

GAHC010118302025



2025:GAU-AS:17690-DB

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

WRIT APPEAL No.183 of 2025

M/S Vertex Construction, represented by the Proprietor, Shri Y. Akato Zhimomi, Resident of Lower Pwd, House No.334, Below Lotha Church, Kohima, Nagaland.

.....Appellant

-Versus-

1. The State of Nagaland, represented by the Commissioner & Secretary, Government of Nagaland, Department of Work & Housing, Nagaland, Kohima.
2. The Chief Engineer, PWD (R&B), Nagaland, Kohima.
3. The Executive Engineer, Phek District, Nagaland.
4. M/s S.N. Enterprise, represented by the Proprietor, Shri Shevohu Nienu, Resident of Toulazou Village, Dimapur, Nagaland.

.....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. A. Gautam, Advocate.

For the Respondent(s) : Ms. M. Kechii, Additional Advocate General, Nagaland
for respondent Nos.1, 2 & 3.

: Mr. M. Jamir, Advocate for respondent No.4.

Date on which judgment
is reserved : 16.12.2025.

Date of pronouncement
of judgment : ***19th December, 2025.***

Whether the pronouncement
is of the operative part of the
judgment? : Not applicable.

Whether the full judgment
has been pronounced? : Yes.

JUDGMENT & ORDER (CAV)

(Ashutosh Kumar, CJ)

We have heard Mr. A. Gautam, learned Advocate for the appellant; Ms. M. Kechii, learned Additional Advocate General, Nagaland for respondent Nos.1, 2 & 3 and Mr. M. Jamir, learned Advocate for respondent No.4.

2. The appellant is the Proprietor of M/s Vertex Construction, who has questioned the judgment & order dated 23.05.2025 passed by a learned Single Judge of this Court (Kohima Bench) in WP(C) No.12/2025, whereby the selection and award of the contract work to respondent No.4 has not been interfered with despite the evaluation having been made on the basis of Quality and Cost Based Selection (QCBS), which system of evaluation was neither incorporated in the Standard Bidding Documents (SBD) information nor the minutes of the pre-bid meeting dated 10.08.2023 was uploaded on the website of the procuring authority or notified to the bidders, especially the appellant.

3. The Government of Nagaland, through the Office of the Chief Engineer (R&B), issued a Notice Inviting Tender (NIT) along with Standard Bidding Document (SBD) for Pradhan Mantri Gram Sadak Yojna (MPGSY) Scheme, inviting tenders for eligible Class-I Contractors for 5(five) different construction works under PMGSY-III Batch-I (2024-25). The appellant and the respondent No.4 along with other bidders applied.

The appellant and the respondent No.4 crossed the technical responsiveness threshold and their financial bids were opened.

4. Clause 23.1 of the SBD information required classification, evaluation and comparison of bids to be disclosed to the bidders after the successful bidder had been announced, but according to the appellant, no such information was disclosed, prompting the appellant to apply for such information through RTI.

5. The appellant came to learn that QCBS system was adopted for assessing the respective bids of the parties by assigning marks at the technical stage and combining them with financial scores. This methodology was neither disclosed in the tender documents nor communicated to the appellant. Though it is claimed by the respondent/ State and the respondent No.4 that there was a pre-bid meeting on 10.08.2023, i.e. 14(fourteen) months prior to the issuance of the NIT on 22.10.2024, wherein it was decided that QCBS system shall be applied for evaluating the tender papers in all the packages under the MPGSY Schemes, but according to the appellant, the same was never notified and thus fell outside the SBD information.

6. The appellant contends that on QCBS evaluation, the appellant

lost out even though he was the L-1 bidder. Alleging the evaluation to have been carried out on a hidden (QCBS) criteria, the appellant now seeks setting aside of the judgment & order dated 23.05.2025, impugned in the present appeal; quashing the work-order issued in favour of the respondent No.4 and issuance of a direction to the State to issue a fresh work-order in his favour.

7. The learned Single Judge has held that the authority has a right not to accept the L-1 bidder and even to prefer a bid other than the L-1 if there exists good and sufficient reason but such a decision must be fair and transparent. The evaluation conditions/ criteria, weightage and other parameters, according to the learned Single Judge, was decided by the Tender Committee on 10.08.2023, i.e. 14(fourteen) months prior to the issuance of the NIT, and, therefore, mere non-uploading of the minutes of the said meeting and not notifying the appellant and others would not vitiate the entire tender process, more so, when the appellant had not participated in the pre-bid meeting. There was, thus, no hidden agenda of the State and no hidden evaluation system. The respondent authority had decided to adopt the QCBS system for all the works under PMGSY-III under the QCBS evaluation system in the ratio of 60% for technical responsiveness and 40% for the financial evaluation. It was also held that when the pre-bid meeting was held on 10.08.2023, the Tender Committee had no idea as to who all would be the bidders for which package and, therefore, evaluating the tender of the appellant and the respondent No.4 and another, who had crossed the technical threshold on the QCBS system, cannot be said to be unfair or bad in the eyes of

law.

8. Mr. A. Gautam, learned Advocate for the appellant has challenged the afore-noted judgment on the ground that the learned Single Judge ignored the fact that only after the appellant had applied through RTI that he came to know about the meeting and the minutes dated 10.08.2023. The said meeting -minute was neither part of the NIT/SBD nor incorporated at any stage as per the laid down procedure. The SBD mandated that any modification of the bidding document as a result of the pre-bid meeting is to be notified in the form of addendum/ corrigendum and be uploaded on the website and such modification/clarification be also notified to all the bidders. That apart, the NIT/SBD was issued 14(fourteen) months after the pre-bid meeting and no bidder can logically contend that he was not aware of the minutes of the meeting only because it did not form part of the NIT floated after more than a year. The appellant has also questioned the evaluation on the alleged ground that favour shown to respondent No.4 for him to be marked more for the possession of the core-cutter machine, which the appellant does not possess, ignoring the fact that there were other deficiencies in the bid of the respondent No.4. Critically the respondent No.4 was marked 100 on the technical front, enabling him to steal the march over the appellant.

9. With respect to the “work completed” disclosure of the appellant, there was an erroneous appreciation of a work-order not having been completed when such work-order was never listed by the appellant in his bid documents. The Technical Evaluation Committee, in

fact, ignored 20(twenty) instances cited by the appellant of having completed the work-orders. The appellant, therefore, relies on ***Dutta Associates Private Limited -Vs- Indo Merchantiles Private Limited & Ors. :: (1997) 1 SCC 53*** and ***Naga Construction -Vs- East West Construction & Ors. :: (2019) 4 GLR 370*** to contend that undisclosed change in evaluation criteria vitiates the tender process.

10. The State as well as the respondent No.4 have contended that the QCBS system was adopted in the ratio of 60:40 for technical and financial bids, respectively, only under reference to Rule 192(iii) of the General Financial Rules, 2017. The criteria of the technical score was adjudged according to the minutes of the meeting dated 08.10.2023 and that the appellant had never attended the other pre-bid meeting held on 12.01.2024, which is about 9(nine) months prior to the floating of the NIT/SBD.

The respondent No.4 possessed one core -cutter machine which is a very important equipment for completing the project; which is not possessed by the appellant.

There can be no manner of doubt that tender conditions constitute the law of tender. Any change in evaluation methodology, particularly the one that materially affects the *inter-se* ranking must be disclosed upfront.

11. In ***Dutta Associates Private Limited*** (supra), the Supreme Court has held that the tendering authority cannot deviate from the conditions of the tender to the prejudice of one of the bidders. Similarly, a Division Bench of this Court in ***Naga Construction*** (supra) has reiterated that

introduction of undisclosed criteria in the evaluation offends Article 14 of the Constitution of India and the principles of transparency.

12. However, in the present case, the procuring authority had issued the NIT for selection of contractors for various work-orders under the PMGSY in several phases and it was decided in the pre-bid meeting that QCBS criteria would be applicable for evaluation in all the tenders under the different packages of PMGSY.

13. True it is that it would have been more fairer if such disclosure were made in the NIT/SBD or it would have been declared upfront before the evaluation and all the bidders would have been notified regarding such evaluation method; but not doing so, in our estimation, falls in the realm of procedural illegality, which does not automatically warrant setting aside of the contract.

14. Needless to state that judicial review in tender matters is limited, particularly after the commencement of the work. The Supreme Court in many cases has cautioned that the Court ought not to act as an appellate authority over the administrative decisions and that even if some procedural aberration is found, the Court must weigh the larger public interest before granting relief. [Refer to ***Jagdish Mandal -Vs- State of Orissa & Ors. :: (2007) 14 SCC 517; Michigan Rubber (India) Limited -Vs- State of Karnataka & Ors. :: (2012) 8 SCC 216*** and ***Banshidhar Construction Private Limited -Vs- Bharat Coking Coal Limited & Ors. :: (2024) 10 SCC 273***]

15. The present project/work is under a Centrally funded Scheme which, if not executed within the time-line, would lead to lapsing of the Central fund, thereby saddling the State with the responsibility of

completing the unfinished task.

16. The question before this Court is whether such decision ought to be upturned at this stage when the work has already been started by respondent No.4.

17. The Supreme Court has clearly cautioned in many cases that semi-completed or substantially progressed contracts should not be interfered with, even if some irregularities are found, unless *malafide* or fraud are established. The Courts must defer to administrative decisions where interference would cause administrative chaos or derail public projects. [Refer to ***Tata Cellular -Vs- Union of India :: (1994) 6 SCC 651; Raunaq International Limited -Vs- IVR Construction Limited :: (1999) 1 SCC 492; Silppi Constructions Contractors -Vs- Union of India & Anr. :: (2020) 16 SCC 489; M/s N.G. Projects Limited -Vs- M/s Vinod Kumar Jain & Ors. :: (2022) 6 SCC 127*** and ***Kirloskar Ferrous Industries Limited & Anr. -Vs- Union of India & Ors. :: (2025) 1 SCC 695.***]

18. Considering the fact that the decision to adopt QCBS system was taken several months before the issuance of the NIT/SBD when it was not known as to who all will be the bidders, the appellant cannot raise grounds of *malafides*; or favouritism; or corruption. The appellant had also participated in the tender for other works under the PMGSY where QCBS system had been adopted and had failed to bag that contract. Though, there cannot be any presumption of a particular mode of evaluation but in the present case, we find that the allegation raised by the appellant is only on principle.

19. While we cannot approve undisclosed deviation from the tender

terms but we do reckon that disproportionate relief is required to be avoided. Setting aside the contract at this stage would cause irreversible harm to the public interest, far outweighing the procedural grievance of the appellant.

20. In our considered view, the appropriate course to be adopted would be to decline interference, while recording disapproval of the tendering authority's conduct in not uploading the minutes of the meeting on its website or notifying the bidders and issuing prospective corrective directions.

21. We say so, particularly for the reason that substantial progress of the work has been done and the work is to be completed by March, 2026 and in setting aside the allotment of work to respondent No.4, there would be an imminent risk of loss of central funding, which decision would override public interest.

22. We, therefore, dismiss this appeal *albeit* with the observation that the tendering authority ought to be more careful and they must ensure that future tenders clearly disclose the evaluation methodology, including any proposal to adopt QCBS method.

No order as to costs.

JUDGE

CHIEF JUSTICE

Mukut Sharma
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by Mukut Sharma
Date: 2025.12.19
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Comparing Assistant