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2026:GAU-AS:17398

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

Case No. : WP(C)/4460/2026

BDM ENTERPRISE
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT FATASHIL AMBARI, P.O. AND P.S. FATASHIL AMBARI, PIN 781035, DISTRICT- KAMRUP M, ASSAM, REPRESENTED BY ITS SOLE PROPRIETOR SRI SHIV NARAYAN MISHRA.

VERSUS

STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, MEDICAL EDUCATION AND RESEARCH DEPARTMENT, DISPUR, GUWAHATI 781006.

2:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
KHANAPARA
GUWAHATI 22.

3:THE PRINCIPAL CUM CHIEF SUPERINTENDENT
ASSAM MEDICAL COLLEGE HOSPITAL
DIBRUGARH.

4:THE SUPERINTENDENT
ASSAM MEDICAL COLLEGE HOSPITAL
DIBRUGARH

5:THE TENDER COMMITTEE
ASSAM MEDICAL COLLEGE HOSPITAL
DIBRUGARH
REPRESENTED BY ITS CHAIRMAN.

6:VANGUARDS SECURITY SERVICES AND SYSTEMS
HAVING ITS OFFICE AT FLAT NO. 1A

LUIT APARTMENT (USHA COURT)
5TH EAST BYE LANE
R.G. BARUAH ROAD
BHASKAR NAGAR
GUWAHATI 781021

Advocate for the Petitioner : MR. M NATH, MR. A BHATTACHARJEE,MS. D L DEKA,MAUSAM NATH

Advocate for the Respondent : SC, HEALTH AND F W, MS. P DEVI(R6),MR D K ROY(R6)

BEFORE

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. M. Nath, Senior counsel

For the respondents :Mr. B.Gogoi, Additional Advocate General

Mr. D. K. Roy, counsel

Date on which judgment was reserved : 05.11.2026

Date of pronouncement of judgment : 25.11.2026

Whether the pronouncement is of the

operative part of the judgment? : No

Whether the judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

25-11-2026

1. The decision of the Bid Evaluation Committee declaring the respondent No. 6 technically qualified in the tender process initiated by Assam Medical College and Hospital, Dibrugarh, for providing Cleaning, Sanitation, and Disinfection Service-Outcome Based-Healthcare is challenged by way of the present writ petition. The petitioner also questions the decision to award the work to the respondent No. 6.

2. The tender notice was issued in Government e Marketplace (GeM) vide Tender Notice dated 16/07/2026.The petitioner and the respondent No. 6, amongst other bidders, participated in the tender process.

The Bid Evaluation Committee found the bid of the petitioner and that of respondent No. 6 to be valid, and the respondent No. 6 was awarded the contract as the lowest qualified bidder.

3. Mr. M. Nath, learned Senior Counsel for the petitioner, argues that the respondent No. 6 did not meet the qualifying experience criteria prescribed under the tender conditions, and that its qualification by the Bid Evaluation Committee is contrary to the eligibility criteria and the nature of work contemplated under the tender.

4. According to Mr. Nath, learned Senior Counsel for the petitioner, the tender was not for mere supply of manpower, but for providing comprehensive cleaning, sanitation and disinfection services on an outcome-based service in a large hospital.

The petitioner also contends that the experience required under the tender must be understood in the context of the scope of the work and that the Experience Certificate relied upon by the respondent No. 6 did not establish that it had undertaken such cleaning and sanitation services in a hospital of the prescribed capacity. It is pointed

out that the petitioner has experience in providing similar services at Gauhati Medical College and Hospital.

5. Mr. B. Gogoi, learned Additional Advocate General, Assam, representing the employer, on the other hand, supports the decision of the Bid Evaluation Committee.

It is the case of the employer that the respondent No. 6 had provided Sweepers and Cleaners to 5 Air Force Hospital, Jorhat, for a period of 24 months, and that the said hospital had a capacity of 500 beds. It is contended that the tender does not specifically require the bidder to have previously executed an outcome-based contract and that the Experience Certificate issued to the respondent No.6 by the hospital certifying satisfactory performance was sufficient to establish the prescribed experience.

6. Mr. Gogoi, learned Additional Advocate General, Assam also contends that the employer is the best judge of its requirements and that the interpretation placed by the Bid Evaluation Committee on the eligibility condition may not be interfered with by this Court in exercise of its power of judicial review.

7. I have heard the learned counsel for the parties. Perused the materials available on record, including the bid documents.

8. Before examining the rival contentions, it would be appropriate to note the settled principles governing judicial review in matters relating to the award of public contracts.

9. The Hon'ble Supreme Court has explained that the judicial review is directed against the decision-making process, not the decision itself and that the Court should interfere in tender matters only where the process is malafide or intended to favour someone or where it is so arbitrary and irrational; no reasonable authority acting reasonably could have taken such a decision and where public interest is affected (Reference: **Tata Cellular Vs. Union of India**, **(1994) 6 SCC 651; Jagdish Mandal Vs. State of Orissa**, **(2007) 14 SCC 517**).

10. It is true that the employer is ordinarily the best judge of its requirements and is best placed to interpret the terms of the tender and that the Court should ordinarily defer to the employer's interpretation. (Ref: **Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and Anr.,** (**2016) 16 SCC 818**).

11. However, such deference is not absolute. Where the interpretation adopted is perverse, unreasonable, or contrary to the plain language and object of the tender, the decision remains open to judicial scrutiny.

12. Thus, a Court exercising its power of judicial review should not interfere with the decision merely because another interpretation of a tender condition is possible or because the Court may arrive at a different view. At the same time, the discretion of the employer cannot be understood to mean that an essential eligibility condition can be diluted or rendered meaningless by the interpretation adopted during evaluation; rather, the decision must be consistent with the tender document read as a whole and must have a rational connection with the object for which the qualification was prescribed. In **Central Coalfields Vs. SLL-SML, 2016 8 SCC 622,** the Hon'ble Apex Court emphasised the importance of compliance with essential conditions of a tender.

13. In the present case, the tender was issued through the GeM on 16/07/2026 for providing "**Cleaning, Sanitation and Disinfection Service-Outcome-Based-Healthcare; as per tender terms and conditions uploaded** at the Assam Medical College and Hospital, Dibrugarh." The contract period was one year. The hospital stated that it has a capacity of 1937 beds, and the area indicated in the tender document is approximately 33,7011 square meters.

14. The eligibility condition relevant to the present controversy requires the bidder to possess at least 2 years' experience in cleaning and sanitation services. It further requires experience in executing cleaning and sanitation services in a government or private hospital with a capacity of at least 500 beds and an area of 50,000 square

meters. The bidder is also required to furnish certificates of past experience in similar services in such a hospital supported by a certified copy of the award of work/agreement.

15. The relevant clauses are quoted hereinbelow:

"II.ELIGIBILITY CRITERIA FOR QUALIFICATION

The bidders who meet the following criteria only shall be considered for price bid opening:

1. Minimum Average Annual Turnover of the Bidder (for 3 years)- Rs. 2 crores only
2. At least 2 years of experience in cleaning and sanitation: The Bidder should have executed cleaning and sanitation services in Government or Private Hospital having bed capacity not less than 500 beds of minimum 50,000 sq mtr of area.

3. The bidder must upload the following documents in the GEM Portal
a) Certificate of past experience of similar service in Government or Private Hospital having bed capacity not less than 500 beds along with certified copies of award of work / agreement"

16. The Scope of Work declared in the Bid Document provides :

"**SCOPE OF WORK/SERVICE PROVIDER'S RESPONSIBILITIES FOR OUTSOURCING OF CLEANING & SANITATION SERVICES**:

1. **The Bidder shall provide round the clock mechanized cleaning & sanitation including bio medical waste management, general waste disposal & pest control services at the Hospital details of which can be as follows:**

Details of area/bed strength				NB
Sl No.	Location	Total floor area in sq.mtr (Approx.)		
1	HOSPITAL AREA (High risk area + Moderate risk area + Low risk area) (including ICU)	136360.29 sq.mtr		The bidders may visit prior to submission of their bids for finalization/calculation of financial estimates
2	NON-HOSPITAL Area (Built-up	78119.10 sq.mtr		

	area only, includes Medical College buildings, Teaching Schools, Hostel buildings etc.)			
3	Filed Area	122513.95		

Total 3,37,011.43sq.mtrs.

17. The Scope also indicates Minor repairs, Bio-Medical Waste (BMW) Management and specific Chemical composition to be used for cleaning in different areas of hospital viz.OT, ICU, Toilet and bathroom, hospital floor and other areas of the campus.

18. From the above, it is clear that the scope of work is not confined to the deployment of Sweepers and Cleaners. It also requires the contractor to provide and use appropriate machinery, equipment, cleaning materials, detergents, chemicals, and disinfectants, subject to the hospital's approval.

The contractor is required to ensure proper cleaning and disinfection, adherence to prescribed schedules and infection control requirements, maintenance of records, supervision and quality control.

The scope also includes medical waste management and pest control activities as specified in the tender, and other incidental services necessary to maintain the required standards of hygiene and sanitation.

It further prescribes performance parameters for floors, walls, fixtures, electrical appliances, furniture, toilets, patient care equipment, and other areas.

The contractor is required to maintain the prescribed standards and to ensure that the services are performed in accordance with the schedules and quality requirements.

19. The tender also contemplates contingency cleaning and deployment of additional manpower without extra payment wherever necessary to maintain the required quality of service.

Significantly, the tender indicates that the prescribed manpower deployment is only indicative and that the contractor must provide sufficient manpower to achieve the required quality of service.

This clause is important in the present context, as it shows that manpower deployment is a means of achieving the required standard of cleanliness and sanitation. But the contractor's principal obligation is to ensure the stipulated quality and outcome of the services.

20. Thus, on a reading of the tender as a whole, it is evident that the present procurement is for an integrated cleaning, sanitation and disinfection service. The contractor is not merely required to make available a specified number of persons; it is required to organise, supervise and manage the service and to ensure that the hospital premises are maintained in accordance with prescribed standards. The manpower deployment is one of the inputs for achieving the required result.

21. The expression "**outcome-based**" used in the tender has not been defined and therefore, is to be understood in the context of these obligations and the scope of the work.

It indicates that the contractor's performance is to be assessed by reference to the quality and standard of service delivered, not merely the number of persons deployed.

22. However, as argued by Mr. Gogoi, learned Additional Advocate General, Assam, it does not mean that the previous contract relied upon by a bidder must have been described as an outcome-based contract.

The tender does not prescribe such a separate requirement. What is required is experience in executing cleaning and sanitation services in a hospital of the prescribed

capacity, and that experience must be examined in light of the nature of the work actually undertaken.

23. Now, coming to the disputed experience relied upon by respondent No. 6, the principal document relied upon is a certificate issued by 5 Air Force Hospital, Jorhat, dated 20/02/2026. The said certificate is reproduced below:

"TO WHOM IT MAY CONCERN

This is to certify that M/s Vanguards Security Services & Systems. Luit Apartment, 5th East Bye Lane, R.G. Baruah Road, Guwahati - 781003, has successfully provided outsourced manpower services for Sweeper and Cleaner at 5 Air Force Hospital (5 AFH), Jorhat, Department of Military Affairs, Indian Air Force, Ministry of Defence, Assam-785005.

The services were rendered under GeM Contract No. GEMC-511687700174496, dated 13 December 2023 for the period from 15 December 2023 to 16 December 2025. During the contract period, the firm's performance was found to be satisfactory, and the services were carried out in accordance with the terms and conditions of the contracts.

This certificate is being issued upon the request of the firm for whatever purpose it may serve.

(Savitha P)
Wg Cdr
OIC OCG"

24. The certificate states that respondent No. 6 successfully provided outsourced manpower services for Sweepers and Cleaners for the period from 15/12/2023 to 16/12/2025, and that the services were carried out in accordance with the terms and conditions of the contract.

It also discloses that the petitioner deployed, under the contract, 48 Sweepers and Cleaners.

25. In support of the Qualification Criteria, the underlying GeM contract under which the petitioner made such a deployment is also placed on record, inasmuch as production of such contract document, based on which the work was executed, was

another condition under the Bid Document.

26. A perusal of the contract document reveals that the contract entered into between the 5 Air Force Hospital and the respondent No.6 is categorised as "**manpower outsourcing services - minimum wage based**". The service description is "**manpower outsourcing services - minimum wage - unskilled; others; sweeper and cleaner". It provides for the deployment of 48 manpower for a period of 24 months**.

27. The obligation under the aforesaid contract substantially relates to the supply and administration of manpower, including availability of personnel, payment of wages and statutory benefits to the manpower supplied, maintenance of attendance and identity records, compliance with EPF and ESI requirements, and the provision of a coordinator.

28. The contract documents produced before this Court do not disclose that respondent No. 6 had undertaken the independent responsibility of managing the hospital's cleaning and sanitation services as an integrated service or that it was responsible for the cleaning standards, disinfection schedules, machinery & consumables, infection control requirements and performance monitoring of the kind contemplated under the present tender and as discussed hereinabove.

29. Therefore, the distinction between manpower outsourcing and execution of cleaning and sanitation services is material in the present case.

A contractor engaged for manpower outsourcing may be required to supply persons who are thereafter deployed and supervised by the establishment concerned. The contractor's responsibility in such a case is primarily to make the required personnel available and to comply with the statutory obligations relating to their engagement.

On the other hand, a contractor engaged to provide cleaning and sanitation service is responsible for organising and managing the service and ensuring the prescribed standard of cleanliness and hygiene.

The fact that the manpower supplied consists of Sweepers and Cleaners, on its own, may not establish that the contractor undertook responsibility for executing the hospital's cleaning and sanitation service.

30. It is true that the nomenclature of the earlier contract alone is not decisive. The substance of contractual obligation has to be examined. A contract described as manpower outsourcing may depend on the actual terms of the contract and may also involve responsibility for executing cleaning and sanitation services.

However, in the present case, the material produced by respondent No. 6, particularly the underlying GeM contract, does not disclose such responsibility.

31. The tender requirement of uploading the Experience Certificate along with the relevant contract/agreement is therefore very significant in the present context.

32. The certificate issued by the hospital in favour of respondent No. 6 confirms the satisfactory supply of Sweepers and Cleaners, and the GeM contract, on the other hand, discloses that the contract was not for the comprehensive cleaning and sanitation services contemplated under the present tender, but for the supply of 48 manpower.

33. The respondent No. 6 has also relied on its experience in other establishments. The material placed on record indicates that its engagement at Arogya Hospital, Silchar, involved deploying 12 housekeeping personnel in a 100-bed hospital. The other engagement referred to by respondent No. 6 relates to the supply of nursing staff, hospital attendants, medical support personnel, and other manpower services in a hospital with less than 500 beds.

In the opinion of this Court, such experience cannot be aggregated to establish the prescribed experience of a 500-bedded hospital with an area of 30,000 square meters.

34. The object of prescribing the criteria in question is apparent from the scope of

the work.

A hospital is a sensitive establishment where cleaning and disinfection are directly connected with public interest, i.e., with hygiene, infection control and patient safety.

It is also apparent that the authority, by prescribing experience in a hospital of specified capacity and examination of the previous contract during the bid evaluation process, intended to ensure that the bidder had prior experience of the nature and scale of service required.

Such a condition therefore cannot be understood as being satisfied merely by showing that the bidder had supplied certain numbers of Sweepers and Cleaners to a hospital.

35. Therefore, the legality of the decision under challenge must be examined with reference to the eligibility conditions and the material produced by the bidders, including the petitioner and respondent No. 6. Equally, the fact that the respondent No. 6 has been permitted to execute the present contract cannot validate the decision declaring it technically qualified.

36. The respondents have strongly relied upon the principle that the employer is the best judge of its requirements and that the interpretation placed by the Bid Evaluation Committee should not be interfered with by a Court in exercise of its power of judicial review.

There is no dispute with such general proposition.

37. This Court is not questioning the wisdom of the employer in prescribing the eligibility criteria nor is it suggesting what qualification ought to have been prescribed for the work. The employer was entitled to decide the nature and extent of experience necessary for the execution of the contract.

However, when examined in the light of the eligibility condition actually prescribed by the employer and the scope of the work, it discloses the nature and requirement of the work; the employer's interpretation must be consistent with the tender document

read as a whole.

If the decision has the effect of treating the supply of manpower as equivalent to the execution of comprehensive cleaning and sanitation services for which the experience was specifically required and the scope of the work was disclosed, such interpretation cannot be sustained.

38. Therefore, it is not an act on the part of this Court in substituting its own interpretation for that of the employer merely because another interpretation is possible; rather, it is an examination of whether the decision to treat the experience of the respondent No. 6 as sufficient is consistent with the plain terms and object & scope of the tender.

39. This Court reiterates that the material produced before the tendering committee, as well as before this Court, shows that the principal experience relied upon by respondent No. 6 was under a manpower outsourcing contract, substantially confined to the supply and administration of personnel, as disclosed in the scope of that contract.

In the absence of material showing that the respondent No. 6 had undertaken the responsibility of executing and managing cleaning and sanitation services for a hospital similar to the nature and scope of the present tender, the decision to treat such experience as satisfying the prescribed condition cannot be sustained, being found to be arbitrary and inconsistent with the conditions prescribed by the employer itself. There is also no material to suggest that the 5 Air Force Hospital is having an area of 50,000/- sq.mtr but it was 32,000 sq.mtr.

40. Thus, the present case does not involve a mere difference of opinion on the commercial merits of the bid.

The decision under challenge treats experience in supply of 48 manpower of Sweeper and Cleaner as equivalent to experience in executing cleaning and sanitation services commensurate to the scope of the present work without any material establishing the

necessary connection between the two.

Such an interpretation of the Bid Evaluation Committee dilutes an essential eligibility condition and is not consistent with the tender read as a whole. Therefore, the decision warrants interference in exercise of judicial review.

41. The aforesaid view is also statutorily supported by the Assam Public Procurement Act, 2017 and Assam Public Procurement Rules, 2020.

42. The Assam Public Procurement Act, 2017 (hereinafter referred to as the Act, 2017) recognises 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 while evaluating bids.

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

44. 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 are to be evaluated only among those bids that meet the eligibility, qualification, and techno-commercial criteria prescribed in

the bidding documents.

The requirement is even more explicit in Rule 23(16)(v), which provides that the evaluation of technical bids shall be based solely on the criteria specified in the bidding documents and that such criteria shall not be waived even where none of the bidders meets them. It further provides that if none of the bids is technically acceptable or none meets the prescribed criteria, the procurement process shall be cancelled and fresh bids be invited without opening the financial bids.

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

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

46. Having held so, this Court also cannot lose sight of the fact that respondent No. 6 is already executing the contract at the Assam Medical College and Hospital, Dibrugarh. The services in question relate to public interest involving cleanliness, sanitation and disinfection in a major public hospital; any abrupt discontinuation of the existing arrangement may adversely affect the functioning of the hospital and the interest of the patients. Therefore, the relief granted by this Court must take into account the larger public interest and need to ensure continuity of these essential services.

47. In the totality of the matter, the decision of the Bid Evaluation Committee declaring the respondent No. 6 technically qualified is set aside.

Consequently, the award of the contract in favour of the respondent No. 6, being founded upon the aforesaid decision, is also interfered with.

48. However, having regard to the nature of services and the fact that the respondent No. 6 is presently executing the work, it is directed that the respondent

No. 6 may be permitted to continue the service for a transitional period not exceeding 60 days from the date of this order or until an alternative arrangement becomes operational, whichever is earlier.

The competent authority shall take immediate steps so that an alternative arrangement is made within the stipulated period, in accordance with law and the applicable procurement procedure.

It shall be open to the authority to proceed in accordance with the present tender, if permissible, or to initiate a fresh procurement process, as may be considered appropriate.

49. The authority shall ensure that essential cleaning, sanitation and disinfection services of the hospital continue without interruption.

50. Accordingly, this writ petition is allowed to the extent indicated above. There shall be no order as to costs.

JUDGE

Comparing Assistant