GAHC030001952026

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

Case No. : PIL/1/2026

1.Shri Vanlalruata Sailo
S/o Thangthuama

R/o LK/C 36, Leitan K Section,

Tlangnuam (Part), Aizawl, Durtlang,

Mizoram-796025

………Petitioner

-Versus-

1. THE STATE OF MIZORAM, through

The Chief Secretary, Government of

Mizoram, New Secretariat Complex,

Khatla, Aizawl, Mizoram-796001

2. THE PRINCIPAL SECRETARY,

Finance Department, Government of

Mizoram, New Secretariat Complex,

Khatla, Aizawl, Mizoram-796001.

3. THE SECRETARY, Law & Judicial

Department, Government of

Mizoram, New Secretariat Complex,

Khatla, Aizawl, Mizoram-796001

……..Respondents

BEFORE

HON'BLE MR. JUSTICE NELSON SAILO

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Advocates for the petitioner: Mr. Kartik Jain, Adv

Advocate for the respondents: Mr. Biswajit Deb, A.G,

Mrs. Linda L. Fambawl, Addl. A.G.

Date on which judgment is reserved : 02.09.2026

Date of pronouncement of judgment : 09.09.2026

Whether the pronouncement is of the Operative part of the judgment? : No

Whether the full judgment has been Pronounced? : Yes

JUDGEMENT AND ORDER (CAV)

(Nelson Sailo, J)

Heard Mr. Kartik Jain, learned counsel for the petitioner and Mr. Biswajit Deb, learned Advocate General assisted by Mrs. Linda

L. Fambawl, learned Addl. Advocate General appearing for the State.

[2.] Brief facts of the case has already been highlighted in our Order dated 20.05.2026 and the same is being abstracted hereunder for brevity:

"*Heard Mr. Kartik Jain, learned counsel for the petitioner as well as Mr. Biswajit Deb, learned Advocate General, Mizoram, assisted by Mrs. Linda L. Fambawl, learned Addl. A.G., Mizoram.*

[2.] The learned counsel for the petitioner submits that a public spirited person has filed the instant PIL to espouse the arbitrariness and illegality committed by the State respondents in coming up with the Notification dated 15.07.2024 fixing the permissible lower limit of tender at 5% below the estimated cost and the higher ceiling at 10% above the estimated cost. Further vide Office Memorandum dated 26.09.2025 the State Government in the Finance Department has also prescribed two (2) Standard Biding Documents (SBD) for procurement of building & other related works; and for road works. He submits that as per both the SBDs certain provision and provisos of Clause-4 of the General Rules and Directions of the Government of India, Central Public Works Department amongst others has been omitted/excluded. The competent authority is therefore given an unbridled power to choose the bidder of his choice. The learned counsel

submits that the State respondents have themselves flouted the provisions of the Mizoram Public Procurement Rules, 2020 published in the Mizoram Gazette dated 12.02.2020, the Mizoram Transparency and Public Procurement Act, 2008 published in the Mizoram Gazette dated 28.04.2008 and the Government of Mizoram Notification No. PWE-7/72/71 dated 01.05.1976.

[3.] The learned counsel submits that in view of the impugned Notification as well as the Standard Bidding Document issued by the State respondents, there is no scope of having a fair play, there is no transparency and also no reasonable procedure for selecting a successful bidder, since it is already known to everyone that the lowest tenderer would be the one who has quoted 5% below the estimated cost. Under the impugned Notification and the Standard Bidding Document, the Competent Authority will be able to pick and choose the tenderer of his choice. Therefore, the Court's interference to the impugned notification and the SBDs is necessary to ensure fairness in the selection of tenderers.

[4.] Per contra, Mr. Biswajit Deb, learned Advocate General, Mizoram, submits that the instant petition is not a Public Interest Litigation but a private interest litigation. He submits that the impugned Notification has been issued in the year 2024, whereas, the instant PIL is initiated only two (2) years thereafter and purportedly in furtherance of the representation submitted by an interested person. He submits that the Notification dated 15.07.2024 is the outcome of a policy decision of the State Government and a

result of due consideration of pros and cons of such fixation. He submits that unless a limit is fixed, public interest will suffer in view of the fact that quotations will be made at a fairly low rate and thereby resulting in sub-standard works, revision of estimates and also escalation of costs. Therefore, taking into account all such issues, the Notification was issued.

[5.] The learned Advocate General, Mizoram, submits that in matters relating to tender and contract, the role of the Court is to see whether the State has acted validly and for a discernable reason and not whimsically for ulterior purpose. Insofar as the fixation of value of tenders is concerned, it is entirely within the purview of the executive and Courts have little or no role. In support of his submission, he has relied upon the case of Michigan Rubber (India) Limited Vs. State of Karnataka and Ors., (2012) 8 SCC 216 and Judgment dated 17.09.2021 of the Apex Court in Civil Appeal No. 4862-4863 of 2021(UFLEX Limited Vs. Government of Tamil Nadu & Ors.).

[6.] We have considered the rival submissions. From a perusal of the Notification dated 15.07.2024 impugned by the petitioner, we have noticed that the permissible lower limit while considering tenders is fixed at 5% below the estimated cost put to tender and the permissible upper ceiling is fixed at 10% of the estimated cost put to tender. While such is the fixation, the Clause-4 of the Government of India, Central Public Works Department is being applied by the State through the SBD for procurement of building and other related works as well as for road works. However, the original

prescription of the Government of India, CPWD under Clause-4 providing the procedure in case of more than two or more contractors having quoted the lowest rate has been omitted. All that is provided is that in the case of two or more lowest bidders, the successful bidder amongst such bidders will be decided by the competent authority. This in our prima-facie view appears to restrict competition in as much as the authority concerned has empowered itself to pick and choose the successful bidder from amongst two or more lowest bidder. The lowest bidder is already defined in terms of the impugned Notification dated 15.07.2024, whereby, the permissible lower limit is fixed at 5% below the estimated cost put to tender. There can be no argument with the principles enunciated by the Apex Court in the authorities relied upon by the learned Advocate General. The State and its instrumentalities indeed has a free hand to pick the best tenderer from amongst the valid tenders, but by the impugned Notification and the SBDs it prima-facie appears that there is no scope for having a competition amongst the tenderers and there is lack of transparency and lack of reasonable procedure for selecting successful bidder. Accordingly, in the interim, we are of the view that the impugned Notification dated 15.07.2024 as well as the SBDs for procurement of building and other related works as well as the road works should be stayed. It is ordered accordingly.

[7.] List the matter again after three (3) weeks.

[8.] In the meantime, the respondents to file their counter-affidavit."

[3.] In response to the PIL, the State respondents have filed an affidavit-in-opposition on 16.06.2026 contending inter-alia with the impugned Notification dated 15.07.2024 in fact was issued in the larger interest of the public with the primary objective of safeguarding the quality of public works and ensuring prudent utilization of public funds. They have also highlighted instances, where similar variations below and above the estimated cost put to tender have been issued which therefore would show that fixation of the lower limit of bidding is necessary. Further, reference has been made to the CPWD Manual which provides for the power to accept the lowest tender after call of tender with or without negotiation for both original and maintenance work. According to the respondents, the Competent Authority with financial powers for Rs.1 crore, 10 crore, 30 crore and 50 crore are the Executive Engineer, Superintending Engineer, Chief Engineer and the Addl. Director General/Engineer-in-Chief respectively. Further, in case of tied bids as per the CPWD Manual, the Competent Authority makes the final selection in the interest of the Government based on factors such as past performance, ongoing works, work done, quality and quantity of works executed and compliance integrity pact. The respondents thus contend that fixation of 5% lower price ceiling is intended to prevent abnormally low bids which often result in poor quality execution, substandard materials and premature deterioration of public assets. Such practices therefore could cause greater financial loss to the exchequer. The cap ensures that contractors quote realistic prices that reflect genuine costs of quality construction and maintenance.

[4.] The respondents further contend that in pursuance to the interim order dated 20.05.2026, it has been notified vide Office Memorandum dated 26.05.2026 that the Notification dated 15.07.2024 shall remain inoperative w.e.f 20.05.2026 until further orders. That in the meantime, all procurement/works shall be governed by the provisions of Mizoram Transparency in Public Procurement Act, 2008, The Mizoram Public Procurement Rules, 2020 and the applicable provisions of Clause-IV of the CPWD Manual until further instructions are issued by the Government.

[5.] The State respondents thereafter filed an additional affidavit on 03.07.2026, justifying the impugned Notification dated

15.07.2024 with regard to capping of the lower ceiling by referring to a number of decisions rendered by the Apex Court on the subject matter.

[6.] When the matter was listed on 13.08.2026, the Court recorded that from the submissions of the learned counsel for the petitioner only one point has been stressed i.e., in the event there is more than one lowest bidder, there is no fixed criteria on the basis of which the successful bidder would be selected. The submission of the learned Advocate General was also recorded that in view of the interim order dated 20.05.2026 passed by this Court, an Office Memorandum dated 26.05.2026 was issued by the Government providing that in view of the said order the provisions of Clause-IV of the CPWD Manual would be followed until further instructions are issued. The Court therefore was of the considered view that keeping the issue of maintainability of the PIL open, if the State Government come up with a selection criteria as was indicated in the said order, the grievance of the petitioner would be fully addressed and nothing more would remain in the PIL.

[7.] Thereafter, the State respondents have filed an additional affidavit on 24.08.2026, incorporating a Notification dated 19.08.2026, issued by the Finance Department (Expenditure Control Branch) on the subject "Procedure for section amongst multiple responsive lowest bidders (L-1) and determination of competent authority in procurement/works-regarding." The said Notification provides that this Court vide order dated 13.08.2026 by modifying interim order dated 20.05.2026 had granted liberty to the State to formulate an appropriate criteria for selection amongst multiple L-1 bidders and to specify the Competent Authority in relation to the contract value. Accordingly, guidelines for selection of bidder/contractor in case of tied bids was framed which includes record of past performance in contract works, record of experience in similar works, litigation, current or during the last 5 years in which a bidder is involved, record of poor performance, record of financial failure, availability of essential construction equipments and man power and bid capacity.

[8.] Further, there is also a clause preventing the near relatives of the Divisional Accountant or Engineering Officers between the grades of Superintending Engineer and Junior Engineer from participating in the tender process. Also the Competent Authority for the purpose of the guidelines would be a committee under the chairmanship of the next higher authority to the authority competent to accept the bid/tender as per delegation of financial powers in Standard Operating Procedures for CPWD Works Manual in force. A chart/table in this regard was also prepared.

[9.] In response to the above affidavit-in-opposition and two additional affidavits filed by the State, the petitioner has not filed any response. Mr. Kartik Jain, learned counsel for the petitioner submits that fixation of lower ceiling at 5% is a restriction which is unreasonable since there may be prospective tenderers who would like to submit their bid more than 5% below the estimated cost put to tender. He submits that there are instances where variations have gone up to 30% below the estimated cost put to tender. Therefore, by putting a restriction only up to 5% below the estimated cost, the same amounts to wastage of funds from the public exchequer. As the same is not in public interest, the Notification dated 15.07.2024 should be set aside.

[10.] The learned counsel submits that insofar as the

Notification dated 19.08.2026, issued by the Finance Department is concerned, the same appears to be only a procedure to be adopted during the technical bid. He submits that in a tender process there are ordinarily two bidding process i.e., technical bid and financial bid. He submits that the Notification dated 19.08.2026 covers only the technical bid and therefore, the claim of the respondents that the said procedure provided in the Notification dated 19.08.2026 is for a situation in case of more than one lowest bid is only misleading and cannot be accepted.

[11.] The learned counsel as regards the maintainability of the PIL submits that the guidelines itself provide that petitions concerning matters of public importance can be entertained as a PIL. Therefore, the issue raised in the instant PIL being a matter of public importance, the PIL is only maintainable.

[12.] Per-contra, Mr. Biswajit Deb, learned Advocate General submits that as per the guidelines issued by the Supreme Court of India based on a full Court decision dated 01.12.1988 and the subsequent modifications, cases falling under the assigned category of the compilation alone can be entertained as the PIL and that complaint against the Central/State Government Department and local bodies except those mentioned in Sl. No.1 to 10 of the compilation will not be entertained as PIL. Considering the same, the learned Advocate General submits that the instant PIL is not maintainable. In order to support his submission, the learned Advocate General amongst others has relied upon the Apex Court decision in ***Michigan Rubber (India) Limited v. State of Karnataka and Ors, (2012) 8 SCC 216*** and Judgment dated 17.09.2021 of the Apex Court passed in Civil Appeal Nos.4862 - 4863 of 2021 (***Uflex Limited v. Government of Tamil Nadu and Ors.***).

[13.] The learned Advocate General further submits that by order of this Court dated 13.08.2026, the issue in the instant PIL has also been scaled down to only one point i.e., what would be the criteria for selecting a successful bidder in the event there is more than one lowest bidder. Apart from this, the issue of maintainability has been left open to be considered. He submits that the learned counsel for the petitioner on the other hand has withheld this fact from this Court by enlarging the scope of consideration beyond what was recorded on 13.08.2026 by this Court. The learned Advocate General submits that this fact has also been taken into account subsequently by this Court on 25.08.2026. This Court by taking into account the Notification dated 19.08.2026 brought on record by way of the additional affidavit dated 24.08.2026 was of the view that the grievance of the petitioner only appeared to have been redressed. That it was only on the insistence of the learned counsel appearing on behalf of the conducting counsel that the matter was adjourned. He thus submits that the PIL should be dismissed on the ground of non-maintainability and in view of the Notification dated 19.08.2026, issued by the State Government in the Finance Department.

[14.] We have considered the submissions made by the learned counsel appearing for the rival parties. This Court on 20.05.2026 after having a prima-facie view that there appears to be lack of transparency and lack of reasonable procedure for selecting successful bid, stayed the impugned Notification dated 15.07.2024 as well as the standard bidding documents for procurement of building and other related works. Following the same, the Office Memorandum dated 26.05.2026 was issued.

[15.] Thereafter, when the matter was listed on 13.08.2026, as already stated in the preceding paragraph, the Court recorded that from the submission made by the counsel for the petitioner, only one point is now stressed which is regarding unavailability of a fixed criteria for selection of a successful bidder in the event there is more than one lowest bidder. Accordingly, it was observed that if the State Government comes up with a selection criterion to be adopted in such a situation, the grievance of the petitioner would be met and nothing would remain in the PIL. Apart from this observation, the issue of maintainability of the PIL was kept open. It was also importantly observed that the earlier interim order dated 20.05.2026 was accordingly modified to enable the State to proceed with the tender process but however, for the time being, the State Engineering Departments should follow the Office Memorandum dated 26.05.2026, till the policy of selection of a successful bidder in the event there is more than one lowest bidder as was suggested by the Advocate General is notified. Therefore, the order dated 13.08.2026 and the subsequent order dated 25.08.2026 has only scaled down the issue for consideration to (i) the maintainability of the PIL and (ii) the criteria to be followed in case of more than one lowest bidder in order to select a successful tender.

[16.] Pursuant to the order dated 13.08.2026, the State Government in the Finance Department (Expenditure Control Branch) have come up with the Notification dated 19.08.2026 providing for the procedure for selection in the event of multiple responsive lowest bidders (L-1). The guidelines for making the selection of the Competent Authority to select bidder in case of tied bids has also been provided by the said Notification. The same is already been mentioned in the preceding paragraphs, and therefore not being repeated for brevity. The said criteria was not provided in the standard bidding documents for procurement of building and other related works issued through the Office Memorandum dated 26.09.2025. All that was provided was that in case of two or more bidders who have quoted the lowest amount, the successful bidder amongst such bidders shall be decided by the Competent Authority. Therefore, lack of transparency in the selection of successful bidder was the glaring point to be considered. However, as per the Notification dated 19.08.2026, the procedure and guidelines for selecting bidder/contractor in case of tied bids have now been provided and therefore, it is seen that the issue raised by the petitioner has already been addressed.

[17.] Be that as it may, it is neither within the domain of this Court nor within the scope of judicial review to embark upon an enquiry in the present PIL as to whether a particular criterion for selection amongst successful bidders in the event of a tie is wise, appropriate or preferable, or whether any other criterion could have been evolved. In matters pertaining to policy and formulation of criteria for selection, the Government has considerable latitude to determine the manner in which such matters are to be regulated, so long as the decision is bona fide, is within the limits of the authority vested in it and does not suffer from any manifest illegality or arbitrariness. In the present case, the guidelines/criteria now prescribed do not appear to be in violation of any law, nor is there any material to suggest that the same have been framed or applied mala-fide. This Court, therefore, finds no ground to interfere with the same in exercise of its power of judicial review.

[18.] Insofar as, fixation of the lower and upper ceiling of the estimated cost put to tender, the same is now not open for consideration since the scope of the PIL has been confined only to the criteria for selecting a successful bidder in case of more than one lowest bidder apart from maintainability of the PIL.

[19.] Insofar as the maintainability of the PIL is concerned, in view of the developments that has taken place after filing of the instant PIL, more particularly, the Notification dated 19.08.2026, we are not inclined to dwell upon the same and instead leave it open for consideration in appropriate proceedings.

[20.] In the result, the PIL stands closed. Interim order/orders passed earlier stands vacated.

JUDGE **JUDGE**

Comparing Assistant