

GAHC010239922024



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

**Case No. : WP(C)/5997/2024**

PIJUSH KANTI CHOWDHURY  
PROPRIETOR OF PUSHPANJALI VARIETIES, SON OF LATE PABITRA  
KUMAR CHOUDHURY, RESIDENT OF CHENGKURI ROAD, AZAD HIND  
LANE, BYE LANE NO.3, HOUSE NO. 09, SILCHAR- 788007, DISTRICT-  
CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM, DEPARTMENT OF MUNICIPAL  
ADMINISTRATION, DISPUR, GUWAHATI- 781006

2:THE CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM  
DEPARTMENT OF HOUSING AND URBAN AFFAIRS  
DISPUR  
GUWAHATI- 781006

3:THE DIRECTOR OF MUNICIPAL ADMINISTRATION  
GUWAHATI-6  
DISPUR  
ASSAM

4:THE DISTRICT COMMISSIONER  
CACHAR  
SILCHAR  
ASSAM

5:THE DISTRICT DEVELOPMENT COMMISSIONER CUM CHAIRMAN  
TENDER EVALUATION COMMITTEE  
CACHAR  
SILCHAR

6:THE SILCHAR MUNICIPAL BOARD  
CACHAR  
SILCHAR  
REPRESENTED BY THE EXECUTIVE OFFICER

7:THE EXECUTIVE OFFICER  
SILCHAR MUNICIPAL BOARD  
CACHAR  
SILCHAR

8:SRI DIGANTA MONDAL  
PROPRIETOR  
ISTADAM  
SON OF DULAL MONDAL  
RESIDENT OF MALUGRAM  
SILCHAR-788002  
DISTRICT- CACHAR  
ASSAM  
MOBILE NO.- 939512382

**Advocate for the Petitioner** : MR. D CHAKRABARTY, MS D.CHAKRABARTY

**Advocate for the Respondent** : GA, ASSAM, MS. R DUTTA(R-8),MR. S KATAKI (R-8),MS S MOCHAHARI(R-6,7),MR. S DUTTA(R-6,7),MR S DUTTA(R-6,7),MS K BORAH(R-6,7),MR SISHIR DUTTA(R-6,7),SC, SILCHAR MUNICIPAL BOARD

**HON'BLE MR.JUSTICE SANJAY KUMAR MEDHI**

**Advocate for the petitioner** : **Shri D. Chakraborty, Advocate.**

**Advocates for the respondents** : **Shri M. Chetia, G.A., Assam;**  
**Shri S. Dutta, Sr. Advocate, R/ 6 & 7;**  
**Ms. S. Mochahari, Advocate&**  
**Shri S. Katak, R/8.**

**Date on which judgment is** : **30.01.2026.**

**Reserved.**

**Date of pronouncement of** : **17.02.2026.**

**Judgment.**

**Whether the pronouncement** : **NA.**

**is of the operative part of the  
judgment?**

**Whether the full judgment** : **Yes.**

**has been pronounced?**

### **JUDGMENT & ORDER**

The extra-ordinary jurisdiction of this Court has been sought to be invoked by filing this application under Article 226 of the Constitution of India by putting to challenge the outcome of a Notice Inviting Tender (NIT) dated 22.07.2014 issued by the Executive Officer, Silchar Municipal Board for operation and maintenance of two parks. The relief prayed for in this petition reads as follows:

*“Under the aforestated premises, it is humbly prayed that Your Lordships may be graciously pleased to admit this Writ Petition, call for the records pertaining to Notice Inviting Tender bearing no. SMGR-80/ AMRUT/ 2024-257 11 dated 22.07.2024 issued by Respondent No. 7 and issue Notice/ Rule calling upon the Respondents to show cause as to why, a Writ in the nature of Mandamus and/ or Certiorari and/ or any other Writ, direction or Order of the like nature be not issued directing the Respondent Authorities to allot the work in connection with Operation & Maintenance of the Gandhi Bagh Park and Norsingtola Park pursuant to the Notice Inviting Tender bearing no. SMGR-80, AMRUT/ 2024-25/ 11 dated 22.07.2024 issued by Respondent No. 7 in favour of the Petitioner in view*

*of the highest offer made by the Petitioner and to set aside any Work Order, that might have been issued in favour of Respondent No. 8 whose offer is lesser than the Petitioner and on hearing the cause or causes as may be shown, to make the rule absolute and/or to pass such further other order as your Lordship may deem fit and proper.*

AND

*Pending adjudication of this writ petition, Your Lordships may be graciously pleased to suspend any Work Order, that might have been issued in favour of Respondent No. 8 in connection with Operation & Maintenance of the Gandhi Baah Park and Norsingtola Park with a direction to Respondent No. 7 to directly carry out Operation & Maintenance of the Gandhi Bagh Park and Norsingtola Park till the final adjudication of the Writ Petition.”*

**2.** The facts, as projected in the petition, in brief, are that Silchar Municipal Board (hereinafter SMB) had issued an NIT dated 22.07.2024 for Operation and Maintenance of the Gandhi Bagh Park and Norsingtola Park. The petitioner, who claims to be eligible for the allotment of the aforesaid work, had offered his bid whereby, 57% of the collection would be the share of the SMB. On the other hand, the respondent no. 8 had made an offer of 37%. The petitioner was directed to appear before the Tender Evaluation Committee and to place the plan. However, the petitioner could see that the respondent no. 8 was operating the work of maintenance. The petitioner could learn that on the grounds of lack of experience and non-furnishing of certain documents, his bid was rejected. It was also learnt that the work was allotted to the respondent no. 8 at the rate offered by the petitioner. The writ petition was accordingly instituted.

**3.** I have heard Shri D. Chakraborty, learned counsel for the petitioner. I have also heard Shri M. Chetia, learned State Counsel, Assam; Shri S. Dutta, learned Senior Counsel assisted by Ms. S. Mochahari, for the respondent nos. 6 and 7 and Shri S. Kataki, learned counsel for the respondent no. 8.

**4.** Shri Chakraborty, learned counsel for the petitioner has submitted that the impugned decision to deny the work to the petitioner in spite of him emerging as the highest bidder is illegal and arbitrary. He has submitted that the offer made by his client was 57% which was much higher than that of the offer of the respondent no. 8 which was 37%. He has also submitted that the reasons which could be gathered for such decision were lack of experience and non-submission of certain documents and the allotment has been made with the respondent no. 8 at the offer of the petitioner by private negotiation. He submits that both the reasons are factually incorrect and without any proper evaluation, the impugned decision has been taken. He has informed this Court that the petitioner came to know about the work order dated 25.09.2024 issued in favour of the respondent no. 8 after filing of the writ petition and therefore, the same is not a specific subject matter of challenge.

**5.** *Per contra*, Shri S. Dutta, learned Senior Counsel assisted by Ms. S. Mochahari, learned counsel for the respondent nos. 6 and 7 has strenuously opposed the writ petition. By drawing the attention of this Court to the affidavit-in-opposition filed on 08.01.2025, the learned Senior Counsel has submitted that the decision making process is based on relevant and germane considerations and has been taken *bona fide*. By drawing the attention of this

Court to the NIT dated 22.07.2024, more particularly, the conditions thereof, he has submitted that against Sl. No. 5 of the list of mandatory documents, there is a requirement to furnish certificate in respect of satisfactory completion of similar nature of works under the Government or Semi Government department during the last two years along with necessary testimonials. He has submitted that under Clause 27 of the Terms and Conditions, there is a mention of the amusement items in the park as provided in Annexure-A. On the other hand, from the Experience Certificate furnished by the petitioner in the district of Hailakandi, apart from the duration being of 6 months, the same was only with regard to installation and maintenance of LED lights with poles and the visitors sitting arrangement. He has submitted that the scope of work is wholly different for which, the petitioner did not have the experience.

**6.** Drawing the attention of this Court to the minutes of the meetings of SMB held on 31.07.2024, 19.08.2024 and 30.08.2024, the learned Senior Counsel for the respondent nos. 6 and 7 has submitted that all the relevant factors were duly considered and the credentials of the petitioner were verified from the Hailakandi authority from where, it could be revealed that the experience of the petitioner was not commensurate with the scope of the aforesaid NIT and the maintenance cost for the Hailakandi park could not be said to be an appropriate evaluation yardstick. He has also submitted that the work order dated 25.09.2024 issued in favour of the respondent no.8 has not been specifically challenged and on this ground alone, the writ petition is liable to be dismissed.

**7.** The learned Senior Counsel has submitted that the scope of interference by a writ court in contractual matters is absolutely circumscribed and limited to the

decision making process. He has also questioned the *locus* of the petitioner to maintain the present challenge on the ground that the petitioner is an unqualified bidder. In support of his submission, the learned Senior Counsel has relied upon the following case laws:

**i) *Raunaq International Ltd. Vs. I.V.R. Construction Ltd. & Ors., AIR 1999 SC 393;***

**ii) *Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. &Anr., (2016) 16 SCC 818;***

**iii) *Silppi Constructions Contractors Vs. Union of India &Anr., (2020) 16 SCC 489;***

**iv) *Agmatel India Pvt. Ltd. Vs. ResourSYS Telecom & Ors., (2022) 5 SCCC 362.***

**8.** The case of ***Raunaq International Ltd. (supra)*** has been cited to buttress the argument that to maintain a challenge regarding work of a contract, the party approaching the Court has to be qualified. In the cases of ***Afcons Infrastructure Ltd. (supra)***, ***Silppi Constructions Contractors (supra)*** and ***Agmatel India Pvt. Ltd. (supra)***, the principles to be followed while adjudicating a matter pertaining to grant of a contract have been laid down. For the sake of brevity, the observations made by the Hon'ble Supreme court in the case of ***Agmatel India Pvt. Ltd. (supra)*** in which, all the previous principles have been culled down are extracted hereinbelow:

“26. *The above-mentioned statements of law make it amply clear that the author of the tender document is taken to be the best person to*

*understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or sub-serving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the Constitutional Court, that, by itself, would not be a reason for interfering with the interpretation given.”*

9. Shri S. Katak, learned counsel for the respondent no. 8, while endorsing the submissions made on behalf of the SMB, has raised the issue of *locus* of the petitioner. By referring to the affidavit-in-opposition filed on 21.01.2025, the learned counsel has submitted that the requirement of experience *vis-a-vis* the eligibility criteria is essentially connected with similar nature of work. By drawing the attention of this Court to the scope of work read with Annexure-A containing the equipment and features of the parks, he has submitted that the experience claimed by the petitioner is not with regard to such equipment and features and is only with regard to visitors' sitting arrangement and maintenance of LED lights and poles. He has submitted that the experience clause, as such, is not the subject matter of challenge. He has submitted that the decision was fairly taken and the records reveal that opportunity was granted to the petitioner to justify his bid. He has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Silppi Constructions Contractors** (*supra*) and the following observations have been pressed into service:

*“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and*

*again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.*

*20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realize that the authority floating the tender is the best judge*

*of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”*

**10.** Shri Chakraborty, learned counsel for the petitioner, in his rejoinder has submitted that affidavits in reply have been filed against the affidavits-in-opposition of the contesting respondents. He has submitted that the requirement under Clause 27 is only to provide an insurance cover for the equipment in the park which were given in the list as Annexure-A and the same cannot be said to constitute the scope of work. He has also submitted that though the scope of judicial review in contractual matters is limited, there are certain exceptions wherein interference is permissible, namely, where there is *mala fide* exercise of powers, perversity in the process or nepotism and bias. He submits that in the instant case, all the exceptions are applicable. He has also submitted that while the NIT described the area as 400 sq. mt., in the affidavit, the area has been described 6400 sq. mt.

**11.** Rival submissions have been duly considered and the materials on record have been carefully examined.

**12.** Before embarking to adjudicate the issue involved *vis-a-vis* the submissions and the materials on record, we are reminded that a writ court, in exercise of

jurisdiction under Article 226 of the Constitution of India would confine its powers to examine the decision making process only. Further, the challenge is with regard to a tender process wherein, scope of such interference is limited.

**13.** Law is well settled in this field. The Hon'ble Supreme Court, after discussing the previous case laws on the jurisdiction of a Writ Court *qua* contractual matters has laid down the principles which have been already noted above. In brief, it has been laid down that the scope of judicial review in contractual matters is absolutely circumscribed as it is the owner who would be the best judge to determine as to whom the work is to be allotted and how it is to be done. Of course, there is no bar as such for interference which has to be on patent illegality, gross unreasonableness/arbitrariness or explicit *mala fides* in the decision making process.

**14.** The principal ground of challenge is that the decision making process is unreasonable and arbitrary. It may be mentioned that there is no specific challenge to the work order dated 25.09.2024 made in favour of the respondent no. 8. As an explanation, it has been contended on behalf of the petitioner that he came to know about the same after filing of the writ petition. Perusal of the records would, however, reveal that the writ petition was filed on 12.11.2024. Therefore, the explanation that the petitioner was not aware of the work order does not inspire confidence and on the other hand, reflects lack of due diligence. Nevertheless, taking the aforesaid aspect to be technical in nature, this Court has proceeded to examine the challenge on its merits.

**15.** In the affidavit-in-opposition filed by the SMB, amongst others, copies of the minutes of meetings held on 31.07.2024, 19.08.2024 and 30.08.2024 have been annexed. The said minutes, in clear terms reveal that the bid of the petitioner was duly considered. There is a clear finding that so far as the Experience Certificate is concerned, the same was in connection with a park having only visitors' sitting arrangement and LED lights with poles. The scope of the work of the present NIT can be fully understood by the list of equipment and facilities as given in Annexure-A which, admittedly, the petitioner does not fulfill. Shri Chakraborty, learned counsel may be correct in contending that Clause 27 is only with regard to providing insurance cover for the equipment mentioned in Annexure-A. However, the said list in Annexure-A also clearly gives the scope of the work. On this point, it would be required to mention the eligibility criteria which contain a list of mandatory documents which includes in Sl. No. 5, an Experience Certificate. For ready reference, the same is extracted hereinbelow:

*“5. Certificate in respect of satisfactory completion of similar nature of works under Govt. or semi Govt. department during last two years along with work order (Tenderer must have completed same nature of work at least one number in single work order in the last 2 financial years ending on 31-03-2024 under Govt./Semi Govt. or under any public sector undertaking).”*

**16.** It may be noted that such certificate of satisfactory completion has to be of **similar nature of works** which have been further explained as **same nature of work**.

**17.** The SMB, while considering the respective bids had taken note of the fact that the experience claimed by the petitioner cannot be held to be either of similar nature or same nature. In fact, in the minutes of meeting held on 19.08.2024, the same has been clearly reflected prior to which, a further opportunity was granted in the minutes of meeting dated 31.07.2024 to have a clear view of the experience claimed by the petitioner from the employer, namely, Hailakandi Municipal Board. This Court has also noted that in the subsequent minutes of meeting dated 30.08.2024, the petitioner was himself present and his views were taken wherein, he had clearly expressed that he did not have such experience of running any amusement park. The further explanation that he can reduce the expenditure by engaging family members who would serve voluntarily does not inspire confidence and may also invite other legal complications. There is also a proper discussion on the bid of the respondent no. 8 regarding his vast experience in running the parks for the last 23 months, coupled with the fact that he was agreeable to increase his offer to 57%.

**18.** With regard to the argument advanced on behalf of the petitioner that there is a difference in the area of the park mentioned in the NIT and the affidavit, the same has been explained by the learned Senior Counsel for the SMB that mention of 400 sq. mt. is only with regard to the excluded area allotted for "Khao-Gallis". This Court is also of the view that when both the parks in question have been specifically mentioned in the NIT dated 22.07.2024, the aforesaid submission cannot be countenanced inasmuch, as an intending bidder is otherwise also required to have a fair idea of the work for which the bid has been submitted.

**19.** At this stage, it would also be required to put on record the stand of the petitioner himself, taken in the affidavit-in-reply filed on 04.03.2025 to the affidavit-in-opposition of the respondent nos. 6 and 7 (SMB). In paragraph 7 of the same, the following has been stated:

*“7. That, as regards the statements made in paragraph 6 of the Affidavit in opposition filed by Respondents No. 6 & 7, your deponent begs to state that the quantum of lease area for Gandhi Bagh and Norsingtola Park was mentioned as 400 Sq.mt. in the NIT dated 22.07.2024 issued by Respondent No. 7 himself and now, as a complete somersault, the same Respondent No. 7 is deposing on oath that the lease area of Gandhi Bagh and Norsingtola Park consists of 6400 sq.mt. **Had your deponent been aware of the quantum of lease area is 6400 sq.mt. instead of 400 sq.mt. as depicted in the NIT itself, your deponent would never have participated in such Tender process.**”*

**20.** It clearly appears that the petitioner himself admits that he does not possess the requisite experience of running a similar/same nature of work which is a mandatory requirement of the aforesaid NIT.

**21.** In the conspectus of the aforesaid discussions, this Court is of the opinion that the impugned decision making process is based on relevant and germane considerations and there is no element of any arbitrariness in the same. The impugned decision making process also does not appear to be vitiated by any *mala fide*.

**22.** In view of the above, the writ petition fails and accordingly, the same is dismissed.

**23.** No order as to cost.

***JUDGE***

**Comparing Assistant**