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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3640/2025 and CM APPL.17007/2025

M/S ASHISH AGARWAL

.....Petitioner

Through: Mr. Nalin Kohli, Sr. Adv., Ms. Nimisha Menon, Mr. Parmod Kalirana, Mr. Manish Choudhary, Ms. Amaya Vaid and Ms. Shruti Agarwal, Adv.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIARespondent

Through: Mr. Apoorv Kurup, Sr. Adv., Mr. Namit Saxena and Ms. Isha Nagpal, Adv.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

28.03.2025

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1. The present petition has been filed assailing the impugned letter/communication dated 18.03.2025 bearing no. CODIV-11036/2/2025-CO Division/Debar/05 issued by the National Highway Authority of India [NHAI / respondent] in regard to Nainsar District Gorakhpur Fee Plaza (Annexure-P1).

2. *Vide* the above impugned letter / communication, the following action has been taken against the petitioner –

- i. the ongoing contract agreement dated 22.08.2024 between the parties, pursuant to which the petitioner operates the Nainsar District Gorakhpur Fee Plaza as the user fee collection agency, has been terminated in terms of Clause 35(3) of the Contract Agreement between the parties;



- ii. the petitioner has been debarred from participating in future tender/s issued by the respondent no.1 for a period of two years in terms of Clause 21(i) of the Contract Agreement and Clause 3.1 & 3.2 of the Request for Qualification dated 01.01.2021 (RFQ) between the petitioner and the respondent;
 - iii. on the basis of the above, the performance security / bank guarantee with respect to the contract agreement for operating the aforesaid fee plaza, deposited by the petitioner in terms of Clause 2.4 of the RFQ, have been sought to be encashed.
3. Learned senior counsel for the petitioner submits that the impugned action has been taken on the basis of a show cause notice issued on 25.01.2025 where, apart from a cryptic reference to an investigation by the Uttar Pradesh Special Task Force (UPSTF) resulting in an FIR No. 0017 filed on 22.01.2025 at P.S. Lalganj, Distt Mirzapur, Uttar Pradesh, no specific attribution/ lapse against the petitioner has been pointed out.
4. Further, it is submitted that a response to the said show cause notice was submitted vide communication dated 30.01.2025 wherein the following points were emphasised:-
- i. That the petitioner had not provided any additional electronic devices such as a laptop or phone to its employee/s working at the aforesaid fee plaza. Furthermore, no fraudulent software was found in the device seized from one of the employees of the petitioner working at the fee plaza.
 - ii. That nothing was found at the aforesaid fee plaza after an inspection carried out by the PIU team.
 - iii. That the petitioner was only using authorized software provided



by the respondent for collection of user fee at the aforesaid fee plaza and that the petitioner strictly adheres to the NHAI guidelines in operating the aforesaid fee plaza.

It is submitted that the impugned letter fails to even notice much less deal with the submissions made by the petitioners in response to the show cause notice.

5. Further, it is brought to the attention of this Court that whereas the show cause notice sought to debar the petitioner only for a period of one year, the impugned letter purports to terminate the contract and also debar the petitioner for a period of two years.

6. It is further submitted that the show cause notice made no reference to any termination action by the respondent.

7. Lastly, it is submitted that the impugned communication have been passed in utter violation of the principles of natural justice inasmuch as no hearing whatsoever was afforded to the petitioner. This is not refuted by learned counsel for the respondent.

8. The respondent seeks to justify the impugned order on the basis of the statement made by one Mr. Alok Kumar Singh to the UPSTF. The same is, however, vehemently denied by learned senior counsel for the petitioner.

9. Respective counsel for the parties have been heard at some length.

10. It is noticed that communications / letters issued by the NHAI which are similar to the impugned communication in the present case and were issued in an identical factual matrix, have been set aside by this Court vide order dated 21.03.2025 in W.P.(C) 3513/2025 and W.P.(C) 3515/2025.

11. In the circumstances and considering the aforementioned discrepancies in the impugned communication/s, and particularly



considering that no opportunity for personal hearing was afforded to the petitioner prior to issuance thereof, the same is clearly unsustainable in law. Accordingly, the impugned communication/s are set aside.

12. However, it is clarified that the same shall not preclude the respondent from issuing a fresh show cause notice, followed by an opportunity of hearing to the petitioner, and thereafter pass a speaking order. Let the said exercise be done as expeditiously as possible.

13. With the above directions, the present petition is disposed of. Pending application also stands disposed of.

SACHIN DATTA, J

MARCH 28, 2025/dn