



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

Case No. : WP(C)/197/2025

JOINT VENTURE OF M/S S.N. ENTERPRISES AND M/S SOUTH EAST ARCHITECTS AND BUILDERS AND 2 ORS
REPRESENTED BY ITS LEAD MEMBER SHRI. SHEVOHU NIENU,
PROPRIETOR OF M/S S.N. ENTERPRISE

2: M/S S.N. ENTERPRISE
NPW/CLASS-1/636
REPRESENTED BY ITS PROPRIETOR SHRI SHEHOVU NIENU
HAVING ITS REGISTERED OFFICE AT TOULAZOU VILLAGE
DIMAPUR-797112
NAGALAND

3: M/S SOUTH EAST ARCHITECHS AND BUILDERS
NPW/CLASS-1/936
REPRESENTED BY ITS PROPRIETOR SHRI BESUVE NIENU
HAVING ITS REGISTERED OFFICE AT DIPHUBAR VILLAGE
E KHEL
4TH MILE-797112
NAGALAN

VERSUS

UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS, GOVT. OF INDIA, TRANSPORT
BHAWAN-1, PARLIAMENT STREET, NEW DELHI-110001

2:STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF NAGALAND
KOHIMA

3:THE COMMISSIONER AND SECRETARY

GOVT. OF NAGALAND
DEPT. OF WORKS AND HOUSING
NAGALAND KOHIMA

4:THE ENGINEER-IN-CHIEF
NPWD
NAGALAND KOHIMA

5:THE CHIEF ENGINEER
PWD (NATIONAL HIGHWAY) NAGALAND KOHIMA AND
CHAIRMAN
BID EVALUATION COMMITTEE

6:M/S VERTEX CONSTRUCTION
HOUSE NO. 334
LOWER PWD
BELOW LOTHACHURCH
KOHIMA-797001
NAGALAND

7:M/S CHINGKAM PHOM
HOUSE NO. 1719
TOLUVI ROAD
PADUMPHUKURI WARD-3
DIMAPUR-797112
NAGALAND

8:M/S Z. RULHO
HOUSE NO. 406
LOWER BAYAVU COLONY
KOHIMA -797112
NAGALAN

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s)	: Mr. Sentiyanger, Advocate
For the Respondent(s)	: Mr. Moa Imchen, Sr. Govt. Advocate
	Mr. Yangerwati, CGC
	Ms. A. Sangtam, Advocate
	Ms. Rebecca, Advocate

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **27.05.2026**

Whether the pronouncement is of the
Operative part of the judgment? : **NA**

Whether the full judgment has been
pronounced? : **Yes**

JUDGMENT AND ORDER (ORAL)

Heard Mr. Sentianger, the learned counsel appearing on behalf of the Petitioners. Mr. Yangerwati, the learned CGC appears on behalf of the Respondent No.1; Mr. Moa Imchen, the learned Senior Government Advocate appears on behalf of the Respondent Nos. 2 to 5; Ms. Rebecca, the learned counsel appears on behalf of the Respondent No.7 and Ms. A. Sangtam, the learned counsel appears on behalf of the Respondent No.8.

2. None appears on behalf of the Respondent No.6 on call.

PREFACE

3. The present writ petition has been filed by the Petitioners being aggrieved by the decision taken in the Minutes of the Meeting dated 02.09.2025 by the Bid Evaluation Committee whereby the Petitioners' bid on one hand was held to be technically non-responsive, while the bids of the Respondent

Nos. 6, 7, and 8 on the other hand were held to be responsive.

CONSPECTUS OF FACTS

4. The brief facts which led to the filing of the present writ petition are that the Chief Engineer, PWD(NH), Nagaland issued a Notice Inviting Tender thereby inviting bids from experienced firms/organizations for operation and maintenance works and activities relating to the Performance Based Maintenance Contract (PBMC) work on NH-02 (Old NH-61) from Km 125.000 to Km 135.000 (Length = 10.00 Km) under NH Division-II, Mokokchung in the State of Nagaland.

5. In the said Notice Inviting Tender, more particularly at Section-1, it was categorically mentioned that the bidder must submit its Financial Bid and Technical Bid online at <http://eprocure.gov.in/eprocure/app> on or before the Bid Due date i.e. 23.06.2025 (up to 12:00 hours Server Time). It was also mentioned that bids received online shall be opened on 30.06.2025 (at 1300 hours Server Time). Further to that, at Section-1 of the Notice Inviting Tender, it was also mentioned that the originals of the Bid Security, document fee, Power of Attorney and Joint Bidding Agreement etc. should be submitted physically by the bidder on or before 30.06.2025 (at 1200 hours IST).

6. Section-2 of the said Notice Inviting Tender is in respect to the "Instruction to Bidders and the Appendix To It" (hereinafter referred to as, "the ITB"). From a perusal of the ITB, it is seen that Clause 3 stipulates who are the "Eligible Bidders" and what are the necessary documents which are required to be filed along with the bid so submitted. Clause 4 relates to "Qualification of the Bidders". The qualifications of the bidders were required to be submitted in the format specifically provided in Section-3 of the Notice Inviting Tender.

7. The Petitioners, along with 8 (eight) other bidders, submitted their bids. The technical bids were opened on 30.06.2025 in presence of all the bidders including the Petitioners. There is nothing on record to show that the Petitioners have raised any objection to the deficiency of the documents of the other bidders, pursuant to the opening of the technical bid.

8. The records further reveal that the technical bids of the 9 (nine) bidders were evaluated on 02.09.2025 by the Technical Evaluation Committee. The Minutes of the Meeting dated 02.09.2025 of the Bid Evaluation Committee is at Annexure-12 to the writ petition.

9. Clause 6 of the said Minutes of the Meeting details out the

evaluation of each of the Bidders. Clause 6.3 of the Minutes dealt with the evaluation of the Petitioners and it was mentioned that the Petitioners did not state that the Petitioners enclosed all necessary formats and documents. It was also found upon perusal of the tender documents submitted by the Petitioners that most of the formats viz. Appendix-IA, Annexure-II, Annexure-III and Annexure-IV were not provided by the Petitioners. It was under such circumstances, the Bid Evaluation Committee was of the opinion that the bid of the Petitioners was not responsive.

10. The Respondent No.6's evaluation is mentioned at Clause 6.2 of the Minutes of the Meeting dated 02.09.2025. It was mentioned that the Respondent No.6 though had not provided the undertaking as mentioned in Clause 12.2(h) of the RFP, but the committee observed that the bidder had submitted all required documents in order and it was opined that the bid of the Respondent No.6 was responsive.

11. The Respondent No.7's evaluation is mentioned at Clause 6.5 of the Minutes of the Meeting dated 02.09.2025. It was observed that the Road Safety Auditor proposed by the bidder did not have a Road Safety Audit Certificate from the appropriate approved Government agency and hence did not have the

required qualification. However, as per Clause 9.1 of the contract agreement, a replacement for the Road Safety Auditor should be proposed by the bidder, if the work is awarded to it and under such circumstances, it was observed that the Respondent No.7 was provisionally responsive. Same was the case as regards the Respondent No.8 which is mentioned at Clause 6.7 of the Minutes of the Meeting dated 02.09.2025. The said Minutes of the Meeting were uploaded on 23.09.2025.

12. At this stage, this Court finds it very pertinent to take note of Clause 23.5 of the ITB which categorically mentions that the Employer shall inform the bidders about the result of the technical evaluation by uploading on the web portal giving 7 (seven) days time for objections if any, from the bidders. It further stipulates that the Employer shall finalize the evaluation of the technical bids after due consideration of objections received and intimate the bidders, whose Technical Bids are found responsive of the date, time and place of opening of the Financial Bids. It is also very pertinent to take note of Clause 23.1 of the ITB which stipulates that after notifying the evaluation of the technical bid, the substantially responsive bidders would be further notified about the opening of the financial bid.

13. The Petitioners have not placed on record any document to show that the Petitioners raised any objection as regards the technical evaluation whereby the Petitioners were held to be technically non-responsive, and the Respondent Nos. 6, 7 and 8, have been held to be technically responsive. The Petitioners instead approached this Court by filing the present writ petition on 26.09.2025 which is 3 (three) days post the opening of the financial bids.

14. Upon filing of the present writ petition, this Court vide an order dated 26.09.2025 issued notice and further stayed the Minutes of the Meeting dated 02.09.2025 of the Bid Evaluation Committee as well as the entire tender process till the next returnable date. The records further reveal that the interim order passed thereupon has been continued from time to time.

15. It is further relevant to take note of that the Respondent State has filed an affidavit-in-opposition on 17.03.2026. Copy thereof was duly furnished to the Petitioners. In the said affidavit-in-opposition filed by the Respondents Nos. 2 to 5, the facts already narrated hereinabove were mentioned and as such, for the sake of brevity, this Court would not like to repeat the same. It was mentioned that, out of the 9 (nine) bidders, only 3 (three) bidders had submitted the complete set of documents

and as such, the Committee recommended the opening of the financial bids of only those 3 (three) bidders, who have been arrayed as Respondent Nos. 6, 7, and 8 in the instant writ petition. It was also mentioned that the Petitioners did not submit most of the formats, that is Appendix-IA, Annexure-II (technical capacity of the bidder), Annexure-III (financial capacity of the bidder), Annexure-IV (details of the eligible projects) and as such, the Petitioners' bid was held to be technically non-responsive.

16. Insofar as the Respondent No. 6 is concerned, it was mentioned in the said affidavit-in-opposition filed by the State Respondents that the Bid Evaluation Committee found that the Respondent No. 6 submitted all the necessary documents. It was also stated that although the undertaking was not uploaded in the bid form by the person holding the Power of Attorney, as required under Clause 12.2(h) of the RFP, the original of the said certificate was physically submitted within the prescribed time, i.e., on 30.06.2025 at 1200 hours.

17. Insofar as the Respondent Nos. 7 and 8, it was mentioned that the Bid Evaluation Committee deliberated the bids submitted by them and found both the parties have submitted complete bids. However, it was observed that the Road Safety Auditor

proposed by both the bidders did not have the requisite qualification. Taking into account Clause 9.1 of the Contract Document, which required the contractor to employ the technical personnel named in the Contract Data or technical persons approved by the engineer, it was observed by the Bid Evaluation Committee that a replacement of the Road Safety Auditor should be proposed by the bidder if the work is awarded to either of them, and considered the bid of the Respondents Nos. 7 and 8 as provisionally responsive.

18. No affidavit-in-reply had been filed by the Petitioners. An affidavit-in-opposition has also been filed by the Respondent No. 8.

SUBMISSIONS MADE ON BEHALF OF THE LEARNED COUNSELS FOR THE PARTIES

19. Mr. Sentianger, the learned counsel appearing on behalf of the Petitioners submitted that the Petitioners had not been treated fairly, which is the requirement of Article 14 of the Constitution of India inasmuch as the Respondent Nos. 6, 7 and 8 have been provided opportunities to submit certain documents at a later stage, whereas the Petitioners have not been provided such. The learned counsel, therefore, submitted that if there is a discriminatory treatment meted out by the Tendering Authority,

the impugned actions would be in violation of the equality Clause mandated under Article 14 of the Constitution, and this Court ought to exercise the jurisdiction under Article 226 of the Constitution. In that regard, the learned counsel referred to the judgment of the Supreme Court in the case of ***Banshidhar Construction Private Limited Vs. Bharat Coking Coal Limited & Others*** reported in ***(2024) 10 SCC 273*** and specifically referred to paragraph No. 22.

20. Mr. Moa Imchen, the learned Senior Government Advocate appearing on behalf of the Respondent Nos. 2 to 5 submitted that the instant writ petition cannot be maintained at the instance of an ineligible bidder inasmuch as, unless and until the Petitioners question their rejection of the technical bid, they cannot question the technical evaluation proceedings dated 02.09.2025, by which the Respondent Nos. 6, 7, and 8 have been held to be technically responsive. The learned Senior Government Advocate further referring to paragraph No. 5 to the writ petition submitted that it is the self-admission of the Petitioners that the Petitioners did not submit all the documents. There is not a single statement in the writ petition that the Petitioners had submitted those documents, and the Respondents have allegedly rejected the Petitioners' bid. The only case the Petitioners as set out is that the Petitioners ought

to have been granted an additional opportunity to submit those documents inasmuch as such opportunity was granted to the Respondents Nos. 6, 7, and 8. The learned Senior Government Advocate further submitted that the case of the Respondents Nos. 6, 7, and 8 are completely different inasmuch as the undertaking which was to be provided by the Power of Attorney holder in terms with Clause 12.2(h) of the RFP though not submitted online, but the original physical copy was duly submitted on or before 1200 hours on 30.06.2025 which is the mandate of the Notice Inviting Tender.

21. The learned Senior Government Advocate for the Respondent Nos. 2 to 5 submitted that in terms with Clause 9.1 of the Contract Agreement, there was a requirement of a Road Safety Auditor. The learned Senior Government Advocate further submitted that in terms with Clause 9.1 of the Contract Agreement, it would show that even if the bidder had given the name of the Road Safety Auditor, the said can be very well changed by the Engineer. The appointment of the Road Safety Auditor was subject to the approval of the Engineer, as could be seen from Clause 9.1 of the Contract Agreement. The learned Senior Government Advocate therefore submitted that merely because of the fact that the Road Safety Auditor did not meet the qualification, the bids of the said Respondents were not

rejected inasmuch as appointment of the Road Safety Auditor would only come if as and when the bidder is being granted the contract. The learned Senior Government Advocate submitted that this is the understanding of the Tendering Authority, which, under no circumstances, can be said to be perverse or mala fide and therefore, this Court may not like to interfere, taking into account the observations of the Supreme Court at paragraph No. 15 of the judgment in the case of ***Afcons Infrastructure Limited Vs. Nagpur Metro rail Corporation Limited & Another*** reported in ***(2016) 16 SCC 818***.

22. Ms. Rebecca, the learned counsel appearing on behalf of the Respondent No. 7 and Ms. A. Sangtam, the learned counsel appearing on behalf of the Respondent No. 8 supported the submissions of Mr. Maa Imchen, the learned Senior Government Advocate for the Respondent Nos. 2 to 5.

ANALYSIS AND DETERMINATION

23. The issue which arises for determination is whether, this Court should exercise the powers of judicial review under Article 226 of the Constitution of India.

24. This Court has duly perused the present writ petition. A perusal of the writ petition nowhere mentions that the

Petitioners' questioned the rejection of the their technical bid on the ground that the Petitioners though have submitted the documents which are Appendix-IA, Annexure-II, Annexure-III and Annexure-IV, but the Petitioners were held to be technically un-responsive. Rather, at paragraph 5 of the writ petition, the Petitioners have categorically stated that considering the nature of the work in question all the 9 (nine) bidders, including the Petitioners had failed to submit all the required documents.

25. In that view of the matter, the rejection of the Petitioners' bid on the ground that the Petitioners were technically non-responsive having not been challenged before this Court, the Petitioners are ineligible bidders.

26. Now the question arises, as to whether, the Petitioners have been unfairly treated inasmuch as it is the case of the Petitioners that the Petitioners have not been afforded an additional opportunity to submit those documents, whereas the Respondent Nos. 6, 7, and 8 have been provided such opportunity.

27. This Court finds it relevant to take note of Clause 12.2(h) of the ITB which categorically stipulates which are the original documents which are to be submitted in the physical form on or before 30.06.2025 at 1200 hours. The documents which are to

be submitted includes the undertaking from the person having the Power of Attorney referred to in Sub-Clause (a) of Clause 12.2 of the ITB that they agree and abide by the bid documents uploaded by the Chief Engineer, PWD (NH), Nagaland and amendments uploaded, if any. It is the specific stand of the Respondents in the affidavit-in-opposition, as well as it is seen from the Minutes of the Meeting held on 02.09.2025, that the Respondent No. 6 had duly submitted the physical document prior to 1200 hours on 30.06.2025. Under such circumstances, it cannot be said that the Respondent No. 6 was technically not responsive or was afforded any additional opportunity to produce any document.

28. Insofar as the Respondent Nos. 7 and 8 are concerned, it is seen from the Minutes of the technical evaluation by the Bid Evaluation Committee that the Road Safety Auditor proposed by both the Respondent Nos. 7 and 8 did not have the qualification and therefore, the Bid Evaluation Committee observed taking into account Clause 9.1 of the Contract Agreement that the bidder, if held to be successful and the contract being granted, would be bound to employ the technical person who will be approved by the engineer and therefore, opined that the same did not constitute a ground for rejecting the bids of the Respondent Nos. 7 and 8. It is the opinion of this Court that

taking into account the materials on record, the allegation of the Petitioners that additional opportunity was granted is completely misconceived.

29. Considering the above, this Court is of the opinion that the aspects of fairness which have been questioned by the Petitioners have no merits to stand.

30. This Court also takes note of the judgment of the Supreme Court in the case of ***Banshidhar Construction Private Limited (supra)*** to which the learned counsel appearing on behalf of the Petitioners had referred to, and more particularly to paragraph No. 22. In the opinion of this Court, the reliance to the observations made by the Supreme Court is completely misplaced. In the said case, before the Supreme Court, the bid of the Appellant therein was rejected by the Respondents on 06.05.2024 on the ground it did not comply with Clause 10 of the NIT, whereas the Respondent No. 8 therein, was held to be technically compliant without having complied with Clause 10 of the NIT. There is a substantial difference in the said aspect to the facts of the instant case.

31. Considering the above, this Court does not find any merit in the instant writ petition, for which the same stands dismissed. No costs.

32. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant