GAHC010208462026

2026:GAU-AS:16326

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

Case No. : WP(C)/5180/2026

PURBANCHAL BUILDTECH PVT LTD
HOUSE NO 2 SEWALI PATH F A AHMED NAGAR SIX MILE GUWAHATI KAMRUP METRO ASSAM 781022 REPRESENTED BY ONE OF ITS DIRECTORS SRI BHASKAR GOSWAMI SON OF SRI AMBIKA PAD GOSWAMI RESIDENT OF VILLAGE BARGAON PO BIHDIA DISTRICT KAMRUP ASSAM 781381

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE SPECIAL COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT OF ASSAM PUBLIC WORKS ROADS DEPARTMENT DISPUR GUWAHATI 781006

2:THE CHIEF ENGINEER (EAP)
PUBLIC WORKS ROADS DEPTT.
ASSAM
FATASIL AMBARI
GUWAHATI 781025

2:THE CHIEF ENGINEER EAP
PUBLIC WORKS DEPARMENT ASSAM FATASIL AMBARI GUWAHATI 78102

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

For the petitioner : Mr. K.N. Choudhury, Sr. Adv
: Mr. R.M. Deka, Adv

For the Respondents : Mr. P. Nayak, Addl. AG

Date of reserve of the judgment : 02.11.2026
Date of pronouncement of judgment : 06.11.2026

Whether the pronouncement is of the operative part of the judgment? : Yes

Whether the judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

1. The present writ petition challenges the tender cancellation notice No. CE/ASRIP/104/2026/68 dated 10.09.2026, issued by the Chief Engineer (EAP), Public Works (Roads) Department, Government of Assam, whereby the tender process relating to Road Safety Improvement Works on State Highways and Major District Roads in Dibrugarh Division under the Assam Secondary Road Network Improvement Project (ASRIP), more particularly relating to Package No. ASRIP/A/RS-2A was cancelled. The further challenge is to a fresh procurement notice, "Request for Bids (Small Works)", under the same package, dated 10.09.2026.

2. The principal challenge to the impugned action is based on alleged non-compliance with Section 26 of the Assam Public Procurement Act, 2017, and on the ground that the cancellation is arbitrary, as it is based on allegations relating to another ongoing project without a reasoned assessment of their relevance to the present tender.

3. The facts necessary for adjudication of the controversy may first be noted.

4. Pursuant to the Notice Inviting Tender dated 10.02.2026, bids were invited for Road Safety Improvement Works of State Highways and Major District Roads in Dibrugarh Division under ASRIP. The package in question relates to Package No. ASRIP/A/RS-2A**.** The estimated cost of the

work was approximately Rs.22.88 crore.

The petitioner participated in the tender process along with another bidder, Sri Numal Saikia. Upon evaluation, both bidders were found technically qualified and accordingly, their bids were opened on 25.05.2026. The petitioner quoted Rs.21,49,54.945/-, approximately 6.05% below the estimated cost, and was ranked L-1. The other bidder quoted Rs.21,61,72,364/-, approximately 5.52% below the estimated cost, and was ranked L-2.

The Bid Evaluation Committee recommended award of the work to the petitioner at its quoted price.

5. The Tender Committee considered the matter in its meeting held on 07.08.2026. The record reveals that some members of a political party, through the local MLA, had lodged complaints against the petitioner regarding the poor quality and delays in executing of the road construction work under Asom Mala 2.0 in the Digboi LAC. Consequently, the District Commissioner, Tinsukia, conducted an inquiry, which was followed by another inquiry by senior officers of the Public Works Department.

The Tender Committee noted the inquiry reports and, referring to the contractor's alleged poor performance in the ongoing project, recommended retendering the work, which the highest competent authority also approved.

6. Accordingly, by the impugned notice dated 10.09.2026, the tender was cancelled, and on the same date, a fresh Notice Inviting Tender for the said package was issued. Although the notice communicates the decision to cancel, it does not set out the reasons for that decision.

7. Mr. K. N. Choudhury, learned Senior Counsel for the petitioner, contends that the cancellation is unsustainable in law. It is submitted that the tender conditions prescribed specific criteria for

assessing a bidder's historical non-performance, and that the Tender Committee could not disregard those criteria to introduce an independent, unpublished disqualification based on allegations concerning another project.

8. It is further contended that the inquiry material was relied upon without affording the petitioner an opportunity to explain the allegations, and that the findings of the inquiry, read as a whole, do not support the conclusion that the petitioner was disqualified or that the entire procurement process ought to be abandoned.

9. The learned Senior Counsel for the petitioner has also pointed out that the Asom Mala 2.0 work was undertaken by PBZ-LZ (JV), in which the petitioner claims to have a 51% participation stake. The petitioner asserts that the joint venture work remains ongoing and that the said contract has neither been terminated for non-performance nor has it formally been determined to disqualify the petitioner from participating in future procurement processes.

10. It is further contended that the departmental inspection report also identified deficiencies on the part of departmental personnel and the consultant, and recommended corrective measures for the ongoing project, rather than the cancellation of the tender in question. The learned Senior Counsel also argues that the action taken is disproportionate to the alleged deficiencies and amounts to the blacklisting of the petitioner.

11. Per contra, Mr. P. Nayak, learned Additional Advocate General, Assam, for the respondents, referring to the affidavit in opposition, argues that the competent authority took the decision in view of complaints and the findings of the inquiry into the petitioner's performance in the Asom Mala 2.0 project.

12. According to learned counsel, under Clause 3.2.1 of Section III of the Bid Document, non-performance of a contract resulting from a contractor's deficiency in an earlier contract is a valid ground for disqualification, and the Tender Committee is competent to reverse the Bid Evaluation Committee's recommendation. Therefore, the action of cancellation of the tender cannot be termed as an arbitrary action warranting interference in the exercise of the power of judicial review of this Court, more particularly when such a decision is based on two inquiry reports confirming non-performance of the petitioner in the contract under Asom Mala 2.0.

13. According to the respondents, the petitioner had no vested right to insist on the award of the contract merely because it emerged as the lowest bidder, especially when no Letter of Acceptance had been issued.

14. I have given anxious consideration to the arguments advanced by the learned counsels for the parties. I have also considered the parties' pleadings and the materials placed on record, including the tender documents, the minutes of the Tender Committee meeting dated 07.08.2026, the inquiry reports relating to the work under Asom Mala 2.0, the note-sheets, and the impugned cancellation notice.

15. It is well-settled that a bidder does not acquire an indefeasible right to the award of a contract merely by being declared the lowest bidder. The procuring authority retains the power to reject bids or cancel a procurement process in accordance with the governing statute and the tender conditions. However, the exercise of such power is not immune from judicial review.

16. In ***Tata Cellular vs. Union of India, (1994) 6 SCC 651***, the Supreme Court explained the limits of judicial review in contractual

matters and emphasized that the Court examines the legality of the decision-making process rather than substituting its own assessment for the administrative authority. In ***Jagdish Mandal vs. State of Orissa***, ***(2007) 14 SCC 517***, the Supreme Court reiterated that interference in tender matters is warranted only where the process is arbitrary or irrational and where the public interest is affected. The Supreme Court reiterated the same restraint in ***Michigan Rubber (India) Limited v. State of Karnataka, (2012) 8 SCC 216***.

17. These decisions, however, do not confer an unrestricted discretion upon the procuring authority. The procuring authority must act within the governing legal framework, on relevant considerations, and for a purpose which the law permits. Judicial restraint in public contract matters does not require the Court to sustain a decision where the record fails to disclose a rational connection between the material relied upon and the action taken.

18. The Assam Public Procurement Act 2017 (hereinafter referred to as the Act, 2017) recognizes the procuring entity's authority to prescribe qualification requirements relating to a bidder's financial, technical, and professional capacity and experience.

Section 7 of the Act, 2017 requires that the bidding documents set out the qualification requirements and apply them uniformly.

Section 7(5) further requires the procuring entity to evaluate bidders' eligibility and qualifications only in accordance with the requirements specified in the bidding documents. More specifically, Section 14(6) of the Act, 2017, expressly provides that the procuring entity shall not use any criteria or procedure other than those mentioned in the bidding documents when evaluating bids.

19. The legislative mandate, therefore, requires the procuring

authority to evaluate bids by applying the criteria it prescribed and notified to all prospective bidders.

20. The Assam Procurement Rules, 2020 (hereinafter referred to as the Rules, 2020) reinforce this requirement.

Rule 15(2) provides that all bids shall be evaluated solely on the basis of criteria specified in the bidding documents.

Rule 15(3) further makes it clear that price bids are to be evaluated only amongst those bids which meet the eligibility, qualification and techno-commercial criteria prescribed in the bidding documents.

The requirement is even more explicit in Rule 23(14)(v), which provides that the evaluation of technical bids shall be based solely on the criteria specified in the bidding documents and that such criteria shall not be waived even where none of the bidders meet them. It further provides that if none of the bids are technically acceptable or none meet the prescribed criteria, the procurement process shall be cancelled and fresh bids be invited without opening the financial bids.

Rule 23(14)(iv) also prohibits any substantive change to qualification information.

21. The statutory and regulatory scheme thus makes it clear that qualification criteria cannot be diluted during the evaluation process. Such a requirement is an essential safeguard to ensure transparency, equal treatment and a level playing field amongst all prospective bidders.

22. In the present case, Section 26 of the Assam Public Procurement Act, 2017 expressly governs the power of cancellation.

Sub-section (1) of Section 26 permits the procuring entity to cancel the procurement process at any time before the acceptance of the successful

bid, for reasons to be recorded in writing.

Sub-section (3) requires the procuring entity to immediately communicate the decision and the reasons for cancellation to all bidders who participated in the procurement process.

Therefore, the statutory scheme recognizes the power to cancel; however, it subjects its exercise to the requirement of recording reasons and communicating the decision along with those reasons.

23. The requirement of recording reasons is not an empty formality. It enables the authority to demonstrate that it took the decision on relevant considerations and in accordance with law. Such a requirement serves another purpose: it informs participating bidders of the basis on which the process ended and allows the decision to be examined against the applicable statutory and tender framework.

24. Therefore, these two requirements must be given effect to. An internal administrative decision does not dispense with the statutory obligation to communicate the reasons for cancellation. In the present case, the cancellation notice dated 10.09.2026 merely communicates the decision to cancel the tender. It does not disclose the reasons for such cancellation.

25. Before this Court, the respondents rely upon the minutes of the Tender Committee meeting dated 07.08.2026, which refer to the complaints and inquiry reports concerning the petitioner’s performance in the ongoing Asom Mala 2.0 project.

26. A perusal of the minutes discloses the broad considerations the Committee weighed. Accordingly, this Court cannot hold that the departmental record contains no rationale.

27. However, the minutes of the meeting dated 07.08.2026 and the inquiry report reveal that the Tender Committee's concerns do not

demonstrate a reasoned application of the tender conditions or adequately explain why those concerns warranted the cancellation of the entire procurement process. In any event, it is admitted that the reasons were not communicated either through the impugned cancellation notice or by any other means required under Section 26(3) of the Act of 2017.

28. Now, coming back to the inquiry materials, the materials placed before this Court show that the District Commissioner's report recorded allegations and deficiencies concerning the quality of work, including aspects of bituminous layers, concrete works, drainage, and related construction activities. It also refers to a work stoppage arising from a dispute.

29. For the sake of completeness, this Court proposes to reproduce the relevant portion of the inquiry report of the District Commissioner as follows:

> 5. **Observations/Findings**
>
> **a. Quality Audit**
>
> **Layer Thickness Deficit**: At multiple inspection points, the compacted thickness of the bituminous and non-bituminous layers was found to be below the minimum specifications outlined in the estimates.
>
> **Material Inconsistency**: Certain samples contained an excessive percentage of fine aggregates, exceeding permitted limits and compromising the road's load-bearing capacity. Additionally, the RCC box culverts suffered from improperly proportioned concrete materials and steel alloys that failed to meet required specifications, thereby undermining both the quality and structural integrity of the culverts.
>
> **Sub-base Instability**: In specific sections where sample was extracted, the Water Bound Macadam (WBM) layer did not meet the required composition, posing a risk of premature cracking and potholes.
>
> **Drainage Infrastructure Deficiencies**: Inspections of the existing drainage

system revealed multiple structural and geometric deficiencies, Geometrically, the drains exhibited poor alignment and uneven flooring. Structurally, the concrete sections demonstrated significant honeycombing, and the mandatory weep holes were entirely omitted from the construction. These issues collectively compromise both the hydraulic efficiency and structural integrity of the drains.

It is also to be noted that the deficiencies observed were informed by the Consultancy Team to the authority via a Monthly Progress Report or on daily basis through WhatsApp group of the PWRD Department (Ref A-VII)

b. Inventory and Status Report of Paver Blocks

A total of 9,86,700 paver blocks were originally installed over an area of 25,300.00 square meters. The Executive Engineer (EE), PWRD, has provided the following status update regarding their current utilization and disposal (Ref Annexure VIII & IX):

Damaged Blocks: Approximately 40% of the total inventory was damaged due to aging and the dismantling process.

Stolen Inventory: Around 4,00,000 blocks were reported stolen, for which FIR has been registered with the Officer-in-Charge (OC), Digboi.

Diverted/Utilized: A large portion of the paver blocks amounting to about 82000 has been repurposed and utilized in various other government and non-government projects.

Departmental Custody: The PWRD, Digboi & Margherita TR Division, Tinsukia currently retains custody of approximately 28,000 dismantled blocks.

Pending Dismantling: An additional 80,000 blocks remain on-site waiting to be dismantled.

c. Allegation of misconduct by Matlebuddin Ahmed

The deep-seated dispute between Bhaskar Goswami, the contractor and authorized representative of PBPL and Manas Protim Dahutia, the petitioner-representing the BJYM, Tingrai Mandal Committee-involves long-standing allegations of misconduct against Matlebuddin Ahmed, along with a history of reported verbal and physical altercations. These claims are extensively documented in numerous petitions submitted by both parties to various

government agencies (Ref-Annexure IV, V, VI). The animosity between the two sides escalated further on May 14th, 2026, when a heated argument broke out during the course of the official inquiry. Given the volatile nature of the conflict, it is recommended that the police administration thoroughly investigate the mutual allegations of assault and threats, strictly adhering to established legal rules and procedures.

6. Recommendations

The integrity of the Asom Mala 2.0 project rests on strict adherence to quality and timely completion. Minor patches or superficial fixes will not suffice where the structural foundation is compromised.

Actionable items:

i. Total reconstruction is carried out in every section where sample testing/investigation indicated a deficit including the drain at Km 16+300-16+350 RHS and the RCC Bax culverts at Km 18+187 RHS and Km 12+380 LHS.

ii. Accurate layer assessment of the entire stretch at regular intervals using appropriate equipment such as DBM Core cutting machine and other similar testing instruments.

iii. The Implementing department/agency should require the contractor to account for the poor workmanship and the use of substandard materials on the project.

iv. Reshuffling of the PWRD officials currently on this project is a move that could rebuild public trust in the administration.

The following steps should be prioritized before resuming construction of the remaining percentage of work:

1. **Dismantling of Non-Compliant Sections**: The identified "deficit areas" must be stripped back to the sub-grade level.

2. **Relaying as per Estimates**: Fresh materials must be laid in strict accordance with the approved plan and estimates to ensure the road can handle projected traffic volumes.

3. Enhanced Supervision: A more rigorous oversight mechanism should be

placed during the reconstruction phase to prevent a recurrence of these lapses.

4. **Precautionary works**: Proper signages and barricading at vulnerable locations using bamboo and reflective materials for visibility during dark.

30. The subsequent departmental inspection report recorded certain deficiencies requiring rectification, including shortcomings in the culvert and drainage works and workmanship issues. At the same time, the report noted that certain measurements conformed to the prescribed specifications, found no major material inconsistencies in the aspects examined, and identified deficiencies in supervision and other areas for which departmental personnel and the consultant were also found responsible. Consequently, the report recommended corrective and contractual measures for the ongoing project.

31. For the sake of completeness, this Court proposes to reproduce the relevant portion of the Inspection Report:

a. Quality Audit

The field inspection has been carried out with the PWRD officials of Digboi & Margherita TR Division headed by Sri Achyut Kumar Baruah, EE, Sri Binod Kr. Chaubey, AEE, Digboi TR Sub Division, officials from RITES Ltd (Consultancy Services for Third Party Monitoring & Quality Control under Asom Mala 2.0) -Sayan Barman (RE), Suraj Kashyap (Asst. Highway Engineer), Ramesh Kr. Jha (QC Engineer) and the contractor's representative, headed by Chinmay Shivam, Project Manager, PBPL, and the para-wise test findings and observations are as follows: (Reports & photographs are enclosed separately).

Layer Thickness:

As per above findings, the compacted thickness of the bituminous and non-bituminous layers were found to be as per the specified thickness as outlined in the DPR provisions, except for some minor variations which may be adjusted during the execution of the next overlay layers to maintain the overall crust thickness as per contract provisions.

Material Inconsistency:

As above, no major noticeable material inconsistency recorded except some minor variation, which may be ignored comparing to the executed volume of work.

Sub-base Instability:

As above, no major Sub-Base/ Base Instability has been noticed except some minor variation which may be ignored comparing to the executed volume of work.

Drainage Infrastructure Deficiencies:

As above, some noticeable poor workmanship has been detected and appropriate remedial measures should be taken hy dismantling and re-constructing the damage wing walls of Bax Culvert at Km 12+400 (LHS) as well as dismantling and re-constructing the defective drain cum foot path work....

Inventory and Status Report of Paver Blocks

As above, it is found that the concern AEE/EE, PWRD, has not handed over the work site to Contractor (Possession of the site) as per contract agreement vide Section-3: Condition of Contract, Clause No.21 & Section 4: Contract Data, Clause No.14. As such, the AEE of Digbol TR Sub-Division, Digbol has lodged one FIR for the stolen ICBP blocks at the Digbei Police Station on dated 19/03/2026. (Ref-Annexure-10). Further, the AEE/EE has not maintained any proper Numerical Accounts for safe custodian of the ICBP blocks by the Contractor during the construction period.

C. Allegation of misconduct by Matlebuddin Ahmed

The inspection has been conducted and limited in view of the allegations regarding slow progress, poor quality of execution and sub-standard work as communicated by the District Commissioner, Tinsukia and therefore allegation of any misconduct by Sri Matlebuddin Ahmed has not been covered in this Inspection.

RECOMMENDATION/ACTIONABLE ITEMS AS PER TERMS OF REFERENCE:

1. **Deficiencies and defects in the project execution:**

i.Poor management and lack of initiative from the part of contractor have been

reported by the EE, PWRD for shifting of W/S pipeline/Utility shifting/shifting of Gas pipe lines/shifting of telephone cable lines etc. resulting un-necessary delay in execution of drain cum foot path from Km 0+00 to Ktm 2+600.

ii.Minor deficient in DBM layer thickness at Km 4+980 & Km 15+220 (RHS) recorded.

iii. Damage wing walls of Box Culvert at Km 12+400 (LIIS) observed.

iv. Poor workmanship in construction of drain cum foot path work for a length of 20.00m (approx.) at Km 16+400 (RHS) observed.

v.Deficient execution of Mandatory man-holes and mandatory weep holes in drain cum foot path construction at Km 16+400 (RHS) observed.

vi.Honey combing in all RCC Box culverts has been observed.

vii.Minor deficient in GSB layer thickness at Km 19+980 recorded.

viii. Noticeable slow progress in construction of drain cum footpath works has been observed (partially completed 0.30km out of 6.50km).

ix. Non-co-operative from the part of contractor with the Third-Party Monitoring and Quality Control Consultant (RITES Ltd) leading to poor quality of workmanship resulting non-rectification of defects and improper reporting of quality control reports and documentation.

x.Poor management and lack of proper guidance from the part of EE, PWRD in dealing with Contractor an[4:50 pm, 2/11/2026] Nayana: and Third-Party Monitoring and Quality Control Consultant (RITES Ltd).

xi. The EE of Digboi & Margherita TR Division, Tinsukia was found reluctant to release payment to contractor's RA Bills ignoring the role and responsibilities of Third-Party Monitoring and Quality Control Consultant (RITES Ltd).

xii. The EE of Digboi & Margherita TR Division, Tinsukia was found reluctant to release the payment to Third-Party Monitoring and Quality Control Consultant (RITES Ltd) without assuring their services provided as per clause 4 of Term of Reference (Scope of Services) of the tender agreement.

4. To examine the role and responsibilities of the Consultant Supervision Service, namely RITES Ltd, in relation to the execution, supervision and monitoring of the project works.

The Third-Party Monitoring and Quality Control Consultant (RITES Ltd) is

mainly responsible for quality of works of the project in terms of deficiency and defective works. It is also observed that there is lack of communication on part of Quality Control consultant with Contractor & PWRD officials about the defective works which further led to deterioration in quality of works. It is found that no proper Quality Control Register as well as no proper documentation has been maintained by the Quality Control Consultant regarding rectification of defective works etc. The Third-Party Monitoring and Quality Control Consultant, RITES Ltd is using the Monthly Progress Report as a media to inform the Executive Engineer about the grievances and field data regarding defect/rectification etc. instead of directly writing to the Contractor with an intimation to Executive Engineer and higher authority. As a whole, it can be inferred that the third-party monitoring & quality Control Consultant is not taking any authority, provided as per clause 4 of Term of Reference (Scope of Services) of the tender agreement.

32. In exercising its power of judicial review, this Court is not called upon in the present proceeding to pronounce on the technical correctness of each observation in the reports or to determine the respective contractual liabilities arising out of the Asom Mala 2.0 project. However, the report must be examined only to the extent necessary to ascertain whether the decision to cancel the present tender was rationally supported by the materials relied upon.

33. Read as a whole, the reports disclose concerns about the execution of ongoing work and identify deficiencies requiring attention; however, they do not, by themselves, establish that the petitioner was disqualified from participating in the present tender or that cancelling the entire procurement process was a necessary consequence of the findings.

34. In this regard, the bidding documents are particularly significant.

Section III of the Bid document deals with the Evaluation and Qualification Criteria;

Under Sub-clause 2.1, it sets out the requirement relating to the history of non-performing contracts.

The requirement stipulates that non-performance of a contract should not have occurred as a result of default on the part of the contractor since 01.01.2020.

The accompanying footnote defines non-performance by reference to the employer's decision on the contractor’s default, subject to the conditions specified therein.

Form CON-2 under Section IV of the bidding documents correspondingly requires the bidder to make a declaration regarding historical contract non-performance and, where applicable to furnish particulars of the contract and the reasons for such non-performance.

35. The aforesaid provisions indicate that the tendering authority prescribed a specific framework for assessing a bidder's historical non-performance. The criteria are not based on any complaints having been made against a contractor. At the same time, it does not equate every deficiency noticed during contract execution with non-performance resulting from a default on the Contractor's part.

36. Therefore, in the facts of the present case, the distinction between a complaint, a technical deficiency requiring rectification, and non-performance within the meaning of the stipulated qualification criteria in the bid document is material.

Therefore, the Tender Committee had to examine the inquiry material in the light of the language of sub-clause 2.1 and determine whether the facts established therein attracted the criteria prescribed by the bidding documents.

37. It is true that the inquiry reports record certain deficiencies in the execution of the Asom Mala 2.0 project. The subsequent departmental

report also records that the works are generally in accordance with the prescribed specifications, identifies deficiencies requiring rectification, and refers to shortcomings in supervision and other aspects involving both departmental personnel and the consultant.

However, this Court cannot adjudicate upon the technical correctness of those observations or the contractual responsibility of the parties in relation to that project or any deficiency that existed. This Court is concerned with whether those findings could legally form the basis for treating the petitioner as a contractor with a history of non-performance, which, admittedly, is the reason for cancelling the procurement process entirely.

38. In this regard, the provisions of section 7(5), 14(6) of the Act, 2017 read with Rules 15(2), 15(3) and 23(14)(v) of the Rules, 2020 mandate that the eligibility and qualification of bidder must be assessed strictly in accordance with the criteria prescribed in bidding documents and that no additional or unnotified criteria can be introduced during the evaluation process by the Tender Committee exercising its role in the approval process for procurement under ASRIP as conferred upon it under project operation manual of ASRIP.

39. The procuring authority, having prescribed specific criteria under sub-clause 2.1 of section III of the bidding documents for historical contract non-performance, was required to examine the inquiry findings within the parameters of those criteria. A mere complaint and adverse observation regarding execution, or a deficiency requiring contractual rectification, without a determination satisfying the stipulated condition, cannot be equated with non-performance within the bidding documents.

40. This court therefore finds that the material relied upon by the Tender Committee does not demonstrate that the petitioner attracted the prescribed criteria of historical contract non-performance to overrule the

recommendation of the bid evaluation committee. Therefore, the decision to cancel the tender, founded on a general assessment of alleged poor performance without undertaking such an examination, cannot be sustained merely on the basis of the Tender Committee's power under the ASRIP manual and the procuring authority's general discretion. Such discretion must be exercised within the statutory and regulatory framework governing the procurement process, that too without there being any defect in the tender process and/or general policy change

41. There is a further aspect that cannot be overlooked.

The Tender Committee recorded the petitioner's alleged poor performance in the ongoing Asom Mala 2.0 project as the reason for recommending rebidding. If it is left unqualified and treated as an established determination of the petitioner's unsuitability, such a reason may have consequences beyond the cancellation of the present tender.

In a fresh tender, the same assessment may be relied upon to question the petitioner's eligibility at the threshold. The assessment may also be invoked in subsequent procurement processes.

Therefore, the concern is not confined solely to the petitioner's claim to be considered in the cancelled tender; it also relates to the potential continuing consequences of an adverse assessment not shown to have been made in accordance with the prescribed criteria.

42. The impugned cancellation is admittedly not based on a general policy change or a defect affecting the procurement process itself. The Tender Committee recorded the reason as the petitioner's alleged poor performance in a separate ongoing project. The inquiry findings were relied upon to question the petitioner's suitability for the tender process, despite its technical qualifications and its position as the lowest bidder.

In these circumstances, before relying on the disputed adverse findings to

the petitioner's prejudice, fairness required that the petitioner ought to have been given a reasonable opportunity to explain its position and that, if submitted, the explanation ought to have been considered in accordance with the tender conditions.

43. The decision also fails to test the proportionality.

The tender committee's concern relates to the petitioner's performance in another ongoing project. The authority had to consider whether the material disclosed any failure that attracted any prescribed qualification criteria and whether that concern justified cancelling the entire procurement process. The petitioner was found technically qualified, and its financial bid was recommended for acceptance. In these circumstances, the impugned action was disproportionate, as it did not first establish relevant deficiencies in the petitioner’s eligibility under the tender conditions. The decision does not explain why such an extreme course was necessary.

44. The respondents are correct that the petitioner's position as L-1 did not confer an automatic right to award the contract. However, such proposition does not answer the challenge raised in the present petition. The petitioner does not succeed in the present proceeding merely because it quoted the lower price; its challenge succeeds because the exercise of the statutory power of cancellation must conform to the governing law. The absence of an indefeasible right to contract does not place the procuring authority's decision beyond the remit of Article 14 of the Constitution of India.

45. Applying the principles laid down in ***Tata Cellular*** (supra), ***Jagdish Mandal*** (supra), and ***Michigan Rubber*** (supra), this Court does not determine whether the petitioner's performance in the Asom Mala 2.0 project was satisfactory or whether the technical deficiencies recorded in the inquiry reports were ultimately established. However, the facts require

an examination as to whether the Tender Committee assessed the inquiry report and relied upon it in accordance with the tender conditions, and whether the decision to cancel the tender was supported by reasons that rationally justified that course.

46. To repeat, the Tender Committee recorded a general concern about the petitioner's performance in another project, but the record does not show that it applied the prescribed historical non-performance criteria.

Further, the cancellation notice does not state the reasons for cancellation, as required under Section 26(3) of the Assam Public Procurement Act, 2017; no other means was also adopted for compliance with such statutory mandate.

The adverse assessment relied upon may prejudice the petitioner's participation in fresh tenders and future procurement processes, without any independent determination of its default under the applicable criteria.

The cumulative effect of these deficiencies renders the decision arbitrary and unsustainable under Article 14 of the Constitution of India. Accordingly, the impugned cancellation notice dated **10.09.2026** and the fresh tender process initiated vide NIT dated **10.09.2026** stand set aside and the writ petition stands allowed. The respondents shall now proceed in accordance with the NIT dated 10.02.2026.

47. Parties to bear their own costs.

JUDGE

Comparing Assistant