



GAHC010246512025



2026:GAU-AS:419

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

Case No. : WP(C)/6333/2025

M/S VERSHA TECHNOTRADE PVT. LTD.
REPRESENTED BY ONE OF ITS DIRECTOR SRI AAKASH SURANA, SON OF
BASANT SURANA, RESIDENT OF HOUSE NO. 42, 4TH BYELANE TARUN
NAGAR, PO DISPUR, GUWAHATI-781005, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE OFFICE OF THE CHIEF ENGINEER, PUBLIC WORKS
DEPARTMENT, BUILDINGS, ASSAM, CHANDMARI, GUWAHATI-781003.

2:THE OFFICE OF THE EXECUTIVE ENGINEER BPM BRANCH
PWD (BLDG) GUWAHATI ASSAM CHANDMARI GUWAHATI-781003.

3:M/S ALLIED CONSTRUCTION
3RD FLOOR BR TOWER 21 JANPATH LANE ULUBARI GUWAHATI-781007

4:POOJA ASSOCIATES (CONTRACT DIVISION)
PICK ME BUILDING
HB ROAD
KAMARPATTY
GUWAHATI-78100



BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri R. Choudhury

Advocates for the respondents : Shri B. Choudhury, SC, APWD,
Shri T.J. Mahanta
Shri A. Borua for R. No. 3,
Shri S.K. Poddar for R.No. 4

Date on which judgment is reserved : 07.01.2026

Date of pronouncement of judgment : **09.01.2026**

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

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

The validity and legality of a tender process in which the petitioner had participated and emerged as the 3rd lowest bidder (L3) is the subject matter of challenge in this petition instituted under Article 226 of the Constitution of India.

2. As per the facts projected, the Public Works Department had floated a tender on 29.07.2025 for construction of a Circuit House at Udalguri on EPC mode. The petitioner being interested and claiming to be eligible on all respects had participated in the said tender process. Under Clause 6 (1) of the "*Information and Guidelines for Bidders*", there was a requirement for a mandatory joint inspection of the site which the petitioner had done on 08.08.2025 and accordingly on 21.08.2025, the petitioner had submitted its bid. On 22.08.2025, the respondent nos. 3 and 4 had also submitted their respective bids. The technical bids were opened on 28.08.2025 when the bids of the petitioner and the respondent nos. 3 and 4 were found to be responsive which

was followed by opening of the financial bids. In the financial evaluation, the financial bid of the petitioner was found to be the 3rd lowest (L3) whereas the respondent no. 3 was declared to be L1 and respondent no. 4 as L2. The grievance of the petitioner is with regard to the aspect that respondent nos. 3 and 4 had formed a cartel which is in violation of Article 2 (2) (b) of the NIT. It is submitted that the bids by the said respondent nos. 3 and 4 were submitted as a cartel and therefore, the entire tender process stands vitiated and is required to be interfered with.

3. I have heard Shri R. Choudhury, learned counsel for the petitioner. I have also heard Shri B. Choudhury, learned Standing Counsel, APWD; Shri T.J. Mahanta, learned Senior Counsel assisted by Shri A. Borua, learned counsel for the respondent no.3 and Shri S.K. Poddar, learned counsel for the respondent no. 4.

4. Shri R. Choudhury, learned counsel for the petitioner, has drawn the attention of this Court to the requirement of submitting an Integrity Agreement to maintain the sanctity of a fair competition in the tender process. Article 2 is with the aspect of the Commitment of the Bidder and under Article 2 (2) (b) of the same, there was a requirement that the bidders would not enter into any undisclosed agreement restricting competitiveness or to cartelize in the bidding process. It is submitted that one of the mandatory condition was to make a joint inspection of the site and from such joint inspection made by the respondent nos. 3 and 4, it is clear that the aforesaid condition was violated. It is the case of the petitioner that the representative of the respondent nos. 3 and 4 were together while making the site inspection. The learned counsel, in this connection has drawn the attention of this Court to the site inspection report of the respondent no. 3 which is supported by a photograph. Similar site inspection

report of the same date i.e., 14.08.2025 is also submitted by the respondent no. 4 with the same photograph. It is submitted that the same demonstrates, beyond all reasonable doubt that the respondent nos. 3 and 4 were in collusion while submitting their respective bids as a result of which the sanctity of the tender process was tarnished.

5. The learned counsel for the petitioner has drawn the attention of this Court to the inferences which have been enumerated in paragraph 10 of the affidavit-in-reply filed on 22.12.2025. He has also drawn the attention of this Court to certain other contracts in which both the respondent nos. 3 and 4 have participated and has submitted that the same would demonstrate that the said respondent nos. 3 and 4 are hand in gloves in submitting bids by forming a cartel. He has also drawn the attention of this Court to the order dated 12.11.2025 passed by this Court wherein a *prima facie* view was expressed regarding formation of such cartel. He has further submitted that under the aforesaid facts and circumstances, the tender process is liable to be cancelled with the direction to initiate a fresh process. He has also submitted that he has instructions to submit that if a direction is given to debar the respondent nos. 3 and 4 from the tender process, his client is willing to do the work at the rate of the L1.

6. *Per contra*, Shri B. Choudhury, learned Standing Counsel, PWD has disputed the projection made on behalf of the petitioner. He has submitted that under Clause 6.0, there is a requirement of site visit and under Clause 6.1, such site visit is mandatory. He has submitted that the said aspect is to be certified by the concerned official and there is no requirement for attaching any photograph. He has also added that there is no restriction or stipulation that such visit has to be done by one bidder at a time. He has submitted that on the

aspect as to how a joint photograph was submitted, a letter was issued by the Additional Chief Engineer on 07.10.2025 to the Executive Engineer which was replied on the same date that the photograph was taken jointly.

7. The learned Standing Counsel has submitted that the conditions of the tender are authored by the Department and accordingly, the Department would be the best Judge to give the best interpretation. He has submitted that the Integrity Certificate has been duly executed and there is no material on record to show that there is any exchange of information. In this regard, he has drawn the attention of this Court to the affidavit-in-opposition, more particularly, the contents made in paragraph 6 which reads as follows:

“6. That, with regard to the statements made in paragraph no 8 of the writ petition; the deponent begs to state that the Integrity Agreement dated 18.08.2025 and 22.08.2025 were executed separately by the Respondent no. 3 and 4 respectively. Each agreement binds the respective bidders independently. Tender Committee found all documents in compliance of the conditions and there was no breach or irregularity noted. There was no proof of exchange of confidential information, coordination in bid pricing or restriction of competitiveness.”

8. He has submitted that the photograph cannot be a ground at all to draw any inference and the record would show that the said photograph was not taken into consideration. He has also submitted that the interim order was obtained by misleading the Court. He has placed before this Court the original records of the case.

9. Supporting the stand of the Department, Shri T.J. Mahanta, learned Senior Counsel appearing for the respondent no. 3, which is adjudged as the L1, has submitted that the inference of violation of Article 2 is on mere presumption and there is no material at all except from the photograph which is wholly irrelevant. He has also submitted that the interim order was obtained from this Court by

making a misleading submission that the same person had represented the respondent nos. 3 and 4. He has submitted that the picture was not actually required to be enclosed to the certificate of site visit and the same would rather show the *bona fide* of the competing parties. He has reiterated that there is no violation of any clause of the tender document. He has submitted that the respondent no. 3 was adjudged as the L1 in a duly conducted tender process. He has also emphasized that the petitioner had participated in the tender process and having emerged as the L3 in the financial bid has made the present challenge.

10. In support of his submission, the learned Senior Counsel for the respondent no. 3 has relied upon the case of ***Central Coal Fields Limited vs. SLL-SML (Joint Venture Consortium & Ors.)*** reported in ***(2016) 8 SCC 622***, more particularly paragraphs 47 and 48 which reads as follows:

“47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision “that no responsible authority acting reasonably and in accordance with relevant law could have reached” as held in Jagdish Mandal followed in Michigan Rubber.

48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various

decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot.”

11. Shri Poddar, the learned counsel for the respondent no. 4 has endorsed the submissions of both the learned Standing Counsel of the Department and the learned Senior Counsel of the respondent no. 3. He has submitted that there is a mandatory requirement regarding the site visit which was accordingly done by his client. He further submits that on the same date, both the representatives of the respondent nos. 3 and 4 had gone to the site and a photograph was taken jointly to substantiate such visit which was not a mandatory requirement. However, the Department has clarified that the photograph was not even taken into consideration. He has also submitted that the other tenders which are sought to be relied upon by the petitioner were open tenders and would not, by any stretch of imagination, indicate that there is any collusion between the respondent nos. 3 and 4. He has submitted that the same would rather show that there is stiff competition between the respondent nos. 3 and 4 while bidding for various works.

12. Shri R. Choudhury, the learned counsel for the petitioner in his rejoinder has admitted that while submissions were made on 07.11.2025, it was projected that the same person had represented the respondent nos. 3 and 4 as the photograph reflected two persons and one was *bona fide* assumed to be an official of the Department. He has, however, submitted that after exchange of the affidavits, it transpires that the two persons are the representatives of the respondent nos. 3 and 4. He has hastened to add that by such projection, the formation of cartel becomes more pronounced.

13. The rival submissions have been duly considered and the materials on

record including the original documents placed before this Court have been carefully perused.

14. The entire challenge projected by the petitioner is based on the ground that the respondent nos. 3 and 4 had formed a cartel which is in violation of Article 2 (2) (b) of the NIT. To substantiate the same, reliance has been placed on a common photograph enclosed by the respondent nos. 3 and 4 while submitting their bids regarding the site visit.

15. The aspect of site visit is a mandatory requirement as contained in Clause 6 (1) "*Information and Guidelines for Bidders*". For ready reference, the said Clause is extracted herein below:

"6.0 SITE VISIT

6.1 The bidder is advised to visit the site of work mandatory, at his own cost, and examined it and its surroundings to collect all information that he considers necessary for proper assessment of the prospective assignment. Site visit by the bidder is mandatory as the site is full of number of existing structures."

16. It transpires that site visit which is mandatory in nature is required to be established which has been done by the respective parties by submission of a certificate. There is no requirement at all for enclosing any photographs to substantiate the same. Nonetheless, it appears that the respondent nos. 3 and 4 in support of such site visit had enclosed a photograph which however is a common one containing the respective representatives of both the respondent nos. 3 and 4.

17. While the writ petition was presented, it clearly appears that the writ petitioner had understood that there was a common representative of the respondent nos. 3 and 4 as the second person in the photograph was presumed

to be an official of the Department. The same is fortified by the submissions of the learned counsel for the petitioner recorded by this Court in its order dated 07.11.2025, the relevant part of which is extracted herein below:

“07.11.2025

...

6. The learned counsel for the petitioner therefore submitted that it is the same person who has represented on behalf of the respondent Nos.3 & 4 who had carried out the site verification for each other.

...”

18. It becomes apparent that on such incorrect submission the interim order of stay was passed.

19. However, on exchange of affidavits, when it was clarified that the photograph in question which was common to the bids of the respondent nos. 3 and 4 had featured the two representatives of the said respondent nos. 3 and 4. On such disclosure, there has been a marked shift in the basis of the challenge. While the challenge remains to be hinged upon violation of Article 2 (2) (b), the accompanying facts have undergone a shift that a common visit was made by the representatives of the respondent nos. 3 and 4.

20. The issue which therefore arise for determination after such shift of stand is whether a visit on the same date by the two representatives of the respondent nos. 3 and 4 can be construed to be a violation of the Article 2 (2)(b) which pertains to Commitment of the Bidder. To appreciate the challenge even after the shift instant, it would be necessary to examine the aforesaid Article which reads as follows:

“Article 2: Commitment of the Bidder(s)/Contractor (s)

...

2) b) The Bidder(s)/Contractor (s) will not enter with other Bidder(s) into any

undisclosed agreement or undertaking, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to cartelize in the bidding process.”

21. There is no dispute to the fact that the respective integrity Agreements have been duly executed by the respondent nos. 3 and 4. In this connection, it would be required to examine the stand of the Department in its affidavit dated 05.12.2025, more particularly, the averments made in paragraph 6 thereof which reads as follows:

“6. That with regard to the statements made in Paragraph no. 8 of the writ petition, the deponent begs to state the Integrity Agreement dated 18.08.25 and 22.08.25 were executed separately by the Respondent no. 3 and 4 respectively. Each agreement binds the respective bidder independently. Tender Committee found all documents in compliance of the conditions and there was no breach or irregularity noted. There was no proof of exchange of confidential information, coordination in bid pricing or restriction of competitiveness.”

22. Though the petitioner has filed an affidavit in reply on 22.12.2025 to the aforesaid affidavit of the Department, there is no specific response, not to talk of any denial of the said stand of the Department. This Court has also noted that in paragraph 10 of the said affidavit, all the five nos. of inferences are based on the photograph only.

23. Even if the altered argument is taken into consideration that the two representatives of the respondent nos. 3 and 4 were found to have featured in the common photograph, the same, in the considered opinion of this Court cannot be construed to be any violation of the Integrity Commitment. To accept such submission would be far-fetched and would be in the realm of imagination.



Unless, any concrete materials can be demonstrated, this Court would be loath in interfering with matters pertaining to allotment of contracts. This Court has also taken into consideration that site visit by the prospective bidders was a mandatory requirement and there is no stipulation that such visit cannot be made on the same date or time by different bidders. This Court is also unable to accept the submission that only because the respondent nos. 3 and 4 were found to be bidders in various other contracts, a cartel can be presumed. Rather, a contrary view would also be possible that there is competition between the respondent nos. 3 and 4.

24. In the conspectus of the aforesaid discussion, this Court is of the opinion that no case for interference is made out and accordingly the writ petition is dismissed.

25. The interim order stands vacated which otherwise also appears to have been passed on an incorrect submission made on behalf of the petitioner.

26. At this stage, this Court is reminded of the law laid down by the Hon'ble Supreme Court in the case of ***Raunaq International Ltd vs I.V R. Construction Ltd. And Ors*** reported in ***(1999) 1 SCC 492*** wherein a strong view was expressed in cases where stay orders pertaining to public works were obtained by unscrupulous litigant where exception was taken and cost was also prescribed to be imposed. However, this Court has restrained itself from taking recourse towards such direction.

27. The records are handed over back to the learned Standing Counsel, PWD.

JUDGE

Comparing Assistant