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

+ W.P.(C) 11968/2024 & CM APPL. 49791/2024, CM APPL.
49792/2024

THEME ENGINEERING SERVICES PVT LTDPetitioner

Through: Ms. Nandadevi Deka, Mr. J. Talukdar
and Mr. Shashwat Pratyush,
Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIARespondent

Through: Mr. Ankur Mittal, Standing Counsel
with Ms. Iskhita Parihar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

10.09.2024

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1. The present petition assails order dated 19th August, 2024,¹ issued by National Highways Authority of India,² suspending Petitioner from participating in ongoing and future bidding process issued by NHAI.

2. A brief background leading to the filing of the present petition is as follows:

2.1. On 31st December, 2020, Respondent appointed the Petitioner as an Independent Engineer for Consultancy Services during Operation and Maintenance for Four Laning of Goa-Karnataka Border to Kundapur Section of NH-66 (formerly NH-17) Km 93.700 to Km. 283.300 in the State of

¹ "the impugned order"

² "NHAI"



Karnataka on Design Build Operate Transfer basis under NHDP-IV.³

2.2. Through letter dated 13th September, 2023, Petitioner informed the concessionaire of the defects noted in the structures along the highway requiring urgent maintenance. Subsequently, tests were conducted in January, 2024 and a Mobile Bridge Inspection Unit Test Report was submitted to the concessionaire on 12th April, 2024. The said communication disclosed that some structures fall under the category of “poor”, and need to be rectified.

2.3. Unfortunately, the Kaali Bridge at Km. 102+500 LHS in Karwar, Uttara Kannada District, Karnataka, collapsed. The said bridge falls within the area covered under the Project. Subsequently, an Expert Committee was constituted to ascertain the reasons for the collapse.

2.4. In such circumstances, a show cause notice dated 08th August, 2024 was issued to Petitioner highlighting that they had failed to perform their duties as per Clause 6.3. of the terms of reference of the Consultancy Agreement and called upon them to furnish an explanation.

2.5. On 10th August, 2024, Petitioner furnished an initial report on the collapse of the bridge.

2.6. Subsequently, on 19th August, 2024, Respondent passed the impugned order thereby suspending the Petitioner from participating in ongoing and future bidding for one month or completion of investigation by the Expert Committee whichever is later. In response, through letters dated 20th August, 2024 and 21st August, 2024, Petitioner furnished an interim response to the show cause notice explaining they have duly acted in accordance with the

³ “the Project”



Consultancy Agreement and performed its duties.

3. In the above background, counsel representing the Petitioner contends the impugned order is illegal and unlawful and is in the teeth of the judgment of the Supreme Court in ***Gorkha Securities Services v. Govt. of NCT of Delhi and Ors.***,⁴ as the same has been passed by mentioning additional grounds which did not find mention in the show cause notice issued by the Respondent. Further, the impugned order violates the principles of natural justice as no reasonable opportunity of hearing was provided to the Petitioner before ordering for their suspension.

4. During the pendency of the present proceedings, the investigation by the Expert Committee has been completed and a report to that effect dated 08th September, 2024 has been prepared. A copy thereof has been e-filed and has also been provided to Petitioner.

5. In view of the above, Mr. Ankur Mittal, Standing Counsel for NHAI, states that NHAI shall withdraw the suspension order with effect from 11th September, 2024 and now a fresh show cause notice shall be issued to the Petitioner for taking appropriate action against them in light of the above-noted report of the Expert Committee. The statement of Mr. Mittal is taken on record shall bind NHAI.

6. Since the suspension order is being withdrawn, no further directions are necessary to be issued and accordingly, the present petition is disposed of. In the event NHAI issued a fresh show cause notice, Petitioner shall have liberty to respond to the same which shall be considered and dealt with by NHAI, in accordance with law. In case of any adverse decision, Petitioner

⁴ (2014) 9 SCC 105



shall be at liberty to assail the same in accordance with law.

7. The Court has not examined the merits of the case. All rights and contentions of parties are left open.

8. Disposed of, along with pending applications.

SANJEEV NARULA, J

SEPTEMBER 10, 2024

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