GAHC010161222022

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

Case No. : WP(C)/5294/2022

M/S RANA CONSTRUCTION AND ENGINEERS PVT LTD
SURAJ COMPLEX, ULUBARI CHARIALI, KAMRUP (METRO), GUWAHATI-781007, ASSAM, REP. BY ONE OF ITS DIRECTORS RANA ZAMAN, AGED ABOUT 50 YEARS, SON OF ALHAZ RAHMAN ALI, RESIDENT OF HOUSE NO. 62, RAHMAN MANSION, SOUTH SARANIA, P.O. ULUBARI, DIST. KAMRUP (M), ASSAM, GUWAHATI- 781007

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF RURAL DEVELOPMENT, NEW DELHI, PIN- 110066

2:THE SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE PROCUREMENT POLICY DIVISION
512
LOK NAYAK BHAWAN
NEW DELHI.

3:THE CHAIRMAN

NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
MINISTRY OF RURAL DEVELOPMENT
GOVERNMENT OF INDIA
NBCC TOWER
5TH FLOOR
BHIKAJI CAMA PLACE
RAM KRISHNA PURAM
NEW DELHI
PIN- 110066

4:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT. OF ASSAM

PUBLIC WORKS ROADS DEPARTMENT
DISPUR
GUWAHATI- 781006.

5:THE CHIEF ENGINEER

PUBLIC WORKS DEPARTMENT (BORDER ROADS)
ASSAM
CHANDMARI
GUWAHATI- 78100

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : WP(C)/5298/2022

M/S RANA CONSTRUCTION AND ENGINEERS PVT LTD
SURAJ COMPLEX
ULUBARI CHARIALI
KAMRUP (METRO)
GUWAHATI- 781007
ASSAM
REP. BY ONE OF ITS DIRECTORS RANA ZAMAN
AGED ABOUT 50 YEARS
SON OF ALHAZ RAHMAN ALI
RESIDENT OF HOUSE NO. 62
RAHMAN MANSION
SOUTH SARANIA
P.O. ULUBARI
DIST. KAMRUP (M)
ASSAM
GUWAHATI- 781007

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF RURAL DEVELOPMENT
NEW DELHI
PIN- 110066

2:THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE PROCUREMENT POLICY DIVISION
512
LOK NAYAK BHAWAN
NEW DELHI.
3:THE CHAIRMAN
NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
MINISTRY OF RURAL DEVELOPMENT
GOVERNMENT OF INDIA
NBCC TOWER
5TH FLOOR
BHIKAJI CAMA PLACE
RAM KRISHNA PURAM
NEW DELHI
PIN- 110066.
4:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR
GUWAHATI- 781006.
5:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (BORDER ROADS)
ASSAM
CHANDMARI
GUWAHATI- 781003.

Advocate for : MR. K N CHOUDHURY
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : WP(C)/5297/2022

M/S RANA CONSTRUCTION AND ENGINEERS PVT LTD
SURAJ COMPLEX
ULUBARI CHARIALI
KAMRUP (METRO)
GUWAHATI- 781007
ASSAM
REP. BY ONE OF ITS DIRECTORS RANA ZAMAN
AGED ABOUT 50 YEARS
SON OF ALHAZ RAHMAN ALI
RESIDENT OF HOUSE NO. 62

RAHMAN MANSION
SOUTH SARANIA
P.O. ULUBARI
DIST. KAMRUP (M)
ASSAM
GUWAHATI- 781007

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF RURAL DEVELOPMENT
NEW DELHI
PIN- 110066

2:THE SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE PROCUREMENT POLICY DIVISION
512
LOK NAYAK BHAWAN
NEW DELHI.
3:THE CHAIRMAN

NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
MINISTRY OF RURAL DEVELOPMENT
GOVERNMENT OF INDIA
NBCC TOWER
5TH FLOOR
BHIKAJI CAMA PLACE
RAM KRISHNA PURAM
NEW DELHI
PIN- 110066
4:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT. OF ASSAM

PUBLIC WORKS ROADS DEPARTMENT
DISPUR
GUWAHATI- 781006.
5:THE CHIEF ENGINEER

PUBLIC WORKS DEPARTMENT (BORDER ROADS)
ASSAM
CHANDMARI
GUWAHATI- 781003

Advocate for : MR. K N CHOUDHURY

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : WP(C)/5301/2022

M/S RANA CONSTRUCTION AND ENGINEERS PVT LTD
SURAJ COMPLEX
ULUBARI CHARIALI
KAMRUP (METRO)
GUWAHATI- 781007
ASSAM
REP. BY ONE OF ITS DIRECTORS RANA ZAMAN
AGED ABOUT 50 YEARS
SON OF ALHAZ RAHMAN ALI
RESIDENT OF HOUSE NO. 62
RAHMAN MANSION
SOUTH SARANIA
P.O. ULUBARI
DIST. KAMRUP (M)
ASSAM
GUWAHATI- 781007.

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF RURAL DEVELOPMENT
NEW DELHI
PIN- 110066.

2:THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE PROCUREMENT POLICY DIVISION
512
LOK NAYAK BHAWAN
NEW DELHI.
3:THE CHAIRMAN
NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
MINISTRY OF RURAL DEVELOPMENT
GOVERNMENT OF INDIA
NBCC TOWER
5TH FLOOR
BHIKAJI CAMA PLACE
RAM KRISHNA PURAM
NEW DELHI
PIN- 110066.

4:THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR
GUWAHATI- 781006.
5:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (BORDER ROADS)
ASSAM
CHANDMARI
GUWAHATI- 781003.

Advocate for : MR. K N CHOUDHURY
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioners : Shri KN Choudhury, Sr. Advocate.
Shri RM Deka

Advocates for the respondents : Shri D. Saikia, AG, Assam
Shri B. Gogoi, PWD
Shri K. Gogoi, CGC

Date of hearing : **16.12.2022**

Date of Judgment : **07.02.2023**

JUDGMENT & ORDER

The subject matter of these four petitions is similar which pertains to a demand for deposit of Additional Performance Security in respect of various works entrusted to the petitioner. It is the case of the petitioner that such demand, apart from unreasonable and arbitrary is a violation of an Office Memorandum dated 12.11.2020. Since the issue is common to all these four writ petitions, those were heard together and are disposed of by this common judgment and order.

2. To address the issue, it is necessary to put on record the facts of the case in

brief.

3. The Chief Engineer, Public Works Department had published a Notice Inviting Tender dated 08.04.2022 calling for tenders for constructions of 155 nos. of roads under the PMGSY. The present writ petitions pertain to four out of the aforesaid 155 numbers of works in which the petitioner was found to be the eligible bidder. It is the case of the petitioner that after issuance of the Letter of Acceptance in its favour, he was asked to furnish Performance Security and also Additional Performance Security. The demand for Additional Performance Security was because of the reason that the petitioner had quoted much below the estimated construction cost. The connected writ petitions and details of the work are mentioned hereinbelow-

WP(C)/5294/2022

Name of the work- upgradation of roads from T04-Abhyapuri Pachnia Road including cross drainage works and routine maintenance of the works for five years under Package No. AS-02-187, PMGSY-III, Batch-1, 2022-23.

Letter of Acceptance dated -06.08.2022

Contract price - Rs.10,22,40,436/-

Performance Security- Rs.25,57,000/-

Additional Performance Security- Rs.3,78,64,000/-

WP(C)/5297/2022

Name of the work- upgradation of roads from MRL11-Road from Majirgaon to Borjhar via Agchia including cross drainage works and routine maintenance of the works for five years under Package No. AS-11926, PMGSY-III, Batch-1, 2022-23.

Letter of Acceptance dated -06.08.2022

Contract price - Rs.3,60,67,998/-

Performance Security- Rs.9,02,000/-

Additional Performance Security- Rs.1,33,06,000/-

WP(C)/5298/2022

Name of the work- upgradation of roads from MRL07-Tetelia Lakhitari to Maheswari Mitani including cross drainage works and routine maintenance of the works for five years under Package No. AS-11929, PMGSY-III, Batch-1, 2022-23.

Letter of Acceptance dated -06.08.2022

Contract price - Rs.4,85,46,891/-

Performance Security- Rs.12,14,000/-

Additional Performance Security- Rs.1,79,96,000/-

WP(C)/5301/2022

Name of the work- upgradation of roads from T05-Dimaruguri Kamarpur Road including cross drainage works and routine maintenance of the works for five years under Package No. AS-17-260, PMGSY-III, Batch-1, 2022-23.

Letter of Acceptance dated -06.08.2022

Contract price - Rs.18,39,13,378/-

Performance Security- Rs.45,98,000/-

Additional Performance Security- Rs.2,12,29,000/-

4. It is the demand for the Additional Performance Security which is the subject matter of challenge in these writ petitions. It is the case of the petitioner that under Clause 4 of the Office Memorandum dated 12.11.2020, there is no scope for demand of Additional Security Deposit or Bank Guarantee in case of abnormally low bids. However, in spite of the said Office Memorandum still being in force, the said demand has been made and therefore, the present writ petitions.

5. I have heard Shri KN Choudhury, learned Senior Counsel assisted by Shri RM Deka, learned counsel for the petitioner. I have also heard Shri AK Dutta, learned CGC for the respondent nos. 1 to 3 and Shri D. Saikia, learned Advocate General, Assam assisted Shri B. Gogoi, learned Standing Counsel, PWD for the respondent nos. 4 and 5. The materials placed before this Court have also been careful examined.

6. Shri Choudhury, learned Senior Counsel for the petitioner has submitted that considering the low rate quoted by the petitioner, an analysis of the bid amount and comparison thereof was given by him. The following justification were cited for being able to quote a lower rate:

> "*1) Considering the scope of Work provided in RFP/ bidding documents, a detailed analysis of sub-head 7, 8, 9, 12 and 13 of the components has been made and percentage of work involved in each sub-head and workable rate based on the market study have been assessed.*
>
> *2) While analyzing the quoted price, overhead expenses and profit have been considered at @8% and 3% of the quoted amount.*
>
> *3) The machinery and equipments are all possessed by us (owned/lease/rental), which will be deployed at reasonable cost.*
>
> *4) The rate quoted by us is exclusive of GST, forest royalty and compensation required for earth work.*
>
> *5) A good quantity of construction materials are lying under my custody, which will be proposed to be consumed in the work at an affordable price."*

7. It is contended on behalf of the petitioner that when a reasonable justification could be given by the petitioner for being able to quote a lower rate, the demand for Additional Performance Security is not tenable at all.

8. The learned Senior Counsel for the petitioner also heavily relies upon an Office Memorandum dated 12.11.2020 issued by the Government of India, Ministry of

Finance. As per the said notification, in case of abnormally low rates which raised material concerns as to the capability of the bidder to perform the contract at the offered price, written clarification can be sought for from the bidder including detailed price analysis. It is further laid down that in case of the response / explanation given is not satisfactory, the bid is liable to be rejected. But no provision should be kept in the bid document regarding Additional Performance Security in case of such bids.

9. The learned Senior Counsel for the petitioner submits that the said Office Memorandum still holding the field, the impugned demand is absolutely unreasonable and is liable to be interfered with. He further submits that the impugned clause which has been incorporated in the Letter of Acceptance has been done without any application of mind and without fulfillment of the conditions precedent. The justifications demonstrated by the petitioner have been overlooked and ignored and in a mechanical manner the impugned demand has been made and therefore, it is a case wherein interference is warranted.

10. *Per contra,* Shri Saikia, the learned Advocate General, Assam has strenuously opposed the writ petitions. Firstly, he submits that there is no challenge to the Clauses of the tender notice which authorizes the owner to demand Additional Performance Security in case of abnormally low bids. In this regard, the condition of contract has been referred to. Clause 26 the instruction to bidder (ITB) envisages that if the quoted rate is abnormally low, justification of rates could be sought for which was done in the instant case vide letter dated 28.06.2022. As per Section 4, conditions of contract, for rates which are either 15% above or below, the requirement of Additional Performance Security has been laid down.

11. The learned AG has referred to the affidavit-in-opposition filed by the respondent no. 5 dated 25.08.2022. In paragraph 5 thereof, it has been categorically stated that 90% of funding is done by the Central Government as the work under the PMGSY which is being implemented by the Ministry of Rural Development through the

National Rural Infrastructure Development Agency (NRIDA). The said Department had issued a notification dated 24.06.2020 under which the aforesaid provision has been laid down for demand of Additional Performance Security for abnormally low bids. The learned State Counsel submits that the said demand being incorporated in Clause 26.3 of the Standard Bidding Document for PMGSY and in absence of any challenge to the said Clause, the writ petition is not maintainable.

12. The learned CGC endorses the submission of the learned Advocate General, Assam and additionally submits that the work being under the PMGSY where 90% of the funding is by the Central Government, the Clauses, more specifically Clause 26.3 are wholly applicable and the present demand is in consonance with the said Clause.

13. Replying to the counter submissions by the learned counsel for the respondents, Shri Choudhury, the learned Senior Counsel for the petitioner reiterates that though the Clause 26.3 empowers the authority to demand for Additional Performance Security, the powers has to be exercised in accordance with law which has not been done. He reiterates that when there were sufficient justification given by the petitioner justifying his rates and all such justification being based on relevant factors, a mechanical approach has been taken.

14. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

15. The grievance is with regard to the demand for Additional Performance Security and the said demand is for the only reason that the bid of the petitioner were found to be abnormally low. In case of such a situation of abnormally low bids, the owner had the option of rejecting such bids by citing reasons. However, it is seen that firstly, the petitioner was given an opportunity to justify its low rates quoted and thereafter the Letter of Acceptance was issued with an additional Clause requiring the bidder to submit Additional Performance Security. The said requirement being provided in the

bidding document itself under Clause 26.3 which admittedly is not the subject matter of challenge, in the opinion of this Court, it would not be open for the petitioner to challenge the imposition of Additional Performance Security as a part of the Letter of Acceptance. To understand the specific challenge made in these writ petitions, the prayer / relief is to be carefully examined. For ready reference, the prayer in WP(C)/5294/2022 which is identical with those of the other writ petitions is extracted hereinbelow-

> "*i. Certiorari shall not be issued for setting aside/quash the impugned action of the respondent no. 5 requiring the petitioner to pay Additional Performance Security to the tune of Rs.3,78,64,000/- in violation of the OM No.F./9/4/2020-PPD dated 12.11.2020 against the work for execution of the work namely upgradation of roads from T04-Abhyapuri Pachnia Road including cross drainage works and routine maintenance of the works for five years under Package No. AS-02-187, PMGSY-III, Batch-1, 2022-23 and / or*
>
> *ii. Mandamus shall not be issued directing the respondents to recall/rescind/cancel and/or forbear from giving effect to the impugned action of the respondent no. 5 requiring the petitioner to pay Additional Performance Security to the tune of Rs. 3,78,64,000/- in violation of the OM No.F./9/4/2020-PPD dated 12.11.2020 against the work for execution of the work namely upgradation of roads from T04-Abhyapuri Pachnia Road including cross drainage works and routine maintenance of the works for five years under Package No. AS-02-187, PMGSY-III, Batch-1, 2022-23 and*
>
> *iii. Mandamus shall not be issued directing the respondents to forthwith follow the instructions contained in the OM No.F./9/4/2020-PPD dated 12.11.2020, wherein, it is stated that no provision should be kept in the Bid Documents regarding Additional Security Deposit in case of Abnormally Low Bids and*

upon cause/s shown and upon perusing the records and after hearing the parties, Your Lordships may be pleased to make the Rule absolute and/or to pass such further or other order/s as Your Lordships may deem fit and proper.

AND

Pending disposal of the Rule Your Lordships may be pleased to direct the respondents to

i. Stay / suspend the operation of the impugned action of the respondent no. 5 requiring the petitioner to pay Additional Performance Security to the tune of Rs.3,78,64,000/- in violation of the OM No.F./9/4/2020-PPD dated 12.11.2020 against the work for execution of the work namely upgradation of roads from T04-Abhyapuri Pachnia Road including cross drainage works and routine maintenance of the works for five years under Package No. AS-02-187, PMGSY-III, Batch-1, 2022-23 and

ii. to allow the petitioner to start the work for execution of the work namely of roads from T04-Abhyapuri Pachnia Road including cross drainage works and routine maintenance of the works for five years under Package No. AS-02-187, PMGSY-III, Batch-1, 2022-23 without paying the Additional Performance Security and/or to pass such other order/s as Your Lordships may deem fit and proper."

16. A careful perusal of the prayer would show that there is no challenge to Clause 26.3 of the bidding document and the prayer is only to set aside the requirement to pay Additional Performance Security. It is seen that the aforesaid requirement is not only in consonance with the terms of the contract but is also preceded by the conditions required for such exercise. It is seen that the rate quoted by the petitioner is abnormally low and instead of rejecting the bid of the petitioner on the said ground, the work in question is still allotted to the petitioner by requiring deposit of Additional

Performance Security. Such requirement, apart from being a policy decision, in the opinion of this Court is also in sync with the interest of public service.

17. The Hon'ble Supreme Court in the case of ***Michigan Rubber (India) Ltd. vs. State of Karnataka*** reported in ***(2012) 8 SCC 216***. In paragraph 23 of the said judgment, it has been laid down as follows:

> "*23. From the above decisions, the following principles emerge:*
>
> *(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*
>
> *(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;*
>
> *(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;*
>
> *(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and*
>
> *(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very*

restrictive since no person can claim fundamental right to carry on business with the Government."

18. In the case of ***Central Coal Fields Limited vs. SLL-SML (Joint Venture Consortium & Ors.)*** reported in ***(2016) 8 SCC 622,*** in matter concerning tender conditions, the following has been laid down by the Hon'ble Supreme Court:

"*4. The question for our consideration is generally whether furnishing a bank guarantee in the format prescribed in the bid documents is an essential requirement in the bidding process of the Central Coalfields Limited and specifically whether a bid not accompanied by a bank guarantee in the format prescribed in the bid documents of the Central Coalfields Limited could be treated as non-responsive in view of Clause 15.2 of the General Terms and Conditions governing the bidding process. The answer to the general and the specific question is in the affirmative.*

*38. In **G.J. Fernandez v. State of Karnataka** both the principles laid down in **Ramana Dayaram Shetty** (1990) 2 SCC 488 were reaffirmed. It was reaffirmed that the party issuing the tender (the employer) "has the right to punctiliously and rigidly" enforce the terms of the tender. If a party approaches a Court for an order restraining the employer from strict enforcement of the terms of the tender, the Court would decline to do so. It was also reaffirmed that the employer could deviate from the terms and conditions of the tender if the "changes affected all intending applicants alike and were not objectionable." Therefore, deviation from the terms and conditions is permissible so long as the level playing field is maintained and it does not result in any arbitrariness or discrimination in the Ramana Dayaram Shetty sense.*

55. On the basis of the available case law, we are of the view that since CCL had not relaxed or deviated from the requirement of furnishing a bank guarantee in the prescribed format, in so far as the present appeals are

concerned every bidder was obliged to adhere to the prescribed format of the bank guarantee. Consequently, the failure of JVC to furnish the bank guarantee in the prescribed format was sufficient reason for CCL to reject its bid."

19. This Court while exercising powers of judicial review only examines the decision making process. In the case of ***Tata Cellular Vs. Union of India*** reported in ***(1994) 6 SCC 651,*** the Hon'ble Supreme Court laid down as follows.

"74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application of judicial review is made, but the decision making process itself.

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."

20. By taking into consideration the settled law as mentioned above, this Court is of the view that the condition of a tender are not to be interfered with in a routine manner and only in exceptional circumstances, a writ Court may embark upon such exercise. However, such exercise is to be resorted to only by maintaining adequate caution. Certain instances (not exhaustive) can be enumerated as follows:

i. When the condition is absolutely unreasonable.

ii. When the condition is apparently discriminatory.

iii. When the condition is such that the same has been incorporated only to suit a particular bidder.

iv. When the imposition of a condition lacks bona fide and is accentuated by mala fide and arbitrary exercise of powers.

21. In the instant case, however, this Court is not even required to go to that aspect of the matter to examine the legality or validity of the Clause of the tender document as there is no challenge at all.

22. In that view of the matter, this Court is of the view that these writ petitions do not have any legs to stand and are accordingly dismissed.

23. No order as to cost.

JUDGE

Comparing Assistant