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2026:GAU-AS:16325

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

Case No. : WP(C)/4297/2026

M/S CALL AND FIX (CAF),
A PROPRIETORSHIP CONCERN CARRYING ON BUSINESS AS A CLASS-I GOVERNMENT CONTRACTOR, HAVING ITS REGISTERED OFFICE AT HOUSE NO. 10, 2ND FLOOR, RUPALI PATH, RGB ROAD, GUWAHATI, DISTRICT- KAMRUP METRO, ASSAM, PIN- 781024, REPRESENTED BY ITS PROPRIETOR SHRI UDAY PRAKASH KANOI, SON OF SRI KAILASH AGARWALA, RESIDENT OF HOUSE NO. 10, 2ND FLOOR, RUPALI PATH, RGB ROAD, GUWAHATI, DIST. KAMRUP METRO, ASSAM-781024.

VERSUS

STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, DEPARTMENT OF HOUSING AND URBAN AFFAIRS, DISPUR, GUWAHATI- 781006.

2:THE DISTRICT COMMISSIONER
HAVING ITS OFFICE AT BORGURI
TINSUKIA
ASSAM- 786126.

3:SWACHH BHARAT MISSION (URBAN)
REPRESENTED BY THE STATE MISSION DIRECTOR
SBM URBAN
PUBLIC HEALTH ENGINEERING DEPARTMENT
GOVERNMENT OF ASSAM.

4:MAKUM MUNICIPAL BOARD
REPRESENTED BY ITS EXECUTIVE OFFICER
HAVING ITS REGISTERED OFFICE AT MAKUM JUNCTION
GANDHI NAGAR
WARD NO. 10

P.S. MAKUM JUNCTION
DISTRICT- TINSUKIA
ASSAM

5:M/S VIDURS
A PROPRIETORSHIP CONCERN REGISTERED OFFICE AT 43
RAJGARH ROAD
CHANDMARI
GUWAHATI
DISTRICT- KAMRUP METRO
ASSAM
PIN- 781003
REPRESENTED BY ITS PROPRIETOR SHRI VIVEK KUMAR SHARMA
SON OF OM PRAKASH SHARMA
RESIDENT OF PRAGATI PATH
RAJGARH ROAD
GUWAHATI
KAMRUP METRO
ASSA

Advocate for the Petitioner : MR G KHANDELIA, MR. K DEKA,MR R PAUL

Advocate for the Respondent : GA, ASSAM, I KUMARI(R5),S FAZIL(R5),MR G JALAN(R5),MR. S BORTHAKUR(R4),MR. S S ROY(R4)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. G. Khandelia, Advocate.

For the Respondents : Ms. U. Das, Govt. Advocate, Assam.
Mr. G. Jalan, Advocate.
Mr. S. S. Roy, Advocate.
Mr. S. Borthakur, Advocate.

Date on which Judgment is
Reserved : 03.11.2026

Date of pronouncement of Judgment : **06.11.2026**

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. G. Khandelia, learned counsel for the petitioner. Also heard Ms. U. Das, learned Government Advocate, Assam, representing the State respondents; Mr. G. Jalan, learned counsel for respondent No. 5; and Mr. S. S. Roy, learned counsel, as well as Mr. S. Borthakur, learned counsel for respondent No. 4.

2. The petitioner has approached this Court questioning the decision of the respondent authorities to declare respondent No. 5, M/s Vidur's, technically qualified in the tender process initiated for the establishment, construction, supply and procurement, fabrication, erection of machinery, trial run and commissioning of Material Recovery Facility (MRF) and Waste to Compost (W2C) plant at the Makum Municipal Board, District Tinsukia, under the Swachh Bharat Mission (Urban). The estimated value of the work was Rs.3,65,10,000/-.

3. The notice inviting tender dated 03.02.2026 prescribed, inter alia, that the bidder must have successfully completed two similar works in Assam during the preceding three years.

4. The tender document defined the expression "similar work" as the construction of a waste-to-compost processing unit and a material recovery facility. The tender further stipulated a minimum average annual gross turnover of Rs 7,50,00,000/- in construction works during the financial years 2022-2023, 2023-2024 and 2024-2025. These requirements were prescribed as mandatory qualification criteria.

5. The petitioner and the respondent No. 5 participated in the tender process. By communication dated 10.06.2026, the authority asked both bidders to furnish certain documents, including proof of completion of similar works. The petitioner claimed to have submitted the required documents on 11.06.2026.

6. The Tender Evaluation Committee minutes dated 21.06.2026 recorded both bidders as technically qualified. The Committee uploaded the technical evaluation results on the portal on 14.07.2026, on which date it opened the financial bids. The Committee declared Respondent No. 5 as L1 and the petitioner as L2.

7. The petitioner contends that Respondent No. 5 did not satisfy the mandatory financial turnover and experience requirements prescribed by the NIT. It is submitted that the Tender Evaluation Committee could not have treated Respondent No. 5 as technically qualified by relaxing the basic eligibility criteria after the bids were submitted.

8. The petitioner also questions the absence of a transparent comparative assessment of the documents furnished by the respondent No. 5.

9. The State respondents contend that they extended preference to respondent No. 5 on account of its status as a Micro, Small and Medium Enterprise (MSME) under the Assam Procurement Preference Policy, 2021. Reliance has also been placed upon the communication dated 10.03.2016 issued by the Ministry of Micro, Small and Medium Enterprises, Government of India concerning the relaxation of prior experience and prior turnover criteria for Micro and Small Enterprises.

10. In this backdrop, the principal question is whether the preference or relaxation contemplated under the aforesaid policy and communication can be invoked to treat respondent No. 5 as technically qualified, notwithstanding its failure to satisfy the mandatory financial and experience requirements expressly prescribed in the NIT.

11. At the outset, it must be observed that judicial review in matters relating to public tenders is ordinarily confined to examining whether the decision-making process is arbitrary, irrational, mala fide, or contrary to the governing statutory provisions and the terms of the tender. The court does not sit as an appellate authority over the technical assessment of the Tender Evaluation Committee, nor does it substitute its own view merely because another interpretation may be possible.

12. At the same time, judicial restraint does not authorize a procuring authority to disregard a mandatory tender condition or the statutory framework regulating public procurement.

13. The Supreme Court has reiterated the principles governing judicial review in tender matters in **Jagdish Mandal v. State of Odisha**, (**2007) 14 SCC 517**, and **Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation**, (**2016) 16 SCC 818**.

14. While the court must exercise restraint in interfering with commercial and technical decisions, that restraint does not extend to permitting a procuring authority to depart from the tender conditions or apply criteria not disclosed to bidders.

15. The Assam Public Procurement Act 2017 (hereinafter referred to as the Act, 2017) recognizes the procuring entity's authority to prescribe qualification requirements relating to a bidder's financial, technical, and professional capacity and experience.

Section 7 of the Act, 2017 requires that the bidding documents set out the qualification requirements and apply them uniformly.

Section 7(5) further requires the procuring entity to evaluate bidders' eligibility and qualifications only in accordance with the requirements specified in the bidding documents.

More specifically, Section 14(6) of the Act, 2017, expressly provides that the procuring entity shall not use any criteria or procedure other than those mentioned in the bidding documents when evaluating bids.

16. The legislative mandate, therefore, requires the procuring authority to evaluate bids by applying the criteria it prescribed and notified to all prospective bidders.

17. The Assam Procurement Rules, 2020 (hereinafter referred to as the Rules, 2020) reinforce this requirement.

Rule 15(2) provides that all bids shall be evaluated solely on the basis of criteria specified in the bidding documents.

Rule 15(3) further makes it clear that price bids shall be evaluated only among those bids that meet the eligibility, qualification, and techno-commercial criteria prescribed in the bidding documents.

Rule 14(v) makes this requirement even more explicit, stating that technical bids shall be evaluated solely on the criteria specified in the bidding documents and that such criteria shall not be waived even if none of the bidders meet them.

It further provides that if none of the bids are technically acceptable or none meet the prescribed criteria, the procurement process shall be canceled and fresh bids be invited without opening the financial bids.

Rule 23(14)(iv) also prohibits any substantive change to qualification information.

18. The statutory and regulatory scheme thus makes it clear that qualification criteria cannot be diluted during the evaluation process. This requirement is an essential safeguard to ensure transparency, equal treatment, and a level playing field among all prospective bidders.

19. The Assam Procurement Preference Policy 2021 (hereinafter referred to as the Policy, 2021) aims to encourage and facilitate the participation of eligible local Micro, Small & Medium Enterprises (MSME) in public procurement.

The policy provides specified benefits and procurement preferences for enterprises that meet the conditions prescribed therein.

20. Here, a distinction must be maintained between eligibility for the technical evaluation and preference in the procurement process. Eligibility concerns the minimum financial, technical, and experiential capacity which a bidder must possess to be considered qualified.

Purchase preference, on the other hand, is a preferential benefit available to an eligible enterprise as contemplated by the policy.

21. A procurement preference cannot be construed as an exemption from minimum qualification requirements prescribed in the Notice Inviting Tender (NIT), in the absence of an express

provision to that effect. The Assam Procurement Policy, 2021, does not confer a general exemption from the financial and experience qualifications prescribed by a procuring authority on every MSME.

22. Mere registration as an MSME does not automatically entitle an enterprise to be treated as technically qualified, notwithstanding its failure to meet the tender conditions. Such benefits are available to an MSME under the procurement policy only when the enterprise is otherwise found technically responsive and eligible, or when the tender prescribes separate eligibility and experience criteria in the bidding document.

23. The respondents have also placed reliance upon a Policy Circular No. 1(2)(1)/2016-MA dated 10.03.2016 issued by the Ministry of Micro, Small and Medium Enterprises, Government of India. The circular concerns relaxing the conditions of prior turnover and prior experience for MSMEs in public procurement. It provides that Central Ministries, Departments, and Central Public Sector Undertakings may relax these conditions, provided the concerned enterprise meets the prescribed quality and technical specifications.

24. A plain reading of the aforesaid communication makes it clear that the relaxation contemplated therein applies to Central Ministries, Departments, and Central Public Sector Undertakings.

Such relaxation is not automatically extended to State Governments or their instrumentalities, nor is it unconditional. The respondent cannot rely on such a Central Government policy circular while ignoring the State's notified Procurement Preference Policy 2021.

25. The respondents have not demonstrated that, beyond the Policy 2021, the State Government specifically adopted the relaxation contemplated in the Notification dated 10.03.2016, under which the mandatory turnover and experience criteria prescribed in the NIT could be dispensed with. Therefore, the said policy circular of the Central Government cannot, on its own, provide a legal basis to treat respondent No. 5 as technically qualified, notwithstanding its failure to satisfy the NIT's mandatory requirements.

26. The admitted position, as reflected in the technical checklist dated 29.06.2026, is also required to be noted. No party disputes the correctness of the entries in the checklist.

27. The NIT prescribed an average annual turnover of not less than Rs. 7,50,00,000/- during the three specified financial years.

Against the aforesaid requirements, the checklist records the turnover of respondent No. 5 as Rs. 157.158 lakhs, Rs. 104.878 lakhs, and Rs. 206.352 lakhs for the respective years. The average of these figures is approximately Rs. 156.13 lakhs, or Rs. 1.56 crores. The prescribed minimum was Rs.7.50 crores. Therefore, the respondent No. 5 fell substantially short of the mandatory financial qualification. On the other hand, the petitioner's annual average turnover for the aforesaid period was Rs. 3.26 crore.

28. The checklist also records only one identifiable work against respondent No. 5, whereas the NIT required the successful completion of two similar works in Assam during the stipulated period. The checklist also records two identifiable works in respect of the petitioner under the head of experience in similar works.

29. Thus, on the face of the admitted checklist, respondent No. 5 did not satisfy either requirement. Therefore, it failed substantially to meet the mandatory financial qualification.

30. The aforesaid deficiencies go to the root of respondent No. 5's qualification. They are not minor or technical irregularities that can be overlooked in the course of evaluation. Neither the Assam Procurement Preference Policy, 2021 nor the Circular dated 10.03.2016 authorizes the procuring authority to dispense with those conditions in the present procurement.

31. Therefore, the Committee could not have treated respondent No. 5 as a technically qualified bidder by extending a relaxation that neither the NIT nor the Procurement Policy, 2021, contemplated or authorized.

32. After the hearing concluded, learned counsel for the respondent employer orally stated that he had instructions to submit that the respondents would proceed with a fresh tender process. The court records the submission. However, no formal decision by the competent authority canceling the existing procurement process has admittedly been issued to date. The learned counsel's oral submission cannot be treated as a formal decision of cancellation, nor can it serve as a substitute for the statutory requirements governing such cancellation.

33. In the aforesaid view of the matter and for the reasons recorded hereinabove, the decision of the Tender Evaluation Committee, insofar as it declares respondent No. 5 technically qualified by overlooking the mandatory financial turnover and experience requirements, cannot be sustained. The consequential declaration of respondent No. 5 as the L1 bidder based on such

technical qualification is also liable to be set aside.

34. Accordingly, the decision of the Tender Evaluation Committee dated 21.06.2026 is set aside to the extent indicated above, together with the consequential declaration of respondent No. 5 as the L1 bidder.

35. The matter is left to the competent procuring authority to take an appropriate decision in accordance with law.

The authority may, if it considers legally permissible and appropriate, proceed with a fresh evaluation of the bids in accordance with the original NIT, applying the mandatory qualification criteria uniformly to all bidders.

36. Alternatively, if there are sufficient and legally sustainable grounds to cancel the existing procurement process, the authority may take a decision to that effect by recording the reasons in writing in accordance with Section 26 of the Assam Public Procurement Act, 2017, and communicating the decision and reasons to all participating bidders.

37. The writ petition is accordingly allowed to the extent indicated above. There shall be no order as to costs.

JUDGE

Comparing Assistant