GAHC010102322026

2026:GAU-AS:17397

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

Case No. : WP(C)/2720/2026

PURBANCHAL BUILDTECH PVT. LTD AND ANR
HAVING ITS REGISTERED OFFICE AT HOUSE NO. 2, SEWALI PATH, F.A. AHMED NAGAR, SIXMILE, GUWAHATI, DISTRICT- KAMRUP(M), ASSAM
REPRESENTED BY ITS AUTHORISED SIGNATORY, MR. BHASKAR GOSWAMI

2: MR. BHASKAR GOSWAMI
S/O- MR. AMBIKA PAD GOSWAMI.
R/O- BARGAON
DIV-RANGIA
P.S.- BAIHATA CHARIALI
DISTRICT-KAMRUP
ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE COMMISSIONER AND SPL. SECRETARY TO THE GOVERNMENT OF ASSAM, PUBLIC WORKS ROADS DEPARTMENT, DISPUR, GUWAHATI-781026, ASSAM

2:THE CHIEF ENGINEER (ROADS) PUBLIC WORKS ROADS DEPARTMENT
GOVERNMENT OF ASSAM
CHANDMARI
GUWAHATI- 781003
ASSAM.

3:THE CHAIRMAN
BID EVALUATION COMMITTEE REPRESENTED BY THE CHIEF ENGINEER (ROADS) PUBLIC WORKS ROADS DEPARTMENT
GOVERNMENT OF ASSAM
CHANDMARI
GUWAHATI- 781003
ASSAM

4:THE EXECUTIVE ENGINEER
PUBLIC WORKS ROADS DEPARTMENT
BONGAIGAON DISTRICT TERRITORIAL ROAD DIVISION
BONGAIGAON.

5:M/S MACROCOSM BUILDERS
HAVING ITS REGISTERED OFFICE AT B.B. ROAD
BARPETA
DISTRICT- BARPETA
PIN-781301
ASSAM REPRESENTED BY ITS AUTHORIZED SIGNATORY SRI DEBADIB DAS.

6:SRIMANTA SANKARDEV INFRACON PVT. LTD
HAVING ITS REGISTERED OFFICE AT S.S. ROAD
WARD NO. 3
ABHAYAPURI
P.O. AND P.S. ABHAYAPURI
DISTRICT- BONGAIGAON
PIN- 783384
ASSAM REPRESENTED BY ITS AUTHORIZED SIGNATORY SRI RUDRA KUMAR PATHAK

Advocate for the Petitioner : MR. A BORUA, MR. T J MAHANTA

Advocate for the Respondent : SC, PWD, MR. I AHMED (R5),MR. ADARSH KR. JAIN (R6),P AGARWAL (R6),P MOHESWARI (R6),MR H BETALA (R6),MR. R K AGARWALA (R6)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. T. J. Mahanta, Senior Counsel assisted by Mr. A. Barua, Advocate.

For the Respondents : Mr. B. Choudhury, Standing Counsel, PWD.

Mr. H. Betala, Advocate for respondent No.5

Mr. I. Ahmed, Advocate for respondent No.6

Date on which Judgment is

Reserved : 20.11.2026

Date of pronouncement of
Judgment : **25.11.2026**

Whether the pronouncement
is of the operative part of the
Judgment : NA.

Whether the full Judgment has
been pronounced : Yes.

JUDGMENT & ORDER (CAV)

(A.D.Choudhury, J)

1. Heard Mr. T. J. Mahanta, learned Senior Counsel, assisted by Mr. A. Barua, learned counsel for the petitioner. Also heard Mr. B. Choudhury, learned Standing Counsel for the Public Works Department, and Mr. H. Betala, learned counsel for the respondent No.5 and Mr. I. Ahmed, learned counsel for the respondent No.6

2. The petitioner has approached this court challenging its exclusion from the tender process initiated by the Public Works Roads Department, Government of Assam, for package No. ASOM-MALA-3.0-25-26-52 under Asom Mala 3.0 (2025-2026).

   The petitioner has also questioned the subsequent decision of the authorities to allot the two constituent road works separately to respondent Nos. 5 and 6.

3. The tender relates to the work of Improvement and Upgradation of (I) Shahid Bedi to North Salmara Junction Road (SH-2) and (II) Talaguri Basugaon Road in the district of Bongaigaon.

4. The works have a combined estimated value of Rs. 8841.28 Lakhs. The NIT was issued on 20.01.2026, and the last date for bid submission was 02.02.2026 at 2:00 PM.

5. Three bidders participated in the process: the petitioner, respondent No. 5, M/S Macrocosm Builders, and respondent No. 6, Srimanta Sankardeva Infracon Private Limited.

6. The petitioner submitted its bid on 02.02.2026 at 11.08 AM. The e-procurement portal generated an online bid submission confirmation bearing bid ID No. 296141. The confirmation records the documents uploaded by the petitioner in the different fields of the portal.

7. The technical bid evaluation sheet records that the petitioner's bid was not evaluated on the ground that the bidder had not digitally signed and uploaded the bid documents.

The bids of respondent Nos. 5 and 6 were found technically qualified. Upon opening their financial bids, both were found to have quoted Rs. 8841.28 Lakhs, being the full estimated value of the package and were accordingly shown as joint L1 bidders.

8. The petitioner contends that its bid was submitted within the stipulated time and that the bid documents required under the tender conditions were uploaded through the e-procurement portal.

It is submitted that technical documents were uploaded in two PDF files, namely Tech1.pdf and Tech2.pdf. The petitioner disputes the correctness of the ground on which its bid was excluded and contends that the documents it uploaded were digitally authenticated through the e-procurement system.

9. The petitioner has also questioned the authorities' decision to divide the composite package and allot two road works separately to respondent Nos. 5 and 6.

It is contended that NIT invited bids for one package and did not contemplate separate awards for two constituent works. The subsequent division, according to the petitioner, is contrary to the tender condition and applicable procurement law.

10. The respondents submit that the petitioner did not upload a separately digitally signed copy of the bid documents in the designated field of the e-procurement portal.

11. In the reply filed on behalf of the department, it is explained that the petitioner uploaded the document Tech1.pdf relating to technical qualification Part-I in the field designated as bid documents, whereas technical qualification Part-II was uploaded as Tech.2.pdf in the field designated as technical qualifications. The department states that the petitioner did not upload a

separately digitally signed copy of each bid document required to be uploaded in the respective fields.

12. With regard to the subsequent allotment of the two road works, the Chief Engineer, PWD Roads, in his instruction dated 18.11.2026, stated that the estimates and bills of quantities were prepared separately for the two roads, with a combined abstract of the project. It is further stated that upon opening of the financial bids, the respondent Nos. 5 and 6 were found to have quoted identical prices and were placed at par as L1 bidders.

The tender evaluation committee decided to allot one road to each of the two bidders, with their consent, to avoid cancellation of the tender and the delay involved in inviting fresh bids. The decision was stated to have received government approval.

13. I have considered the rival submissions and perused the original records, including the bid documents uploaded by the petitioner.

14. The scope of judicial review in matters relating to tender and award of contract is well settled. The court does not sit as an appellate authority over the decision of the tendering authority, nor is it required to substitute its own assessment for that of the competent authority. The concern of this court is to examine whether the decision-making process is lawful, fair, and free from arbitrariness, irrationality, mala fides, or favouritism.

15. In **Tata Cellular –VS- Union of India**, the Supreme Court explained the limits of judicial review in contractual matters. The principles were reiterated in **Jagdish Mandal –VS- State of Orissa**, wherein it was held that interference is warranted where the process adopted or decision made is mala fide or intended to favour someone or is so arbitrary and irrational that no responsible authority acting reasonably and in accordance with relevant law could have reached such a decision. The court is also required to examine whether public interest is affected. The same approach has been reiterated in **Afcons Infrastructure Limited –VS- Nagpur Metro Rail Corporation**.

16. i n the present lis, the first aspect which requires consideration is the petitioner's exclusion from the tender process.

17. Clause 12.1 of the bidding documents specifies the documents comprising the technical bid and financial bid.

Clause 18.1 provides for submission of technical and financial bids online, while clause 18.2 requires the prescribed hard copy of the technical bid and supporting documents to be signed by the bidder or its authorised representatives.

Clause 19.1.1 specifies the documents to be submitted as part of the online technical bid.

Clause 19.1.2 specifies the documents comprising the online financial bid, and clause 19.1.3 deals with submission of original technical documents.

Clause 19.4 requires the bidder to obtain a digital certificate for participation in the e-tendering process.

Clause 26.1 requires the employer, at the stage of examining bids, to ascertain, among other things, whether the bid satisfied the requirements of the bidding documents; Clause 26.2 deals with substantial responsiveness and material deviations.

18. These provisions have to be read with Rule 23 of the Assam Public Procurement Rules 2020, which prescribes the procedure for submission, receipt, and evaluation of bids.

Rule 23(2)(viii) of the Assam Public Procurement Rules 2020 provides that in case of e-procurement, bidders shall prepare bids in the formats provided in the bidding documents or, in their absence, in the formats published on the e-procurement portal, which shall be digitally signed by way of a digital signature certificate and uploaded.

The provision further requires scanned copies of stipulated bid documents to be uploaded along with the bids and makes the procedure prescribed on the State Public Procurement Portal or e-procurement portal applicable.

19. The instructions published on the Government of Assam e-procurement portal under the heading, "Special instruction to the contractors/bidders for the e-submission of bids online," are also relevant.

Instruction 9 requires the bidder to prepare the documents in the format specified therein and expressly provides that where there is more than one document, they may be clubbed together.

Instruction 14 requires the bidder to click the "freeze bid" button to complete the submission process and treats an unfrozen bid as incomplete or invalid.

Instruction 18 provides that at the time of freezing the bid, the documents submitted by the bidder will be digitally signed using the bidder's e-token and then submitted.

Instruction 19 provides that the bid summary shall act as proof of submission, while Instruction 20 clarifies that successful submission means the bid, as uploaded, has been received and stored in the system, and that the system does not certify its correctness.

20. The online bid submission confirmation in the present case records the submission of the petitioner's bid before the prescribed deadline and identifies the documents uploaded by it in different required fields.

21. The department also acknowledges that the technical qualification documents uploaded by the petitioner bore signatures and seal, though Part-I was placed in the field designated for bid documents and Part-II in the field designated for technical qualifications. The objection is that the petitioner did not separately upload digitally signed copies of the bid documents.

22. The distinction between digital authentication of the electronic bid and placement of the supporting documents in the designated field is material. The portal instructions contemplate digital authentication of the documents submitted at the time of freezing of the bid through e-bidders' e-token.

They also permit more than one document to be clubbed together. The absence of a separate digital signature on each page of the scanned supporting documents is not discernible from any of the tender documents, nor could the learned counsel for the respondent show any such provision in the bidding documents, instructions to bidders or any statutory provision. Therefore, it cannot be equated with the absence of digital authentication of the electronic bid. At the same time, the permission to club documents does not dispense with the requirement of uploading the documents in the prescribed field for the tender. Therefore, the bidders were required to follow the submission procedure.

23. The petitioner uploaded the technical qualification Part-I as a PDF file in the designated field and the financial qualification under Part-II as a composite PDF file. The documents had been uploaded before the deadline and were available in the electronic bid.

A copy of the petitioner's bid documents in Technical-I and Technical-II, downloaded from the portal and printed, is produced before this court. Therefore, this court must consider whether the

absence of a digital signature in each uploaded document is essential and, if so, whether it is a material deviation warranting rejection of the entire bid.

24. In this regard, Rule 23(10)(a)(10) of the Assam Public Procurement Rules, 2020, requires the bid evaluation committee to conduct preliminary scrutiny of the open bids to assess their prima facie responsiveness.

Under Rule 23(10)(a), the committee is required to examine whether the bid is signed in accordance with the requirements prescribed in the bidding documents.

Rule 23(11) requires tabulation of the technical bids and inter alia examination of whether the bid has been signed by the bidder or an authorised person. The committee is thus required to examine the bid as submitted and record its findings with reference to the prescribed requirements.

Under sub-rule 13(i), the bid evaluation committee must determine whether a bid is responsive to the bidding documents and the provisions of the Act.

Sub-rule 13(ii) of Rule 23 provides that a bid is responsive if it meets the requirements of the bidding documents without any material deviation, reservation, or omission.

Sub-rule 13(iii) defines a material deviation, reservation, or omission with reference to its effect on the scope, quality, or performance of the subject matter of procurement, the rights of the procuring entity or obligations of the bidders or its effect upon the competitive position of other bidders if rectified.

Sub-rule 13(v) further provides that a bid may be regarded as responsive if it contains minor deviations that do not materially alter or depart from the requirements of the bidding documents, or errors or oversights that can be corrected without changing the substance of the bid.

Rule 23(15) specifically deals with immaterial non-conformities. Under sub-rule 15(i), the bid evaluation committee may waive non-conformities that do not constitute a material deviation, reservation, or omission and deem the bid responsive.

Sub-rule 15(iii) also permits rectification of immaterial non-conformities or omissions on the basis of information or documents received from the bidder.

These provisions, however, have to be read with Rule 23(14)(iii) and (iv), which prohibit any change in the price or substance of a bid and prohibit a substantive change to qualification information or a submission including a change intended to make an unresponsive bid responsive.

25. The statutory scheme thus makes a distinction between a material deviation which requires rejection and an immaterial non-conformity which may be waived or rectified in accordance with the rules.

The question of materiality cannot be answered solely by referring to the label of the portal field in which a document was uploaded. The committee is required to examine the nature of the document, the requirement for which it was sought, the effect of its placement in the particular field and whether acceptance of the bid would prejudice the rights of procuring entity or the competitive position of the other bidders.

26. In the present case, the original record produced reflects that the evaluation sheet records that the petitioner had not digitally signed and uploaded the bid document. However, the respondent did not stick to this position; rather, it admits that the bids were duly uploaded within the stipulated time with the digital signature.

27. The department's subsequent explanation before this court states that the petitioner did not upload a separately digitally signed copy of each bid document in the designated field.

The online submission confirmation, on the other hand, records that the bid was submitted and that the technical qualifications documents were uploaded in the portal through Part-I, placed in the field, but in a composite manner as a PDF file, clubbing all the documents.

28. The department has not demonstrated, from the material presently placed before this court, including the original record, how placing those documents in the field-marked bid documents affected the authenticity or substance of the offer, or how their consideration would have prejudiced the evaluation of other bidders.

29. More particularly, the printed bid documents, after being downloaded from the portal and produced before this court, show that each and every page of the bid document was physically signed with the seal of the petitioner, and scanned copies were uploaded thereafter in a composite PDF file.

30. This court is conscious that an essential condition of a tender cannot be waived and that a bidder cannot be permitted to complete or improve its bid after the prescribed deadline. The provisions of Rule 23(14) make this limitation clear.

The present consideration, however, does not involve permitting the petitioner to submit a fresh document or to alter its offer. It concerns the legal consequence of a document already uploaded within time, but placed in a composite manner through a PDF file.

31. The decision to exclude the petitioner without examining the nature and consequence of the deviation, particularly in light of the portal instructions and the provisions of Rule 23(13) and Rule 23(15), does not disclose the application of the statutory test of responsiveness.

Even if it is presumed that the portal provided separate fields for bid documents and technical qualifications, this does not dispense with the committee's obligation to determine whether the misplacement of documents, if any, resulted in a material deviation or violated the clear mandate of the tender condition. fact remains that no such tender condition could be shown by the learned standing Counsel.

32. In the circumstances, the decision to exclude the petitioner's bid from evaluation, on the ground recorded, cannot be sustained without such consideration.

33. This Court, however, is not expressing any opinion on the technical qualifications of the petitioner or declaring its bid to be responsive. The matter requires consideration by the competent bid evaluation committee confined to the preliminary question of responsiveness.

Such consideration shall be made on the basis of the original electronic bid and documents uploaded before the prescribed deadline.

No fresh document, subsequent digital authentication, substitution, or improvement of bid shall be permitted.

The committee shall record specific reasons as to whether the deviation in placement of the documents constitutes a material deviation under Rule 23(13) or an immaterial non-conformity falling within Rule 23(15) of the Assam Public Procurement Rules, 2020.

34. The next aspect concerns the decision to divide the composite package and allot the two road works separately to respondent Nos. 5 and 6.

35. The NIT invited bids for a package comprising two road works for a combined estimated value of Rs. 8841.28 Lakhs. The respondents seek to justify the subsequent division on the ground that separate estimates and bills of quantities had been prepared for the two roads with a combined abstract of the project.

36. The explanation furnished by the department itself makes it clear that the decision to allot one road to each of the two bidders was taken after the financial bid had been opened and respondent Nos. 5 and 6 were found to have quoted identical prices.

37. As projected by the respondents, the tender evaluation committee decided to divide the package principally to avoid cancellation of the tender and the delay involved in inviting fresh bids. The two bidders thereafter expressed their consent to undertake the separate works, and the proposal received government approval.

38. Section 8(3) of the Assam Public Procurement Act, 2017 provides that a procuring entity shall neither divide nor bulk its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid its obligation under Sub-section 1.

The proviso permits division or bulking into appropriate packages, for reasons to be recorded in writing, in the interest of efficiency, economy, and timely completion or supply, prior to inviting bids.

Rule 8(8) of Assam Public Procurement Rules, 2020, further provides that no procurement entity shall divide or bulk its procurement after bids have been invited for the purpose under any circumstances.

39. Thus, the statutory scheme requires the decision to divide a procurement into appropriate packages to be taken before invitations to bid.

40. The bidding documents must disclose the nature and extent of the procurement for which bids are invited so that all prospective bidders participate on the same terms and formulate their offers based on the procurement structure disclosed to them.

If a composite package is split after completion of the bid by dividing it and awarding it to two separate contractors, this would also violate the rights of prospective tenderers. Many bidders who could not have participated due to the high value of the tender might have participated had

it been divided prior to initiation, at the time of issuing the NIT. This results in a violation of Article 14 of the Constitution of India.

41. In the present case, the separate preparation of estimates and bills of quantities for two roads may explain how the project cost was assessed. But it does not establish that the NIT contemplated separate awards for two constituent works. The whole package was notified as one procurement with a combined estimated value, and the financial bids were evaluated for the package as a whole. The decision to allot one road to each of the two joint L1 bidders was taken only after the financial bids had been opened and the result of the bidding process had emerged.

42. The consent of respondent Nos. 5 and 6 to undertake separate components of the work cannot confer on the procuring entity a power that the statute and rules do not permit. Nor can subsequent government approval validate a course of action contrary to the statutory requirement.

The authority was required to deal with the situation arising from identical lowest bids in accordance with the original bid documents and applicable procurement law. It could not, after completion of the bidding process, alter the structure of the procurement by dividing the composite package between two bidders.

43. The concern expressed by the department that cancellation of tender and invitation of fresh bids would delay execution of the project is understandable. The subject works form part of a public infrastructure program, and timely execution is undoubtedly in the public interest. However, administrative convenience and the objective of avoiding delay cannot justify a departure from the procedure prescribed by tender conditions and procurement law. The public interest in timely execution of the work has to be pursued within the framework of law.

44. In view of the foregoing discussion, this court finds that the decision excluding the petitioner requires consideration in the limited manner indicated above. The subsequent decision to divide the composite package and allot the two constituent road works separately to the respondent Nos. 5 and 6 cannot be sustained in view of the mandate of section 8(3) of the Assam Public Procurement Act, 2007 read with rule 8(8) of Assam Public Procurement Rules, 2020.

45. Consequently, the decision of the technical bid evaluation committee excluding the petitioner is set aside to the extent indicated in this judgment.

46. The matter is remitted to the competent bid evaluation committee for a fresh decision on the preliminary responsiveness of the petitioner's bid strictly in accordance with Clause 12.1, 18.1, 18.2, 19.1 and 19.4 and Clause 26 of the bidding documents, the instructions published in the e-procurement portal and Rule 23(10), (13), (14) and (15) of the Assam Public Procurement Rules, 2020.

47. The exercise shall be confined to the original electronic bid and the documents uploaded before the deadline. No fresh document, subsequent authentication or improvement of the bid shall be permitted.

48. The subsequent decision to make separate allotments of two constituent road works in favour of respondent Nos. 5 and 6 is set aside. The authority shall not issue work order pursuant to the said separate allotments.

49. If, upon consideration, the petitioner's bid is found responsive and otherwise eligible, its original financial bid shall be dealt with in accordance with the original NIT and the applicable procurement law and rules. The authority shall also deal with the situation arising from the identical lowest bids of the respondent Nos. 5 and 6, in accordance with the procedure prescribed in the bidding documents and applicable law. No separate allotment of two constituent works shall be made.

50. The entire exercise shall be completed expeditiously, preferably within six weeks from the date of receipt of a certified copy of this judgment. It is needless to say that the respondents shall be at liberty to initiate a fresh tender process, if the situation necessitates and justifiable grounds are available.

51. The writ petition is accordingly partly allowed in the above terms. The parties shall bear their own costs.

JUDGE

Comparing Assistant