

GAHC010056652023



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

**Case No. : WP(C)/1466/2023**

AJIT BARUAH  
S/O- HAREN BARUAH ,  
PERMANENT R/O- VILLAGE- RANABARI.  
P.O- SINGRA,  
P.S- NORTH LAKHIMPUR, DIST- LAKHIMPUR, ASSAM, PIN-787023.

PRESENTLY RESIDING AT VILL-KHANAMUKH,  
P.O- NANKE PATGAON,  
P.S- CHARIDUAR, DIST- SONITPUR, ASSAM, PIN-784101

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT OF  
ASSAM, ENVIRONMENT AND FOREST DEPARTMENT, DISPUR, GUWAHATI,  
KAMRUP METRO , ASSAM-06.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST  
AND HEAD OF FOREST FORCE  
ASSAM  
ARANYA BHAWAN  
PANJABARI ROAD  
GUWAHATI  
KAMRUP METRO  
ASSAM  
PIN- 781037.

3:THE DIVISIONAL FOREST OFFICER  
LAKHIMPUR DIVISION  
NORTH LAKHIMPUR  
DIST- LAKHIMPUR  
ASSAM

4:THE ASSAM ELECTRONICS DEVELOPMENT CORPORATION LIMITED  
(AMTRON)  
REPRESENTED BY ITS MANAGING DIRECTOR  
HAVING ITS REGISTERED OFFICE AT INDUSTRIAL ESTATE  
BAMUNIMAI DAM  
GUWAHATI-781021  
KAMRUP METRO  
ASSAM

5:RANA DEV SAIKIA  
S/O- LATE GUNA KANTA SAIKIA  
R/O- M.T ROAD  
WARD NO-07

P.O- AND P.S- NORTH LAKHIMPUR  
DIST- LAKHIMPUR  
ASSAM PIN-78700

Linked Case : WP(C)/1737/2023

M/S RAGIA KU ENTERPRISE  
A PROPRIETORSHIP FIRM HAVING ITS REGD. OFFICE AT ESS SECTOR  
NEAR M.L.A. COTTAGE  
ITANAGAR ARUNACHAL PRADESH REP. BY ITS AUTHORIZED  
REPRESENTATIVE SRI DIPEN BORAH  
S/O- SRI LOK NATH BORAH  
AGED ABOUT 43 YEARS R/O- VILL- TEOKIA  
P.O. AHOMONI  
P.S. PANIGAON  
DIST.- LAKHIMPUR  
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM  
ENVIRONMENT AND FORESTS DEPTT.  
DISPUR GUWAHATI  
PIN- 781006  
KAMRUP (M) DISTRICT  
ASSAM

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST  
AND HEAD OF FOREST FORCE  
ASSAM REHABARI

GUWAHATI  
PIN- 781008  
KAMRUP (M) DISTRICT  
ASSAM  
3:THE DIVISIONAL FOREST OFFICER  
LAKHIMPUR DIVISION  
NORTH LAKHIMPUR  
DIST.- LAKHIMPUR  
ASSAM  
4:ASSAM ELECTRONICS DEVELOPMENT CORPORATION (AMTRON)  
LIMITED  
REP. BY ITS MANAGING DIRECTOR  
INDUSTRIAL ESTATE  
BAMUNIMAIDAN  
DIST.- KAMRUP (M)  
ASSAM  
5:RANA DEV SAIKIA  
S/O- LATE GUNA KANTA SAIKIA  
R/O- M.T. ROAD  
WARD NO.-07 P.O. AND P.S. NORTH LAKHIMPUR  
PIN- 78700 DISTRICT- LAKHIMPUR  
ASSAM

Advocate for the Petitioners : Mr. K. N. Choudhury, Sr. Advocate

Mr. M. Mahanta, Advocate  
Mr. P. K. Munir, Advocate

Advocate for the Respondents : Mr. D. Das, Sr. Advocate

Mr. S. Khound, Advocate  
Mr. D. Gogoi, Advocate  
Mr. I. Borthakur, Advocate

### **BEFORE**

### **HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 09.02.2024

Date of Judgment : 09.02.2024

### **JUDGMENT AND ORDER (ORAL)**

Heard Mr. K. N. Choudhury, the learned senior counsel assisted by Mr. M. Mahanta, the learned counsel for the petitioner in WP(C) No.1466/2023 and Mr. P. K. Munir, the learned counsel for the petitioner in WP(C) No.1737/2023. I have also heard Mr. D. Gogoi

and Mr. I. Borthakur, the learned counsels appearing on behalf of the Forest Department of the Government of Assam as well as Mr. D. Das, the learned senior counsel assisted by Mr. S. Khound, the learned counsel appearing on behalf of the private respondents.

2. Both the writ petitions are taken up together taking into account that both the writ petitions are in relation to the Long E-Auction Notice dated 07.06.2021 and the petitioners herein have assailed the order dated 08.02.2023 whereby the bids of the petitioners in both the writ petitions have been rejected on the ground of failing in the technical bid.

3. The facts involved in both the writ petitions are pari-materia for which this Court finds it relevant to take note of the facts involved in WP(C) No.1466/2023 and while doing so, this Court had also duly taken note of the differences in the facts in WP(C) No.1737/2023 as would be seen infra.

4. The Divisional Forest Officer, Lakhimpur Division had issued a Long E-Auction Notice dated 07.06.2021 in terms with the provisions of Rule 32, 33 and 34 of the Assam Minor Mineral Concession Rules, 2013 (for short, ‘the Rules of 2013’). A perusal of the contents of the said Long E-Auction Notice dated 07.06.2021 reveal that the bids were invited in two systems, i.e. technical and financial from registered contractors, firms, societies and individual etc. for award of lease/contract /permit for five Minor Mineral Concession Arrears (Mahals). The instant writ petitions are in relation to the Minor Mineral Concession Area No.4., i.e. Dikrong Sand and Gravel Mining Contract Area of 2021-27 (10 Ha.) and for the sake of convenience, the said Minor Mineral Concession Area is herein after referred to as ‘the Mahal in question’. It is also relevant to take note of that the said Long E-Auction Notice stipulated the type of Minor Mineral and the quantity in cu.m in respect to the Mahal in question. The total quantity of the sand was 1,40,000 m<sup>3</sup> and for gravel 1,96,000 M<sup>3</sup>. The earnest money deposit was Rs.58,80,000/- and the contract period was mentioned to be 7 years (from the date of signing the agreement). It is also seen from the said Long E-Action Notice that the details of the eligibility criteria, experience, auction schedule and other terms and conditions were available in the auction document to

be purchased and downloaded by the bidder from the portal, i.e. <https://www.assamforestonline.in> up to 04.07.2021. Further to that, the online bidding would commence from 11.06.2021 and the last date for submission of the online bid was 05.07.2021. The petitioners in both the writ petitions along with others purchased the auction documents and submitted their bids online mode.

5. It is the case of both the writ petitioners that certain documents which were submitted in the online mode mysteriously disappeared for which the petitioners duly submitted respective representations before the Divisional Forest Officer and the Divisional Forest Officer informed the petitioners that the said aspect would be looked into. While the said process was going on, the technical bid of both the petitioners were rejected for which both the writ petitioners filed two writ petitions before this Court which were registered and numbered as WP(C) No.3394/2021 and WP(C) No.3610/2021.

6. It is relevant to take note of that in the case of the writ petitioner in WP(C) No.1466/2023, the ground for rejection was that the cancelled court fee of Rs.100/- was not found as well as the notarized affidavit on Rs.100/- non-judicial stamp about Minor Mineral held by the bidder and that no mineral revenue due to the Government were not found. In respect to the writ petitioners in WP(C) No.1737/2023, the technical bid was rejected on the ground that the cancelled court fee of Rs.100/- was not found during the technical evaluation auction. The records further reveals that on 29.07.2021, this Court in WP(C) No.3394/2021 issued notice returnable by four weeks and till the next returnable date, the tender process in respect to the Mahal in question pertaining to E-Auction Notice dated 07.06.2021 was directed not to be processed and status-quo be maintained as on 26.07.2021. The record reveals that the respondent Department filed an affidavit in WP(C) No.3394/2021. To the said affidavit, a letter bearing No.AEDC/2013-14/IPG/Forest Online/4521 dated 27.07.2021 issued by the Senior System Consultant of Respondent No.4, i.e. the Assam Electronics Development Corporation (AMTRON), Ltd. was enclosed. The

said letter which is a part of the instant writ proceedings and enclosed as Annexure-9 to WP(C) No.1466/2023 shows that the Senior System Consultant of the respondent No.4 had suggested that the current e-auction should be cancelled and restarted with the proper NIT documents for the benefit of all the bidders. It was also mentioned that the NIT documents should be corrected as required so, as to bring it in line with online E-Auction system.

7. Thereupon, when both the writ petitions, i.e. WP(C) No.3394/2021 and WP(C) No.3610/2021 was listed before this Court on 13.06.2022, the Standing Counsel of the Forest Department made a submission to the effect that since there is already a recommendation from the respondent No.4, i.e. AMTRON for cancellation of the tender in question, the State Forest Department Authorities would abide by the same. It was also submitted that the tender was in the process of being cancelled. This Court duly observed that if the tender in question is cancelled then the grievances of the writ petitioners would automatically stands redressed. Under such circumstances, the Standing Counsel of the Forest Department was directed to take steps for filing an affidavit through the competent authority bringing on records the final decision on the question of cancellation of tender.

8. The writ petitions there upon were directed to be listed on 22.06.2022. It further reveals from the records more particularly paragraph No.12 of the writ petition in WP(C) No.1466/2023 that pursuant to the said direction passed by this Court in its order dated 13.06.2022, an affidavit was filed by the respondent Forest Department on 21.06.2022 in WP(C) No.3610/2021 whereby the decision of the competent authority, i.e the respondent Principal Chief Conservator of Forests & Head of Forest Force, Assam for cancellation of the tender process as recommended by the AMTRON was brought on record.

9. Be that as it may, when the matter was listed on 22.06.2022, the Standing Counsel of the Forest Department submitted an instruction to the effect that although no final decision has yet been taken regarding cancellation of the tender yet, but in view of the Clauses 8, 13 & 18 of the Bidding Document, the Departmental authority would be open to revisit the documents of the writ petitioners, if such direction is issued by this Court.

Upon the said submission made, the counsels appearing on behalf of both the writ petitioners agreed that if the Departmental authorities are agreeable to re-verify the documents of the bidders physically, then they would have no objection if the writ petitions are disposed of with such a direction. This Court vide the order dated 22.06.2022 disposed of both the writ petitions being WP(C) No.3394/2021 and WP(C) No.3610/2021 thereby directing that within two weeks from the date of the said order, the official respondents may take steps for re-visiting the decision of Technical Evaluation Committee after physical verification of the hard copies of the documents relied upon by both the petitioners. It was also observed that since there were as many as 7 bidders who have been disqualified on technical grounds, it would be open for the Departmental authority to extend similar consideration to the technical bid of other bidders as well who are not before this Court if those bidders continued to show interest in the matter. The relevant portion of the said order is quoted herein below:-

*“During the pendency of the writ petition, AMTRON, Assam which is the nodal agency to conduct the online bidding process, had apparently issued letter dated 27-07- 2021 recommending that the tender itself be cancelled and a fresh e-auction notice be issued.*

*Mr. Pathak, learned standing counsel, Forest Department submits on instruction that although no final decision has yet been taken regarding cancellation of the tender, yet, in view of the Clauses- 8, 13 and 18 of the tender document, the departmental authority would be open to revisit the matter upon physical verification of the documents to be submitted by the writ petitioners, if such a direction is issued by this Court.*

*Responding to the above, the learned counsel for the petitioners as well as the qualified bidder have candidly submitted that if the departmental authorities are agreeable to re-verify the documents of the bidders physically, then they would have no objection if the writ petitions are disposed of with such a direction.*

*Since the tender document contains clauses which permits the recourse proposed by the departmental authority, viz. revisiting the technical evaluation and since all the parties are agreeable to such a direction, I dispose of these writ petitions by providing*

*that within 02 weeks from today the official respondents may take steps for revisiting the decision of the technical evaluation committee after physical verification of the hard copies of the documents relied upon by both the petitioners.*

*Since there are as many as 07 technical bidders who have been disqualified on technical ground, it would be open for the departmental authorities to extend similar consideration to the technical bids of the other bidders as well, who are not before this Court, if those bidders continue to show interest in the matter.*

*Writ petitions are accordingly disposed of.”*

10. Before further proceedings this Court however finds it very pertinent to observe that a perusal of the Bidding Documents do not visualize that the physical copy of the bid is required to be submitted along with the online bid. Clause 8 ((A) (a) (ii) of the Bidding Documents only stipulated that the duly executed original physical copy of the Technical Bid may be demanded by the Authorities at the address specified in Clause 13.1.2 any time during the bidding process and in case of difference between documents submitted electronically and original document submitted physically, the original documents submitted physically would prevail. Therefore, the effect of the order dated 22.06.2022 by this Court would now permit the original physical copy of the bid now to be submitted and these documents would prevail over the documents which were electronically submitted. In other words, the entire e-auction process which stipulated the last date of submission of the electronic bid was rendered nugatory.

11. Pursuant to the said order passed by this Court on 22.06.2022, both the writ petitioners herein submitted representations dated 28.06.2022 for accepting hard copies of the bid documents in respect to the settlement of the Mahal in question. On such representations, a hearing was held in the Office of the Principal Chief Conservator of Forests & Head of Forest Force, Assam in presence of the petitioners along with the officials of AMTRON. Vide an order dated 26.08.2022, it was observed that the claim of the two petitioners herein for accepting the technical bids on the ground that they have submitted the correct technical bids in all respect is not a matter of fact and is not valid

and accordingly the technical bids of the petitioners were again rejected primarily on the ground that there was no manipulation in the online bid process. It was also observed in the order dated 26.08.2022 that the Divisional Forrest Officer, Lakhimpur Division to continue further with the NIT dated 07.06.2021, i.e. the E-Auction process of the second stage of bidding with the qualified bidders, namely, (i) Ganesh Kalwar and (ii) the private respondent.

12. Although no affidavit was filed in the present proceedings by any of the respondents, but during the course of hearing, certain documents were placed before this Court; reference to which this Court finds it pertinent to mention. These documents were placed by Mr. D. Das, the learned senior counsel appearing on behalf of the private respondent. The first document is a document dated 26.08.2022 whereby the Divisional Forest Officer, Lakhimpur Division had informed the private respondent and Sri Ganesh Kalwar that live auction in respect to the Mahal in question would be held from 31.08.2022 at 1:00 PM, and as such, the said bidders were requested to contact the respondent No.4-AMTRON for online training on the same before 31.08.2022 without fail. The second communication is of the same date, i.e. 26.08.2022 issued by the Divisional Forest Officer, Lakhimpur Division to the Managing Director of respondent No.4-AMTRON informing the latter to arrange necessary online training to the technically qualified bidders before the live auction. The third document is a document dated 27.02.2023 which is a provisional Letter of Intent to the private respondent wherein it was mentioned that on 31.08.2022, the second stage of e-auction had taken place and the private respondent quoted the highest.

13. The order dated 26.08.2022 whereby both the petitioners were again held to be technically disqualified were put to challenge by both the writ petitioners by filing two separate writ petitions being WP(C) No.5732/2022 and WP(C) No.5861/2022. When the writ petition being WP(C) No.5732/2022 was listed before this Court on 06.09.2022 for motion, it was submitted before this Court that the order impugned therein, i.e. the order

dated 26.08.2022 was not in terms with the order passed by this Court dated 22.06.2022 in WP(C) No.3394/2021. The learned Standing Counsel, Forest Department categorically submitted before this Court that the order dated 26.08.2022 does not appear to be in consonance with the directions passed by this Court for which the Departmental counsel prayed for posting the matter again on 08.09.2020 so as to enable the Department to take corrective measures as may be permissible under law. The private respondent was duly represented by his counsel on the said date. Under such circumstances, vide the order dated 06.09.2022, this Court directed the learned Departmental counsel to apprise this Court as to the basis on which the impugned order dated 26.08.2022 was issued. The said order dated 06.09.2022 having relevance to the dispute involved is quoted herein below:-

*“Heard Mr. K.N. Choudhury, learned Sr. counsel assisted by Mr. M. Mahanta, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned standing counsel appearing for the official respondents. Mr. D. Das, learned Sr. counsel assisted by Mr. K. Mohammad, learned counsel is present on behalf of the respondent No. 5.*

*The order dated 26-08-2022 passed by the Principal Chief Conservator of Forest, Assam rejecting the tender of the petitioner and another bidder, viz. M/s Rangia KU Enterprise i.e. the writ petitioner in W.P.(C) No. 5861/2022 have been put under challenge in this writ petition, inter alia, on the ground that despite the specific directions issued by the order dated 22-06-2022 passed by this Court in W.P.(C) No. 3394/2021, the respondent authorities have neither revisited the earlier order nor recorded any findings as regards the correctness of the petitioner’s claim based on proper verification of the physical documents.*

*According to Mr. Choudhury the impugned order is nothing but a clear attempt to over-reach the jurisdiction of this Court for the purposes which are not bonafide and therefore, besides setting aside the impugned order, the concerned official also needs to be proceeded against for contempt of Court.*

*Mr. D. Gogoi, learned standing counsel, Forest Department, Assam has submitted in his usual fairness that the impugned order does not appear to be in*

*consonance with the direction passed by this Court. The learned departmental counsel, however, prays for posting this matter again on 08-09-2022 so as to enable the department to take corrective measures, as may be permissible under the law.*

*Mr. D. Das, learned Sr. counsel has reserved his submission awaiting further decision of the department in the matter.*

*In view of the above, let this writ petition be listed again on 08-09-2022 along with W.P.(C) No. 5861/2022.*

*On the next date fixed, the learned departmental counsel to apprise this Court as to the basis on which, the impugned order has been issued.”*

14. Pursuant to the order dated 06.09.2022 passed by this Court another interesting development took place in as much as on 07.09.2022 itself, the Additional Chief Conservator of Forest (A & V) issued an office order dated 07.09.2022 to the effect that the order dated 26.08.2022 bearing O.O No.475 issued by the Principal Chief Conservator of Forest and Head of Forest Force, Assam is kept in abeyance forthwith until further orders. The said office order dated 07.09.2022, being relevant is quoted herein under:-

“0.0. No. 496

*Dated Guwahati, the 7" September/2022*

OFFICE ORDER

*In compliance to the Hon'ble Gauhati High Court's order dated 06/09/2022 passed in WP(C) No. 5732/2022 (Shri Ajit Baruah-vs-the State of Assam & Ors.), the speaking order dated 26/08/2022 bearing O.O. No. 475 issued by the Principal Chief Conservator of Forests & Head of Forest Force, Assam in WP(C) No. 3394/2021 along with linked Case WP(C) No.3610/2021 is hereby kept in abeyance forthwith until further order.*

*This has the approval of Principal Chief Conservator of Forests & Head of Forest Force, Assam.*

*Addl. Principal Chief Conservator of Forests (A&V)  
O/O the Principal Chief Conservator of Forests & Head of Forest  
Force, Assam*

*Panjabari, Guwahati”*

15. On 08.09.2022, when both the writ petitions were listed before this Court, i.e. WP(C) No.5732/2022 and WP(C) No.5861/2022, it was submitted before this Court that the Department will give a fresh hearing to the writ petitioners based on the hard copies of the tendered documents. It is under such circumstances this court duly observed in its order dated 08.09.2022 that it was apparent that the Department is on a course of correction and has decided to pass fresh order in the matter after completing physical verification of the documents and on hearing the petitioners. Accordingly, the writ petitions, in view of the said undertaking given by the Departmental counsel were held that it had become infructuous and accordingly the same was closed. The common order dated 08.09.2022 passed in both the writ petitions, i.e. WP(C) No.5732/2022 and WP(C) No.5861/2022 is quoted herein below:-

*“Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. M. Mahanta, learned counsel for the writ petitioner in WP(C) 5732/2022 and Mr. T. H. Hazarika, learned counsel for the writ petitioner in WP(C) 5861/2022. Mr. D. Das, learned senior counsel assisted by Mr. K. Mohammed, learned counsel is present on behalf of the private respondent. Mr. P.N. Goswami, learned Additional Advocate General, Assam, representing the Forest Department has appeared and produced a copy of the order dated 07/09/2022 issued by the Additional Principal Chief Conservator of Forests, keeping the order impugned in these writ petitions i.e. the speaking order dated 26/08/2022 in abeyance. He submits that the department will give a fresh hearing to the writ petitioners based on the hard copies of the tender documents.*

*If that be so, it is apparent that the department is on a course of correction and has now decided to pass fresh order in the matter after completing physical verification of the documents and on hearing the petitioners. In view of the above, these writ petitions have become infructuous and are accordingly, closed.*

*The petitioner(s) shall furnish hard copies of the bid documents sought to be relied upon by them to the concerned authorities within three days from today.*

*Thereafter, a date may be fixed and notified by the respondents for hearing of the matter. It would be open for the respondents to pass fresh speaking orders thereafter.*

*With the above observation, both the writ petitions stand disposed of.”*

16. On the basis thereof a re-hearing was held in the Office of the PCCF & HoFF, Assam wherein both the writ petitioners were asked to submit the hard copies of the documents along with their signatures on each page which were accordingly submitted and kept in a sealed cover. The ‘brief facts of the case’ as noted in the order dated 08.02.2023 is relevant as it mentions various significant developments which culminated to the order dated 08.02.2023. Further from the said Section of the order dated 08.02.2023, it reveals that the Divisional Forest Officer, North Lakhimpur was asked to collect the hard copies of the bid documents along with their signatures on each page from other bidders. Accordingly, on 20.09.2022, the signed copies of the physical bid documents were submitted along with joint signatures of the DFO, North Lakhimpur Division and also kept in sealed cover in the Office of the PCCF & HoFF, Assam in so far as the petitioners and in respect to the private respondent on 26.09.2022. However, the other bidders failed to submit their bid documents in spite of repeated notices dated 22.09.2022 and 30.09.2022 by the DFO, Lakhimpur Division. It also appears from the materials on record that one of the technically qualified bidder Sri Ganesh Kalwar withdrew his earnest money deposit amount of Rs.29,40,000/- and was refunded by AMTRON on 05.12.2022. It is also relevant to take note of that as per the original bid Evaluation Committee’s report dated 06.07.2021, three bidders were found technically qualified, i.e. the private respondent, Sri Ganesh Kalwar and Sri Takeswar Doloi. However, both Sri Takeswar Doloi and Sri Ganesh Kalwar had withdrawn the earnest money deposit. It was also noted that 7 bidders had also withdrawn their earned money deposits. Therefore, in the fray at the time of consideration of the technical bids remained both the petitioners and private respondent. On 21.01.2023, a hearing was held whereby the documents submitted by both the petitioners and the private respondent

were examined in their presence and the physical documents which were kept in sealed cover were opened and examined.

17. The technical bid of the petitioner in WP(C) No.1466/2023 was rejected on two grounds, i.e. the document of fixation of Court fee stamp bears Auction 5 instead of Auction 4 for Dikrong Sand and Mining Contract Area. Secondly, the petitioner in WP(C) No.1466/2023 failed to furnish signed copies of the original bidding documents for participation in the online auction/tender process along with his bid.

18. As regards the petitioner in WP(C) No.1737/2023, it was held that the said petitioner submitted affidavits stating at Sl. No.2 (i) submission of ESIC certificate, but on scrutiny the bid of said petitioner was found lacking in ESIC certificate which were purported to be submitted through an affidavit but no such certificate was found in place of ESIC certificate. An undertaking to that effect that ESIC certificate would be submitted within one month being chosen as a successful bidder was duly submitted. It was held that the affidavit filed by the petitioner in WP(C) No.1737/2023 was a false affidavit. It was also mentioned that the said petitioner failed to sign the original bidding documents and submit the same in online as well as in physical submission dated 20.09.2022. On the basis thereof, both the petitioners were held to be technically disqualified. It was mentioned that the bid of the private respondent as submitted physically on examination was found qualified.

19. Before proceeding further, this Court finds it very pertinent to observe that on 27.02.2023, an Office Order No.19 was issued by the PCCF & HoFF, Assam stating inter-alia that on 31.08.2022, the stage 2 live auction was conducted wherein the private respondent had offered his bid amount of Rs.6,42,08,888/- for which the provisional Letter of Intent (LoI) was issued to the private respondent being the successful bidder. Thereupon, on 28.02.2023, the Letter of Intent was issued. Those documents were placed before this Court during the course of hearing which are kept on record and marked with the letters "X" and "Y".

20. The record further reveals that both the writ petitions were filed pursuant thereto on 13.03.2023 and 20.03.2023. In WP(C) No.1466/2023, this Court issued notice and in the interim, observed that though the private respondent may not be restrained from obtaining the mining plan and other clearance from the Ministry of Environment, the final allotment order may not be granted until the returnable date. In WP(C) No.1737/2023 an order dated 29.03.2023 was passed whereby notice was issued and a similar interim order was passed. It is relevant to take note of that in both the writ petitions, neither the official respondents nor the private respondent have filed affidavit-in-opposition.

21. In the backdrop of the above pleadings and materials on record, let this Court take note of the respective submissions made by the learned counsel for the parties.

22. Mr. K. N. Choudhury, the learned senior counsel for the petitioner submitted that the ground and reasons for which the bid of the petitioner in WP(C) No.1466/2023 was rejected are arbitrary, unreasonable and is not based on the terms and conditions of the bidding documents. Referring to Clause 13 of the bidding documents, the learned senior counsel submitted that the technical bid shall comprise of a bid letter in the format specified in part B of Schedule-I along with documents mentioned in Part B (i) (c) and (d) of Schedule-I. The learned senior counsel submitted that the bidder in question was an individual bidder and therefore there was no requirement to submit any Power of Attorney in terms with Clause 13 (b). The learned senior counsel further submitted that Clause (c) requires an affidavit in the format specified in Part D of Schedule-I. The learned senior counsel further drew the attention of this Court to Schedule-I which related to the format of the technical bid. In terms with Clause A which are the General Instructions, the technical bid comprises of a Bid letter in the format specified in Part B along with documents mentioned in Part B (1) (c) & (d). In terms with Part B (1) of Schedule-I, the bid letter, must be printed on the letterhead of the bidder, if the bidder is a registered company. In case of other bidders, it may be printed on plain paper. In terms

with Sub-Clause (b) of Part B (1), the bid letter must be signed by the authorized representatives of the bidder, in case the bidder is a company and in other cases the bidder must personally signed the bid letter. The learned senior counsel submitted that documents mentioned in Sub-Clause (c) of Part B (1) has no relevance to the petitioner taking into account that the petitioner is an individual bidder and not a company. As per Sub-Clause (d) of Part B (1), various documents were required to be submitted. The learned senior counsel submitted that from a perusal of the documents mentioned in Schedule-I or even the Clauses of the Bidding Document, there is no requirement that the bidding document which is completely different from the bid letter is required to be signed and submitted. The learned senior counsel further drew the attention of this Court to Clause 1 of the Bidding Document which explains about the bidding document and the definition of the ‘bidding document’ contained in Clause 2 of the Bidding Document which means the bidding documents together with the Schedules and documents referred in the bidding document including the information, memorandum and any agenda to the bidding document. He therefore submitted that as per Clause 13 as well as Schedule-I, Part A & B, there was no requirement of submission of a signed bidding document. The learned senior counsel further submitted that if the format of the bid letter is taken into consideration which is duly mentioned in Part B of Schedule-I and more particularly to paragraph No.2 of the said bid letter, it would be seen that the bidder has to give an undertaking that the bidder had reviewed the terms of the bidding documents and unconditionally and irrevocably accept, agree and acknowledge the terms thereof. It is under such circumstances the learned senior counsel for the petitioner therefore submitted that the bidding document was not required to be signed and submitted as per the terms and conditions of the bidding document itself. Therefore, the first ground on which the petitioner in WP(C) No.1466/20223 has been held to be disqualified is not based upon the bidding document.

23. The learned Senior Counsel further submitted that as per Sub-Clause (d) (vi) of

Part B (1) of the Schedule-I as well as Clause 5 of the Bidding Document, there is a requirement of submission of a Court fee of Rs.100/- pasted, cancelled, crossed and digitally signed in the format available at the website <http://www.assamforestonline.in>. The learned senior counsel further drew the attention of this Court to the format which was available in <http://www.assamforestonline.in> wherein it was mentioned that any stamp found to be reused or not crossed would lead to disqualification of the bidder. He therefore submitted that there is no denying to the fact that the petitioner duly submitted Rs.100/- court fee which was crossed and not reused. There was an inadvertent mistake in not correcting the format which was available in the website which showed Auction No.5 which the petitioner ought to have made it as Auction No.4, but that cannot be a reason for rejecting the bid of the petitioner as disqualified in as much as the court fee of Rs.100/- was duly received. He further submitted that in respect to Auction No.5 which pertains to Singra Sand and Gravel Mining Contract Area, the said petitioner had also participated and submitted a separate court fee of Rs.100/- which can be seen from Annexure-17 to the writ petition. It is, therefore, the submission of the learned senior counsel that the grounds on which the petitioner's bid was rejected were manifestly arbitrary, suffers from malice in law and the manner in which the terms of the Bidding Document was applied suffered from perversity for which the impugned order is required to be interfered with.

24. The learned senior counsel further drew the attention of this Court to Clause 8 of the bidding document which categorically stipulated that if there are less than two technically qualified bidders, then the auction process shall be annulled and such technically qualified bidder if any will not get the chance to proceed to second round of E-Auction. The learned senior counsel further submitted that only when an auction is annulled on two consecutive occasions due to the same reason, i.e. less than two technically qualified bidders, then in the next auction of the same mine, the single technical qualified bidder, if any, shall be allowed to the next round of E-Auction. The

learned senior counsel therefore submitted that on 16.07.2021, the technical evaluation which was carried out was rendered honest on the basis of the stand taken by the Department as well as the order passed by this Court on 22.06.2022. Thereafter, the order dated 26.08.2022 was passed whereby it was held that there were two technically qualified bidders. This technical evaluation was also rendered honest on the basis of the stand taken by the Departmental officials wherein they stated that they would take a fresh decision after giving hearing to the petitioners for which this Court passed an order on 08.09.2022. Thereupon, hearing was conducted on the technical evaluation and on the date on which the order of technical evaluation was done finally, i.e. on 08.02.2023, the respondent authorities had only one technically qualified bidder. Therefore, the respondent authorities could not have gone ahead with the second round of E-Auction as per the mandate of the bidding document. However, the action on the part of the respondent authorities to settle the Mahal in question in favour of the private respondent on the basis of the technical evaluation done on 26.08.2022 speak large of the illegalities on the part of the respondent authorities to favour the private respondent by hook or by crook. He therefore submitted that this is a fit case wherein the entire tender process should be annulled and the respondent authorities should be directed to go for a fresh tender.

25. Mr. D. Das, the learned senior counsel appearing on behalf of the private respondent, per contra, submitted that the question of annulling the tender process does not arise in view of the fact that on the basis of the order dated 26.08.2022, there were two technically qualified bidders and as such on 31.08.2022, the respondent authorities have duly gone to the second stage. He therefore submitted that when the Respondent Authorities proceeded to the second stage on 31.08.2022, there were two technically eligible tenderers for which the question of annulment of the tender process does not arise. The learned senior counsel further submitted that the private respondent has duly submitted the earnest money deposit as well as the security deposit and has also obtained

the mining plan by incurring huge expenditure and the private respondent would be seriously prejudiced if the entire tender process is annulled.

26. On the aspect pertaining to the order dated 08.02.2023 whereby both the petitioners have been held to be technically disqualified, the learned senior counsel submitted that the Court fee which was submitted of Rs.100/- was in respect to Auction No.5 and not Auction No.4 and as such the submission of the said court fee was not in accordance with the bidding documents and the respondents have rightly disqualified the petitioner in WP(C) No.1466/2023. The learned senior counsel further referring to Clause 13 and more particularly the Section with the Heading ‘Minor Deviations’ submitted that Minor Deviations would not be permitted in matters related to eligibility and shall be permitted only with respect to procedural requirement. He further submitted that the decision of the State Government/competent authority regarding what constitutes minor deviation shall be final and binding. The learned counsel further drew the attention to Clause 5 of the bidding document and submitted that the submission of the court fee stamp of Rs.100/- falls within the ambit of General Eligibility Criteria and as such the said cannot be allowed as a minor deviation. Furthermore, when the respondents have not taken a view that it constitute a minor deviation, this Court under Article 226 of the Constitution even if such view is not acceptable would not interfere with the said interpretation so given by the respondent authorities.

27. As regards the question of the bidding document not being signed and placed, the learned senior counsel fairly submitted that a perusal of the bidding document does not reflect that the said bidding document was required to be signed and submitted along with the technical bid.

28. On the rejection of the bid of the writ petitioner in WP(C) No.1737/2023, the learned senior counsel submitted that the perusal of the entire materials on record would show that the bid letter as well as also in the affidavit so filed, the petitioner on oath stated that the copy of the EPF and ESIC certificate were enclosed supporting the

eligibility criteria whereas such certificate was not enclosed. The learned senior counsel for the private respondent submitted that though the undertaking was also given that the same shall be produced within one month of being chosen as a successful bidder which is also permissible as per the bidding document but as the contents of the bid letter and the affidavit were incorrect in so far as submission of the EPF and ESIC certificate, the Respondent Authorities were justified in rejecting the bid of the petitioner in WP(C) No.1737/2023.

29. Mr. D. Gogoi and Mr. I. Borthakur, the learned counsels appearing on behalf of the Forest Department have placed before this Court the original physical copies of the bids submitted by the petitioner as well as the private respondent. Both the counsels fairly submitted that a perusal of the bidding document does not reveal that the said bidding document was required to be signed and submitted along with the technical bid. The learned counsels further drew the attention of this Court to Clause 5 of the bidding document and more particularly to the Section wherein the requirement of the scanned copy of PF registration and scanned copy of ESIC registration was mentioned. The learned counsels submitted that though as per the said Clause 5, each bidder has to provide the scan copies of the PF registration as well as ESIC registration at the time of registration at the website <http://assamforestonline.in>, but, if a bidder cannot provide the said certificate at the time of registration, the Clause mandates that the bidder can provide it within one month of being chosen a successful bidder. It was submitted by the learned counsels appearing on behalf of the Forest Department that an undertaking was duly given by the petitioner in WP(C) No.1737/2023 along with the bid that the petitioner would provide such registration certificate within one month of being chosen as a successful bidder. The question of disqualification of the writ petitioner in WP(C) No.1466/2023, as regards the non-submission of court fee of Rs.100/-, the learned counsels submitted that the said court fee was submitted but it was mentioned as auction No.5 which ought to have been Auction No.4. It was however candidly submitted that in

respect to Auction No.5, the said petitioner had duly participated and submitted separate court fee.

30. On the basis of the above contentions and taking into account the materials on record, three points for determination arise for consideration:

- (i) Whether the disqualification of the petitioners in both the writ petitions in the technical bid evaluation by the Respondent Authorities was justified?
- (ii) Whether on the facts of the instant case, the tender proceedings are required to be annulled?
- (iii) What relief or reliefs, the parties herein are entitled to?

31. From the above materials on record and the submission made, it is apparent that the rejection of the technical bid of the petitioners on the ground of non-submission of the signed bidding document was contrary to the terms and conditions of the bidding document in as much as a perusal of Clause 13 as well as Part A and B of the Schedule-I, do not show that there was a requirement of submitting the signed copy of the bidding document. What was required in so far as the bidding document in question is that the bidder has to acknowledge in the bid letter that the bidder unconditionally and irrevocably accept, agree and acknowledge the terms of the bidding document. Further to that, Part B (1) (b) of Schedule-I categorically mention that it is only the bid letter that must be signed by the bidder and in respect of a company, it can be signed by the duly authorized representative of the bidder. The said having been complied with by the petitioners, the impugned order dated 08.02.2023 whereby both the writ petitioners have been disqualified on the ground of non-submission of the signed bidding document suffers from the malice in law and perversity in the understanding, appreciation as well as the application of the terms of the tender conditions.

32. In the backdrop of the above, let this Court therefore now take the question as to whether the rejection of the bid of the petitioner in WP(C) No.1466/2023 was justified

on the ground that though the petitioner had duly submitted the court fee of Rs.100/- by pasting in the format as given and then crossed, scanned and signed (both digitally and physically) and uploaded in the website, but mentioned in the format as Auction No.5.

33. This Court has duly taken note of Clause 5 of the bidding document as well as the Sub-Clause (d) (vi) of Part B (i) of Schedule-I which stipulate that the court fee stamp of Rs.100/- should be pasted, cancelled, crossed and digitally signed on the format available on the website. The digitally signed document is available at page 115 of the writ petition and the original physical copy has also been placed before this Court. From the said two documents, it reveal that there was a requirement of affixing court fee stamp amounting to Rs.100/- per Mahal/auction on the space provided in the format. It was also required that all such stamps are to be duly crossed after affixing. There is a Note to the said format which stipulates five conditions. Clause 5 of the Note is relevant and the same is quoted herein under:-

*“5. Any stamp found to be re-used or not crossed will lead to disqualification of the bidder.”*

34. Therefore, from a perusal of the Clause 5, Sub-Clause (d) (vi) of Part B (1) of Schedule-I and Clause 5 of the Note in the format provided for affixing the Court fee stamp, it is clear that there is a requirement of depositing Rs.100/- as Court fee and the disqualification would only be if the stamp is found not crossed or is re-used. However, from the materials on record, it is seen that the stamps in question were duly pasted, scanned, signed (both physically and digitally) and the same were duly crossed. It neither appears that the said stamps were re-used nor it is the case of the Respondent Authorities that the stamp was reused. Further to that, Page 170 of the writ petition clearly shows that for Auction No.5, the petitioner had separately given the Court fee. Under such circumstances, merely in the format it was mentioned as Auction No.5 rather than Auction No.4, in the opinion of this Court, the respondent authorities were not justified in rejecting the bid of the petitioner in WP(C) No.1466/2023. It is the further

opinion of this Court that the said rejection amounts to malice in law coupled with perversity in application of the terms of the tender conditions.

35. Now coming to the disqualification of the petitioner in WP(C) No.1737/2023, this Court finds it relevant to take note of the relevant portion of Clause 5 of the tender condition which is reproduced herein under:-

*Highest Bidder is expected to take measures for welfare of labour working on mines, Therefore, a) Each bidder has to provide scanned copies of PF registration of the company/firm/individual. This should be provided at the time of registration at the website <https://www.assamforestonline.in>. In case the bidder is not able to provide it at the time of registration, he has to provide it within one month of being chosen as successful bidder.*

*b) Each bidder has to provide scanned copies of ESIC registration of the firm/company/individual. This should be provided at the time of registration at the website <https://www.assainforestonline.in>. In case the bidder is not able to provide it at the time of registration, he has to provide it within one month of being chosen as successful bidder.”*

36. From the above, it would be seen that though there is the requirement of providing the scan copies of the PF registration as well as ESIC registration at the time of registration at the website, but, the bidder upon being chosen as a successful bidder can submit the same within one month of being chosen as a successful bidder. This Clause, therefore, clearly mandates that submission of PF registration as well as the ESIC registration is not essential as per the very mandate of the bidding document and it can be submitted by the successful bidder within one month of being chosen so. The record further reveals that there is an undertaking given by the petitioner in WP(C) No.1737/2023 which is not denied by the respondent authorities as would be seen from the impugned order itself. Now the question therefore arises as to whether on the basis of the affidavit as well as the bid letter wherein it has been mentioned that the ESIC registration and PF registration have been submitted along with the bid document, but the same having not done so would entail disqualification of the bidder on ground that

the bid letter and affidavit was false.

37. This Court at this stage finds it relevant to take note of Clause 13 of the bidding document. In the said Clause, there is a Section “Rejection of Bids”. From the said Section “Rejection of Bids”, it is seen that the State Government/competent authority reserved the right to reject any bid on any criteria specified in the bidding document including without limitation, on the ground (a) bids have not been submitted with all information and details listed in the bidding document; (b) bid is not in conformity with Clause of 8 of the bidding documents; (c) bids have been submitted without earnest money and (d) bids have otherwise not been submitted in accordance with the bidding documents. None of these grounds exist for rejection of the bid of the petitioner in WP(C) No.1737/2023. Under such circumstances, it is therefore the opinion of this Court that rejection of the bid of the petitioner in WP(C) No.1737/2023 was not in accordance with the bidding documents. The above analysis therefore shows that the rejection of the technical bids of the petitioners in both the writ petitions were not justified. This therefore answers the first point for determination. The fall out of this analysis and determination would be dealt with in the later segment of this judgment when this Court would deal with the third point for determination as framed.

38. The second point for determination is as to whether in the facts of the instant case, the tender ought to be annulled. This Court finds it relevant to take note of Clause 8 of the bidding document. The relevant portion of Clause 8A being pertinent for the purpose of the instant point for determination is reproduced herein below:-

*“Normally, if there are less than two technically qualified bidders then the auction process shall be annulled and such technically qualified bidder, if any, won’t get a chance to proceed to second round of e-auction. However, if the auction is annulled on two consecutive occasions due to the same reason, i.e. less than two technically qualified bidders, then in the next e-auction(s) of the same mine, the single technically qualified bidder, if any shall be allowed to proceed to the next round of e-auction. It must be mentioned here that for the above relaxation to be applicable, the details of the*

*mine as given in the information memorandum, i.e. area, GPS coordinates, reserve price, earnest money, duration and mode of mineral concession etc. shall not undergo a change during such consecutive auctions.”*

39. Clause 8B further stipulates as regards the second round of E-Auction. It starts with “Where the total number of technically qualified bidders is more than one, the auction process shall proceed to the second round of auction which shall be held in the following manner, namely,.....”.

40. A conjoint reading of both Clauses quoted above would clearly show that if there are less than two technically qualified bidders, the auction process shall be annulled and the single technically qualified bidder will not get a chance to proceed to the second round of E-Auction. It is only when such auction process had been annulled on two consecutive occasions due to the same reason, i.e. when there is less than two technically qualified bidders, then in the next E-Auction of the same mine, the single technically bidder, if any shall be allowed to proceed to the next round of E-Auction. It is also seen that to go to the second round of E-Auction there has to be more than one technically qualified bidder.

41. This Court upon a reading of the above Clauses quoted of the bidding document is of the opinion that the tender envisages two types of evaluations and it is only upon completion of the first evaluation, i.e. the technical bid and thereupon on the availability of two or more technically qualified bidders, the second round of E-Auction can be gone into. The only exception to the above mandate is when the tender process have been annulled on two occasions for the same mahal/mine on account of non-availability of two or more technically qualified bidders, then the second round of e-auction is permissible with one technically qualified bidder.

42. In the backdrop of the above, let this Court take note of the facts involved. In the previous segments of the instant judgment, this Court has duly taken note of the facts.

The records clearly reveal that on 16.07.2021, there were three technically qualified bidders. This evaluation was rendered nonest in view of the specific stands taken by the respondent authorities in WP(C) No.3394/2021 and WP(C) No.3610/2021. This Court further finds it very pertinent at this stage to take note of the stand taken by the respondent No.4, i.e. AMTRON wherein the said authority recommended for cancellation of the tender in question and re-start with a proper NIT document for the benefit of all bidders by correcting the NIT document in line with the online E-Auction system. On the basis of the said stand taken by the respondent No.4, it was apprised to this Court on 13.06.2022 that the entire tender process would be annulled for which this Court granted an opportunity to the respondent Forest Department to place their stand by way of an affidavit. Accordingly, an affidavit was filed on 21.06.2022 in WP(C) No.3610/2021 wherein the Principal Chief Conservator of Forest and Head of Forest Force, Assam mentioned about the cancellation of the tender process as recommended by AMTRON. Under such circumstances, the said tender process therefore ought to have been cancelled at that nascent stage. However, the respondent Forest Department took another stands on 22.06.2022 when both the writ petitions, i.e. WP(C) No.3394/2021 and WP(C) No.3610/2021 were taken up. The stand taken was that the respondent Forest Department can again re-visit the matter upon physical verification of documents to be submitted in terms with Clauses 8, 13 & 18 of the bidding document. On the basis of the said stand, this Court directed vide the order dated 22.06.2022 for re-visiting the technical evaluation and directions were passed thereby granting two weeks time to the official respondents to physically verify the documents so submitted by each and every bidder in respect to the Mahal in question. Therefore, it would be seen that the technical evaluation which was made on 16.07.2021 had lost its force.

43. This Court further finds it very pertinent to observe another very important aspect before proceeding further. The stand taken by the respondent Forest Department to re-visit on the basis of Clauses 8, 13 & 18 of the bidding document though it was

permissible as per the bidding document, but the entire E-Auction process and the sanctity attached to submission of bids along with documents on or before the last date of submission of the tender was rendered nugatory in as much as a perusal of the bidding document clearly mentioned that the bid had to be submitted by way of online mode but there was no prescription that along with submission of the bid in the online mode, there was also the requirement of the submission of the physical copy of the bid. Not only that in terms with Clause 8 (A) (a) (ii), in case, there was difference between document submitted electronically and the original document submitted physically, the original document submitted physically shall prevail. Further to that, there was no demand made earlier for submission of the original physical copy of the technical bid prior to the last date of submission of the online bids. The resultant effect of the stand which was taken by the respondent Forest Department and the consequential order being passed by this Court on 22.06.2022, was that the original document submitted physically subsequent to the last date of submission of the online bid would prevail over the online bid which in fact negates the entire edifice of an E-Auction process.

44. Be that as it may, the petitioners though submitted representations in 28.06.2022, the said representations were rejected vide the order dated 26.08.2022. In fact a perusal of the order dated 26.08.2022 reveals that the Forest Department at the later stage realized that re-visiting in terms with Clauses 8, 13 & 18 would render the entire E-Auction process nugatory and therefore attempted vide the order dated 26.08.2022 to bring the tender process prior to the order being passed by this Court on 22.06.2022 thereby holding that the petitioners did not uploaded the document in question and there can be no manipulation of the documents which have been uploaded. However, this stands which has been taken in its order dated 26.08.2022 was directly in conflict with the earlier stands taken by the Forest Department and the consequential order being passed by this Court on 22.06.2022.

45. At this stage, this Court finds it very pertinent to mention that at the time of

passing the order dated 26.08.2022, there were two technically valid tenderers, one was the private respondent and the other was one Ganesh Kalwar. On the basis thereof, the respondent Forest Department proceeded to the second stage as could be seen from the communications which were placed before this Court and on 31.08.2022, the private respondent became the highest bidder. However, the petitioners herein who were aggrieved by the order dated 26.08.2022 approached this Court by filing two writ petitions being WP(C) No.5732/2022 and WP(C) No.5861/2022. On 06.09.2022 when the said writ petitions were taken for motion, it was submitted by the Standing Counsel appearing on behalf of the Forest Department that the order dated 26.08.2022 was not in consonance with the directions passed by this Court on 22.06.2022 in WP(C) No.3394/2021 for which this Court adjourned the matter to 08.09.2022 and the Departmental counsel was directed to apprise the basis of passing the order dated 28.06.2022. Immediately thereafter on 07.09.2022, the official respondents kept the order dated 26.08.22 in abeyance meaning thereby the technical evaluation which was being carried out was kept in abeyance. On 08.09.2022, when WP(C) No.5732/2022 and WP(C) No.5861/2022 were listed, it was specifically submitted that the Department would give a fresh hearing to the writ petitioners based on hard copies of the tender documents and the Department would pass a fresh order in the matter after competing physical verification of the documents and hearing the petitioners. On the basis of the order dated 08.09.2022 and taking into account the stand which was taken therein by the official respondents, the determination of technical evaluation so made vide order dated 26.08.2022 became nonest in as much as there would be a fresh technical evaluation to be carried out. The consequential effect therefore was that the bidding process was again relegated to the first stage of technical evaluation and any action taken on the basis of the order dated 26.08.2022 had become redundant.

46. The record reveals that on 20.09.2023, the original physical documents were duly submitted by both the petitioners. The private respondent submitted the documents on

26.09.2022. In the mean time, amongst the two technically valid tenderers, i.e. the private respondent and one Sri Ganesh Kalwar, the later, i.e. Sri Ganesh Kalwar withdrew his earnest money deposit and the same was paid back to him on 05.12.2022. Therefore, amongst the 10 bidders, 7 bidders were no longer interested and had withdrawn their earnest money deposit and in the fray remained three bidders, i.e. the two petitioners herein and the private respondent. Vide the impugned order dated 08.02.2023, the technical evaluation was carried out and it was found that out of the three remaining in the fray, the petitioners herein were not technically qualified and only the private respondent was technically qualified. Therefore, from the above it would be seen that the technical evaluation finally concluded on 08.02.2023 and on that day, there was only one technically qualified bidder as per the Respondent Authorities. Under such circumstances, in view of the above Clauses quoted, the respondent authorities could not have gone ahead with the second stage but rather ought to have annulled the entire tender process. The action on the part of the respondents to further proceed with the second stage of the E-Auction process was in direct conflict with the tender conditions, more particularly the Clauses quoted herein above. Under such circumstances, this Court therefore decides the second point for determination opining that in view of the order dated 08.02.2023, the respondent authorities ought to have annulled the entire tender process as there was only one technically valid bidder as per the Respondents.

47. In view of the above, let this Court analyze and determine as to what relief or reliefs the parties herein are entitled to. To decide, this Court had also heard the learned counsels for the parties. A query was made by this Court upon the learned counsels for the petitioner and the respondents to the effect that in the given case if the order dated 08.02.2023 is interfered with, the question would be that there would be three technically valid tenderers and then in such circumstances, what consequential directions this court should pass. Mr. D. Das, the learned senior counsel appearing on behalf of the private respondent submitted that the private respondent was not a party to

the first leg of litigation wherein it was decided that the physical documents would be verified, although the physical documents were never demanded prior to the last date of submission of the documents in online mode. He therefore submitted that the document which was not there initially can be very well brought within the fold of the bid in view of the action of the respondent authorities to call for the original physical copy at a much later stage. In fact, the Respondent Authorities tried to adopt corrective measures vide order dated 26.08.2022 holding inter-alia that there could be no manipulation of the documents which have been submitted on the online mode but that was too late. The learned senior counsel therefore submitted that the process which has now been followed, has made the entire E-Auction tender process nugatory. He further submitted that in the circumstance, the order dated 08.02.2023 is interfered with and the tender process being allowed to be continued, it would cause great injustice to the private respondent in as much as the second stage of e-auction has to be interfered with and resultantly, the Letter of Intent issued to the private respondent would become redundant.

48. Mr. K. N. Choudhury, the learned senior counsel appearing on behalf of the petitioner in WP(C) No.1466/2023 submitted with all fairness that in the interest of justice, the entire process needs to be annulled.

49. This Court having given its anxious consideration to the above aspect is of the opinion that the tender process needs to be annulled for the following reasons:

(i) A perusal of the bidding documents and more particularly the Clauses quoted while determining the point for determination No.2 would clearly show that if there is only one technically valid tenderer, the tender process has to be annulled and cannot further proceed to the second e-auction stage. It is also seen that the tender process in the instant case had not been earlier annulled on two consecutive occasions for this reason and resultantly the respondents were required to annul the tender process and start afresh which was not done in spite of the fact that

there was only one technically valid bidder as per the order dated 08.02.2023.

(ii) The action on the part of the respondent Forest officials not to cancel the tender process at a nascent stage in the year 2021 or even in 2022, but the decision to proceed on the basis of Clauses 8, 13 & 18, in the opinion of this Court has rendered the entire E-Auction process nugatory in as much as the respondent authorities prior or on or before the last stage of submission, did not take any steps for calling for the original physical copy of the bids. It was done so at a much belated stage at the intervention of this Court on account of the stand taken by the respondent authorities which led to the passing of the order dated 22.06.2022 and 08.09.2022. The entire sanctity attached to the last date of submission of the bids by online mode stood negated in view of Clause 8 (A) (a) (ii) of the bidding documents.

(iii) This Court had duly taken note of the communication dated 27.07.2021 issued by the Senior System Supervisor of the respondent No.4, AMTRON wherein also there was a recommendation for cancellation of the entire tender process and thereupon issuing a fresh NIT by bringing the NIT documents in line with the online E-Auction system.

(iv) This Court had duly taken note of the Long E-Auction Notice dated 07.06.2021 which categorically stipulated that the mining contract would be for the period from 2021-2027 and it is on the basis thereof, the bidders have quoted their rates. In the meantime, in view of the various litigation, 2½ years have already passed by and as such in the opinion of this Court if on the basis of the bids which were submitted on or before 05.07.2021, the settlement is to be given for a period for another 7 years from the date of entering into the agreement, it would lead to the loss of revenue whereas the bidders who have not even quoted for this period would be entitled to undue benefit.

(v) This Court had also taken into consideration that while deciding the Point of

Determination No.1 this Court held that the rejection of the technical bids of the petitioners on the grounds assigned were not justified and resultantly held that the impugned order dated 08.02.2023 was not justified. The resultant effect of this decision on the Point of Determination No.1 would only render the order dated 08.02.2023 bad in law and would result in yet again another round of technical evaluation which would only lead to the delay in settlement of the Mahal in question. This Court further finds it pertinent to observe that if in the eventuality, the technical bids of the petitioners are again rejected, it would lead to a situation whereby the tender process has to be annulled. On the other hand, if the technical bids of the petitioners or one of the petitioners are held to be valid then in such circumstances though the respondents would be in a position to proceed to the second stage of the e-auction, but in view of what had been held in Clause (iv) herein above, it would occasion loss of revenue to the State.

50. For the above reasons, this Court therefore sets aside the impugned order dated 08.02.2023 and directs the respondent the authorities to forthwith take appropriate steps for settlement of the Mahal in question, i.e. Dikrong Sand and Mining Contract Area by way of a fresh tender process. The provisional Letter of Intent dated 27.02.2023 as well as the Letter of Intent dated 28.02.2023 issued in favour of the private respondent are also interfered with and set aside and quashed.

51. The writ petitions therefore stands allowed on the basis of the above observations and directions.

52. The records which have been produced by the Respondent Authorities are returned to Mr. D. Gogoi, the Standing Counsel for the respondent Forest Department.

**JUDGE**

**Comparing Assistant**