GAHC010257492025

2026:GAU-AS:608-DB

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

WRIT APPEAL NO.378 OF 2025

1. Shri Hementa Kumar Nath,
Son of Banamali Nath,
Resident of Village: Balisatra, PO & PS: Balistra, District: Nagaon, Assam, PIN – 781307.

2. Mrs. Hima Deka Bharali,
Wife of Mridul Bharali,
Resident of Balisatra, PO: Batadrava,
District: Nagaon, Assam, PIN – 782122.

……..***Appellants***

-Versus-

1. The State of Assam, represented by the Principal Secretary to the Government of Assam, Panchayat & Rural Development, Dispur, Guwahati – 06.

2. The Commissioner & Secretary to the Government of Assam, Panchayat & Rural Development, Dispur, Guwahati – 36.

3. The District Commissioner and Secretary to the Government of Assam, Panchayata & Rural Development Department, Dispur, Guwahati – 06.

4. The Chief Executive Officer, Nagaon Zilla Parishad, Nagaon, PIN – 782001.

5. Md. Majaharul Islam,
Son of Nurul Hoque,
Resident of Upar Dumaria, PS: Batadraba,
District: Nagaon, Assam, PIN – 782001.

……...*Respondents*

– B E F O R E –
HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Appellant(s)	**:** Mr. K.N. Choudhury, Sr. Advocate, assisted by Ms. R.R. Kakati, Advocate.
For the Respondent(s)	**:** Mr. S. Dutta, Standing Counsel, Panchayat & Rural Development Department for respondent Nos.1, 2 & 4.
	: Mr. P. Saikia, Govt. Advocate, Assam for respondent No.3.
	: Mr. S. Dutta, Sr. Advocate, assisted by Mr. D.A. Kaiyum, Advocate for respondent No.5.
Date of hearing	**:** 20.01.2026.
Date of Judgment	**: 20.01.2026.**

JUDGMENT & ORDER (ORAL)

(Ashutosh Kumar, CJ)

We have heard Mr. K.N. Choudhury, learned Senior Advocate, assisted by Ms. R.R. Kakati, learned Advocate for the appellants; Mr. S. Dutta, learned Standing Counsel, Panchayat & Rural Development Department for respondent Nos.1, 2 & 4; Mr. P. Saikia, learned Government Advocate, Assam for respondent No.3 and Mr. S. Dutta, learned Senior Advocate, assisted by Mr. D.A. Kaiyum, learned Advocate for respondent No.5.

2. The challenge in the present appeal is to the judgment dated 10.11.2025 passed by a learned Single Judge of this Court in WP(C) No.6324/2025, whereby the settlement of the Bazar in question with respondent No.5 has not been interfered with.

3. A Tender Notice was issued on 07.06.2025 by the Chief Executive

Officer, Nagaon Zilla Parishad for settlement of various markets under the Parishad for a period of 1(one) year, i.e. from 2025 to 2026 with effect from 01.07.2025 to 30.06.2026. The tender in question is with respect to Balisatra Half Weekly Market, wherein the Government value of the said market was declared to be around Rs.83 Lakhs. Clause 12 of the Tender Notice indicated that in respect of tender for all Bazars/Hats, the tender offering highest value at the rate of the average of settlement value of previous 3(three) years along with an increase within the cap of 10% will be accepted for consideration. Later, an addendum was brought about indicating in detail the average value of all the Ghats/Hats, which were put to tender along with a figure which indicated the 10% increase on such average value.

4. The appellants did not participate in the bid despite they being seasoned bidders, who had participated in such bids earlier and were also with all preparedness, only for the reason that they understood the terms of the tender differently, which, according to the appellants, was the only logical conclusion of the wordings used in the Tender Papers. Perhaps the appellants understood that the minimum value of the tender would be the average of the last 3(three) years bid value and the range within which bids have to be offered would be the average of the last 3(three) years settlement with only a ten percent hike cap and not beyond. The average of the last 3(three) years settlement was more than a Crore of rupees. This assessment of the minimum price prevented the appellants from participating in the bid. When the bid was settled in favour of the respondent No.5 at a much lower price, which was only slightly higher than the Government price of the Hat, the appellants chose to question the tender process by alleging that the terms of the tender were confusing, vague and thus led to lesser participation and consequently there was no level playing field.

Mr. Choudhury contends that this confusing Clause in the Tender Document, in a way, breached the essentials of Article 19(1)(g) of the Constitution of India.

5. The learned Single Judge, while dealing with the issue, found that Clause 12 of the Tender Papers was basically in consonance with the amended Rule 47(1) of the Assam Panchayat (Financial) Rules, 2002 *(hereinafter to be referred as "2002 Rules")*, which only provided the maximum price for which Hats or Ferries or Fisheries or Ponds could be settled. This Clause could not have been misread to understand that the minimum reserve price would be the average of the last 3(three) years settlement. The minimum reserve price has not been indicated in the Tender Paper, leaving it open ended. The only stipulation in the Tender Papers is with respect to the Government value of the Hat in question and nothing beyond.

However, we find from the Tender Papers that the earnest money also has been indicated for all such Ghats/Hats, which also was found by the learned Single Judge to be in consonance with the mandate of Rule 47(1) of the 2002 Rules as it prescribes that the earnest money ought not to be less than 2% of the bid amount.

6. The contention of the appellants was rejected by the learned Single Judge on the grounds that the appellants had never participated in the tender and that there was little scope of any other interpretation of the Clauses of the Tender which had to be in accord with the 2002 Rules.

7. Mr. Choudhury contends that there is an ambiguity in the tender Clauses which could mean that the minimum reserve price would be the average of the bid settled for the last 3(three) years and the range from which the bidders would be selected would be within the average of the last 3(three) settlement amount and 10% cap over and above that. This understanding only prevented the appellants from participating in the bid.

Mr. Choudhury further submits that if any term of the tender is likely to cause confusion, it vitiates the process primarily for the reason that it would prevent fullest participation. In the present case, it has been pointed out that the bid of the respondent No.5 has been settled at a very low price, perhaps the lowest in the last 3(three) years settlement. Thus, the ambiguity in the Tender Papers leading to confusion has prevented fair competition that the appellants' non-participation in the tender would not render them disentitled to question the process as the issues raised by them would fall in the domain of public law review and not private grievance. Even otherwise, Mr. Choudhury argued that mere non-participation in a tender would not oust a person interested in participating from questioning the fairness of the process of selection.

8. There could be no dispute about the afore-noted proposition.

However, on examining the Tender Documents, especially Clause 12 read with Rule 47(1) of the 2002 Rules, it becomes very clear that what was indicated in the tender document was the maximum price which perhaps was necessary for avoiding tenders with inflated bid which would never be fulfilled but no minimum reserve price or else it would have been mentioned.

9. True it is that in the wordings employed in Clause 12, there could be a possibility of confusion that the minimum price would be the average of the last 3(three) years bid amount but then whether it has led to non-participation of many other interested tenderers is a question which is to be gleaned from the surrounding circumstances.

10. The records reveal that there were 5(five) participants in the tender but the bid of the respondent No.5 was the highest, even though low by the previous precedence.

11. In ***Reliance Energy Limited & Anr. -Vs- Maharashtra State Road Development Corporation Limited & Ors. :: (2007) 8 SCC 1***, the Supreme Court, while adumbrating on the various facets of Article 19 of the Constitution explained that level playing field in all spheres of constitutional and fundamental rights is an important concept and it holds special relevance for construing Article 19(1)(g) of the Constitution of India. When Article 19(1)(g) confers fundamental right to carry on business to a person/company, he is entitled to invoke the said doctrine of level playing field. However, it was clarified that this doctrine is subject to public interest.

12. The law with respect to tender is also very clear. When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. The legal certainty is an important aspect of the rule of law. If there is any vagueness or subjectivity in the said norms, it may result in unequal and discriminatory treatment and thus violate the doctrine of "level playing field".

However, after saying this, we need to emphasize that it was not a case of single participation. There were many participants and perhaps all others, except respondent No.5, had offered lesser offer than the respondent No.5 for him to be selected. Thus, for majority of the bidders, Clause 12 of the Tender Document did not create any confusion with respect to the minimum reserve price.

13. That apart, very strong reasons are required for any interference with the concluded contract as the sanctity of a concluded contract is also an important facet of an effective fiscal administration of the State.

14. Seen in this perspective, we do not wish to interfere with the judgment of the learned Single Judge. We also say this for the reason that the contract period also has substantially been consumed and only 5(five) months are left for the contract period to be over.

15. For the afore-noted reasons, we dismiss this appeal but with no order as to costs.

JUDGE **CHIEF JUSTICE**

Mukut Sharma Digitally signed by Mukut Sharma Date: 2026.01.21 11:05:40 +05'30'

Comparing Assistant