

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 02nd NOVEMBER, 2022

IN THE MATTER OF:

+ **W.P.(C) 13619/2022**

DHATARWAL CONSTRUCTION COMPANY PVT. LTD.

..... Petitioner

Through: Ms. Anusuya Salwan, Ms. Nikita Salwan, Mr. Bankim Garg, Mr. Shakib Khan, Mr. Rachit Wadhwa, Advocates

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA Respondent

Through: Ms. Madhu Sweta and Ms. Raveena Dewan, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, C. J.

1. The instant writ petition has been filed under Article 226 of the Constitution of India, 1950, seeking the quashing of letter dated 14.09.2022 issued by the Respondent, i.e. National Highways Authority of India (NHAI), whereby the bid of the Petitioner was declared as non-responsive as per Clause 2.2.2 (i) of the Request for Proposal (RFP). The petition further prays for a writ of *mandamus* directing the Respondent to declare the Petitioner as technically qualified and for the Respondent to open the financial bid of the Petitioner.

2. The facts leading to the instant petition are as under:

- a) It is stated on 07.02.2022, the Respondent invited tenders for Rehabilitation and Upgradation to Four-Lane Configuration and Strengthening of Thanpuri to Paror Section from KM 85+135 to 100+840 of NH-20 (New NH-154) (Design Length – 16.275) of Pathankot Mandi under NH (O) in Himachal Pradesh on Engineering, Procurement and Construction (EPC) Mode (*hereinafter referred to as “the project”*). The last date for submission of bids was 11.05.2022.
- b) The RFP enumerates the Bidding Process as per which a single stage two-part system has been adopted for the selection of a bidder for award of the project. As per the process, the bid is to be invited under two parts:
 - i. the Technical Bid whereby the eligibility and qualification of the bidder is to be examined at first based on details submitted, and
 - ii. if the Technical Bids of a bidder are responsive to the eligibility and qualifications required under the RFP, then the Financial Bid under the second part shall be opened.
- c) It is stated that the Petitioner submitted an online bid on 19.07.2022, along with bid security of Rs. 3,58,14,000/- vide Bank Guarantee No. 069BG01221970004 issued by YES Bank Ltd. and the required documents. It is stated that in terms of Clause 2.2.2.2, 2.2.2.5 and 2.2.2.7 of the RFP, the Petitioner submitted the requisite documents. It is stated that the financial capacity of the bidder was Rs. 18.68 crores at the close of the

preceding financial year and the Average Annual Turnover was Rs. 56.05 crore for the last five financial years.

- d) In order to demonstrate technical qualifications, the Petitioner submitted details of certain projects, for instance, “Major maintenance with overlaying on carriageway of Kota – Baran section on the damage stretches at various location between km. 1080.263 to 1184.322 of NH-27 pavement marking re-painting of kerbs” (*hereinafter referred to as “Kota-Baran project”*). This project was to start on 08.08.2019 and complete on 27.02.2021, with the project costing Rs. 253.99 crores. It is stated that the Petitioner completed the Kota-Baran project to the satisfaction of NHAI *vide* letter dated 05.03.2021. A certificate was issued by NHAI that the work stood completed on 27.02.2021.
- e) It is stated that *vide* letter dated 26.07.2022, NHAI sought clarifications from the Petitioner with regard to the claim of Kota-Baran project falling under the Category 3 with respect of Clause 2.2.2.2 (ii) of the RFP. The letter sought for suitable proof from the Petitioner after noting that as per Clause 2.2.2.5 (v) of the RFP, the project could not be considered as an eligible project for evaluation in any category. In response, the Petitioner *vide* letter dated 01.08.2022 stated that the Kota-Baran project did not fall under “Maintenance work” and that the certification from NHAI indicated that out of 104 kms, 48 kms of work had been done with strengthening/re-construction from base levels.

The relevant portions of both the letters have been reproduced as follows:

Letter dated 26.07.2022 issued by NHAI to the Petitioner.

<i>Reference</i>	<i>Clarification Required</i>
xxx	xxx
<i>Annex-IV Details of Eligible project</i>	<i>Project code "a" i.e. "Major Maintenance with overlaying an carriageway of Kota-Baran section on the damage stretches at various location between km 1080.263 to 1184.322 of Nh-27 including Thermoplastic Pavement Marking Re-Painting of Kerbs. (Plus Variation order for strengthening in 48 Km 2-lane Re-Construction Stretches done by CTB". As per clause 2.2.2.5 (v) of RFP, the Maintenance works are not considered as eligible project for evaluation in any category.</i> <i>Bidder to clarify how the said project has been claimed under category "3" w.r.t. Clause 2.2.2.2 (ii) of RFP by giving some suitable proof from its Client.</i>

Response dated 01.08.2022 issued by the Petitioner to NHAI.

<i>Reference</i>	<i>Clarification Required</i>	<i>Reply by the Bidder</i>
xxx	xxx	xxx
<i>Annex-IV Details of Eligible project</i>	<i>Project code "a" i.e. "Major maintenance with overlaying a carriageway of</i>	<i>Project "A", The certificate from NHAI for the Project "A" clear attached with</i>

	<i>Kota-Baran section on the damage stretches at various locations between km 1080.263 to 1184.322 of Nh-27 including Thermoplastic Pavement marking Re-Painting of kerbs. (Plus variation order for strengthening in 48 km 2-lane Re-Construction stretches done by CTB". As per clause 2.2.2.5 (v) of the RFP, the maintenance work are not considered as eligible project for evaluation in any category.</i> <i>Bidder to clarify how the said project has been claimed under category "3" w.r.t. clause 2.2.2.2 (ii) of RFP by giving some suitable proof from its client.</i>	<i>indicate that out of 104 Km, 48 Km work has been done with Strengthening/Re Construction from Base Levels. The Project "A" nomenclature is <u>Major Maintenance but as per site conditions, out of 104 Km, 48 Km strengthening was done and Major Rehabilitation work including Strengthening/Re Construction work has been done on majority of the Stretch. Similarly in 56 Km of Stretch, DBM as strengthening and BC for wearing course was done.</u></i> <i>Therefore, The above Major Maintenance work doesn't come under "Maintenance works are not considered as eligible project for evaluation as per Instruction No.6 to Annex-IV. As such works with nomenclature like PR, OR, FDR,SR, site/micro grading, surface renewal, resurfacing work, Tarring, B.T.</i>
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		surface work, temporary restoration, urgent works, periodic maintenance, repair & rehabilitation, one time maintenance". <u>As it is strengthening with DBM in 54 Km and with Cement Treated Sub Based/DBM in 48 Km and subsequently wearing Course of BC is laid on 104 KM as per MORTH Specifications. We request you consider this Project under Category "3" as per the nature of the Project work not by the Nomenclature.</u>
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(emphasis supplied)

- f) It is stated that the Petitioner visited the office of the Respondent to clarify the nature of the project and was informed to intimate to the concerned office of NHAI to change the nomenclature of work. Consequently, *vide* letter dated 23.08.2022, the Petitioner communicated to the Project Director, NHAI, PIU, Kota, Rajasthan, to clarify that the Kota-Baran project related to reconstruction/re-strengthening and did not fall under the category of major maintenance. It is stated that the Petitioner personally visited the said office as well and the Project Director agreed to the contention of the Petitioner, but stated that he would be unable to do so. It is stated that on 23.08.2022, the

Petitioner informed the Respondent that a request for modification to the Project Director had been made and 15 days' were needed by the Petitioner for the submission of a modified/revised completion certificate.

- g) It is stated that the Petitioner did not receive any communication from the Respondent in this regard, and thereafter, the impugned letter dated 14.09.2022 was issued by the Respondent holding the Petitioner's bid to be non-responsive and disqualifying the Petitioner from the bidding process.
- h) Aggrieved by the above, the Petitioner has now approached this Court by way of the instant writ petition seeking the quashing of the letter dated 14.09.2022 and for a declaration that the Petitioner's bid is responsive.

3. Ms. Anusuya Salwan, learned Counsel appearing for the Petitioner, submits that the decision of the Respondent suffers from *mala fide*, unreasonableness and arbitrariness. She submits that the process that has been adopted by the Respondent must be strictly as per the bid parameters that are enumerated in the RFP, and the departure from the said parameters on the part of the Respondent indicates that the actions of the Respondent are intended to favour other bidders.

4. Ms. Salwan submits that the Petitioner had successfully fulfilled the eligibility criteria that had been provided in the RFP under Clause 2.2 and the relevant experience certificates had been provided by the Petitioner in this regard. She states that the reasoning provided by the Respondent that the Kota-Baran project was "maintenance work" and could not be counted for the purposes of Eligible Projects, and that it was not "re-

construction/strengthening/upgradation” reeks of *mala fide* as the Respondent did not attempt to seek verification regarding the nomenclature of the said project from the concerned Project Director.

5. Additionally, the learned Counsel for the Petitioner relies upon Tamboli Ramanlal Motilal (Dead) by LRs. v. Ghanchi Chimanlal Keshavlal (Dead) by LRs. and Ors., 1993 Supp (1) SCC 295, to submit that the nomenclature of a document should not be rendered conclusive and it is real intention that needs to be gathered. She states that document needs to be read as a whole, and that the Project Director of the Kota-Baran project has also orally admitted to the said project not being in the nature of “maintenance works”. She has further relied upon the opinions of various technical experts who have allegedly categorised the Kota-Baran project to not be mere maintenance work.

6. *Per contra*, Ms. Madhu Sweta, learned Counsel appearing for NHAI, submits that the settled law dictates that matters of contractual nature cannot be interfered with by the Courts until and unless there is patent irregularity, irrationality, illegality or procedural impropriety on the part of the Competent Authority. However, in the absence of these occurrences, Courts would be impelled to stay their hands. Ms. Sweta submits that as per Clause 2.2.2.5, there are certain categories and factors for evaluation of Technical Capacity and eligible projects, and that Clause 2.2.2.5 (iii) (II) specifically states that maintenance works are not to be considered as eligible projects for the purposes of evaluation as per instruction No.6 to Annex-IV. She further states that Clause 2.2.6 (ii) notes the eligible experience on eligible projects in respect of those that come under Category 3, and as per Clause

2.2.2.7 (ii), the necessary information relating to the Technical Capacity has to be provided as per the format at Annex-II of Appendix-IA.

7. The learned Counsel appearing for NHAI argues that the Petitioner had demonstrated Rs. 541.46 crores as its “threshold technical capacity” by enlisting five eligible projects, including the Kota-Baran project. However, the same came under the category of “maintenance works” and was not to be considered an eligible project as per Clause 2.2.2.5 (v) of the RFP. Ms. Sweta states that the Petitioner was requested to submit clarifications regarding the same *vide* letter dated 26.07.2022 which was done accordingly *vide* letter dated 01.08.2022. She states that after due consideration of the clarifications put forth by the Petitioner was the decision taken to disqualify the bid of the Petitioner, and that the said decision cannot be termed as arbitrary and irrational. She submits that the Petitioner has failed to satisfy the requirements for eligibility and is now misleading the Court by suppressing material facts with regard to the Kota-Baran project.

8. It is further submitted by Ms. Madhu Sweta, learned Counsel for NHAI, that in two more tenders, the work relied upon by the Petitioner has been considered only as a maintenance work and the Petitioner's bid has been rejected and the Petitioner chose not to challenge the said decisions. However, Ms. Anusuya Salwan, learned Counsel for the Petitioner, in response to the said contention, has submitted that since the Petitioner was not L-1 in those tenders, the Petitioner chose not to challenge the non-awarding of the work on this ground.

9. Heard Ms. Anusuya Salwan, learned Counsel for the Petitioner, Ms. Madhu Sweta, learned Counsel appearing for NHAI, and perused the material on record.

10. At the outset, it would be pertinent to discuss the relevant Clauses of the RFP governing the instant matter. Clause 2.2.2.2 (i) mandates for the bidder wishing to participate to possess a “Threshold Technical Capacity” of Rs. 373.66 crores or more, and Clause 2.2.2.5 stipulates the categories and factors for evaluation of the “Threshold Technical Capacity” and eligibility projects with Clause 2.2.2.5 (iii) (II) noting that maintenance works cannot be considered as eligible projects for evaluation as per instruction No.6 to Annex-IV. Clause 2.2.2.6 (ii) provides for the eligibility requirements for a project to qualify as an Eligible Projects with respect to Category 3 projects, and Clause 2.2.2.7 (ii) stipulates that the bidder must provide necessary information relating to Technical Capacity as per the format at Annex-II of Appendix-IA. The said Clauses are reproduced as under:

"2.2.2 Qualification requirements of Bidders

2.2.2.2 Technical Capacity

(i) For demonstrating technical capacity and experience (the "Technical Capacity"), the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have received payments for construction of Eligible Project(s), or has undertaken construction works by itself in a PPP project, such that the sum total thereof, as further adjusted in accordance with clause 2.2.2.5 (i) (ii), is more than Rs. 373.66 crore (Rupees Three Hundred Seventy Three Crore and Sixty Six Lakh Only) (the "Threshold Technical Capacity").

xxx

2.2.2.5 Categories and factors for evaluation of Technical Capacity

(i) Subject to the provisions of Clause 2.2.2 the following categories of experience would qualify as Technical Capacity and eligible experience (the "Eligible Experience") in relation to eligible projects as stipulated in Clauses 2.2.2.6 (i) & (ii) (the "Eligible Projects"). In case the Bidder has experience across different categories, the experience for each category would be computed as per weight of following factors, to arrive at its aggregated Eligible Experience:

Category	Project/Construction Experience on Eligible Projects	Factors
1	Project to highways sector that qualify under Clause 2.2.2.6 (i)	1
2	Project in core sector that qualify under clause 2.2.2.6 (i)	0.75
3	Construction in highways sector qualify under clause 2.2.2.6 (ii)	1
4	Construction in core sector that qualify under Clause 2.2.2.6 (ii)	0.75

xxx

(iii) For the purpose of this RFP:

(a) highways sector would be deemed to include highways, expressways, bridges, tunnels, runways, railways (construction/reconstruction of railway tracks, yards for keeping containers 'etc.) metro rail and ports (including construction/reconstruction cost of Jetties, any other linear infrastructure including bridges etc.); and

xxx

(II) Maintenance works are not considered as eligible project for evaluation as per Instruction No.6 to Annex-IV. As such works with nomenclature like PR, OR, FDR, SR, site/micro grading, surface renewal, resurfacing work, Tarring, B. T. surface work, temporary restoration urgent works, periodic maintenance repair & rehabilitation, one time maintenance, permanent protection work of bank, external pre stressing, repair of central hinge, short term.OMT contract of NHAI, any type of work related to order fencing, work of earthwork alone, construction of buildings/ hostels, etc, or not specified, shall not be considered. However, such maintenance works shall be considered as eligible projects in case of Maintenance works to be taken up on EPC mode.

xxx

(IV) Project in Highway sector shall constitute the following for the purpose of consideration under category 1 or 3 as applicable, if:

- (i) Widening / reconstruction / up-gradation works on NH / SH or on any category of road taken up under CRF, SARDP, LWE*
- (ii) Widening/ re-constriction/up-gradation works on MDRs with loan assistance from multilateral agencies or on BOT basis,*
- (iii) Widening/ reconstruction / upgradation work of roads in Municipal corporation limits, construction of Bypasses,*

(iv) Construction of stand- alone bridges,ROBs, tunnels w.r.t roads.

(v) Long term OMT works of NHAI/MoRT&H.

2.2.2.6 Eligible Experience on Eligible Projects in respect of each category:

xxx

(ii) For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have received payments from its client(s) for construction works executed, fully or partially, or work executed and certified by the Engineer-in-charge/ Independent Engineer/Authority's Engineer during the 5 (five) financial years immediately preceding the Bid Due Date, and only the amounts (gross) actually received/ work executed, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, receipts of or work executed amount less than Rs. 18.68 crore (Rupees Eighteen Crore and Sixty Eight Lakh Only) shall not be reckoned as receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turnkey construction contract / EPC contract for the project. Further, the cost of land and also cost towards preconstruction activities (like shifting of utilities etc.) shall not be included hereunder:

ANNEX-IV

Details of Eligible Projects

Instructions:

xxx

xxx

xxx

xxx

xxx

6. *The total payments received and/or revenues appropriated for self-construction for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.1.13). For Categories 1 and 2, expenditure on construction of the project by the Applicant itself should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 2.2.2.6(i)(c). In case of Categories 3 and 4, payments received only in respect of construction should be provided, but only if the amount received exceeds the minimum specified in Clause 2.2.2.6(ii). Receipts for construction works should only include capital expenditure, and should not include expenditure on maintenance & repair and operation of Highways."*

(emphasis supplied)

11. In the instant case, the Petitioner has demonstrated its "Threshold Technical Capacity" to be Rs. 541.46 crores against the minimum requirement of Rs. 373 crores. To substantiate its capacity and its work experience, five eligible projects were submitted by the Petitioner, with Project A being the Kota-Baran project. Clause 2.2.2.5 (II) categorically notes that "*maintenance works are not considered as eligible project for evaluation as per Instruction No.6 go Annexure-IV*". The Kota-Baran project that has been cited by the Petitioner explicitly states that it is major maintenance work. On being asked by NHAI vide letter dated 01.08.2022 to clarify how the said project has been claimed under Category 3, the response

of the Petitioner is that out of 104 kms of work that was done under the Kota-Baran project, 48 kms of work was strengthening/re-construction. Thus, despite falling under the nomenclature of “maintenance”, it does not automatically assume the nature of “maintenance works”.

12. This Court is of the opinion that the explanation advanced by the Petitioner does not suffice and does not portray that the decision taken by the Respondent to ouster the bid of the Petitioner is arbitrary or irrational in any manner. The exercise of interpreting what constitutes as “maintenance work” can only be undertaken by the Respondent herein, i.e. the author of the tender document. It is in fact well settled that the authority that authors the tender document is the best person to understand and appreciate its requirements, and the Court should not sit like a Court of Appeal over the appropriate authority and must realise that the authority floating the tender is the best judge of its requirements [Refer to M/s Agmatel India Pvt. Ltd. v. M/s Resoursys Telecom and Ors., 2022 SCC OnLine SC 113, and Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489]. It is further to be noted that whether or not the Kota-Baran project is primarily “maintenance work” cannot be established before a Writ Court, and therefore, the ostensibly relevant opinions of the technical experts do not come to the aid of the learned Counsel for the Petitioner.

13. Furthermore, when one deliberates upon the scope of judicial review in contractual matters, especially those relating to tenders, it is observed that the Supreme Court has consistently stressed upon how the power of judicial review should not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. Relying upon a conspectus of decisions on this aspect, the Supreme Court in Shobikaa

Impex Private Limited & Anr. v. Central Medical Services Society and Ors.,
(2016) 16 SCC 233, stated the following:

" 19... In this context, we may profitably refer to the authority in B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. [B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd., (2006) 11 SCC 548] where a two-Judge Bench, after referring to a series of judgments has culled out the following principles: (SCC pp. 571-72, para 66)

"(i) if there are essential conditions, the same must be adhered to;

(ii) if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

(iii) if, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;

(iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;

(v) when a decision is taken by the appropriate authority upon due consideration of the tender

document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;

(vi) the contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority;

(vii) where a decision has been taken purely on public interest, the court ordinarily should exercise judicial restraint.”

xxx

20. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. [Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138] , it has been held that (SCC p. 148, para 15) the State can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It has been further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point.

21. In Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] , it has been ruled that: (SCC p. 531, para 22)

“22. ... When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”

22. In *Union of India v. International Trading Co.* [*Union of India v. International Trading Co.*, (2003) 5 SCC 437] , it has been held that: (SCC p. 445, para 15)

“15. ... The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose.”

It has been further opined that: (SCC p. 445, para 15)

“15. ... The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case.”

23. *In Jespar I. Slong v. State of Meghalaya [Jespar I. Slong v. State of Meghalaya, (2004) 11 SCC 485] , this Court stated that: (SCC p. 494, para 17)*

“17. ... fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable.”

14. In a recent decision of the Supreme Court in N.G. Projects Limited v. Vinod Kumar Jain and Ors., (2022) 6 SCC 127, while examining whether the challenge of Respondent No.1 therein to the finding of the Technical Evaluation Committee that its bid was unresponsive, it was observed that the Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and that any contract of public service should not be interfered with lightly. Moreover, the Supreme Court cautioned all High Courts to not issue any interim order that had the potential of derailing the entire process of services meant for larger public good.

15. Flowing from the foregoing judicial precedents, it can be ascertained that the Court's limited jurisdiction in cases of the nature of the instant petition may only be exercised if the conditions imposed by way of a tender document are whimsical, capricious or tailor-made to suit a particular entity, or if the administrative decision taken by the Competent Authority is such that it violates the principles espoused under Article 14 of the Constitution of India, 1950. Herein, a perusal of the material on record indicates that it is not a case where NHAI has laid down a condition so stringent or arbitrary that it impedes public interest, or that the decision taken by it to disqualify

the Petitioner is in the garb of favouring a specific entity or it reeks of irrationality and unreasonableness. Given the nature as well as the magnitude of work that is to be undertaken, it is in fact crucial for NHAI to be circumspect about the relevance of the projects that have previously been undertaken by a bidder, and therefore, the nomenclature of the work does assume importance.

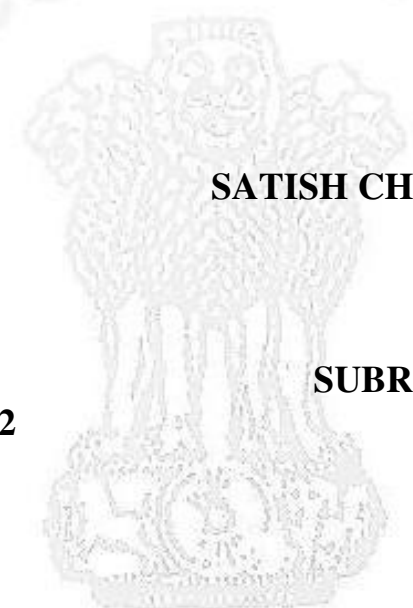
16. Accordingly, this Court declines to exercise its jurisdiction under Article 226 and the instant petition is dismissed, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 02, 2022

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