surprise of the Petitioner, the Respondent Authorities, however, did not issue the work order or provided a copy of the agreement. Under such circumstances, taking into consideration that the completion period

mentioned in the tender document was 9 (nine) months, the Petitioner filed a writ petition being WP(C) No.2963/2025. When the said writ petition was taken up by the learned Coordinate Bench of this Court on 13.06.2025, the learned Standing counsel of the Public Works Road Department had placed a parawise reply/comments dated 05.06.2025, wherein it was mentioned that the Respondent Authorities were not inclined to issue the final work order to the Petitioner. It is under such circumstances, the learned Coordinate Bench of this Court, vide the order dated 13.06.2025 in WP(C) No.2963/2025 observed that the decision of the Respondent Authorities not to issue the work order to the Petitioner should be formally communicated to the Petitioner within a period of 1 (one) week from the date of receipt of the certified copy of the order.

7. In spite of the directions passed by the learned Coordinate Bench of this Court in the order dated 13.06.2025 in WP(C) No.2963/2025 to communicate the formal decision to the Petitioner within a period of 1 (one) week from the date a certified copy of the order was served, no such information was provided to the Petitioner. On the other hand, a fresh Notice Inviting Tender dated 01.08.2025 was issued by the Chief Engineer (Roads), Public Works Roads Department. The Petitioner being aggrieved by such

actions on the part of the Respondent Authorities, filed the writ petition before this Court which is registered and numbered as WP(C) No.4799/2025.

8. This Court vide an order dated 22.08.2025, while issuing notice passed a detailed order directing that the decision not to issue the work order to the Petitioner as directed by the learned Coordinate Bench in the order dated 13.06.2025 in WP(C) No.2963/2025 be intimated to the Petitioner inasmuch as without such intimation, Petitioner's valuable right to assail such a decision is taken away. This Court further granted liberty to the Petitioner to submit his bid in pursuance to the impugned Notice Inviting Tender, which would be without prejudice to the rights of the petitioner in WP(C) No.4799/2025.

9. The records reveal that in pursuance thereto, a communication dated 24.06.2025 was handed over to the learned counsel for the petitioner on 26.08.2025 itself. Being aggrieved by the communication dated 24.06.2025, which was served upon the learned counsel for the petitioner on 26.08.2025, the Petitioner had filed the second writ petition being WP(C) No.5228/2025.

10. This Court vide an order dated 08.09.2025 issued notice and

further directed that all steps taken subsequent to the communication dated 24.06.2025 shall be subject to the outcome of the writ petition.

11. The records reveal that in both the writ petitions, the respondents have filed their affidavit-in-opposition. In WP(C) No.5228/2025, the Respondent No.2 has filed a preliminary affidavit as well as an additional affidavit. In the preliminary affidavit, the Respondent No.2 has alleged that while carrying out the verification, it revealed that the Petitioner had submitted a false affidavit at the time of tendering, claiming ownership and availability of required machinery and manpower and details in that regard were also provided. It was further mentioned that the Petitioner's bid was non-compliant with Clause 4.5A and other relevant provisions of the ITB.

12. To the said preliminary affidavit, an affidavit-in-reply was filed by the Petitioner giving point-by-point reply that the Petitioner was duly qualified and had all the necessary requirements for the purpose of being technically competent in the tender process. Details to that effect were also enclosed to the affidavit-in-reply.

13. An additional affidavit was filed by the Respondent No.2,

wherein it was alleged that upon carrying out necessary verifications, it was found that the Petitioner did not have the requisite qualifications in a sense that not all technical employees were found on regular payroll; the machinery listed in the tender documents was not owned, all hired upto date insurance/tax not paid; the petitioner had a history of poor performance and litigation in previous works and the firm lacked adequate experience in works of similar magnitude. It was also mentioned that in order to avoid project delays, cost escalation, and to prevent further loss to the exchequer, the department had taken the decision not to issue the work order in favour of the Petitioner.

14. The records further reveal that the Petitioner had also filed a detailed affidavit in response to the additional affidavit filed by the Respondent No.2.

15. In the backdrop of the above, let this Court now consider the respective submissions on behalf of the parties.

SUBMISSIONS MADE BY THE LEARNED COUNSELS FOR THE PARTIES:

16. Mr. B. J. Ghosh, the learned counsel appearing on behalf of the Petitioner had submitted that the Petitioner was technically

qualified and was also the lowest bidder. It is only for extraneous reasons, the Respondent Authorities did not want to issue the work order to the Petitioner in spite of issuance of the Letter of Acceptance. The learned counsel appearing on behalf of the Petitioner further drawing the reference to the affidavits-in-reply filed to the preliminary affidavit as well as the additional affidavit filed by the Respondent No.2 submitted that the Petitioner had all the requisite documents which would clearly show that the Petitioner was technically qualified and had the requisite manpower and the machineries. The learned counsel further submitted that fresh conditions were sought to be incorporated in order to deprive the Petitioner. In addition to that, the learned counsel appearing on behalf of the Petitioner submitted that the question of cancellation of the tender and going for a fresh tender is completely foreign in the facts of the instant case, inasmuch as, with the issuance of the Letter of Acceptance, a contract had come into existence more so, when the Performance Security was submitted within the time as stipulated in the Letter of Acceptance.

17. The learned counsel submitted that this is a pure case of malice in fact and malice in law and as such, this Court ought not only set aside the impugned communication dated 24.06.2025, but also the subsequent Notice Inviting Tender which was issued which

is impugned in WP(C) No.4799/2025. The learned counsel for the Petitioner further submitted that upon the Letter of Acceptance being issued, there is a formation of a contract as would be seen from Para 33.2 of the ITB, and therefore, the question of cancellation of the tender is totally misconceived. At best, steps could have been taken for termination, which is envisaged under Para 59 of the conditions of the contract, provided there was any fundamental breach of the contract.

18. Per contra, Mr. B. Gogoi, the learned Standing counsel appearing on behalf of the PWRD submitted that after the issuance of the Letter of Acceptance, due verifications were carried out and it was found that the Petitioner had submitted a false affidavit at the time of tendering, claiming ownership and availability of the required machinery and manpower. The Petitioner had suppressed the facts that he had a history of poor performance and litigation in previous works. The Petitioner also did not have the adequate experience in works of similar magnitude. The learned Standing counsel further submitted that in terms with Clause 4.8 of the ITB, when a bidder makes misleading or false representation in the forms, statements, and enclosures submitted as a proof of qualification requirement, or record of poor performance such as abandoning the works, not properly completing the contract,

inordinate delay in completion, litigation history and financial failure, etc., the bidders can be disqualified. He further submitted that issuance of a Letter of Acceptance did not create any enforceable right upon the Petitioner, and as such, both the writ petition lack merit, for which the same are required to be dismissed.

19. This Court has heard the learned counsels appearing on behalf of the parties and has perused the materials on record.

ANALYSIS AND DETERMINATION:

20. From the materials on record, more particularly, the tender summary reports dated 15.05.2025, it is apparent that the petitioner along with four other bidders were held to be technically responsive. The petitioner was also the lowest bidder who submitted a bid of Rs.90,00,000/- for the package in question. The Letter of Acceptance was issued on 07.03.2025, asking the Petitioner to deposit the performance security equivalent to Rs.1,80,000/- in the form of TDR/FDR/Bank Guarantee. The Petitioner duly submitted the Term Deposit Advice on 10.03.2025 which is within the period of 10 days as mentioned in the Letter of Acceptance.

21. In the backdrop of the above, let this Court now take note of some of the provisions of the tender. The Notice Inviting Tender contained various Sections. Section 1 is the Instruction to Bidders. The Instruction to Bidders had various parts. Part F is with the heading "Award of Contract". Para 33 of the Instruction to the Bidders is of relevance inasmuch as it is under the heading "Notification of Award and Signing of Agreement". The said Para being relevant is reproduced herein under:

"***33. Notification of Award and Signing of Agreement***

33.1 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 Conditions of Contract called the "Letter of Acceptance") will state the sum that the Employer will pay the Contractor in consideration of the execution, completion and maintenance of the Works by the contractor as prescribed by the contract (hereinafter and in the contract called the "Contract Price").

33.2 The notification of award will constitute the formation of the Contract, subject only to the furnishing of a performance security in accordance with provision of Clause 34.

33.3 The Agreement will incorporate all Agreement between the Employer and the successful Bidder. The successful bidders will furnish performance security within 10 (ten) days and sign the agreement

within 21 (twenty one) days following the notification of award (letter of acceptance).

33.4 Upon the furnishing by the successful Bidder of the performance security, the Employer will promptly notify the other bidders that their Bids have been unsuccessful."

22. From a perusal of the above quoted Para and more particularly Para 33.1, it appears that the bidder whose bid is accepted would be notified of the award by the employer prior to the expiration of the bid validity period. This letter by which such intimation shall be made shall be called the Letter of Acceptance. Para 33.2 is of vital significance, inasmuch as, it is mentioned that the notification of the award would constitute the formation of the contract and the exception being the furnishing of the performance security in accordance with the provisions of Para 34.

23. Para 34 of the ITB refers to the Performance Security. The said Para 34 being relevant is reproduced herein under:

"***34. Performance Security***

34.1 Within 10 (ten) days of issue of the letter of acceptance, the successful Bidder shall deliver to the Employer a performance security in any of the forms given below for an amount equivalent to 2% of the contract price plus additional security of unbalance bids in accordance with Clause 29.5

of ITB and Clause 52 of conditions of Contract.

- ***A bank guarantee in the form given in section 8; Or***
- ***Bank FDR.***

Validity Period: As Below

(i) Performance security shall be valid for the period of 45 days after the expiry of Liability Period of 5 (Five) years from the date of completion of work.

34.2 If the performance security if provided by the successful bidder in the form of a bank Guarantee, it shall be issued either (a) at the bidders option, by a nationalized/schedule Indian Bank or (b) by a Foreign Bank located in India approved by RBI and acceptable to the Employer.

34.3 Failure of the successful bidder to comply with the requirements of Sub-Clause 34.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the bid security.

34.4 Deleted."

24. A conjoint reading of Para 33 and 34 of the Instruction to Bidders would show that the notification of the award would constitute the formation of the contract, and it is only when the Performance Security is not furnished, then only the award of the contract can be cancelled by forfeiting the bid security. This is the

mandate of Para 34.3. In other words, the issuance of the Letter of Acceptance on 07.03.2025 and the submission of the Performance Security on 10.03.2025 led to the formation of the contract between the Petitioner and the Respondent Authorities. It is well settled that once the contract has been formed, the discharge of the said contract can only be as per the terms of the Indian Contract Act, 1872 or the terms of the contract. Therefore, the question of cancellation of the Letter of Acceptance is completely foreign once the contract has been formed.

25. This Court now finds it relevant to take note of the communication dated 24.06.2025, which is assailed in WP(C) No.5228/2025. A perusal of the said communication dated 24.06.2025 assigns no reasons as to why the work order was not issued and the Respondent Authorities are not willing to permit the Petitioner to perform his part of the contract. In the preliminary affidavit as well as in the additional affidavit reasons have been assigned.

26. At this stage, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of ***Mohinder Singh Gill and Another Vs. Chief Election Commissioner, New Delhi and Others*** *reported in* ***(1978) 1 SCC 405*** and more particularly

Paragraph No.8, wherein the Supreme Court observed that an order passed has to be judged on the basis of the reasons contained in the said order and not upon subsequent explanation being provided by way of affidavit. Paragraph No.8 of the said judgment being relevant is reproduced herein under.

> "***8.*** *The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:*
>
> > "*Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.*"
>
> *Orders are not like old wine becoming better as they grow older.*"

27. Now let this Court take into consideration the challenge to the Notice Inviting Tender dated 01.08.2025 which is the subject matter of challenge in WP(C) No.4799/2025. In the foregoing discussions, this Court has categorically held that upon the issuance of the Letter of Acceptance and submission of the

Performance Security, there is a formation of the contract. Once the contract has been formed, such contract has to be discharged as per the modes available under the Indian Contract Act, 1872, or as per the terms and conditions of the contract between the Petitioner and the Respondents. Taking into account the reasons so assigned, it may at best be a case of a termination of a contract and under no circumstances, it can be a case of a cancellation of the Letter of Acceptance to deprive the Petitioner of the benefits of the formation of the contract between the Petitioner and the Respondents.

28. Under such circumstances, in view of the existence of subsisting contract between the Petitioner and the Respondents in respect to the package in question, the Respondent Authorities could not have gone for a fresh tender in respect to the same package. It is therefore the opinion of this Court that the Notice Inviting Tender dated 01.08.2025, insofar as the package in question is concerned, which is assailed in WP(C) No.4799/2025, cannot be sustained in law.

CONCLUSION:

29. Accordingly, both the writ petitions stand disposed of with the following observations and directions:

(i) The issuance of the Letter of Acceptance, coupled with the submission of the Performance Security by the Petitioner within the time permitted have led to the formation of a contract between the Petitioner and the Respondents.

(ii) Upon the formation of the contract between the Petitioner and the Respondents, the Respondent Authorities cannot nullify the said contract by cancelling the Letter of Acceptance. The recourse must be in accordance with the modes permissible under the Indian Contract Act, 1872, or the terms of the contract entered into between the Petitioner and the Respondents. In the instant case, at best, it may be a case for termination of the contract, subject to there being a fundamental breach of its terms and conditions.

(iii) The impugned communication dated 24.06.2025 issued by the Chief Engineeer, PWRD is set aside and quashed.

(iv) The impugned Notice Inviting Tender dated 01.08.2025, insofar as the package in question is concerned, is set aside and quashed.

(v) This Court clarifies that the setting aside of the Notice Inviting Tender dated 01.08.2025 is limited only to the package in question and would not affect any other packages which is not the subject

matter of the present proceedings.

(vi) It is further observed that the instant judgment would not come in the way of the Petitioner or the Respondent Authorities to take any other steps in pursuance to the formation of the contract.

Bijoy Saha

Digitally signed by Bijoy Saha
Date: 2026.11.06 20:19:47 +05'30'

JUDGE

Comparing Assistant