



2025:GAU-AS:8031

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

WRIT PETITION No.1597/2024

Sri Ranjit Baruah

Son of Late Purendra Nath Baruah
Proprietor of M/s Ranjit Baruah
Natun Tekela Gaon, A.T. Road
P.O. Mohanaghat, Dibrugarh
Pin- 786006

.....Petitioners

-Versus-

1. The State of Assam

Represented by the
Commissioner and Secretary to
the Government of Assam,
Health & Family Welfare
Department, Dispur, Guwahati-
781006.

2. The Secretary

Government of Assam
Health & F.W. (B) Department,
Dispur, Guwahati-781006.

**3. The Director of Medical
Education, Assam**

Sixmile, Khanapara, Guwahati
Pin- 781002.

4. The Principal-cum-Chief

Superintendent

Assam Medical College Hospital
Dibrugarh- 786002.

5. The Superintendent

Assam Medical College Hospital
Dibrugarh- 786002.

6. The Tender Committee

Assam Medical College Hospital
Dibrugarh- 786002, represented
by its Chairman

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) :Mr. S. Sarma, learned Senior Counsel
assisted by Mr. A. Gautam.

For the Respondent(s) :Mr. B. Gogoi, learned Additional
Advocate General, Assam.

Date of Hearing :**05.06.2025.**

Date of Judgment :**17.06.2025.**

JUDGMENT & ORDER (CAV)

Heard Mr. S. Sarma, learned senior counsel assisted by Mr. A. Gautam, learned counsel appearing for the petitioner. Also heard Mr. B. Gogoi, learned Additional Advocate General appearing for the State respondent.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner is assailing the notice inviting for re-tender (e-Tender) No.MCH/2024/948 dated 09.01.2024 for providing annual job contract of Dietary Service to the patient admitted to Assam Medical College Hospital, Dibrugarh issued by the Superintendent, Assam Medical College Hospital, Dibrugarh.

3. The brief facts of the case are that pursuant to a notice inviting for e-Tender through the e-Procurement system for providing an annual job contract for dietary service to the patient admitted to Assam Medical College Hospital, Dibrugarh, bearing No. MCH/2023/25858 dated 03.10.2023 (hereinafter referred to as the first tender), issued by the respondent Nos. 4 and 5, the petitioner, who is a government-registered 1st Class Contractor and Supplier, along with two other bidders, participated in the said tender. Though, in the technical bid, the petitioner qualified; however, the financial bid of the petitioner was not opened.

4. It is the specific case of the petitioner that thereafter, by notice inviting for re-tender (e-tender) through the e-Procurement system for providing the same services as that of the first tender to the patient admitted to Assam Medical College Hospital, Dibrugarh, bearing No. MCH/2023/29988 dated 16.11.2023, was issued by the respondent Nos. 4 and 5 (hereinafter referred to as the second re-tender). In the said tender process, four bidders,

including the petitioner and proforma respondent No.7, participated; however, the technical bids of all the bidders were rejected. Accordingly, for the third time, another notice inviting for a re-tender (e-tender) through the e-Procurement system for providing the same service as that the first tender and second re-tender were issued by the respondent Nos.4 and 5 vide No. MCH/2024/948 dated 09.01.2024 (hereinafter referred to as the impugned third tender).

5. It is the specific case of the petitioner that, having noted the aforesaid advertisement in the newspaper on 10.01.2024, the petitioner participated in the said tender process. The proforma respondent No.7 also participated along with the petitioner. Thereafter, the technical bids of the two bidders were opened, and upon being duly qualified, their financial bids were also opened. However, though the petitioner was found to be the lowest bidder, notice inviting tenders for the same services as that of the first tender, second re-tender, and the third impugned re-tenders were issued in the portal of Government e-Market (hereinafter referred to as the GeM) by Bid Document No. GEM/2024/B/4755482 dated 08.03.2024.

6. Aggrieved by the aforesaid issuance of a fresh tender against the same services for which the petitioner had been duly qualified as the lowest tenderer, the present writ petition has been filed.

7. Mr. S. Sarma, learned senior counsel appearing for the petitioner, submits that the manner in which the tender for the subject work has been re-tendered one after the other despite there being participants and qualified technical bids itself goes to show the arbitrariness involved in the decision making process. He further submits that though the petitioner in the third re-tender was the lowest tenderer, the authorities, for reasons best known to them, instead of settling the tender with the petitioner, issued a fresh tender for the same work through GeM. He further submits that under the relevant Procurement Act and Rules, the authorities are bound to communicate the decision of cancelling the tender and the reasons thereof to the petitioner, and since the same has not been done, the respondent No.4 has acted in a mala fide and illegal manner. He further submits that the communication of reasons is a facet of principles of natural justice.

8. He further submits that it appears from the affidavit and subsequent documents placed by the State Government that after the technical bids of the third re-tender were opened and scrutinized, the petitioner as well as the proforma respondent No.7 were found to be qualified, and the tender committee had specifically taken the decision that since the two bidders have been found technically qualified and the tender has already been re-tendered thrice, to open the financial bid of the qualified tenderers. He further submits that accordingly the financial bid of the petitioner as well as the proforma respondent

No.7 were open; however, instead of settling the tender with the petitioner, who's bid was the lowest, the respondent authorities decided to issue fresh tender for the same work.

9. He further submits that under the Procurement Act and Rules, the decision for cancellation or for issuance of a fresh tender has to be made by the procurement authority i.e. respondent Nos.4 (Principal-cum-Chief Superintendent, AMCH). However, it is evident from the affidavit as well as the documents placed by the state government that the respondent No.4 has merely endorsed the decision of the tendering committee without any independent application of mind as required under the statute. He further submits that it is also evident that the respondent No.4 in his affidavit-in-opposition filed before this court and in the additional affidavit filed during the course of the hearing, has taken a contradictory stand.

10. In support of the aforesaid submission as regards the communication of reasons, he relies upon the following decisions of the Apex Court:-

i) ***Ajantha industries Vs. Central Board of Direct Taxes*** reported in ***(1976) 1 SCC 1001***.

ii) ***C.B. Gautam Vs. Union of India*** reported in ***(1993) 1 SCC 78***.

11. He further submits that the Office Memorandum dated 08.01.2024 cannot overrule the provisions of the

Procurement Act and Rules. He further submits that the respondent authorities have not followed the provision of the aforesaid Procurement Act and Rules while taking the decision of fresh tender by ignoring the lowest bid of the petitioner in the third re-tender. He further submits that the impugned office memorandum is also not in accordance with the provision of the applicable Procurement Act and Rules. Accordingly, he submits that the decision to issue a fresh tender for the same work is totally illegal and arbitrary.

12. In support of his submission that when power is provided to do a certain thing in a certain way, it should be done in that way or not at all, he relies upon the following decisions:-

i) ***Nazir Ahmad Vs. King-Emperor*** reported in ***(1935-36) 63 IA 372.***

ii) ***Dipak Babaria Vs. State of Gujarat*** reported in ***(2014) 3 SCC 502.***

13. In support of his submission that executive instructions cannot override statutory provision, he relies upon the following decisions:-

i) ***B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn. and others*** reported in ***(2006) 11 SCC 731 (II).***

ii) Rajasthan State Industrial Development & Investment Corpn. Vs. Subhash Sindhi Cooperative Housing Society & Ors reported in ***(2013) 5 SCC 427.***

14. In support of his submission that the filing of affidavits is not an empty formality and contradictions contained therein cannot be left unexplained by the deponents, he relies upon the following decisions:-

i) Assam Company India Ltd. Vs. Bank of New York Mellon, London reported in ***(2014) 5 GauLR 197.***

ii) Greater Guwahati United Motor Transport Association Vs. Gauhati Municipal Corporation & 2 Ors. reported in ***(1996) 2 GauLR 473.***

15. Per contra, Mr. B. Gogoi, learned Additional Advocate General appearing for the State respondent, submits that the authorities, in view of the mandatory requirement of procuring supply of the subject tender through GeM, cancelled the third re-tender and issued the fresh tender for the subject work by GeM. He further submits that the aforesaid decision, having been taken as per the endorsement of the tender committee as regards the mandatory requirement of tender through GeM, which is in accordance with the office memorandum issued under the Procurement Act dated 08.01.2024, the said decision ought not to be faulted. He further submits that the

aforesaid decision being taken in the public interest, this court ought not interfere with the issuance of the fresh tender for the subject work.

16. He further submits that though the financial bid of the selected bidders, i.e., the petitioner and the proforma respondent No.7 in the third e-Tender, was opened, however, in view of the decision of the tendering committee to not go ahead and instead call a fresh tender through mandatory GeM requirement, the respondent authorities did not upload the result of the financial bid in the portal.

17. In support of his aforesaid submissions, he relies upon the following decisions:-

i) ***Ramchandra Murarilal Bhatted & Ors. Vs. State of Maharashtra & Ors.*** reported in ***(2007) 2 SCC 588.***

ii) ***Master Marine Services (P) Ltd. Vs. Metcalfe & Hodgkinson (P) Ltd. & Anr.*** reported in ***(2005) 6 SCC 138.***

iii) ***Jagdish Mandal Vs. State of Orissa & Ors.*** reported in ***(2007) 14 SCC 517.***

iv) ***Silppi Constructions Contractors Vs. Union of India & Anr.*** reported in ***(2020) 16 SCC 489.***

18. I have given my prudent consideration to the arguments advanced by the learned senior counsel for the

petitioner as well as the learned Additional Advocate General for the state respondents and have perused the material available on record. I have also considered the citations cited at the bar.

19. It appears that for the subject work, i.e., the annual job contract of dietary services to the patient admitted to the Assam Medical College Hospital, Dibrugarh, initially three tenders were issued: first on 03.10.2023, second re-tender on 16.11.2023, and third re-tender on 09.01.2024. It appears that in respect of the first tender, there were three bidders who participated; in the second re-tender, there were four bidders who participated; and in the third re-tender, there were two bidders who participated.

20. It further appears that in respect of the first tender, only one bid was found to be technically qualified, and therefore, it was suggested for re-tendering. It further appears that, in respect of the second tender, no bidders were found qualified, and therefore, for the third time, a re-tender had to be called for the subject work. The issue involved in this writ petition being non-selection of the petitioner despite being qualified and the lowest tenderer in the third re-tender, I shall now look into the decision making process as regards the third re-tender.

21. Apt at this stage to refer to the provisions of the Assam Public Procurement Act, 2017 (hereinafter referred to as the Procurement Act).

22. Section 2(g) of the Procurement Act defines “**e-Procurement**” as the electronic process wherein the physical tendering activity is carried out online using the internet and associated technologies. Section 2(q) of the said Act defines “**notification**” as a notification published in the official gazette. Section 2(r) of the said Act defines “**prescribed**” as prescribed by rules made under the said Act. Section 2(x) of the said Act defines “**procuring entity**” to mean an entity referred to in subsection (2) of Section 3. Section 3 of the said Act reads as under:-

*“3. **Application.**-(1) This Act shall apply to all procuring entities referred to in sub-section (2).*

(2) For the purposes of this Act, "procuring entity" means,-

(a) any department of the State Government or its attached or subordinate office;

(b) any State Public Sector Enterprise owned or controlled by the State Government;

(c) any entity established or constituted by the Constitution of India whose expenditure is met from the Consolidated Fund of the State,

(d) any entity or board or corporation or authority or society or trust or autonomous entity (by whatever name called) established or constituted by an Act of the State Legislature or an entity owned or controlled by the State Government;

(e) any other entity which the State Government may, by notification, specify to be a procuring entity for the purpose of this Act, being an entity that receives substantial financial assistance from the State Government in so far as the utilization of such assistance towards procurement is concerned.

(f) any procurement support agency or procurement agent or procurement consultant involved in procurement on behalf of the procuring entities specified in clauses (a) to (e) above.

(3) The State Government may, by notification, permit the procuring entities to carry out procurement, financed under the assistance from the multilateral development banks, bilateral development agencies, or foreign governments or pursuant to an inter-governmental agreement, in accordance with the procurement procedures stipulated in terms of such assistance or agreement:

Provided that before granting permission, the State Government shall satisfy itself that the procurement procedures stipulated in terms of such assistance or agreement, are in consonance with the basic norms of public procurement specified in sub-section (1) of Section 4.

4) Subject to such rules as may be made in this behalf consistent with the provisions of Sections 4 and 11, the provisions of Chapters II and III shall not apply to,-

(a) any procurement the estimated cost or value of which is less than the threshold value as Finance Department of the State Government may, by notification, specify for different classes or categories of procurements or procuring entities;

(b) emergency procurement necessary for the management of any disaster, as defined in clause (d) of Section 2 of the Disaster Management Act, 2005 (Central Act No. 53 of 2005);

(c) the procurement under Assembly and Parliamentary election urgency;

(d) procurement for the purposes of security or on strategic considerations that the State Government may, by general or special order, specify;

(e) procurement by a procuring entity under clause (b) to clause (e) of sub-section (2) of Section 3 from its subsidiary company or joint venture company in which such procuring entity has more than fifty percent share;

(f) any other procurement, as may be notified by Finance Department.

23. Reading Section 3 of the Procurement Act, it is clear that the procuring entity means, among others, any department of the state government or its attached or subordinate office. In the present case, admittedly, the respondent No.4 i.e the principal-cum-superintendent, is the procuring entity.

24. Section 26 of the Procurement Act, which provides cancellation of the procurement process, reads as under:-

“26. Cancellation of the procurement process. (1) *A procuring entity may, for reasons to be recorded in writing, cancel the process of procurement initiated by it,-*

(a) at any time prior to the acceptance of the successful bid; or

(b) after the successful bid is accepted in accordance with sub-sections (4) and (5).

(2) The procuring entity shall not open any bids or proposals after taking a decision to cancel the procurement and shall return such unopened bids or proposals.

(3) The decision of the procuring entity to cancel the procurement and reasons for such decision shall be immediately communicated to all bidders that participated in the procurement process.

(4) If the bidder whose bid has been accepted as successful fails to sign any written procurement contract as required, or fails to provide any required security for the performance of the contract, the procuring entity may cancel the procurement process after forfeiting the bid security provided by the bidder to the State Government.

(5) If a bidder is convicted of any offence under this Act, the procuring entity may,-

(a) cancel the relevant procurement process if the bid of the convicted bidder has been declared as successful but no procurement contract has been entered into;

(b) rescind the relevant contract or forfeit the payment of all or a part of the contract value if the procurement contract has been entered into between the procuring entity and the convicted bidder.”

25. Reading the aforesaid provision, it is clear that the procuring entity is empowered under the provision of the Procurement Act to cancel the procurement process; however, under subsection 3 of Section 26, the decision of the procuring entity to cancel the procurement and the reasons for such decision are required to be communicated to all bidders that participated in the procurement process immediately.

26. Section 28 provides the methods of procurement, which reads as under:-

“28. Methods of procurement.”-(1) *Subject to the provisions of this Act and the rules made thereunder, a procuring entity may procure a subject-matter of procurement by means of any of the following methods, namely:-*

- (a) Open Competitive Bidding; or*
- (b) Limited Bidding; or*
- (c) Two stage Bidding; or*
- (d) Single Source Procurement; or*
- (e) Electronic Reverse Auction; or*
- (f) Request for Quotations; or*
- (g) Spot Purchase; or*
- (h) Competitive negotiations; or*
- (i) Rate Contract or Government E-Market (GeM);*
- (j) Framework agreement; or*
- (k) e-commerce; or*
- (l) community procurement for community driven schemes; or*
- (m) Swiss Challenge; or*

(n) any other method of procurement notified by the State Government satisfying the principles of procurement contained in this Act and which the State Government considers necessary in public interest.

(2) The State Government may, by notification, declare adoption of electronic procurement as compulsory for different stages and types of procurement, and on such declaration, every requirement for written communication under this Act shall be deemed to have been satisfied if it were done by electronic means.

(3) In procuring a subject-matter of procurement, every procuring entity shall follow the detailed procedure in respect of the relevant method of procurement as may be prescribed in the Rules made under this Act.”

27. Reading the aforesaid provision, it is clear that under subsection 1 of Section 28, the methods of procurement, inter-alia, are open competitive bidding, rate contract, or GeM. Subsection 2 of Section 28 provides that the state government may, by notification, declare adoption of electronic procurement as compulsory for different stages and types of procurement, and on such declaration, every requirement for written communication under this act shall be deemed to have been satisfied if it were done by electronic means. Admittedly, in the case in hand, the subject procurement is done by way of electronic means. Further, it is clear that under subsection 3 of Section 28 of the said Act, every procuring entity shall follow the detailed procedure in respect of the relevant method of procurement as may be prescribed in the rules made under this Act.

28. Section 29 of the Procurement Act provides the manner in which the open competitive bidding is done, which reads as under:-

“29. Open competitive bidding.”-(1) Every procuring entity shall prefer the open competitive bidding as the most preferred method of procurement to be followed.

(2) Open competitive bidding may also be followed in case of two stage bidding in terms of Section 32, electronic reverse auction in terms of Section 33 and rate contract in terms of, Section 36.

(3) The procuring entity may follow the pre-qualification procedure specified in Section 18 and invite bids from pre-qualified bidders only.

(4) Where the procuring entity chooses a method of procurement other than the open competitive bidding, it shall record the reasons and circumstances thereof.

(5) In case of an open competitive bidding, the procuring entity shall invite bids by publishing an invitation to bid on the State Public Procurement Portal and in at least one such other manner as may be prescribed.”

29. Reading the aforesaid provision, it is clear that opening competitive bidding is the most preferred method of procurement to be followed by every procuring entity. However, if the procuring entity wants to adopt any other method as provided under Section 28 of the said Act, it is required to record the reasons and circumstances thereof.

30. Sections 36 of the Procurement Act provides the manner in which the rate contract and GeM are done, which reads as under:-

"36. Rate contract and Government E-Market (GeM).

(1) Rate Contract:

(a) A procuring entity may choose to engage in a rate contract procedure in accordance with the rules as may be made in this behalf, under this Act where it determines that

(i) the need for the subject-matter of procurement is expected to arise on an indefinite or repeated basis during a given period of time;

(ii) by virtue of the nature of the subject-matter of procurement, the need for it may arise during a given period of time.

(b) A procuring entity may award a rate contract on the basis of open competitive bidding or by means of other procurement methods in accordance with the provisions of this Act.

(c) Subject to the rules as may be made in this behalf, the procedure for rate contract shall include the following, namely:-

(i) the manner in which rate contract is to be entered into, including selection of the method of bidding to be followed; and

(ii) the manner in which a procurement contract has to be entered into using rate contract procedure.

(2) Government E-Market (GeM):

(a) Director-General Supplies and Disposal (DGS&D) hosts an online Government e-Market Place (GeM) on pilot basis, for common use goods and services. The electronic and online procurement process on GeM is end to end from placement of supply order to payment to suppliers.

(b) Government Procuring Entities (including State Government entities) at their option may view, compare and directly purchase online, the Products and services offered by various suppliers on GeM under such conditions, as may be prescribed by the Government.

(c) The procedure and details of procurement through the GeM shall be such as may be prescribed by the Government.

31. Reading the aforesaid provision, it is clear that a procuring entity is also empowered to adopt a rate contract procedure, which can be on the basis of open competitive bidding or by means of other procurement methods as provided under the said Act. It is further clear that the procedure for the rate contract is required to be laid down in the rules. It is further clear that the GeM is also adopted by Director General Supplies and Disposal on pilot basis for common use of goods and services and such electronic and online procurement process on GeM is end to end from placement of supply order to payment to suppliers. It is further clear that it is the discretion of the procuring entity to view, compare, and directly purchase online the products and services offered by various suppliers on GeM. It is further clear that the procedure and details of such procurement shall be prescribed by the government.

32. Section 55 of the Procurement Act provides the power of the state government to make rules, inter-alia, for providing the procedure in respect of various methods of procurement under Section 28 of the said Act. That apart, it appears that under Section 56 of the said Act, the state government is also empowered to issue guidelines giving details of procedure or general forms or standard specifications and manuals required for giving effect to the provisions of this Act and the Rules made thereunder.

33. Apt also to refer to the relevant rules of the Assam Public Procurement Rules, 2020 (hereinafter referred to as Procurement Rules). Rule 24 of the said rules reads as under:-

“24. Methods of procurement and procedures thereof.- Every procuring entity shall follow the procedure in respect of the chosen methods of procurement as mentioned in sub-section (1) of Section 28 of the Act for a particular procurement. A procuring entity, may choose different methods of procurement specified in sub-section (1) of Section 28 of the Act, if deemed more advantageous and appropriate after recording the specific reasons and circumstances in writing for so choosing in exception to the preferred method i.e. Open Competitive Bidding method in terms of sub-section (4) of Section 29 of the Act, such specific reasons and circumstances shall be recorded in the case file and clearly noted in the procurement register indicating the name and designation of the procurement entity making the decision. Procedures to be followed for various methods of procurement are as follows:-

(A) Procedure for Open Competitive Bidding :-

(i) Subject to the provisions in the Act and the general principles of procurement, the procedure laid down under these rules shall be followed by all procuring entities in cases of all procurement through Open Competitive Bidding.

(ii) There shall be no restriction on participation of eligible bidders in Open Competitive Bidding. This shall include eligible bidders not registered with the procuring entity as well as foreign bidders bidding in Indian rupees. If bidders are required to be pre-qualified, the procedure for pre-qualification of bidders prescribed under these rules shall be followed.

(iii) *The date for opening of bids shall be fixed after at least twenty one clear days counted from the date of publication of the latest advertisement inviting bids.*

(iv) *Open Competitive Bidding at global level, i.e. International Competitive Bidding (ICB), with provisions to bid in the currencies under the notified Basket of Currencies of the Reserve Bank of India, shall be resorted to in cases where :-*

(a) *The required specifications, quality of the subject-matter are not available within the nation, and alternatives available in the nation are not suitable for the purpose;*

(b) *There is requirement for compliance to specific inter- national standards in technical specifications and sufficient number of competent domestic bidders that are likely to comply with these required technical specifications and quality are not available;*

(c) *There is a suspected anti-competitive behaviour attracting provisions of Competition Act, 2002 (Central Act 12 of 2003) as amended among indigenous bidders;*

(d) *Any other reason for which International Competitive Bidding is considered to be appropriate by the procuring entity or the concerned Administrative Department :*

Provided that date for opening of bids shall be fixed after at least forty-five clear days counted from the date of publication of the latest advertisement inviting bids in case of International Competitive Bidding.

(B).....

(C).....

.....

(H).....

(I) Rate contract and Government E-Market (GeM) :-

(1) Rate Contract :-

(i) Subject to the satisfactions of the conditions contained in clause (a) of sub-section (1) of Section 36 of the Act, a procuring entity may engage in a

rate contract procedure in accordance with the provisions laid down herein below.

(ii) The procedure for concluding rate contracts and for procurement in the rate contract method shall consist of two phases. In the first phase, the rate contracts, including parallel rate contracts, where required, shall be concluded through Open Competitive Bidding without any commitment of quantum of procurement. In the second phase, procurement of the particular subject-matter in the required quantities, as essential and necessary to satisfy the public need, may be made from time to time by issue of supply or work orders at those rates during the period of the rate contract.

(iii) In the first phase, single envelope or two envelope bids, in terms of Section 13 of the Act, shall be invited by issuing Notice Inviting Bids as in the Open Competitive Bidding method and incorporating the following conditions in the bid documents :

(a) In the Bidding Documents, including NIB, approximate quantities of the requirement estimated on the basis of the annual off take shall be indicated along with the specifications thereof wherein it shall also be specifically mentioned that no minimum quantity of procurement is guaranteed;

[(b) The period of the rate contract shall be clearly indicated in the Notice Inviting Bids and the other Bidding Documents. The period of rate contracts shall normally be one year from the date of contract but may be shorter if the procurement entity arrives at a reasoned conclusion that market prices would fall significantly in the short term. A shorter period may be selected and specified in the bidding documents by the procuring entity after recording the reasons thereof in writing in the case file which shall form part of the procurement records;]

(c) The terms and conditions of the rate contract, including provision for liquidated damages, shall be similar to those prescribed for procurement by Open Competitive Bidding;

(d) A clause to the effect that the procuring entity or the rate contractor are both entitled to withdraw or cancel the rate contract by serving due notice on such other giving not less than fifteen (15) days' time;

(e) A clause to the effect that the procuring entity reserves its right to renegotiate the price with the rate contract holders during the validity of the rate contract;

(f) The rate contract shall be entered into for price, without commitment for quantity and time of supply of the subject-matter of procurement, with the bidder of the lowest priced bid or most advantageous bid fulfilling the laid down eligibility and qualification criteria including past performance against such rate contract, availability of ISI mark or service centres across the State and such other criteria as required and these conditions as applicable shall be specified in the bidding documents;

(g) The procuring entity shall also reserve its right to conclude parallel rate contracts with different bidders, in addition to the responsive bidder submitting the lowest priced bid or most advantageous bid, but at the rates of such bidder;

(h) That, in case the price quoted by the lowest responsive bidder is not reasonable or found to be high, the price may be negotiated with lowest responsive bidder with whom the rate contract may be concluded consequent only upon lowering of the bid price to the desired level. If otherwise, fresh bids shall be invited;

(i) The prices under a rate contract shall be invariably subject to 'price fall clause' and this shall be specified in the bidding documents. A

clause regarding price fall shall be incorporated in the terms and conditions of rate contract:

Explanation I: *A price fall clause is a price safety mechanism in rate contracts which provides that if the original rate contract holder quotes a lesser price or reduces its price to render similar goods, works or services of a price lower than the rate contract price to anyone in the State, at any time, during the validity of the rate contract, the rate contract price shall be automatically lowered or reduced accordingly to such lesser or reduced price quoted for the subject-matter of procurement with effect from the date of such quoting or reducing, and the rate contracts shall also be amended accordingly.*

Explanation II: *In such cases, the firms holding parallel rate contracts shall also be given opportunity to reduce their price by notifying the lowered or reduced price allowing them fifteen days' time to intimate their acceptance to the revised price. Similarly, if a parallel rate contract holder firm reduces its price during the currency of the rate contract, its reduced price shall be conveyed to other parallel rate contract holders as well as the original rate contract holder for corresponding reduction in their prices. If any rate contract holders do not agree to the reduced price, further transaction with it shall not be conducted;*

(iv) If, consequent to invitation of bids, only one bid is received, or consequent to technical evaluation, if only one bid is found eligible or qualified, such bid shall be termed as 'single bid' in respect of that subject-matter of procurement or item and in all cases where such single bid is received, bids may be handed on the lines of procedure laid down in sub-rule (20) of Rule 23.

(v) Rate contracts for Machine Tools, Information Technology Product, Original Equipment Manufacturer and Ancillary spares and other similar such products, where the design feature, performance parameters, etc., vary significantly among the products of different manufacturers and even between different models of the same

manufacturer and where equitable comparison of prices of such products or services is not feasible, may be finalised and concluded on the offered percentage of discount on Net Dealer Price (NDP) or discounted MRP basis, generally known as "Catalogue basis".

(vi) Parallel rate contracts :-

(a) If the quantity of the subject-matter of procurement required is beyond the capacity of the lowest bidder or the subject-matter of procurement is of a critical or vital nature, rate contracts may be entered with more than one bidder in the order of their standing in the final evaluation of bids but at the successful lowest bid rate as parallel rate contracts :

Provided that such provision for parallel rate contracts is specified in the bidding documents.

(b) Where parallel rate contracts are needed though the price of lowest responsive bidder is reasonable, the rate contract shall first be awarded to such lowest responsive bidder. Thereafter, the price of such lowest bidder shall be counter-offered to the responsive bidder quoting the next higher rate, or rates in case more than one parallel rate contractors are needed, with intimation to the lowest bidder, asking them if they so desire to reduce their price and send revised bids accordingly in sealed covers or on e-procurement platform, to be opened in public at a specified place, date and time as per the prescribed procedure. Bidders who accept the counter-offered rate or rate lower than it shall be awarded parallel rate contracts. If the lowest bidder also lowers its rate in its revised offer, the same may also be accepted with effect from that date and its rate contract amended accordingly. All such parallel rate contracts shall be awarded simultaneously for the sake of transparency.

(c) In cases where parallel rate contracts are necessary, and where even the bid quoted by the

lowest responsive bidder is not reasonable, price negotiation shall be conducted with that bidder in the first instance. The rate contract may be concluded if that bidder agrees to bring down the price to the desired level and that price may be counter offered to other responsive bidders for further action in identical manner as prescribed in clause (b) above. If however, the lowest bidder does not agree to reduce its price in the first instance itself, then the price which has been decided as reasonable may be counter offered to all the other responsive bidders who had quoted higher price and also to the lowest bidder for further action as in clause (b) above.

(vii) In the second stage, the supply or work order shall be placed to the rate contractor as and when needed at the contracted price for supply or execution of the required quantity of the subject-matter of procurement mentioning the place of supply or execution and the delivery schedule.

[(viii) The procuring entities shall ensure new rate contracts become operative right after the expiry of the existing rate contracts without any gap. In case it is not possible to conclude the new rate contracts due to unavoidable reasons, the existing rate contracts may be extended at the same rates, terms and conditions for a further period not exceeding another one year after ascertaining that the wholesale market prices of the subject-matter of procurement or its constituents have not fallen during the period.]

(ix) Except as otherwise provided for in this rule, all other provisions of these rules shall, mutatis mutandis, apply to procurement by rate contracts.

[(x) For procurements using rate Contract, if it is estimated that the value of procurement shall exceed beyond the e- procurement threshold in a Financial Year, then the Rate Contract has to be done mandatorily through the e-procurement mode. For Rate Contracts done through offline mode, the procuring entity should ensure that the e-

procurement threshold is not crossed during the entirety of the contract period and extension (if any).]

(2) Government E-Marketplace (GeM) :-

(i) Procuring entities may, as appropriate in the public need and interest, utilise the Government E-Marketplace (GeM) facility for purchase of their essential common use needs determined as available therein, subject to the provisions of the Act, the guidelines that may be notified in this regard by the State Government, and, without exception, the condition that the rates for the items offered by suppliers the GeM or the total cost involved thereof are not higher than the prevailing wholesale market prices in the State or the discounted rates of authorised dealers in the State or applicable.

(ii) The procuring entities shall fulfil the requirements of the GeM portal pertaining in publication of their annual requirements for the common use goods and services on GeM within thirty days of approval of the annual budget. The demand for such goods and services shall not be divided into small quantities to make piecemeal purchases for avoiding procurement through L-1 buying or bidding or reverse auction of the GeM.

(iii) All such procurements through GeM shall be subject to the prior sanction of the concerned compounding authority with reference to the relevant Delegation of Financial Power Rules in respect of the subject-matter and value of the procurement.

(iv) The State Government in Finance Department shall notify the detailed guidelines for such on-line procurement through GeM, together with the mode and procedure for making payments to the registered suppliers thereof, and may be also prescribe financial ceiling or any other conditions for the purpose.”

34. Reading the aforesaid Rules, it appears that the procuring entity may choose different methods of procuring specified in subsection 1 of Section 28 of the

Procurement Act if they are more advantageous and appropriate after recording the specific reasons and circumstances in writing for so choosing an exception to the preferred methods, i.e. the open competitive bidding method in terms of subsection 4 of Section 29 of the said Act, and that such specific reasons and circumstances shall be recorded in the case file and clearly noted in the procurement register, indicating the name and designation of the procuring entity making the decision. Thus, it is clear that it is the procuring entity that has been given the discretion under the statute to decide the procuring method to be adopted in respect of a particular procurement, which preferably shall be done by open competitive bidding; however, the procuring entity may differ from the said preferred method and instead choose any other method as mentioned in subsection 1 of Section 28 of the said Act. In such an event, it is imperative under the provision of the rule that, firstly, the procuring entity is satisfied that such adoption of a different method of procurement is more advantageous and appropriate, and secondly, such reasons and circumstances for choosing an exception to the preferred method of open competitive bidding are specifically recorded in writing. It is further clear that such reasons and circumstances have to be recorded clearly in the case file and the procurement register with the name and designation of the procuring entity making the decision. It further appears that the procuring entities, in the larger interest of the public may utilize the GeM for the purchase of their essential common-

use needs determined as available therein; however, in strict compliance with the provision of the Act and the Rules made thereof, and the guidelines that may be notified in this regard by the state government.

35. What transpires thus from the above is that under the Procurement Act and Rules, the procuring entity in the larger public interest has the power to procure essential common use needs through the GeM. However, while taking the decision of availing the facility of the GeM for the purchase of such essential services and commodities, the procuring entity is bound by the provisions of the Procurement Act and Rules made thereof, and the guidelines that may be notified in this regard, and all such procurement through GeM shall be subject to the prior sanction of the concerned compounding authority, and also the state government in the Finance Department is required to notify.

36. Turning back to the facts of the instant case, it appears from the records pertaining to the subject tender made available to the court by the learned Additional Advocate General that the tender committee, in their minutes of the tender financial bid opening meeting held on 12.02.2024, were of the opinion that since there were only two bidders participating in the process, in order to have better participation and involvement of more numbers of bidders to ensure the quality, fresh tender be resorted. Accordingly, the committee members recommended the

respondent No.4 to float a fresh tender through the GeM portal. The short question is thus whether the procurement entity, i.e., respondent No.4, who is the competent authority under the provision of the Procurement Act has taken a decision to choose the GeM method for the subject procurement, by cancelling the third re-tender done by the preferred method of open competitive bidding, in accordance with the provisions of the Procurement Act and Rules made thereof as discussed above or not, and in the event such a decision has been taken in accordance with the Act and Rules, whether the decision making process is free from the vice of arbitrariness.

37. The principles of judicial review in respect of contractual methods are well settled, and the same are applicable only in order to prevent arbitrariness or favoritism. Undoubtedly, the government being the guardian of the finances of the state, it is expected from the government to protect the financial interests of the state. Hence, the right to refuse the lowest or any other tender is always available to the government; however, the same cannot be done contrary to law and/or in an arbitrary manner. The public authorities are governed by the rule of law, and therefore, such authorities are constitutionally obligated to maintain complete fairness and transparency during the entire process of tender and in taking decisions thereof. Thus, it is not the merit of the decision that a writ court is concerned with but the decision making process. In short, the power of judicial review is not an appeal from

the decision. The writ court, while exercising judicial review in reviewing the decision making process, is concerned as whether a decision making authority exceeded its power, committed an error of law, committed a breach of rules of natural justice, reached a decision that no reasonable tribunal would have reached, or, abused its powers. In other words, the writ court is not determining whether a particular policy or particular decision adopted by the government is fair but is only concerned with whether the manner in which such decisions have been taken. The Apex Court in the case of ***M/s Star Enterprises and Ors. Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Ors.***, reported in **(1990) 3 SCC 280** emphatically laid down the necessity of judicial review of the administrative actions and decisions in relation to the commercial field as under:-

“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.”

The submission of Mr Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so.”

38. The grounds upon which an administrative action is subject to control by judicial review have been subsequently laid down by the Apex Court in the decision of the Apex Court in the case of ***Tata Cellular Vs. Union of India***, reported in ***1994 6 SCC 651*** as under:-

“(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. The decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

(iii) Procedural impropriety.”

39. Relevant paragraphs of the said judgment of the Apex Court are reproduced hereunder for ready reference:-

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. *Whether a decision-making authority exceeded its powers?*
2. *Committed an error of law,*
3. *committed a breach of the rules of natural justice,*
4. *reached a decision which no reasonable tribunal would have reached or,*
5. *abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it.

(ii) Irrationality, namely, Wednessbury unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. The decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind 28, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court

should, "consider whether something has gone wrong of a nature and degree which requires its intervention.

78....

79....

....

93...

94. *The principles deducible from the above are:*

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

40. Reading the aforesaid judgment, it is clear that the authorities have to be very cautious while exercising

their discretion in the said administrative actions and decisions.

41. In the case of ***Union of India and Ors. Vs Dinesh Engineering Corporation and Anr.***, reported in ***(2001) 8 SCC 491***, the Apex Court has explained the manner in which the public authorities are obligated to use their above-mentioned discretionary power as under:-

“16. But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognised by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law, especially Article 14 of the Constitution. In the instant case, we have noticed that apart from rejecting the offer of the writ petitioner arbitrarily, the writ petitioner has now been virtually debarred from competing with EDC in the supply of spare parts to be used in the governors by the Railways, ever since the year 1992, and during all this while, we are told the Railways are making purchases without any tender on a proprietary basis only from EDC which, in our opinion, is in flagrant violation of the constitutional mandate of Article 14. We are also of the opinion that the so-called policy of the Board creating monopoly of EDC suffers from the vice of non-application of mind, hence, it has to be quashed as has been done by the High Court.”

42. Viewed thus, it is clear that the state authorities have a discretionary power to award government contracts to the successful bidder/tender if he/they have substantially complied with the essential conditions of the tender document issued by such authority and/or cancel the tender and if required, go for a fresh tender. True that, the said power is not unfettered; however, the same must be exercised by the state authorities within the four corners of Article 14 of the Constitution. In other words, the judicial power of review is exercised to rein in any unbridled executive function. Meaning thereby, the "tender jurisdiction" is vested in this court under Article 226 of the Constitution so as to ensure greater accountability, credibility, and transparency on the part of such authorities. However, the same is limited; that is to say, only if the said administrative action and/or decision of the state authority under consideration is arbitrary, biased, irrational, mala fide, or unreasonable. Procedural irregularities or errors in assessment, which may be trumped by the consideration of public interest, are no grounds for such interference. Therefore, this court ought not to embark upon making a technical analysis of the tender document, as the same falls within the exclusive domain of the author thereof. The test is thus to find the right balance between the administrative discretion to decide contractual matters vis-à-vis arbitrariness and unfairness, which are essentially not justiciable, and the

need to remedy any such arbitrariness and unfairness. That being so, the duty of the court is to confine itself to the question of the legality of the tender process on the touchstone of Article 14 of the Constitution of India. In short, arbitrariness and unfairness are set right by the writ court by exercising judicial review.

43. Keeping the aforesaid principles in mind, I shall now judicially review the decision of the respondent No.4 in choosing the GeM method over the open competitive method by cancelling the third re-tender.

44. Apt at the outset to refer to the affidavit-in-opposition filed on behalf of the respondent No.4 on 13.08.2024 to ascertain the manner in which the respondent No.4 has taken the decision to cancel the subject third re-tender and initiate a fresh tender. The relevant paragraph of the affidavit in opposition reads as hereunder:-

“4. That with regard to the statements made in paragraph 2 of the writ petition, the deponent begs to deny the averments made by the writ petitioner and further begs to submit that there is no arbitrary, illegal nor malafide, unreasonable, unconstitutional and high handed action on part of the respondent authorities.

The deponent further begs to submit that only two bidders participated after the third bidding. In the first tender bid, three bidders participated. However, in the second time, four bidders participated and in the third time, two bidders participated. Further, the Government of Assam vide its Office Memorandum dated January 2024 No. ECF No. 327632 made it mandatory for GeM for all procuring entities for procurement of all Goods and Services that are available in GeM.

9. *That with regard to the statements made in paragraph 14 of the writ petition, the deponent begs to deny the averments made by the writ petitioner and further begs to submit that no illegal and arbitrary manner has been acted upon, as per Government Notification bearing No. ECG No. 327632 dated January 2024, GeM is mandatory. As such, a fresh tender was invited through Government e-Marketplace (GeM)*

10. *That with regard to the statements made in paragraph 15 of the writ petition, the deponent begs to deny the averments made by the writ petitioner and further begs to submit that no illegal and arbitrary steps have been initiated through GeM inviting fresh tender.*

11. *That with regard to the statements made in paragraph 16 of the writ petition, the deponent has no comments so far as the same are matters of record. However, anything beyond the records are denied and disputed by the answering respondent.*

Further, the deponent begs to submit that in the first bid, only one party qualified which was not acceptable. In the second instance, it was rejected as no bidders qualified and in the third instance, only two bidders qualified, but GeM is mandatory and participation of more bidders is required.

45. Reading the aforesaid paragraphs, it is clear that the stand of the respondent authorities is that since GeM is mandatory in terms of the Office Memorandum dated 08.01.2024 and participation of more bidders is required, a fresh tender for the subject work was issued. It further appears that, except for the aforesaid bold defence, nothing further is discernible from the said affidavit-in-opposition filed by the respondent No.4. That apart, the respondent No.4 is also silent as regards the manner in which the impugned decision has been taken. Apropos

thus, to refer to the said Office Memorandum dated 08.01.2024, which reads as under:-

“OFFICE MEMORANDUM

*For Procurement of items from GeM and
Assam Tenders Portal*

ECF/No.327632 Dated Dispur January 2024

*In supersession of all previous notification related to e-Procurement (IT.69/2011/363 dated 15th October 2014, FEB(eGU).03/2015/3 dated 17th March 2015, FEB(eGU).03/2015/61 dated 5th August 2015, FEB (eGU) 03/2015/62 dated 23rd November 2016, FEB (eGU) 03/2015/109 dated 13th July 2018, FEB,366/2016/pt/XXV/250 dated 16th December 2021, and eCFNo.311119 dated 9th May 2023) and **GeM notification** (No.FEB.224/2021/5 dated 28th January 2022), the Finance Department hereby directs all the procuring entity specified in **Sub-Section (2) of Section 3 of Assam Public Procurement Act, 2017** to adhere to the following:*

A. For procurement of Goods & Services -

- 1. Government e-Marketplace (GeM) is mandatory for all procuring entities for procurement of all Goods & Services that are available in GeM (as per Rule **24(I)(2)(iv) of Assam Public Procurement Rules, 2020**).*
- 2. In the event that specific goods and services are not available in GeM, the procuring entity shall mandatorily procure the same on Assam Tenders Portal (<https://assamtenders.gov.in>) for value above **INR 20 lakh**.*
- 3. Procurement of goods and services valued less than INR 20 lakh may also be procured through Assam Tenders Portal (<https://assamtenders.gov.in>) at the*

discretion of the procuring entity (if and only if the goods and services are not available in GeM).

However, the following items shall remain exempted from the purview of this amendment.

I. All the "Emergency Procurement" and "Urgent Works" as defined in the Assam Public Procurement Act, 2017 and Assam Public Procurement Rules, 2020

II. The procurements in the ten statutory Autonomous Council viz Moran Autonomous Council, Kamatapur Autonomous Council, Bodo Kachari Welfare Autonomous Council, Matak Autonomous Council, Rabha Hasong Autonomous Council, Mising Autonomous Council, Tiwa Autonomous Council, Deori Autonomous Council, Thengal Kachari Autonomous Council and Sonowal Kachari Autonomous Council.

III. Procurement done through spot purchase and Request for Quotation (RFQ)

IV. Any items to be notified by the departments with due concurrence of the Finance Department.

B. For procurement of works:

*1. Works valued above **INR 20 lakh** shall be procured through Assam Tenders Procurement Portal (<https://assamtenders.gov.in>).*

2. Works valued less than INR 20 lakh may also be procured through Assam Tenders Portal (<https://assamtenders.gov.in>) at the discretion of the procuring entity.

3. Works valued above INR 50 Lakhs shall be mandatorily procured through Assam Tenders Portal (<https://assamtenders.gov.in>) for the following cases mentioned below:

I. All the 'Emergency Procurement' and 'Urgent Works' as defined in the Assam Public Procurement Act, 2017 and Assam Public Procurement Rules, 2020.

II. The procurements in the ten statutory Autonomous Council viz Moran Autonomous Council, Kamatapur Autonomous Council, Bodo Kachari Welfare Autonomous Council, Matak Autonomous Council, Rabha Hasong Autonomous Council, Mising Autonomous Council, Tiwa Autonomous Council, Deori Autonomous Council, Thengal kachari Autonomous Council and Sonowal Kachari Autonomous Council

C. Nodal Officers

All procuring entities as defined under sub-section (2) of Section 3 of Assam Public Procurement Act, 2017 will nominate one senior officer as Nodal Officer for 'GeM and e-Procurement'.

The details of such officers, along with their contact details will be forwarded to the Chairperson, State Procurement Facilitation Cell (SPFC).

In case there is an Assam Finance Service (AFS) officer posted in that particular procuring entity, then such officers will be treated as the Nodal Officer for 'GeM and e-Procurement' by default. In cases where there are no AFS officers posted, the procuring entity may prefer to have the senior most officer handling accounts as the Nodal Officer.

This shall come into force with immediate effect.

(Jayant Narlikar, IAS)

*Commissioner & Secretary
to the Govt. of Assam
Finance Department"*

46. Reading the aforesaid office memorandum, it appears that the Finance Department has directed all the procuring entities to procure goods and services available in GeM (as per Rule 24(1)(2)(iv) of the Procurement Rules) through GeM. In order to examine the decision making process in question, this court, by order dated 27.05.2025, directed Mr. Gogoi, learned Additional Advocate General for the state respondent, to place the relevant records relating to the decision of the respondent No.4 in connection with the subject third re-tender. Accordingly, the records of the tendering committee in relation to the first tender, second re-tender, and third re-tender for the subject work were placed before this court on 30.05.2025. Upon perusing the records, especially the third re-tender, it appears that the tender committee has opened both the technical and the financial bids of the bidders, and after opening the financial bids, though the petitioner's bid was the lowest, however, recommended the respondent No.4 to float a fresh tender through the GeM method.

47. Apt to refer to the minutes of the tender bid opening meeting held on 12.02.2024 in respect of the subject third re-tender by the tendering committee, which reads as hereunder:-

“MINUTES OF THE TENDER BID OPENING MEETING HELD ON 12.02.2024 AT 1.00 PM IN THE CONFERENCE HALL OF ASSAM MEDICAL COLLEGE HOSPITAL DIBRUGARH FOR PROVIDING ANNUAL JOB CONTRACT OF DIETARY SERVICES

TO THE PATIENT ADMITTED IN ASSAM MEDICAL COLLEGE HOSPITAL, DIBRUGRH PUBLISHED VIDE RE-TENDER(e-Tender) NO. MCH/2024/948 DTD. 09.01.2024.

The meeting was presided by the Chairperson of the committee Prof, Tapan Gogoi, Prof & Head, Deptt. Of Ophthalmology, Assam Medical College & Hospital, Dibrugarh, in presence of the following members.

1. *Dr. Tapan Gogoi ... Chairperson
Prof. & Head of Ophthalmology,
AMCH, Dibrugarh.*
2. *Dr. Dhruva Jyoti Bhuyan Member
Assoc. Prof. & HOD I/ CDeptt. Of
Phychiatric
AMCH, Dibrugarh.*
3. *Dr. Ramesh Sonowal Member
Prof. of & G, AMCH,
Dibrugarh*
4. *Sri Rubul Boruah Member
Finance & Accounts Officer i/c
DC,s Office, Dibrugarh*
5. *Mr. Bhaben Kuman Member
Sub-Inspector, FCS & CA,
Dibrugarh*
6. *Dr. S.K Bhagawati Member
Deputy Superintendent, AMCH,
Dibrugarh*
7. *Dr. Hitendra Sonowal, Member
Deputy Superintendent, AMCH,
Dibrugarh*
8. *Dr. P.K. Dutta ... Member
Assoc. Prof. of Medicine, AMCH,
Dibrugarh*

9. Dr. R. Das Member

Asstt. Prof. of Surgery, AMCH,
Dibrugarh

10. Mr. Raktim Bhattacharjee

11. Mr. Ai Cheng Gohain Member

F.A, AMCH, Dibrugarh

12. Mrs. Z Hussain Member

Dietitian, AMCH, Dibrugarh

The following Bidders/Authorized representatives were present in the tender bid opening meeting.

Sl No.	Name of firm	Name of bidder/authorized representative who present in the tender bid opening meeting	Contact No.
1	Axis Contractor & Engineer Pvt. Ltd.	Girish Baruah	9678723497
2	M/S Ranjit Baruah Natun tekela gaon P.O. Mohhanaghat Dist-Dibrugarh	Ranjit Baruah	9435034164

The committee members opened the tender both online and offline mode and found 2 (two) Nos. of bidders were participating in the tender. The committee scrutinized technical bid documents of the above bidders. The details of which shown below.

Sl No		Name of firms	
		Axis Contractor & Engineer Pvt. Ltd.	M/S Ranjit Baruah Natun tekela Gaon P.O Mohanaghat Dist- Dibrugarh
1	Court Fee Stamp Rs.8.25(Rupees Eight Twenty Five Paise) only (for local bidders) or IPO of Rs.10/-(Rupees Ten) only (in case of bidders from outside of the State of Assam)	submitted	
2	Tender Fees: Rs.6,000/- (Rupees six Thousand only) (Through online mode only) online acknowledge receipt	submitted	submitted
3	EMD: Rs.10,00,000/- (Rupees Ten Lakhs Only) (Through online mode only) online acknowledge receipt	submitted	submitted
4	Copy of constitution or legal status of the bidder manufacturer/sole proprietorship/firm/agency etc.	submitted	submitted
5	"The turnover for providing dietary service in	submitted	submitted

	<p><i>Hospital/ Similar Health Institution of the firm should not be less than Rs.5.00 Crore in the last three financial year i.e.2020-2021, 2021-2022, 2022-2023. Copies of profit & loss account and balance sheets duly authenticated by a Govt. Registered Chartered Accountant for the last three financial years i.e. 2020-2021, 2021-2022, 2022-2023 should be enclosed.”</i></p>		
6	<p><i>Experience of similar nature of work of 03 year or more. Similar nature of work means supplying diet services in a hospital/ similar health institution/PSU on daily basis with a minimum occupancy of 500 persons. Necessary supporting documents like work orders, Satisfactory work completion certificate, etc. for last three years to this effect must be submitted along with the offer</i></p>	<i>submitted</i>	<i>submitted</i>
7	<i>Copy of the income Tax</i>	<i>submitted</i>	<i>submitted</i>

	<i>Return Filed Acknowledgements for last three years i.e.2020-2021, 2021-2022, 2022-2023.</i>		
8	<i>Copy of PAN Card/ Service Tax Registration</i>	<i>submitted</i>	<i>submitted</i>
9	<i>Copy of the Sales tax/ GST Registration certificate</i>	<i>submitted</i>	<i>submitted</i>
10	<i>“Brochures, original Technical catalogue with detailed specification and picture with date & time alongwith Venue of the Services offered, if relevant.</i>	<i>submitted</i>	<i>submitted</i>
11	<i>Banker of Company/ Firm/ agency with full address (Attach certified copy of statement of A/c for the last one year) Telephone Number of Banker</i>	<i>submitted</i>	<i>submitted</i>
12	<i>Copy of valid ESIC & EPF registration certificate</i>	<i>submitted</i>	<i>submitted</i>
13	<i>Copy of the valid Labour License Certificate</i>	<i>submitted</i>	<i>submitted</i>
14	<i>List of Labour with strength on the date of submission of the tender (i.e Name of Labours)</i>	<i>submitted</i>	<i>submitted</i>
15	<i>Food License under the food safety and Standard Regulation 2011 (Attach Attested copy)</i>	<i>submitted</i>	<i>submitted</i>
16	<i>Acceptance of terms & conditions attached (Yes/</i>	<i>submitted</i>	<i>submitted</i>

	<i>No). Please sign each page of terms and conditions as token of the acceptance and submit as part of tender document.</i>		
17	<p><i>A. Details of clients along with address, telephone and Fax numbers, Amount of contract, Duration of contract (Attach a separate sheet)</i></p> <p><i>B. Have you previously supplied these items to any government/ private organization? If yes, attach the relevant proof.</i></p> <p><i>C. Details of clients where similar services are presently provided by the agency separated for govt. and private clients.</i></p>	<p><i>A. Submitted</i></p> <p><i>B. Submitted</i></p> <p><i>C. Submitted</i></p>	<p><i>A. Submitted</i></p> <p><i>B. Submitted</i></p> <p><i>C. Submitted</i></p>
18	<i>A. The concerned firm/ company whose product has been declared as of spurious or adulterated quality and any criminal cases is filled and is pending in any court shall not be eligible to participate in the</i>	<i>Submitted</i>	<i>Submitted</i>

	<p><i>bidding process.</i></p> <p><i>Convicted firms/ company shall also not be eligible to participate in the bid</i></p> <p><i>B. Enclose an affidavit duly certified by (enclosed/Not enclosed) the notary at the location of the Agencies/Head quarters that the bidder has never been black listed or punished by any court for any criminal offence/breach of contract.</i></p>	<i>Submitted</i>	<i>Submitted</i>
<i>19</i>	<i>Duly filled format of Technical Bid as per Annexure-I (Yes/No)</i>	<i>submitted</i>	<i>submitted</i>
<i>20</i>	<i>Bidders who come from outside Assam must have a branch office in Assam at least period of one year.</i>	<i>submitted</i>	<i>submitted</i>

After scrutiny all the bidders as stated above were found to be technically qualified. As the tender was called for 3rd time, the committee members have decided to opened the financial bids on 20.02.2024 at 2.00 p.m.

i) Sd/- ii) Sd/- iii) Sd/- iv) Sd/-

v) Sd/- vi) Sd/- vii) Sd/- viii) Sd/-

ix) Sd/- x) Sd/- xi) Sd/- xii) Sd/-”

48. Reading of the aforesaid minutes of the tendering committee, it appears that the committee scrutinized the technical bid documents of the two bidders, i.e., the writ petitioner and the respondent No.7, and upon scrutinizing, both were found to be technically qualified. It further appears that the tendering committee, upon considering the fact that the tender was called for the third time, decided to open the financial bid of the two qualified bidders on 20.02.2024 at 2 p.m.

49. Curiously, it appears that after the financial bid was opened and the petitioner's bid was found to be the lowest, the technical committee, instead of finalizing the same, recommended floating a fresh tender for the subject work through the mandatory GeM method for better participation.

50. Apt to refer to the tender financial bid opening meeting held on 20.02.2024, which reads as hereunder:-

**“MINUTES OF THE TENDER FINANCIAL BID
OPENING MEETING HELD ON 20.02.2024 AT
2.00 PM IN THE CONFERENCE HALL OF ASSAM
MEDICAL COLLEGE HOSPITAL DIBRUGARH FOR
PROVIDING ANNUAL JOB CONTRACT OF DIETARY
SERVICES TO THE PATIENT ADMITTED IN
ASSAM MEDICAL COLLEGE HOSPITAL,
DIBRUGARH PUBLISHED VIDE RE-TENDER (e-
Tender) NO. MCH/2024/948 DTD. 09.01.2024.**

The meeting was presided by the Chairperson of the committee Prof. Tapan Gogoi, Prof & Head, Deptt. Of Ophthalmology, Assam Medical College & Hospital, Dibrugarh, in presence of the following members.

1. *Dr Tapan Gogoi ... Chairperson
Prof. & Head of Ophthalmology,
AMCH, Dibrugarh.*
2. *Dr Dhruva Jyoti Bhuyan .. Member Secretary
Assoc. Prof. & Deptt. of
Phychiatric
AMCH, Dibrugarh.*
3. *Dr. Ramesh Sonowal Member
Prof. of & G, AMCH,
Dibrugarh*
4. *Sri Rubul Boruah Member
Finance & Accounts Officer i/c
DC,s Office, Dibrugarh*
5. *Mr. Bhaben Kumar Member
Sub-Inspector, FCS & CA,
Dibrugarh*
6. *Dr. S.K Bhagawati Member
Deputy Superintendent, AMCH,
Dibrugarh*
7. *Dr. Hitendra Sonowal, Member
Deputy Superintendent, AMCH,
Dibrugarh*
8. *Dr. P.K. Dutta ... Member
Assoc. Prof. of Medicine, AMCH,
Dibrugarh*
9. *Dr. R. Das Member
Asstt. Prof. of Surgery, AMCH,
Dibrugarh*
10. *Mr. Ai Cheng Gohain Member
F.A, AMCH, Dibrugarh*

11. Mrs. Z Hussain

.... Member

Dietitian, AMCH, Dibrugarh

Since, there were only two bidders participating in the process, to have a better participation and involvement of more numbers of bidders to ensure the quality the committee members would like to recommend the Principal-cum-Chief Superintendent and Superintendent, AMCH, Dibrugarh to float a fresh tender through GeM Portal.

i) Sd/-

ii) Sd/-

iii) Sd/-

iv) Sd/-

v) Sd/-

vi) Sd/-

vii) Sd/-

viii) Sd/-

ix) Sd/-

x) Sd/-

xi) Sd/- ”

51. Reading the aforesaid minutes of the financial bid opening, it is apparent that the financial bids of the two bidders were opened. What is surprising to note is that the tender committee at the time of opening the technical bid and upon scrutinizing the same was, though fully aware that there were two qualified technical bids, since the subject work was re-tendered for the third time, they decided to open the financial bid, and after opening the financial bid, instead of finalizing the same, they took a complete somersault and recommended the respondent No.4 to float a fresh tender through the GeM method for better participation.

52. It appears from the aforesaid records of the tendering committee in respect of the third re-tender that

by letter dated 02.03.2024, the tendering committee submitted the minutes of the tender committee (third re-tender) for the subject work to the respondent No.4. In the body of the aforesaid letter, it appears that at the top of the right hand corner, there is a note by hand, "*as per committee suggestion, invite tender through GeM portal*", purportedly signed by the respondent No.4 by inserting the date 02.03.2024. It is pertinent that neither the name nor the designation of the person signing the said note is recorded. That apart, no official seal is also appended against the signature in question. Further, the date inserted by hand appears to have also been overwritten. It is worthwhile to mention that except for the records of the tendering committee pertaining to the subject tender, second re-tender, and third re-tender, no other records regarding the decision of the respondent No.4 relating to the third re-tender have been placed despite the opportunity being given.

53. During the course of the hearing, Mr. B. Gogoi, learned Additional Advocate General, placed a letter dated 25.04.2025, issued by respondent No.4 to show that respondent No.4 had taken the decision of issuing a fresh tender for the subject work through the GeM portal, which was later placed by way of an additional affidavit filed on 03.06.2025, with a copy served to the other side. The said letter reads as under:-

*“OFFICE OF THE SUPERINTENDENT::
ASSAM MEDICAL COLLEGE HOSPITAL
DIBRUGARH-786 002*

Dated Dibrugarh the 25/4/2025

No MCH/2025/ 11347

To

Mr. Buddhadip Gogol

*Standing Counsel, Health & Family Welfare
Department*

***Subject: W.P (C) No. 1597/2024(Shri Ranjit Baruah
vs State of Assam & 5 ors)***

*Ref. 1. Our letter bearing No.MCH/2024/8316 dtd.
04/04/2024*

2. Your letter No.HD/DS/25 did. 21/04/2024

Sir

We have informed you that the office of the undersigned has received your above referred letter, in compliance of the same we are handing over the process of the original tender documents available to us through the personnel messenger Sri Pitamber Reddy, Grade-IV (Peon), AMCH, Dibrugarh.

We would like further state that as per the minutes of the meeting held on 20/02/2024 at 2.00 PM in the Conference Hall of AMCH, Dibrugarh for providing annual job contract of dietary service to patients admitted in AMCH, Dibrugarh, it was clearly decided by the tender committee as per Govt. of Assam, Finance Department office memorandum No. ECF/No.327632 dtd. 08/01/2024 whereon it has been made mandatory by the Govt. of Assam under GeM Portal for all procuring entities for procurement of all goods and services that are available in GeM. According to the minutes of the tender financial bid although was opened through online mode

not signed and endorsed by any members of the tender committee. But in view of the aforesaid Govt. Notification the committee members recommended the Principal-cum-Chief Superintendent and Superintendent, Assam Medical College & Hospital, Dibrugarh to float a fresh tender through GeM portal. In the Assam Tender portal it is mentioned that financial covered to be opened (screenshot copy of the Assam Tender is enclosed herewith). As the matter was referred for fresh tender under GeM portal so the financial bid of the two selected bidders were not uploaded/submitted in Assam Tender Portal.

Be it mentioned that in the tender notice inviting e-Tender vide our office No.MCH/2024/948 dtd. 09/01/2024 it has been clearly mentioned that the Principal-cum-Chief Superintendent/Superintendent, AMCH, Dibrugarh reserves the right to reject all or any tender without assigning any reason.

This is for your kind information, record and doing needful

Yours faithfully

*Principal-cum-Chief
Superintendent
Assam Medical College &
Hospital, Dibrugarh*

*Superintendent
Assam Medical College
Hospital, Dibrugarh”*

54. Reading the aforesaid letter, it is clear that according to the minutes of the tender financial bid, although the financial bid was opened through online mode, it was not signed and endorsed by any members of the tender committee. It is further clear that in view of the Office Memorandum dated 08.01.2024, since the committee members recommended the respondent No.4 to float a fresh tender in relation to the subject work through the GeM portal, the matter was referred for a fresh tender

under the GeM portal, and the financial bids of the two selected bidders were uploaded/submitted in the Assam Tender Portal. In fact, there is no document whatsoever available on record relating to the decision of the respondent No.4 except the note purportedly to have been signed by the respondent No.4 in the body of the letter dated 02.03.2024. That apart, the aforesaid letter dated 25.04.2025 written by the respondent No.4 to the Additional Advocate General, State, is at best an instruction to him and cannot be taken as the decision of the respondent No.4 in relation to the adoption of the GeM method in the subject tender and cancellation of the third re-tender.

55. Thus, the admitted position that unfolds from the above is that the third re-tender was issued on 09.01.2024, and the office memorandum relied on the tendering committee, which mandates the GeM method mandatory was issued on 08.01.2024, i.e., one day before the date of issuance of the third re-tender. As noted above, it is mandatory under the provision of the Procurement Act for a notification to be published in the official gazette before coming into effect. It is pertinent that during the course of the hearing on 30.05.2025, upon query being put to the learned Additional Advocate General as regards the publication of the said Office Memorandum dated 08.01.2024 in the official gazette, accommodation was sought for obtaining instruction thereof. Thereafter, by filing an additional affidavit on 03.06.2025, he clarified that

the said office memorandum is not published in the official gazette. Paragraph 4 of the said additional affidavit reads as under:-

“4. That as regards the Office Memorandum dated 08.01.2024 issued by the Commissioner and Secretary to the Government of Assam, Finance Department, the deponent begs to submit that on enquiry, in the Finance Department, it has been informed that in pursuance of Rule 24(I)(2)(iv) of the Assam Public Procurement Rules, 2020 relating to Government e-Marketplace, the Finance Establishment (B) Department issued a Gazette Notification vide No. FEB.224/2021/5 dated 28.01.2022 whereby it was directed that Government e-Marketplace (GeM) is mandatory for all procurement entities for procurement of all goods and services that are available in GeM except in cases specified therein. Thus, procurement of goods and services available in GeM was already made mandatory for the procurement entities by the above mentioned Gazette Notification dated 28.01.2022. Further, it has been informed that the Office Memorandum dated 08.01.2024 is an Administrative Order and as such, the same is not required to be Gazette notified.”

56. Reading the aforesaid paragraph, it is clear that the stand of the respondent authority is that the Finance Establishment (B) Department, as per Rule 24(I)(2)(iv) of the rules, issued a gazette notification dated 28.01.2022, whereby it was directed that the Government e-Market (GeM) is mandatory for all procurement entities for procurement of all goods and services that are available in

GeM. It is thus contended on behalf of the state authorities that the mandatory requirement for procurement of subject work by the GeM method was already available vide the aforesaid gazette notification dated 28.01.2021. That apart, it is contended that the Office Memorandum dated 08.01.2024, being an administrative order, is not required to be gazette notified.

57. The aforesaid stand of the state respondent appears to be totally fallacious inasmuch as the Office Memorandum dated 08.01.2024 specifically mentions that the GeM notification dated 28.01.2022 stands superseded in view of the issuance of the Office Memorandum dated 08.01.2024. That apart, the tendering committee has referred to the Office Memorandum dated 08.01.2024 and not the GeM notification dated 28.01.2022, which is now sought to be relied on by the respondent authority. Such resort to adopt contrary stand before this court clearly demonstrates the desperate attempt of the respondent authority to justify their actions, which, on the face of it, appear, to be arbitrary and unreasonable. Apropos that, under the provisions of the Procurement Act and Rules made thereunder as extracted hereinabove, it is clear that detailed guideline for online procurement through GeM has to be notified by the state government in the Finance Department. It is also mandatory for such notification to be published in the official gazette. Undoubtedly, notification in common parlance is an instance of formal notifying or informing in writing. Similarly, an office memorandum is

primarily internal communication document used within an organization to transmit official information, instruction or announcement. Therefore, I have no doubt that the Office Memorandum dated 08.01.2024 relied by the tendering committee to adopt GeM procuring method for the subject procurement by cancelling the third re-tender is nothing but a notification which unless is published in the official gazette, the same shall not come into effect.

58. As a necessary corollary from the above, the admitted position is that the respondent No.4, who is the competent authority under the provisions of the Procurement Act and Rules made thereof to choose any other method other than the most preferred methods of open competitive bid, has not taken the decision in the subject third re-tender as required under the law. That apart, the tendering committee though was fully aware as regards the number of participation at the time of finalizing the technical bid, decided to open the financial bid and after opening the financial bid, suddenly was of the view that for better participation fresh tender be issued. It is not understood as why the tendering committee could not have taken this decision for fresh tender before opening the financial bid, since they were fully aware of the number of participation. It is further evident that though the office memorandum mandating GeM procurement method has not come into effect, the tendering committee insisted following the same, which was issued just one day prior to the issuance of the third re-tender. Such action of the

tendering committee as well as respondent No.4 does not inspire the confidence of this court. Moreover, the respondent No.4 has not communicated the grounds for not finalizing the subject third re-tender process. The decision making process is bound to be fully transparent and/or fair. Any decision making process which is not transparent and/or fair, suffers from the vice of arbitrariness. That apart, it is absolutely clear that the provisions of the Procurement Act and Rules made thereof has been totally violated and abused by the respondent No.4 while taking the impugned decision of issuing the fresh tender in the subject process. As such, I have no hesitation to hold that the subject decision making process is wholly arbitrary, discriminatory and unreasonable.

59. Viewed thus, from any angle, the impugned decision of the respondent No.4 in issuing the subject fresh tender cannot stand in the eye of law. That being so, the same is to be set right.

60. Hence, the writ petition succeeds.

61. Accordingly, the decision making process of the respondents in not finalizing the subject third e-Tender dated 09.01.2024 as well as the decision inviting fresh tender for the subject work through the GeM are hereby set aside and quashed.

62. Resultantly, the respondent authorities, more particularly the respondent Nos. 2, 3, 4 and 5 are directed

to finalize the subject third e-Tender process pertaining to e-Tender bearing No. MCH/2024/948 dated 09.01.2024 for the subject e-Procurement for providing annual job contract of dietary services to the patient admitted in Assam Medical College Hospital, Dibrugarh, in accordance with law.

63. With the above observations and directions, the writ petition stands allowed and disposed of.

Send back the case records.

JUDGE

Comparing Assistant