

GAHC040001732026

2026:GAU-AP:192-DB



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

Case No. : WA/20/2026

The State of AP and 3 Ors
represented by the Secretary, Rural Development, Govt of Arunachal Pradesh,
Itanagar 791111

2: The Director

Age:

Occupation :

Rural Development

Govt of Arunachal Pradesh

Itanagar.791111

3: The Joint Director (RE)

Age:

Occupation :

Rural Development Department

Govt of Arunachal Pradesh

Itanagar.791111

4: The Project Director

Age:

Occupation :

Department of Rural Development

Upper Subansiri District

Daporijo

Arunachal Pradesh

VERSUS

M/s L Y Enterprises and Anr

Sikarijo Village, PO and PS Daporijo, Upper Subansiri District, Arunachal Pradesh

represented by its proprietor Shri Ladu Yekar, Son of Shri Karle Yekar, Sikarijo

Village, Po and PS Daporijo, Upper Subansiri District, Arunachal Pradesh 791122.

2:M/s R R R Enterprises

Age: 0
Occupation :
proprietor Shri Bimbo Notum Raji
Son of Sarnu Raji
Battak Village
PO and PS Daporijo
Upper Subansiri District
Arunachal Pradesh. 79112

Advocate for the Petitioner : Binter Picha, SC (RD)

Advocate for the Respondent : Duge Soki, Yombom Nasi Tamin,Kolin Dagium,Take
Kyamdo,Parswajyoti Das Nair

Linked Case : WA/21/2026

M/s R R R Enterprises
Age: 0
Occupation :
Address:proprietor Shri Bimbo Notum Raji
Son of Sarnu Raji
Battak Village
PO and PS Daporijo
Upper Subansiri District
Arunachal Pradesh. 791122

VERSUS

The State of AP and 4 Ors
Age: 0
Occupation :
Address:represented by the Secretary
Rural Development
Govt of Arunachal Pradesh
Itanagar 791111
2:The Director
Age: 0
Occupation :
Address:Rural Development
Govt of Arunachal Pradesh
Itanagar.791111

3:The Joint Director (RE)
Age: 0
Occupation :
Address:Rural Development Department

Govt of Arunachal Pradesh
Itanagar.

4:The Project Director
Age: 0
Occupation :
Address:Department of Rural Development
Upper Subansiri District
Daporijo
Arunachal Pradesh.

5:M/s L Y Enterprises
Age: 0
Occupation :
Address:represented by its proprietor Shri Ladu Yekar
Son of Shri Karle Yekar
Sikarijo Village
PO and PS Daporijo
Upper Subansiri District
Arunachal Pradesh. 791122

Advocate for : Duge Soki
Advocate for : Binter Picha appearing for The State of AP and 4 Ors: Advocate ,

:::BEFORE:::

**HON'BLE MR. JUSTICE KARDAK ETE
HON'BLE MR. JUSTICE BUDI HABUNG**

Date on which judgment is reserved : 16.02.2026

Date of pronouncement of judgment : 27.02.2026

**Whether the pronouncement is of the
Operative part of the judgment : N/A**

**Whether the full judgment has been
Pronounced : Yes**

Judgment & Order (CAV)

(Kardak Ete, J)

Heard Mr. B. Picha, learned Standing counsel, Rural Development Department, for the appellants in WA No. 20(AP)/2026 and Mr. D. Soki, learned counsel for the appellant in WA No. 21(AP)/2026. Also heard Mr. P. D. Nair, learned counsel for the respondent No. 1 in WA No. 20(AP)2026 and for the respondent No. 5 in WA No. 21(AP)/2026.

2. These 2 (two) intra-court appeals are directed against the judgment and order dated 09.01.2026 passed in WP(C) No. 243/2025 by the learned Single Judge, whereby the writ petition has been allowed by holding that the bid of the writ petitioner is within the permissible limit provided under Clause 20.4.3.2 of the CPWD Works Manual, 2014, thereby directing the respondent authorities to award the contract in favour of the writ petitioner.

3. Facts of the case in brief are that *the Project Director, Department of Rural Development, Upper Subansiri District, Daporijo*, the respondent No. 4 herein, issued a Notice Inviting Tender dated 11.04.2025 inviting bids from eligible Class-II contractors for "supply and procurement of materials under MGNREGA 2025-26" in respect of CD Block, Chetam, Upper Subansiri District, Daporijo (Package-VIII). The estimated cost of the work is Rs. 5,36,45,700/- (Rupees Five Crores Thirty-Six Lakhs Forty-Five Thousand Seven Hundred only). Pursuant to the said NIT, three firms including the Appellant in WA No. 21(AP)/2026 and petitioner/Respondent No. 1 & 5 participated in the tender process. The technical bids were opened on 30.04.2025 and the financial bids were opened on 01.05.2025. Upon evaluation of the financial bids, it was found that M/s L. Y.

Enterprises, Respondent No. 1 & 5 herein and the writ petitioner in writ petition, had quoted the lowest amount of Rs. 4,82,81,129.93 (Rupees Four Crores Eighty Two Lakhs Eighty One Thousand One Hundred Twenty Nine and Paise Ninety Three only), whereas the appellant No. 2 herein had quoted Rs. 4,97,22,889.85 (Rupees Four Crores Ninety Seven Lakhs Twenty Two Thousand Eight Hundred Eighty Nine and Paise Eighty Five only). However, the Tender Evaluation Board found that the bid quoted by the Respondent No. 1 & 5/writ petitioner was -10% below the estimated cost put to tender and considering the same to be an unworkable rate, did not accept the said bid notwithstanding it was the L-1 bid. Consequently, the bid of the appellant No. 2 was forwarded for approval vide order dated 02.05.2025.

4. Being aggrieved by the approval of the bid of the appellant No. 2, for award of the work, M/s L. Y. Enterprises preferred a writ petition being WP(C) No. 243/2025 challenging the Board decision and forwarding for approval dated 02.05.2025. In the meantime, the Department issued a Letter of Intent (LOI) in favour of the appellant No. 2. The appellant No. 2, thereafter submitted the requisite performance guarantee before the authorities. In the writ petition, petitioner/Respondent No. 1 & 5 contended that although its bid was below -10% of the justified rate, the same could be accepted in terms of Clause 20.4.3.2 of the CPWD Works Manual. It was alleged that the rejection of its bid was at the behest of political influence and on extraneous considerations.

5. The State respondents/appellant filed their affidavit-in-opposition denying the allegations and specifically stating that the bid of the writ petitioner, being -10% below the estimated cost, was found non-responsive. It is also stated that a justified rate had been prepared for the package of work and since the bid of the writ petitioner was admittedly below the justified rate, the same was rightly

treated as non-responsive. The appellant did not file a separate affidavit and adopted the stand taken by the State respondents. The writ petitioner/respondent No. 1 & 5, thereafter filed an affidavit-in-reply reiterating that its bid was within the permissible limit under Clause 20.4.3.2 of the CPWD Works Manual and therefore ought to have been accepted. An additional affidavit was also filed bringing on record certain provisions of the Manual for Procurement of Works, 2022, guidelines of the Central Vigilance Commission and the General Financial Rules, 2017 and further alleging that the bid quoted by the appellant No. 2 was similar to the justified rate, thereby suggesting prior acquaintance with the Bill of Quantities.

6. By the impugned judgment and order dated 09.01.2026, the learned Single Judge held that the bid of the writ petitioner/respondent No. 1 & 5, was within the permissible limit as provided under Clause 20.4.3.2 of the CPWD Works Manual, 2014 and accordingly allowed the writ petition by directing the respondent authorities to award the contract in favour of the petitioner.

7. Before the learned Single Judge, the writ petitioner/respondent No. 1 & 5 had contended that the approval dated 02.05.2025 was actuated by political and extraneous considerations and that its bid was within the permissible variation under the CPWD Works Manuals, the deviation being only 2.9% below the justified rate and therefore, being the lowest bidder, it was entitled to award of the contract.

8. The respondent authorities, on the other hand, contended that the justified rate had been fixed at (-)7.31% of the estimated cost, whereas the bid of the writ petitioner was -10% below the estimated cost and was therefore unworkable. It was contended that the concept of justified rate was introduced

precisely to prevent acceptance of unworkable bids and there had been suppression of material facts and file noting were not amenable to challenge and the bid of appellant No. 2 was the most responsive and therefore was approved. The appellant contended that Clause 20.4.3.2 of the CPWD Works Manual, 2014 was not applicable inasmuch as the said clause dealt with permissible variations where the bid is above the justified rate and not below it and since the bid of the writ petitioner was below the justified rate, the same was rightly treated as unworkable. It was also urged that evaluation of bids being a technical matter, the Court ought not to substitute its decision for that of the expert committee.

9. The learned Single Judge framed issues with regard to the applicability of Clause 20.4.3.2 of the CPWD Works Manual, the justifiability of approval of the award of work in favour of the appellant, the extent of judicial review in matters involving decisions of expert committees and whether the procedure adopted by the respondent authorities was arbitrary. Ultimately, by the judgment and order dated 09.01.2026, the learned Single Judge allowed the writ petition and directed the respondent authorities to award the contract in favour of the writ petitioner. It is contended that the conclusion and decision of the learned Single Judge, being perverse and hyper-technical, is liable to be set aside and quashed.

10. Mr. B. Picha, learned Standing counsel, Rural Development Department, for the appellants in WA No. 20(AP)2026, submits that the learned Single Judge failed to appreciate that the writ petition was itself not maintainable against a file noting. He submits that without challenging the subsequent developments, namely the order dated 02.05.2025 and the Letter of Intent (LOI) dated 06.06.2025, by way of amendment, no relief should have been granted to the

writ petitioner/respondent No. 1 & 5. By not challenging the rejection of its financial bid, the writ petitioner/respondent No. 1 & 5 had conceded to the decision of the Tender Board dated 02.05.2025 and the said order stood valid. Despite such glaring admission, the learned Single Judge ignored this fact. He submits that relief for which no prayer or pleading was made should not have been granted. More so, the learned Single Judge erroneously directed the appellants to award the work to the writ petitioner/respondent No. 1 & 5, whereas at best, the Court could have directed the appellant authorities to re-evaluate or reconsider the financial bids of all the bidders.

11. Mr. B. Picha, learned Standing counsel, submits that no any hidden criteria was applied, stating that the justified rates were prepared for three Districts, namely, Papum Pare, Kamle, and Upper Subansiri, based on the market value of each item. For Chetam CD Block, Upper Subansiri, the Project Director prepared the justified rate, which was approved by the Joint Director on 21.04.2025, fixing the justified amount at Rs. 4,97,24,886.96 (Rupees Four Crores Ninety-Seven Lakhs Twenty-Four Thousand Eight Hundred Eighty-Six and Paise Ninety-Six only), equivalent to a percentage of -7.31% *vis-à-vis* the tender value of Rs. 5,36,45,700/- (Rupees Five Crores Thirty-Six Lakhs Forty-Five Thousand Seven Hundred only). The bid of M/s LY Enterprises, the respondent No. 1 & 5/writ petitioner herein, was -10% lower than the justified rate, while the bid of M/s Salo Enterprise was -7.23% lower and the bid of M/s RRR Enterprises, the appellant No. 2, was exactly -7.31% lower, matching the justified rate. Accordingly, the bid of appellant No. 2 was accepted and the bid of the petitioner/respondent No. 1 & 5 was rejected and therefore, there is no infirmity in the decision-making process.

12. Mr. D. Soki, learned counsel for the appellant No. 2, submits that the

learned Single Judge failed to appreciate that the bid of the writ petitioner had been rejected being unworkable and that Clause 20.4.3.2 of the CPWD Works Manual, 2014, is not applicable to the case of the writ petitioner/respondent No. 1 & 5.

13. Mr. Soki, learned counsel further contends that the evaluation of tenders requires technical expertise, which the Hon'ble Court does not possess and therefore, the decision of the tender committee cannot be substituted. He submits that while dealing with the issues involved in the writ petition, the learned Single Judge committed errors both in law and fact by allowing the writ petition, thereby causing untold hardship and great prejudice to the appellant No. 2. In view of the above, the impugned order dated 09.01.2026 suffers from patent illegality and therefore, cannot be legally given effect to.

14. The learned counsels for the appellants, in support of their submissions have relied on the following judgments:

- (i). **Shanti Sports Club and Anr. Vs. Union of India and Ors.**, reported in **(2009) 15 SCC 705**;
- (ii). **Raunaq International Ltd. vs. I.V.R. Construction Ltd. and Ors.** reported in **(1999) 1 SCC 492**;
- (iii). **M/s Tama Fabrication vs. State of Arunachal Pradesh**, reported in **2020 3 GauLR 261**.

15. *Per contra*, Mr. P.D. Nair, learned counsel for the respondent No. 1 & 5/writ petitioner, submits that on 01.05.2025, the financial bids of the three technically qualified bidders were opened and the petitioner firm was found to be the lowest bidder with a bid value of Rs. 4,82,81,129.93 (Rupees Four Crores

Eighty-Two Lakhs Eighty-One Thousand One Hundred Twenty-Nine and Paise Ninety-Three only). The bid value of the second lowest bidder, being the firm RRR Enterprises, the appellant No. 2, was Rs. 4,97,22,889.85 (Rupees Four Crores Ninety-Seven Lakhs Twenty-Two Thousand Eight Hundred Eighty-Nine and Paise Eighty-Five only). The respondent No. 1 & 5/writ petitioner as the lowest bidder, it was expecting of being issued the work order and award of the contract. However, the respondents/authorities issued the impugned order dated 02.05.2025, whereby the bid of the petitioner was rejected for being -10% below the justified rate, whereas the rate quoted by the appellant was approved as it was 7.31% below the justified rate. It is contended that the tender conditions did not provide for resorting to any justified rates and therefore rejection of the petitioner's lowest bid on the ground of being lower than the justified rate amounts to application of a hidden criterion in the tender process, which was arbitrary in nature and violative of Article 14 of the Constitution of India.

16. He submits that the CPWD Works Manuals of 2014, 2019, and 2024 specifically provide that variation up to 10% of the justified rates can be accepted and only variations above 10% cannot be accepted; since the variation of the petitioner's bid was within the 10% limit, it could not have been rejected.

17. Mr. Nair, learned counsel submits that the impugned action of the respondent authorities in rejecting the lowest bid of the respondent No. 1 & 5/writ petitioner and awarding the contract to the appellant No. 2 was arbitrary and biased, influenced by political considerations. In terms of Clause 14(II) of the Special Conditions of the NIT, the contract has to be awarded to the lowest bidder as L1 and by bypassing the bid of the respondent No. 1 & 5/writ petitioner, the respondent authorities violated the terms of the NIT, which has

been rightly interfered with by the learned Single Judge.

18. Mr. Nair, learned counsel submits that Clauses 20 and 25 of the NIT are not mutually exclusive. Clause 20 specifically states that the tender shall be governed by Clause 20.4.3 of the CPWD Works Manual, under which variations over justified rates are permissible as per Clause 20.4.3.2. Under the said clause, variations up to 5% can be ignored and variations up to 10% can be allowed in peculiar situations. The respondent No. 1 & 5/writ petitioner submits that the justified rate fixed by the authorities was Rs. 4,97,24,886.96 (Rupees Four Crores Ninety-Seven Lakhs Twenty-Four Thousand Eight Hundred Eighty-Six and Paise Ninety-Six only) and the petitioner's bid of Rs. 4,82,81,129.93 (Rupees Four Crores Eighty-Two Lakhs Eighty-One Thousand One Hundred Twenty-Nine and Paise Ninety-Three only) was only 2.9% below the justified rate and therefore, the bid was within the permissible limit under Clause 20.4.3.2.

19. Mr. Nair, learned counsel submits that since the bid of the respondent No. 1 & 5/writ petitioner was the lowest and within the permissible range, the respondent authorities could not have rejected it. The respondents were wrong in holding that a bid equal to the justified rate or -7.31% could be accepted and contends that it is erroneous interpretation of terms of processing the bids. For tender works under Arunachal PWD, in terms of Clause 20.4.3.2 of the CPWD Works Manual, 2014, the lowest tenderer within a variation of 5% over the justified rate has to be considered for award of work. Therefore, he submits that no interference is warranted to the impugned judgment and order dated 09.01.2026 passed by the learned Single Judge.

20. In support of his submission, Mr. Nair, learned counsel for the respondent

No. 1 & 5/writ petitioner has relied on the following judgments:

(i). **Vice-Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Limited and Anr. Vs. Shishir Reality Private Limited and Ors.**, reported in **(2022) 16 SCC 527**.

(ii). **M. P. Power Management Company Limited, Jabalpur vs. Sky Power Southeast Solar India Private Limited and Ors.**, reported in **(2023) 2 SCC 703**.

(iii). **Ritesh Tewari & Anr. vs. State of Uttar Pradesh & Ors.**, reported in **(2010) 10 SCC 677**.

(iv). **Kimberley Club Pvt. Ltd. vs. Krishi Utpadan Mandi Parishad & Ors.**, reported in **2025 INSC 1276**.

(v). **Dutta Associates Pvt. Ltd. vs. Indo Merchantiles Pvt. Ltd. and Ors.**, reported in **(1997) 1 SCC 53**.

21. We have considered the submissions of the learned counsels for the parties and also perused the materials available on record as well as the impugned judgment.

22. Pursuant to the NIT dated 11.04.2025 issued by the appellant authority inviting bids from eligible Class-II contractors for supply and procurement of materials under MGNREGA 2025–26 in respect of CD Block, Chetam, Upper Subansiri District, Daporijo (Package-VIII) with an estimated cost of Rs. 5,36,45,700/- (Rupees Five Crores Thirty-Six Lakhs Forty-Five Thousand Seven Hundred only), three firms including the Appellant No. 2 and petitioner/respondent No. 1 & 5 participated in the tender process. The

technical and financial bids were opened on 30.04.2025 and 01.05.2025, respectively. Upon evaluation of the financial bids, it was found that M/s L. Y. Enterprises, the writ petitioner/Respondent No. 1 & 5, had quoted the lowest amount of Rs. 4,82,81,129.93 (Rupees Four Crores Eighty-Two Lakhs Eighty-One Thousand One Hundred Twenty-Nine and Paise Ninety-Three only), whereas the appellant No. 2 had quoted Rs. 4,97,22,889.85 (Rupees Four Crores Ninety-Seven Lakhs Twenty-Two Thousand Eight Hundred Eighty-Nine and Paise Eighty-Five only). The Tender Evaluation Board found that the bid quoted by the Respondent No. 1 & 5/writ petitioner was -10% below the estimated cost put to tender and considering the same to be an unworkable rate did not accept the bid. Consequently, the bid of the appellant No. 2 was accepted and forwarded for approval vide order dated 02.05.2025. Admittedly, the writ petitioner/respondent No. 1 & 5 quoted the lowest bid. A Letter of Intent (LOI) was issued in favour of the appellant No. 2 and thereafter the appellant submitted the requisite performance guarantee before the authorities.

23. The case of the petitioner/Respondent No. 1 & 5 is that its bid was below 10% of the justified rate and the same could be accepted in terms of Clause 20.4.3.2 of the CPWD Works Manual, being L1. The rejection of its bid was actuated by extraneous considerations and was in violation of the terms of the tender, as in terms of Clause 14(II) of the Special Conditions of the NIT, the contract has to be awarded to the lowest bidder (L1). Its bid was within the permissible limit under Clause 20.4.3.2 of the CPWD Works Manual and therefore ought to have been accepted. As noted hereinabove, an additional affidavit was also filed bringing on record certain provisions of the Manual for Procurement of Works, 2022, the guidelines of the Central Vigilance Commission and the General Financial Rules, 2017, further alleging that the bid quoted by

the appellant No. 2 was similar to the justified rate, thereby suggesting prior acquaintance with the Bill of Quantities.

24. The stand of the appellant state is that the bid of the writ petitioner/respondent No. 1 & 5 being -10% below the estimated cost was found non-responsive. A justified rate had been prepared for the package of work and since the bid of the writ petitioner/respondent No. 1 & 5 was admittedly below the justified rate, the same was rightly treated as non-responsive.

25. By the impugned judgment and order dated 09.01.2026, the learned Single Judge held that the bid of the writ petitioner was within the permissible limit as provided under Clause 20.4.3.2 of the CPWD Works Manual, 2014 and accordingly allowed the writ petition by directing the respondent authorities to award the contract in favour of the writ petitioner.

26. Record reveals that the justified rates were prepared for three Districts, namely, Papum Pare, Kamle, and Upper Subansiri, based on the market value of each item. In respect of Chetam CD Block, Upper Subansiri, the Project Director prepared the justified rate, which was approved by the competent authority on 21.04.2025, fixing the justified amount at Rs. 4,97,24,886.96 (Rupees Four Crores Ninety-Seven Lakhs Twenty-Four Thousand Eight Hundred Eighty-Six and Paise Ninety-Six only), equivalent to a percentage of -7.31% qua the tender value of Rs. 5,36,45,700/- (Rupees Five Crores Thirty-Six Lakhs Forty-Five Thousand Seven Hundred only). The bid of the writ petitioner/respondent No. 1 & 5 was found to be -10% lower than the justified rate, while the bid of the appellant No. 2 was exactly -7.31%, matching the justified rate. Accordingly, the bid of the appellant was accepted and the bid of the petitioner/respondent No. 1

& 5 was rejected.

27. In order to appreciate the allegation of violation of the terms of the tender, we deem it apposite to refer to and consider the relevant provisions of the Special Conditions of the NIT and the relevant clauses of the CPWD Works Manual.

28. Clause 14 of the Special conditions of tender is reproduced herein under:

“14. Awarding of work Order:

i. The tender shall be evaluated by the boards constituted by DC-Cum-DPC at district level and recommended at least three firms L1, L2 and L3 to competent authority for acceptance along with all relevant documents.

ii. The Joint Director (RE) shall further scrutiny the tender documents recommend by Project Director. The Lol will be issued to L1 Firm if the tender documents recommended by Project Director is upto the satisfaction of acceptance authority;

iii. The Project Director will issue supply order to the L1 Firms on the basis of Lol issue by the acceptance authority.”

29. A bare reading of the above clause goes to show that, for awarding of work, the tender is required to be evaluated by the Boards at the District Level and recommend at least three firms, L1, L2, and L3, to the competent authority for acceptance along with all relevant documents. The Joint Director (RE) shall further scrutinize the tender documents recommended by the Project Director. The LOI will be issued to the L1 firm if the tender documents recommended by the Project Director are up to the satisfaction of the accepting authority. The supply order is to be issued to the L1 firm on the basis of the LOI issued by the accepting authority.

30. Clause 20 of the Special Conditions lays down that the tender shall be governed by Clause 20.4.3 of the CPWD Works Manual for reasonability and

competitiveness of the rates.

31. Clauses 20.4.3 & 20.4.3.2 of the CPWD Works Manual, 2014, are reproduced hereinbelow:

“20.4.3 Reasonability and competitiveness of rates

The tender accepting authority shall satisfy himself about the reasonability of rates before acceptance of the tenders. Reasonability of rates shall primarily be assessed on the basis of justified rates. The mode of preparation of justified rates is detailed in the following para 20.4.3.1 Permissible variations over the justified rates are given in para 20.4.3. 2. (Modified vide DG/MAN/254 dt. 07.12.2012).

20.4.3.2 Acceptance of tenders at justified rates with allowable variations

Apropos provisions under para 20.4.3 variation up to 5% over the justified rates may be ignored. Variation up to 10% may be allowed for peculiar situations and in special circumstances. Reasons for doing so shall be placed on record. Tenders above this limit should not be accepted.”

32. Reading of the above clauses shows that the tender accepting authority shall satisfy himself about the reasonability of rates before acceptance of the tenders. Reasonability of rates shall primarily be assessed on the basis of justified rates. The mode of preparation of justified rates is provided under 20.4.3.1. Permissible variations over the justified rates are that variation up to 5% over the justified rates may be ignored, while variation up to 10% may be allowed for peculiar situations and in special circumstances. Reasons for doing so shall be placed on record. Tenders above this limit shall not be accepted. Thus, variation up to 5% over the justified rate may be ignored and up to 10% may be allowed for peculiar situations and special circumstances, for which reasons have to be placed on record.

33. In the present case, the justified rates were prepared based on the market value of each item in respect of Chetam CD Block by the appellant authorities

and were approved on 21.04.2025, fixing the justified amount at Rs. 4,97,24,886.96 (Rupees Four Crores Ninety-Seven Lakhs Twenty-Four Thousand Eight Hundred Eighty-Six and Paise Ninety-Six only), equivalent to a percentage of -7.31% qua the tender value of Rs. 5,36,45,700/- (Rupees Five Crores Thirty-Six Lakhs Forty-Five Thousand Seven Hundred only). The bid of the writ petitioner/respondent No. 1 & 5 was found to be 10% lower than the justified rate, whereas the bid of the appellant No. 2 was exactly -7.31%, matching the justified rate. Thus, we are of the view that, since the justified rate is fixed at Rs. 4,97,24,886.96 (Rupees Four Crores Ninety-Seven Lakhs Twenty-Four Thousand Eight Hundred Eighty-Six and Paise Ninety-Six only) in terms of the above clauses of the CPWD Manual and the appellant No. 2 had quoted the exact justified rate, no illegality is shown. Although ordinarily the L1 bidder is required to be awarded the work, once the justified rate is fixed, the variation of 5% or 10% would be inconsequential.

34. It is true that the bid of the petitioner/respondent No. 1 & 5 was within the permissible variation as per the CPWD Manuals, the deviation being only 2.9% below the justified rate, and was the L1 bidder. Had there been no requirement of fixing the justified rates, in normal circumstances, the petitioner/respondent No. 1 & 5 would have been entitled to the award of the contract. However, since the justified rates were fixed and the appellant No. 2 had quoted the exact justified rates, unless glaring arbitrariness or illegality is established, we see no reason to interfere with the decision-making process. We find that the learned Single Judge appears to have not considered this aspect and reached a conclusion solely on the premise that, since the petitioner/respondent No. 1 & 5 was the L1 bidder whose bid was within the permissible variation under the CPWD Manuals (deviation being only 2.9%

below the justified rate), they were entitled to be awarded the work. We respectfully disagree with this reasoning, as the justified rate had been fixed at -7.31%, while the bid of the petitioner/respondent No. 1 & 5 was -10%. Therefore, the bid of the petitioner/respondent No. 1 & 5 was found unworkable, despite being L1, as the concept of the justified rate is introduced precisely to prevent the acceptance of unworkable bids.

35. It is a settled proposition of law that price may not always be the sole criterion for awarding a contract. Often, when an evaluation committee of experts is appointed to evaluate offers, the special knowledge of the expert committee plays a decisive role in determining which is the best offer and the price offered is only one of the criteria. At times, a higher price for substantially better quality of work can be legitimately paid in order to secure proper performance of the contract and ensure good quality of work, which is as much in the public interest as a low price. The Court should not substitute its own decision for that of an expert evaluation committee.

36. Regard being had to the contention of learned counsels for the appellants that the writ petition was itself not maintainable against a file noting and without challenging the subsequent developments, namely the order dated 02.05.2025, and the Letter of Intent dated 06.06.2025, by way of amendment, no relief should have been granted to the writ petitioner and thereby not challenging the rejection of his financial bid, the writ petitioner had conceded to the decision of the Tender Board dated 02.05.2025, we find that although the vide order dated 02.09.2025 by which the bid of the petitioner was rejected is extracted in the file noting, the facts remain that the bid of the petitioner was rejected vide the said order dated 02.09.2025 and therefore, the petitioner has challenged the rejection, though the petitioner has not annexed the copy of the

said order except the extracted file noting. But it was desirable for the petitioner to challenge the subsequent developments, however, in our view, the same is not fatal as regards maintainability.

37. Coming to the case laws relied on by the learned counsel for the appellants, on perusal, we find no relevancy in the facts and circumstances of the present case, except in the case of **Raunaq International Ltd.** (supra), wherein the Hon'ble Supreme Court has held, which is reproduced herein below:

"... 16. It is also necessary to remember that price may not always be the sole criterion for awarding a contract. Often when an evaluation committee of experts is appointed to evaluate offers, the expert committees special knowledge plays a decisive role in deciding which is the best offer price offered is only one of the criteria. The past record of the tenderers, the quality of the goods or services which are offered, assessing such quality on the basis of the past performance of the tenderer, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, a higher price for a much better quality of work can be legitimately paid in order to secure proper performance of the contract and good quality of work - which is as much in public interest as a low price. The court should not substitute its own decision for the decision of an expert evaluation committee."

38. The judgments relied on by the learned counsel for the writ petitioner/respondent No. 1 & 5 have been carefully considered and reproduced hereinunder:

(i). In the case of **Vice-Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Limited (supra)**, the Hon'ble Supreme Court has held, which is reproduced herein below:

"...29. This court in the case of M/s Star Enterprises v. City and Industrial Development Corporation of Maharashtra Ltd., (1990) 3 SCC 280 reiterated the aforesaid concerns and stated the necessity of judicial review even with respect to the commercial transactions undertaken by the State. This court held as follows:

“10. In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for actions on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process.”

37. Such illegal procedure adopted, clearly vitiates the subsequent order by the Vice-Chairman, due to the irregularity, which goes to the root of the matter. The conduct of the appellant authorities indicate that the enquiry was not conducted with an open mind. The preexisting findings of the Principal Secretary recommending the cancellation of allocation has the potential to color the entire proceedings held subsequently just to meet the procedural requirements.”

(ii). In the case of **M. P. Power Management Company Limited, Jabalpur (supra)**, the Hon’ble Supreme Court has held, which is reproduced herein below:

“...82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. The principle laid down in Bareilly Development Authority (supra) that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal (supra), may not continue to hold good, in the light of what has been laid down in ABL (supra) and as followed in the recent judgment in Sudhir Kumar Singh (supra).

82.3. The mere fact that relief is sought under a contract which is not statutory,

will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/ inaction is, per se, arbitrary.

82.4. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into [See R.D. Shetty (supra)]. This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular vs. Union of India, (1994) 6 SCC 651.

82.5. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition.

82.6. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a Writ Petition in a contractual matter. Again, the question as to whether the Writ Petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the Writ Court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

82.8. The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a Writ Petition (See in this regard, the view of this Court even in ABL (supra) explaining how it distinguished the decision of this Court in State of U.P. and others v. Bridge & Roof Co., (1996) 6 SCC 22, by its observations in paragraph-14 in ABL (supra)).

82.9. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a Writ Petition, when actually the resolution of a disputed question of fact is unnecessary to grant

relief to a writ applicant.

82.10. The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

82.11. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the Fundamental Right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible Rule in favour of the Court turning away the petitioner to alternate Fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the Writ Court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL Limited (supra), if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL (supra). It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

82.12. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard

to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (See in this regard Kumari Shrilekha Vidyarthi and others v. State of U.P. and others, (1991) 1 SCC 212). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely malafide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.

82.13. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate Forum.

82.14. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the Writ Petition itself.

82.15. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. [See Sudhir Kumar Singh and Others (supra)]...”

(iii). In the case of **Ritesh Tewari (supra)**, the Hon’ble Supreme Court has held, which is reproduced hereinbelow:

“...26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the

power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest are coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. Petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner.”

(iv). In the case of **Kimberley Club Pvt. Ltd. (supra)**, the Hon’ble Supreme Court has held, which is reproduced hereinbelow:

“...13. It is trite that the terms of an NIT must be clear and unambiguous. If 1st respondent-Mandi Parishad intended that ‘haisiyat praman patra’ must be issued by District Magistrate alone, it ought to have specified so in the NIT conditions.

18. For the aforementioned reasons, we are of the opinion that rejection of appellant’s technical bid on ground that appellant’s certificate was not issued by District Magistrate is de hors the terms of the NIT and is liable to be quashed.”

(v). In **Dutta Associates Pvt. Ltd. (supra)**, the Hon’ble Supreme Court has held, which is reproduced hereinbelow:

“...4. After hearing the parties, we are of the opinion that the entire process leading to the acceptance of the appellant’s tender is vitiated by more than one illegality. Firstly, the tender notice did not specify the viability range nor did it say that only the tenders coming within the viability range will be considered. More significantly, the tender notice did not even say that after receiving the tenders, the Commissioner/Government would first determine the viability range and would then call upon the lowest eligible tenderer to make a counter-offer. The exercise of determining the viability range and calling upon Dutta Associates to make a counter-offer on the alleged ground that he was the lowest tender among the eligible tenderers is outside the tender notice. Fairness demanded that the authority should have notified in the tender notice itself the procedure which they proposed to adopt while accepting the tender. They did nothing of that sort. Secondly, we have not been able to understand the very concept of viability range though Sri Kapil Sibal, learned counsel for the appellant, and the learned counsel for the State of Assam tried to explain it to us. Learned counsel stated that because of the de-control of molasses, the price of rectified spirit fluctuates from time to time in the market and that, therefore,

the viability range was determined keeping in view (i) distillery cost price; (2) export pass fees; (3) central sales tax; (4) transportation charges; (5) transit wastage @ 1%; and (6) warehouse operational wastage @ 1.1/2% - vide the counter-affidavit filed by the Secretary to Excise Department, Government of Assam pursuant to this Court's orders. Sri Sibal further explained that because of the possibility of the fluctuation, the tender notice contains clause (16) which reserves to the Government the power to reduce or increase the contract rate depending upon the escalation or deceleration of the market price in the exporting States. We are still not able to understand. Clause (16) deals with post-contract situation, i.e., the situation during the currency of the contract and not with a situation at the inception of the contract. The tenderers are all hard-headed businessmen. They know their interest better. If they are prepared to supply rectified spirit at Rs.11.14 per LPL or so, it is inexplicable why should the Government think that they would not be able to do so and still prescribe a far higher viability range. Not only the rate obtaining during the period when the tenders were called was Rs.11.05 Per LPL, the more significant feature is that during the period of about more than two years pending the writ petition and writ appeal, the appellant has been supplying rectified spirit @ Rs. 9.20 per LPL. If it was not possible for anyone to supply rectified spirit at a rate lower than Rs. 14.72 (the lower figure of the viability range), how could the appellant have been supplying the same at such a low rate as Rs.9.20 for such a long period. It may be relevant to note at this stage the circumstances in which the appellant volunteered to supply at the said rate. Indo Merchantiles, the respondent herein, filed the writ petition and asked for an interim order. The learned Single Judge directed (vide Order dated June 2, 1994) that while Dutta Associates (appellant herein) shall not be given the contract, he "shall be allowed to execute the contract at the lowest quoted rate which is stated to be 9.20 by the writ petitioner. The respondent No. 3 (Dutta Associates) states that the lowest quoted rate is 11.14. If the lowest quoted rate is 9.20, it is that rate at which the contract shall be given to the respondent No.3." It is pursuant to the said order that the appellant-Dutta Associates has been supplying rectified spirit @ Rs. 9.20 per LPL since June 1994 till October 1996. The said order did not compel the appellant (Respondent No. 3 in the writ petition) to supply at the rate of Rs. 9.20p. If that rate was not feasible or economic, he could well have said, "sorry". He did not say so but agreed to and has been supplying at that rate, till October, 1996. It is equally significant to note that pursuant to the interim orders of this Court (which directed the Government to implement the orders of the Gauhati High Court with respect to interim arrangement) negotiations were held with both the appellant and the first respondent herein; both offered to supply at Rs.9.20p. The Commissioner, of course, chose the first

respondent, Indo Merchantiles, over the appellant, for reason given by him in his order dated October 14, 1996. The rate, however, remains Rs.9.20p. and the appellant's counsel has been making a grievance of the Commissioner not accepting the appellant's offer. All these facts make the so-called viability range and the very concept of viability range look rather ridiculous-and we are not very far from the end of the three year period for which the tenders were called for. Neither the interlocutory order of the learned Single Judge dated June 2, 1994 aforesaid nor does the order of the Commissioner dated October 14, 1996 passed pursuant to the interim orders of this court provide for any fluctuation in the rate of supply depending upon the fluctuation in the market rate in the exporting States, as provided by clause (16) of the Tender Conditions, which too appears rather unusual. The order of the learned Single Judge aforesaid does not also say that the rate specified therein is tentative and that it shall be subject to revision at the final hearing of the writ petition. As a matter of fact, no such revision was made either by the learned Single Judge or by the Division Bench. It is in these circumstances that, we said, we have not been able to understand or appreciate the concept of viability range, its necessity and/or its real purpose. Thirdly, the Division Bench states repeatedly in its judgment that having determined the viability range, the Government called upon only the appellant-Dutta Associates (third respondent in the writ petition/writ appeal) to make a counter-offer to come within the viability range and that his revised offer at the higher limit of the viability range (Rs.15.71) was accepted. The Division Bench has stressed that no such opportunity to make a counter-offer was given to any other tenderer including the first respondent. As the Division Bench has rightly pointed out, this is equally a vitiating factor.

5. It is thus clear that the entire procedure followed by the Commissioner and the Government of Assam in accepting the tender of Dutta Associates (appellant herein) is unfair and opposed to the norms which the Government should follow in such matters, viz., openness, transparency and fair dealing. The Grounds Nos.1 and 2, which we have indicated hereinabove, are more fundamental than the third ground upon which the High Court has allowed the writ appeal.

6. Before parting with this matter, we must also say that we have not been able to appreciate a particular observation of the Division Bench. In para-12 of its judgment, it said: "In matter like supply of spirit to warehouse, offer of low or high rate does not affect the Government revenue. The more the profit earned by the supplier, the more sales tax can be levied by the Government". We find it difficult to understand how the acceptance of a tender at a high rate does not affect the Government revenue. Secondly, we find it yet more difficult to understand the observation that more profit the supplier earns, the more sales

tax will the government realise. Sales tax is not linked with the profit. It is linked to the sale price and we see no logic in Government paying higher rate at a substantive figure and realising sales tax at a smaller figure.”

39. The aforesaid judgments are well-settled principles of law enunciated by the Hon'ble Supreme Court as regards the judicial review of tenders, namely, that the terms of the tender must be clear and unambiguous and that the procedure adopted in accepting and rejecting the tender must ensure openness, transparency and fair dealing of State largesse. Thus, having considered the issue in the present case, we find that the same cannot be pressed into service in the facts and circumstances of the case.

40. In the present case, as noted hereinabove, the justified rates were prepared based on the market value of each item in respect of Chetam CD Block by the appellant authorities and were approved on 21.04.2025, fixing the justified amount at Rs. 4,97,24,886.96 (Rupees Four Crores Ninety-Seven Lakhs Twenty-Four Thousand Eight Hundred Eighty-Six and Paise Ninety-Six only), equivalent to a percentage of -7.31% qua the tender value of Rs. 5,36,45,700/- (Rupees Five Crores Thirty-Six Lakhs Forty-Five Thousand Seven Hundred only). The bid of the writ petitioner/respondent No. 1 & 5 was found to be -10% of the justified rate, whereas the bid of the appellant No. 2 was exactly -7.31%, matching the justified rate. Thus, we are of the view that, since the justified rate is fixed at Rs. 4,97,24,886.96 (Rupees Four Crores Ninety-Seven Lakhs Twenty-Four Thousand Eight Hundred Eighty-Six and Paise Ninety-Six only) in terms of the above clauses of the CPWD Manual and the appellant No. 2 had quoted the exact justified rate, we find no illegality in the decision-making process.

41. For the foregoing reasons and conclusion, in our considered view, the

learned Single Judge has erroneously held that the bid of the writ petitioner was within the permissible limit as provided under Clause 20.4.3.2 of the CPWD Works Manual without considering the justified rates. Thus, the impugned judgment and order dated 09.01.2026 passed in WP(C) No. 243/2025 by the learned Single Judge warrants interference and is accordingly set aside.

42. In the result, both the Writ Appeals succeed and stand disposed of.

JUDGE

JUDGE

Comparing Assistant