

GAHC010056982026



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

Case No. : WP(C)/1632/2026

M/S WIN POWER INFRACON LLP AND ORS
1ST FLOOR, BASANTA ENCLAVE.
DR. B. BARUAH COLLEGE ROAD, ULUBARI -781007, GUWAHATI,
ASSAM. REPRESENTED BY SHRI AMRENDRA KUMAR TIWARI (POWER OF
ATTORNEY HOLDER OF M/S WIN POWER INFRACON LLP)

2: SHRI AMRENDRA KUMAR TIWARI
GENERAL MANAGER.
M/S WIN POWER INFRACON LLP.
1ST FLOOR
BASANTA ENCLAVE.
DR. B. BARUAH COLLEGE ROAD
ULUBARI-781007 GUWAHATI
ASSAM

VERSUS

ASSAM POWER DISTRIBUTION COMPANY LIMITED AND ORS
BIJULEE BHAWAN, PALTAN BAZAR, GUWAHATI.
REPRESENTED BY ITS MANAGING DIRECTOR .
DIST.- KAMRUP(M), GUWAHATI.

2: CHAIRMAN APDCL
BIJULEE BHAWAN
PALTAN BAZAR.
DIST- KAMRUP (M) GUWAHATI.

3: MANAGING DIRECTOR APDCL
BIJULEE BHAWAN
PALTAN BAZAR .
DIST- KAMRUP (M) GUWAHATI.

4: CHIEF GENERAL MANAGER (DISTRIBUTION AND SAFETY)
LAR BIJULEE BHAWAN

PALTAN BAZAR
DIST- KAMRUP (M) GUWAHATI.

5:CHIEF GENERAL MANAGER (AUDIT)
BIJULEE BHAWAN
PALTAN BAZAR
DIST- KAMRUP (M) GUWAHATI

Advocate for the Petitioner : MR D NANDI, MS P MAZUMDAR,MS. M KUMARI,MR K K MAHANTA (Sr. Advocate),MS P MAZUMDAR,M. KUMARI

Advocate for the Respondent : SC, APDCL, FOR CAVEATOR,MR. K P PATHAK,MR BHARGAV DAS

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 27.03.2026

Heard Mr. K.K. Mahanta, learned Senior Counsel assisted by Ms. M. Kumari, learned counsel for the petitioner; and Mr. K.P. Pathak, learned Standing Counsel, APDCL for all the respondents.

2. An Notice Inviting Tender [NIT] [E-Tender] dated 11.09.2025 was published inviting bids for a contract-work, 'Construction of 33 KV Dedicated Feeder from 220 KV Salakati GSS to HPCL Project at Kamardanga under Basugaon ESD under Deposit Work Scheme on Full Turnkey Mode' [the Contract-Work', for short]. In response to the NIT, a number of bidders including the petitioner submitted their bids. After completion of evaluation of technical bids of the bidders, the price bids of the bidders whose technical bids were found responsive, were opened on 02.02.2026.

3. After evaluation of the price bids, the petitioner emerged as the L-1 bidder. As the price bid of the petitioner was found 19.972% below the working estimate amount, the tender authority & employer, APDCL sought for justifications from the petitioner on 02.02.2026 requesting to the petitioner to submit supporting documents in connection with Annexure-1[E], which was the prescribed format for assessing Bid Capacity of the bidders in relation to

the Bid Capacity assessment formula : $[A*N*2-B]$ set forth in the Bid Document.

4. On 05.02.2026, a Letter of Intent [LoI] was also issued in favour of the petitioner intimating the petitioner that the APDCL would be intending to place an order for execution of the Contract-Work at the quoted price of the petitioner subject to the conditions mentioned therein. One of the conditions was for submission of Additional Performance Guarantee for Abnormally Low Price [ALP].

4. Subsequently, when the petitioner responded to the Letter dated 02.02.2026 by submitting supporting documents with regard to its Bid Capacity, Bid Capacity of the petitioner was examined again on the basis of the documents submitted. On examination of the figures given in Annexure-1[E] by the petitioner, the Bid Capacity calculation in respect of the petitioner was found incorrect. By a Speaking Order dated 09.03.2026, the LoI dated 05.02.2026 issued earlier to the petitioner was cancelled.

5. Assailing the Speaking Order dated 09.03.2026, the petitioner has approached this Court by the instant writ petition.

6. Mr. Mahanta, learned Senior Counsel appearing for the petitioner has submitted that the reason shown for cancellation of the LoI in the Speaking Order is arbitrary and unsustainable. Once the LoI was issued by the Tendering Authority upon reaching satisfaction as regards the Bid Capacity and responsiveness of the bid of the petitioner, the order of cancellation of the tender process could not have been passed as the acceptance was complete since the petitioner had, in the meantime, complied with all the conditions of the LoI. The act of putting the same Contract-Work to re-tender is in clear violation of the right of the successful bidder. Since the petitioner had complied with all the conditions of the LoI, the impugned Speaking Order is not sustainable in law. Mr. Mahanta has pressed for an interim order to stay the tender process initiated by NIT published on 11.03.2026 for the same Contract-Work. The fact of publication of a fresh NIT in a hurried manner, according to him, goes to indicate that the action of the respondent APDCL is for purposes other than bona fide.

7. Mr. Pathak, learned Standing Counsel, APDCL has referred to the clauses in the Bid Document and the NIT and the statements and averments made in the preliminary affidavit-in-opposition filed today. He has submitted that the Bid Capacity projected by the petitioner in Annexure-1[E], after a detailed scrutiny, has been found to be incorrect when examined with the supporting documents submitted by the petitioner in connection with two contract-works, which were stated to be executed by the petitioner. It is found that the petitioner was not the main contractor in respect of the said two contract-works. The petitioner had executed the works only as a sub-contractor. But, there was no privity of contract between the employer and the petitioner either as a contractor or as a sub-contractor in respect of the said two contract-works. Despite repeated requests, the petitioner had failed to submit the documents regarding privity of contract between the petitioner as the sub-contractor with the employer of the said two projects.

8. In response, Mr. Mahanta, learned Senior Counsel appearing for the petitioner has referred to a Certificate dated 23.03.2023 issued by the Chief Executive Officer, Cachar Electrical Circle, APDCL, Cachar to substantiate that the petitioner had carried out the said works with due knowledge of the employer.

9. The matter would require further examination.

10. Issue notice, returnable on 06.05.2026.

11. As Mr. Pathak has appeared and accepted notices on behalf of all the respondents, issuance of formal notice to the respondents stand dispensed with. The learned counsel for the petitioner shall serve an extra copy of the writ petition along with annexures, to Mr. Pathak within 2 [two] working days from today.

12. Heard the learned counsel for the parties also on the interim prayer.

13. By the Letter of Intent [LoI] dated 05.02.2026, the petitioner was informed that after

his emergence as the L-1 bidder, the employer would intend to place an order for execution of the contract-work at his quoted rate against the NIT. The petitioner was asked to submit additional performance guarantee for ALP as the petitioner's quoted price was found to be 19.972% below the working estimate. From the Letter of Intent [LoI], it does not emerge that there was formation of any contract between the petitioner and the employer at that point of time. Therefore, the respondent APDCL as an employer was within its discretion to make scrutiny of the bid of the petitioner prior to issuance of any Letter of Acceptance or execution of a contract. In the Speaking Order, it is observed that the Bid Capacity calculation projected in Annexure-1[E] by the petitioner, is found to be incorrect by a Committee after examination of the documents placed by the petitioner in support pursuant to the Letters dated 02.02.2026 and 07.02.2026.

14. In the preliminary affidavit-in-opposition, the Minutes of a Meeting held by the Committee entrusted with the task of scrutiny of the Bid Capacity of the petitioner is found enclosed. The Committee had observed that the petitioner submitted two work completion certificates wherein the petitioner was shown as a sub-contractor. The petitioner failed to produce any work order issued in its favour against the said two work completion certificates issued as a sub-contractor. The Committee further observed that the petitioner had carried out the sub-contracting works without any approval of the employer.

15. The Letter of Intent [LoI] merely expressed an intention to enter into a contract. There was no binding legal relationship between the petitioner and the employer at that stage. It is true that on some occasion, a Letter of Intent [LoI] can be construed as a Letter of Acceptance [LoA] or a binding contract. On perusal of the LoI, only the intention of the employer to enter into a contract is evident. The Committee after a detail scrutiny has found the Bid Capacity, as projected by the petitioner in Annexure-1[E], to be incorrect and the Bid Capacity of the petitioner fails to meet the criteria in the Bid Document. The decision to cancel a tender process is an administrative decision and it is not required to give reasons, even if it be a State or an instrumentality of the State. In the present case, the tendering authority in the Speaking Order has assigned reasons for cancellation. Having gone through the reasons so assigned and in the above obtaining fact situation, this Court is not inclined to

pass an interim order staying bidding process initiated by the Tender Notice dated 11.03.2026.

JUDGE

Comparing Assistant