

GAHC010040102026



undefined

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

Case No. : WP(C)/1150/2026

MS VIVEK TRANSPORT AGENCY
MURGI FARM, BICHLI ADDAN, MOHALLA BICH BAZAR, P.O AND P.S.-
SOHSARAI, DIST-NALANDA, BIHAR-803118. CURRENT BUSINESS
ADDRESS- CARE OF - DIPEN BORAH, VILLAGE - TEOKIA, P.O- PANIGAON,
MOUZA- TELAHI, DISTRICT - LAKHIMPUR, ASSAM, REPRESENTED BY ITS
PROPRIETOR, SHRI VIVEK KUMAR, AGED ABOUT 41 YEARS, SON OF SHRI
ANIL KUMAR, PERMANENT RESIDENT OF WARD NO. 3, BICHBAZAR, P.O
AND P.S- SOHSARAI, DIST- NALANDA, BIHAR- 803118

VERSUS

STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO
GOVERNMENT OF ASSAM, FOOD, PUBLIC DISTRIBUTION AND
CONSUMER AFFAIRS DEPARTMENT, DISPUR, GUWAHATI-781006

2:COMMISSIONER
FOOD
PUBLIC DISTRIBUTION
CONSUMER AFFAIRS AND LEGAL METROLOGY
R.K. MISSION ROAD
POST OFFICE - ULUBARI
GUWAHATI 781007
DISTRICT KAMRUP (METROPOLITAN)
ASSAM

3:DISTRICT COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR.

4:BID EVALUATION COMMITTEE
FOOD

PUBLIC DISTRIBUTION AND CONSUMER AFFAIRS BRANCH
LAKHIMPUR DISTRICT
NORTH LAKHIMPUR
REPRESENTED BY ITS CHAIRMAN
I.E.
THE DISTRICT COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR

Advocate for the Petitioner : MR. DITUL DAS, MR. B J TALUKDAR

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

26.02.2026

Heard Mr. D. Das, learned counsel for the petitioner and Mr. G. Bakalial, learned Junior Government Advocate, Assam for all the respondents.

2. By a Notice Inviting Tender [NIT] for selection / appointment of handling and transport contractor for transportation of foodgrains under NFSA-2013 of Lakhimpur district, the respondent no. 3 invited e-Tender / bids on 12.01.2026. As per the NIT, the name of the Contract-Work is 'Transportation of Foodgrains i.e. Rice under NFSA-2013' and the specification of the Contract-Work is : 'carrying / loading / unloading of allotted foodgrains i.e. Rice under NFSA-2013 in 2 [two] Tier System – Tier-I [from FCI Godown to GPSS / WCCS Godown] and Tier-II [From GPSS / WCCS Godown to FPS Dealer / Agent] for transportation of delivery up to Fair Price shop level'. The period of the work is during the financial year 2026-2027.

3. As per the schedule of the NIT, a pre-bid meeting was scheduled on 17.01.2016 and bid submission started on 14.01.2026. The last date of bid submission was 04.02.2026 and the technical bid opening date was 05.02.2026.

4. The petitioner, as a proprietor of firm, has asserted that it submitted all the requisite documents listed in the Bid Document along with its bid. After opening of the technical bids on 05.02.2026, the Technical Bid Evaluation Committee evaluated the technical bids of six participant bidders including the petitioner. Upon evaluation of the technical bids, the Committee declared two of the bids as technically qualified and the remaining four bids as technically disqualified due to non-submission of the documents mentioned in the Minutes of the Meeting, held on 06.02.2026. The Committee had further observed that as per Rule 23[16] of the Assam Public Procurement Rules, 2020, the numbers of bidders qualified in technical bid should not generally be less than three to elicit fair comparison of bids. On that count, the Committee decided to process for re-tender within a time duration of fourteen days from the publication of the notice considering the upcoming election urgency and to and to ensure fair competition and transparent appointment of contractors.

5. After such decision, a fresh NIT has been published on 11.02.2026 and the last date of submission of bids in response to the NIT dated 11.02.2026 is 27.02.2026. The technical bid opening date has been fixed on 27.02.2026.

6. Mr. Das, learned counsel for the petitioner has submitted that the reasons for disqualification of the technical bid of the petitioner are clearly illegal and arbitrary. He has submitted that in respect of a similar nature of contract in another district, namely, Biswanath, the petitioner had submitted the same documents to support his claim of eligibility / qualification to carry out the contract-work of same nature and the petitioner having emerged successful, was granted the contract-work. Tthe petitioner is currently executing the contract-work. As the grounds for disqualification of the technical bid of the petitioner are clearly arbitrary and illegal, the impugned decision for disqualifying the technical bid of the petitioner is liable to be set aside and if the technical bid of the petitioner is adjudged as qualified, then there would be three participants at the technical bid opening stage and the subsequent NIT dated 11.02.2026 needs to be recalled. It is his submission that the Technical Bid Evaluation Committee had added more conditions than Clause 8 and Clause 15 of the Bid Document. In support of his submissions, Mr. Das has referred to the decision in Kimberley

Club Pvt. Ltd. vs. Krishi Utpadan Mandi Parishad and others, 2025 INSC 1276, and Vinishma Technologis Pvt. Ltd. vs. State of Chhattisgarh and another, 2025 INSC 1182.

7. Per contra, Mr. Bakalial, learned Junior Government Advocate appearing for the respondents has submitted that since the respondent no. 3 is the tendering authority and the author of the Bid Document, one has to defer to the understanding and interpretation given to the terms and conditions by the author of the Bid Document. If two interpretations are possible, then it is the interpretation which is adopted by the tender authority is to be respected, unless it is found wholly arbitrary or malafide or to favour any bidders. None is the situation in the case in hand. He has further submitted that the acceptance of the bid of the petitioner on the basis of the documents in another contract by another tendering authority cannot be a cause to criticize the decision of the tendering authority in another contract-work. On similar grounds, bid of other bidders were also rejected. The FSSAI license is a State license only. The tendering authority in the case in hand is independent of the tendering authority in the other similar contract-work. He has referred to the decision in Raunaq International Ltd. vs. I.V.R. Construction Ltd. and others, [1999] 1 SCC 492; Jagdish Mandal vs. State of Orissa and others, [2007] 14 SCC 517; and Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and another, [2016] 16 SCC 818.

8. The matter would require consideration.

9. Issue notice, returnable on 27.03.2026.

10. As Mr. Bakalial has appeared and accepted notices on behalf of all the respondents, issuance of formal notice in respect of the respondents stand dispensed with. The learned counsel for the petitioner shall serve requisite nos. of extra copies of the writ petition along with annexures, to Mr. Bakalial by tomorrow.

11. The learned counsel for the parties are also heard on the interim prayer. Mr. Das has strenuously argued for an interim order to stay the bidding process initiated by the NIT dated

11.02.2026. Mr. Bakalial has also similarly submitted from the public interest perspective, it is not a case for any interim relief.

12. The reasons for disqualifying the technical bid of the petitioner, mentioned by the Technical Bid Evaluation Committee are – [i] Registered office document not submitted; [ii] FSSAI license submitted for Bihar State; and [iii] Contract Labour License submitted for Bihar State.

13. In Clause 8 of the Bid Document, it was inter alia provided that the bidder should have a valid up-to-date trade, license and FSSAI license, and the same were to be submitted with the bid. Clause 15 had prescribed for submission of an up-to-date labour license issued under the Contract Labour [Registration and Abolition] Act, 1970 [‘the Contract Labour Act’, for short].

14. On perusal of the Minutes of the Meeting of the Technical Bid Evaluation Committee, it transpires that by adopting a strict approach qua the terms and conditions of the Bid Document, the Committee has not accepted the license submitted by the petitioner under the Contract Labour Act as it was for the Bihar State. The Committee has not accepted the technical bid of another bidder on the ground that his contract labour license is valid for Dibrugarh only. One of the grounds for disqualifying the bid of the petitioner is ‘Registered office document not submitted’. On similar ground, the bid of another bidder viz. ‘Nishika Roadlines, Nagaon’ has been disqualified. The third ground for rejection is that the FSSAI license is for the State of Bihar only.

15. The Contract-Work is meant for lifting and transporting of 48000 quintals approximately of PMGKAY rice each month under NFS-13 for Tier-I from the nearest FCI godowns and the said transportation from the FCI godowns in the district of Lakhimpur are to be made to 31 Gaon Panchayats Samabay Samities who, in turn, would make the PMGKAY rice available to the beneficiaries in the nooks and corners of Lakhimpur district. It is not difficult to envisage that the number of beneficiaries under the PMGKAY rice among the population of Lakhimpur district are substantially large and timely delivery of PMGKAY rice to

the beneficiaries, which are from the economically disadvantaged section, is of paramount importance.

16. While considering the legal right of the petitioner as a participant, one cannot be oblivious of the public interest and public elements involved in a tender process of such nature. It has been held in *Jagdish Mandal vs. State of Orissa and others*, [2007] 14 SCC 517, that the power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest. A tenderer or contractor with a grievance can always seek damages in a civil court.

16. When the matter of disqualification of the petitioner's technical bid is looked from the standpoint of public elements / public interest involved, this Court is of the prima facie view that it is the public interest which should prevail over the private elements.

17. It is also a settled proposition that the mere disagreement with the decision-making process or the decision of the tendering authority / employer is no reason for a constitutional court to interfere. The tendering authority / employer of a project having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given. [*Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and another*, [2016] 16 SCC 818].

18. The decision in *Vinishma Technologies Pvt. Ltd.* [supra] has considered the reasonable restrictions within the meaning of Article 19[6] of the Constitution of India. In *Kimberley Club Pvt. Ltd.* [supra], it has been held that the terms of NIT must be clear and unambiguous. The tendering authority while floating tender, must specify the terms and conditions in clear terms in the NIT itself.

19. Having considered the submissions of the learned counsel for the parties and the materials on record, it is apposite to refer to the following observations made in *Raunaq International Limited vs. I.V.R. Construction Limited and others*, [1999] 1 SCC 492.

10. What are these elements of public interest? [1] Public money would be expended for the purposes of the contract. [2] The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. [3] The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. [4] The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work thus - involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages retardation of industrial development, hardship to the general public and substantial cost escalation.

20. The fresh tender has already been published on 11.02.2026 and the last date of bid submission is 27.02.2026. From the Annexure-A, Annexure-B, Annexure-C and Annexure-D to the NIT dated 11.02.2026, it is evident that the PMGKAY rice / foodgrains are to be transported under NFSA-13 to the nook and corners of Lakhimpur district.

21. The reason to publish the fresh NIT within the period of fourteen days has been recorded in the Minutes of the Technical Bid Evaluation Committee and has been taken note of. Having regard to the public element involved in the bidding process for selection of Handling and Transport Contract for Transportation of Food-grains under NFSA-2013 of the entire Lakhimpur district qua the alleged violation of the rights of the petitioner as a tenderer, this Court is of the prima facie view that no interference in the form of any interim order staying the bidding process initiated by the NIT dated 27.02.2026 is called for at this stage.

22. The matter of disqualification of the technical bid of the petitioner in the bidding process initiated pursuant to the NIT dated 12.01.2026 would, however, be subject to the outcome of the writ petition.

23. List the case on 27.03.2026.

JUDGE

Comparing Assistant