GAHC010057962026

2026:GAU-AS:4655-DB

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

Case No. : WA/79/2026

SPS CONSTRUCTION INDIA PRIVATE LIMITED,
THROUGH ITS AUTHORIZED REPRESENTATIVE MR. MADHAV SINGLA,
HAVING REGISTERED OFFICE AT 1006-1007, 10TH FLOOR,
PEARLS BEST HEIGHT-1, NETAJI SUBHASH PLACE,
PITAMPURA, NEW DELHI – 110034.

…….***Appellant***

-VERSUS -

1.UNION OF INDIA,
THROUGH MINISTRY OF RAILWAYS,
HAVING ITS OFFICE AT 256-A, RAISINA ROAD,
RAJPATH AREA, CENTRAL SECRETARIAT,
NEW DELHI- 110001.

2:NORTHEAST FRONTIER RAILWAY,
THROUGH CHIEF ENGINEER,
HAVING ITS OFFICE AT CONSTRUCTION OFFICE,
MALIGAON, GUWAHATI -781011.

3:LARSEN AND TOUBRO LIMITED,
HAVING ITS OFFICE AT 8TH FLOOR,
VATIKA MINDSCAPE BUILDING,
DELHI MATHURA ROAD, FARIDABAD – 121003.

…… ***Respondents***

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

Advocate for the Appellant(s)	: Mr. Vivek Chib, Senior Advocate assisted by Mr. Siddhartha Sunil, Mr. Aditya Mittal, Mr. Vibhu Pahuja and Mr. A Chakraborty, Advocates.
Advocate for the respondent(s0	: Mr. K. Gogoi, Central Government Counsel, for respondent Nos.1 & 2.
	: Mr. D. Das, Senior Advocate assisted by Mr. R. Sarmah, Ms. M. Kakoty and Ms. A. Gupta, Advocates for respondent No.3.
Date of Hearing	: 27.03.2026 & 31.03.2026.
Date of Judgment	: 01.04.2026.

JUDGMENT & ORDER

(Ashutosh Kumar, CJ)

We have heard the learned counsel for the parties.

2. The appellant/SPS Construction India Private Limited has challenged the judgment dated 18.02.2026 passed by a learned Single Judge of this Court in WP(C) No.5051/2025 and WP(C) No.6625/2025, whereby the afore-noted two writ petitions have been dismissed, upholding the validity of the eligibility condition for the revised Request For Proposal (in short "RFP") dated 23.07.2025 and the rejection of the appellant's technical bid as non-responsive.

3. The respondent Nos.1 and 2 had issued an RFP dated

19.05.2025 for execution of major infrastructure project on Engineering, Procurement and Construction (EPC) Mode, namely, construction of second rail-cum-road bridge over river Brahmaputra along with associated works.

4. The original RFP contained an eligibility condition in Clause 2.2.2.4.iii.ii.2 of Section 2 thereof that there should not be a history of collapse of superstructure/substructure of any span of a bridge/flyover/via-duct/metro-line work during construction/service in last 5(five) years, ending last day of month previous to the one in which tender is invited and that an undertaking in that regard shall be submitted along with the bid.

5. Upon representation by the prospective bidders including the appellant, the respondents issued a revised RFP dated 23.07.2025, clarifying that only collapses attributable to design failure or quality failure would be relevant; and the look-back period would be reduced from 5(five) years to 3(three) years.

6. The appellant submitted its bid pursuant to the revised RFP but with the "without prejudice" clause and contemporaneously filed WP(C) No.5051/2025, [WP(C) No.5051/2025 was filed on 26.08.2025 as claimed by the appellant i.e. a day before the submission of the bid but according to the respondents the afore-noted was filed after the submission of the bid] challenging the validity of the clause or in the alternative, a declaration from the Court that such clause would not operate against the bidders having suffered a collapse in respect of any

of their projects in the last 3(three) years on account of force majeure and/or in absence of any determined or adjudicated fault of the bidder.

7. While the afore-noted writ petition was pending, the technical bid of the appellant was rejected on 28.10.2025 as non-responsive in terms of the afore-noted clause. Another writ petition vide WP(C) No.6274/2025 thus was filed, challenging the said rejection. However, on submission that the Letter of Acceptance (LOA) had already been issued to respondent No.3/Larsen and Toubro Limited (L&T), the afore-noted writ petition [WP(C) No.6274/2025] was withdrawn by the appellant with the liberty to challenge the same. Thereafter, the appellant had preferred WP(C) No.6625/2025 challenging the grant of LOA to respondent No.3.

8. Before the learned Single Judge, it was argued on behalf of the appellant that the clause in question was void as it was vague, uncertain and ambiguous and, therefore, it did not provide a "level playing field" on account of inherent uncertainties in the application of such clause. In a project undertaken by the appellant in the State of Bihar within 3(three) years of the present RFP, there had been a collapse of few spans of the bridge under construction but without any fatalities and the cause of such collapse has till date not been ascertained**.**

It was thus contended by the appellant that the history of the collapse, referred to above, could not have been read against it.

9. A reference was made by the appellant to the judgment of the Supreme Court in ***Reliance Energy Limited & Anr. –Vs- Maharashtra State Road Development Corporation Limited & Ors. :: (2007) 8 SCC 1***,

wherein it was held that where tenders are invited, the terms and conditions must indicate with legal certainty the norms and benchmarks. Any vagueness or subjectivity in the said norms would result in unequal/discriminatory treatment, thus, violating the doctrine of "level playing field". Reference was also made to the judgment of the Supreme Court in ***Atlanta Limited -Vs- Union of India & Anr. :: 2018 SCC OnLine Del 8269*** and ***Blue Dreamz Advertising Private Limited -Vs- Kolkata Municipal Corporation Limited & Ors.:: (2024) 15 SCC 264*** to argue that the clause in question actually led to automatic debarment of the appellant in the absence of any determined guilt, which is impermissible.

10. The learned Single Judge framed a number of issues but primarily as to whether the appellant, having participated in the tender process had the locus to challenge the eligibility condition? (b) Whether the impugned clause is vague, arbitrary or violative of the doctrine of "level playing field"? (c) Whether the impugned clause amounts to automatic blacklisting and (d) Whether the rejection of the appellant's technical bid is legally sustainable?

11. The learned Single Judge, on perusal of the facts of the case, found that the appellant had submitted its bid after the issuance of the revised RFP with full knowledge of the impugned eligibility condition.

12. Applying the law laid down in ***National High Speed Rail Corporation Limited -Vs- Montecarlo Limited & Anr. :: (2022) 6 SCC 401***, it was held by the learned Single Judge that a bidder who participates in a tender process with the knowledge of its terms cannot subsequently

challenge those terms upon being unsuccessful. The appellant perhaps, according to the learned Single Judge, attempted to circumvent this principle by contending that the writ petition was filed with "without prejudice" clause and contemporaneously with or perhaps after the bid submission.

It was found that the appellant had already participated in the process, which was a conscious commercial decision. The tendering authority, more often than not, would structure its process on the assumptions that bidders have accepted the terms. Allowing such a challenge would enable bidders to adopt the practice of participating in the process and then, upon failure, assailing the conditions, which is impermissible.

13. Challenging the afore-noted finding of the learned Single Judge, it was argued on behalf of the appellant that the first writ petition [WP(C) No.5051/2025) was filed on 26.08.2025, questioning the inclusion of the disqualification criterion at Clause 2.2.2.4.iii.ii.2 of the said RFP, being vague, over-broad, arbitrary and specifically targeted, as it required the bidders to undertake that they do not have any history of collapse of superstructure/substructure of any span of a bridge/flyover during construction or service in the last 3(three) years, but without clarifying whether the incidents for which no adjudicated liability has been fixed on the bidder would be included in this clause**.** The appellant had submitted its bid on 27.08.2025 looking at the time-line provided in the RFP.

14. In support of the afore-noted fact, it was contended on behalf of the appellant that it is a matter of record that the first writ petition was notarized and filed on 26.08.2025.

It has also been pointed out that the appellant had given an undertaking dated 26.08.2025 along with its bid in compliance of the said clause of RFP on a "without prejudice" basis.

Even though the same was brought on record before the learned Single Judge by way of an additional affidavit, it was held by the learned Single Judge that the challenge to the eligibility condition was made after participation by the appellant.

15. It would not be necessary for us to go into the afore-noted aspect as it appears that despite deciding the locus of the appellant to challenge the eligibility condition in the negative, the learned Single Judge proceeded to determine other questions framed, namely, whether the clause in question was vague or arbitrary or it resulted in automatic blacklisting and whether the rejection of the appellant's bid was sustainable.

16. The learned Single Judge, on perusal of the undertaking given by the appellant, found that there was no explanation that the collapse of a few spans of the bridge during construction by the appellant in Bihar, was not because of any design failure or quality failure. The appellant had understood the ambit of reach of the clause in question. There was no vagueness and uncertainty regarding the application of that clause. The State has a right to fix its own terms of the tender which is

not open to judicial scrutiny. A reference was made in the impugned judgment to ***Tata Cellular -Vs- Union of India :: (1994) 6 SCC 651***.

17. The learned Single Judge concluded on a detailed reading of the clause in question that there was no arbitrariness or *mala fides.* Relying on a judgment of Supreme Court in ***Uflex Limited -Vs- Government of Tamil Nadu & Ors. :: (2022) 1 SCC 165***, wherein it was held by the Supreme Court that in every tender, there are certain qualifying parameters whether it be technology or turnover and the Courts cannot in exercise of judicial review sit over such conditions, rejected the contention of the appellant**.**

18. Let us now examine the clause in question to understand whether the same is vague or arbitrary.

19. The records reveal that the original concern of vagueness stood substantially addressed by the clarification in the revised RFP. The clause, as it stands now, limits the disqualification to collapse attributable to (i) design failure or (ii) quality failure. These are well understood technical parameters in engineering practice, which, in our estimation, are neither indeterminate nor subjective.

20. Post the clarification, the eligibility clause became applicable uniformly to all bidders and it also reflected a rational nexus with the objective of ensuring structural safety in a complex bridge project. This condition is, in fact, a risk mitigation measure. Infrastructure project of this magnitude demands high degree of reliability. Excluding the bidders for recent history of collapse attributable to design failure or quality failure is

a legitimate policy choice.

21. That apart, the reduction of the look-back period from five years to three years further demonstrates that the respondents acted fairly and responsibly.

22. The argument that the impugned clause amounts to automatic blacklisting is also misconceived. Blacklisting entails stigmatic exclusion from all future contracts and carries civil consequences. The impugned clause in its present form, merely prescribes an eligibility criterion for a specific tender. It neither imposes a penalty nor prohibits future participation in other tenders. The distinction between the eligibility condition and blacklisting is well recognized in tender jurisprudence. The clause in question, therefore, falls squarely within the category of a valid risk mitigation clause.

23. The contention that the clause cannot be activated in the absence of prior determination or adjudication of the cause of collapse and is, therefore, faulty, does not merit acceptance.

24. At the first glance, the argument appears to be attractive but it proceeds on a fundamentally incorrect understanding of the nature and purpose of eligibility condition in a tender.

25. As noted above, the clause is not penal in character. It is preventive and is a risk-cover, intended to enable the employer to assess the technical reliability and risk profile of bidders in high-stakes infrastructure projects.

26. Requiring a prior judicial or quasi-judicial adjudication of cause of collapse would defeat the very purpose of such a clause. Infrastructure failures often involve prolonged technical investigations; expert committee reports and delayed or inconclusive findings. If the applicability of the clause were made contingent upon the final adjudication, the employer would be compelled to either indefinitely delay the procurement or ignore recent and potentially serious structural failures. Neither of the consequences would be acceptable in public procurements.

27. The appellant's argument *prima-facie* appears to rest on the assumption that the clause operates mechanically upon mere occurrence of a collapse. This is incorrect. The Revised RFP specifically limits its application to collapses attributable to the design failure or quality failure.

Thus, in the impugned clause, there is an in-built causal filter. It does not disqualify every bidder with a collapse history but only those where collapse is linked to the deficiencies attributable to the bidder.

28. In a tender process, the burden of demonstrating eligibility lies on the bidder. Where a bidder has a known history of collapse within the relevant period, it is incumbent upon such a bidder to disclose the incident fully and explain with supporting materials, if necessary, that the collapse was not due to design or quality failure, but for other factors like force majeure, third party interference or any other extraneous causes. If the bidder fails to provide such clarification, the employer would be

entitled to proceed on the basis of the available record.

29. In the present case, the learned Single Judge has rightly found that the appellant's undertaking does not contain any such categorical clarification.

30. There is no principle in tender jurisprudence that eligibility conditions must depend upon prior adjudication of disputed facts**.** On the contrary, the Supreme Court has consistently held in ***Tata Cellular*** (supra) and ***Jagdish Mandal -Vs- State of Orissa & Ors. :: (2007) 14 SCC 517*** that the tender authorities have wide latitude in prescribing eligibility criteria. The Courts do not substitute their own standards and the commercial decisions can be based on reasonable assumptions of risk, not proved beyond doubt.

31. Tender evaluation is not a judicial trial. It is only a commercial and a technical screening process.

32. Accepting the appellant's argument would lead to impractical consequences. Every bidder with a collapse history could claim pending inquiry and remain eligible or the employer would be forced to independently investigate technical causes mid-tender and, in that case, the procurement process would become unworkable and uncertain. Public authorities are entitled to adopt administrable criteria, particularly in any technically sensitive projects involving public safety.

33. We, therefore, are of the view that the clause, as it stands after clarification, narrows the scope to specific causes, namely,

design/quality failure; it limits the timeframe of three years and requires an undertaking from the bidder, striking a reasonable fairness between bidder and protection of public interest.

34. The absence of formal adjudication does not render the clause vague or unworkable; rather it places a duty of disclosure and explanation on the bidder.

35. The appellant has had a recent collapse incident and no conclusive explanation was made available to the extent that it was unrelated to design failure or quality failure. The undertaking given by the appellant does not dispel the risk contemplated by the clause. In such circumstances, the tender authority acted within its rights in treating the bid of the appellant as non-responsive.

36. Another issue raised on behalf of the appellant is the rationale of a three years' look-back period.

This is a matter of policy grounded in commercial and technical considerations in infrastructure contracts, particularly those involving bridges over major rivers. The employer is entitled to assess the current technical and operational reliability of a bidder. A recent failure within 3(three) years is far more relevant indicator of a present capability than an older incident. The original FRP prescribed a five years' period. Upon representations, this was consciously reduced to three years, demonstrating that the authority applied its mind and responded to the industry concerns and in fact, adopted a less restrictive standard. A defined temporal cut-off ensures certainty and uniformity. Any longer

period may become unduly harsh; while a shorter period might dilute safety concerns. The choice of three years, according to us, lies within a reasonable band of discretion.

37. As held in ***Uflex Limited*** (supra), the authorities are best placed to determine the technical and commercial threshold required for a project. The Courts do not calibrate such parameters unless they are manifestly arbitrary.

38. No materials have been placed on record to show that the three years' period is capricious, irrational or without nexus to object of ensuring structural safety. The challenge, therefore, fails.

39. Another argument raised on behalf of the appellant is that such a clause would operate as a hindrance to his participation in other tenders across India. This argument is misconceived for the reason that it is a tender specific condition. Each tender is an independent invitation, governed by its own terms. The clause in the present RFP applies only to this procurement process and in no case creates a binding precedent for other authorities. It does not amount to blacklisting. It does not debar the appellant from future tenders and also does not create any adverse record enforceable by other authorities. Different Government bodies may adopt different eligibility criteria, depending upon project complexities, risk profile and technical requirements.

40. The apprehension of exclusion from pan India tenders thus is purely speculative. The Courts ought not to invalidate a clause on the basis of hypothetical downstream effects.

41. Another argument raised on behalf of the appellant is that the requirement of giving an undertaking has been made implicit but without providing any contours within which such undertaking is to be given.

This contention is equally untenable. The purpose of undertaking is clear. It is required to affirm that there is no disqualifying collapse attributable to design failure or quality failure within the stipulated period. What should be the substance of declaration is, therefore, absolutely unambiguous. The tender conditions primarily require declarations without prescribing exhaustive formats.

42. What is required is substantive compliance and not ritualistic adherence to any template. Where a bidder is aware of potential disqualification event, it is incumbent upon it to disclose the history of collapse fully; explain its causes and clarify why it does not fall within the disqualification criteria.

43. The appellant has not provided a clear statement that the Bihar collapse was unrelated to design failure or quality failure. He has not placed any material or explanation to that effect.

44. The impugned eligibility framework represents a legitimate exercise of contractual discretion, aimed at safeguarding public interest in a technically sensitive project. The appellant has failed to demonstrate that the conditions are vague or unworkable; or that the process is arbitrary or unfair.

45. For the afore-noted reasons, this writ appeal is dismissed and

the impugned judgment passed by the learned Single Judge is sustained and upheld.

JUDGE **CHIEF JUSTICE**

Bijoy Sarma

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Comparing Assistant