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

+ **W.P.(C) 4589/2025 and CM APPL.21257/2025**

**M/S P.S.T. ENGINEERING CONSTRUCTION THROUGH ITS
MANAGING PARTNER**

.....Petitioner

Through: Mr. Senthil Jagadeesan, Sr. Advocate
along with Ms. Suriti Chaudhary, Mr.
Punit Aggarwal, Mr. Anuj Manoj, Mr.
Abiha Zaidi and Mr. Pritam Raman
G., Advocates.

versus

**NATIONAL HIGHWAY AUTHORITY OF INDIA THROUGH ITS
CHAIRMAN & ORS.**

.....Respondents

Through: Mr. Santosh Kumar, Standing
Counsel along with Ms. Dharity
Phookan, Mr. Devansh Malhotra,
Advocates for (NHAI) R-1 and R-2.
Mr. Brijesh Kumar and Ms. Arani
Mukherjee, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

16.04.2025

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1. The present petition has been filed by the petitioner assailing the Show Cause Notice dated 02.04.2025 (hereinafter 'SCN'). The said SCN reads as under –

"ADMIN-34 /5/ 2024-Kerala Division (E-252409)

Date: 02.04.2025

Show Cause Notice

Without Prejudice

To ,

*M/ s. PST Engineering Construction
2/352, Vavipalayam, Kolaram (Po)
Paramathy Velur (TK), Namakkal (Dt),
Tamilnadu - 637201
Phone No; - +914286293371, 8012588152*

Sub: Rectification of 17 Nos Blackspots / Accident spots under Annual



Road Safety plan for 2024-2025 in the stretch of Walayar – Vadakkancherry - Thriussur- Angamaly Section of NH-544 in Kerala on EPC Mode.

Sir,

1. In reference to bid submitted for subject work on 11.03.2025 and as part of Technical Evaluation, clarification was sought vide NHAI 's letter dated 18.03.2025 (copy enclosed) as per Cl. 3.1.4.

2. You, vide your letter dated 20.03.2025 (copy enclosed), had clarified that the Project Code 'C' which was claimed under Category -3 falls under Category-4.

3. However, pursuant to clause 2.2.2.2 (ii) of RFP, your bid was considered as Non-Responsive.

4. Subsequent to the declaration of Technical Evaluation Result on 21.03.2025, you vide your letter dated 21.03.2025, submitted 2 certificates issued by Er. C. Thileepan, M.E, Executive Engineer, Water Resources Department, Vennar Basin Division, Thanjavur, as detailed below: -

(i) Certificate dated 21.03.2025 specifying that the work was undertaken within Municipal Corporation Limits.

(ii) Certificate dated 20.03.2025 detailing the type and quantity of work executed.

5. The genuineness of the certificates dated 20.03.2025 and 21.03.2025, as mentioned above, was sought from WRD Dept through PD, PIU Thanjavur on 25.03.2025 (copy enclosed). The Executive Engineer, WRD, Vennar Basin Division, Thanjavur, vide letter dated 25.03.2025 (copy enclosed), has clarified that certificate dated 20.03.2025 and 21.03.2025 were not genuine and were not issued by the office of Executive Engineer , WRD, Vennar Basin Division , Thanjavur and the officer has been promoted since Nov, 2024 and was not posted at the division on the dates when the certificates were issued. Further, WRD, has also reported that the name of work do not match with the records in the division. Therefore, you were considered as Non-Responsive pursuant to clause 2.2.2.2 (ii) and clause 2.6 of RFP.

6. As per submission at Para#4 & 5 above, you were found engaged in fraudulent practice, as specified in Section - 4 of RFP. As per Cl. 4.1 of RFP, the Authority shall be entitled to forfeit and appropriate the BID Security or Performance Security, as the case may be, as Damages,



without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise. If bidder, directly or indirectly or through an agent, found engaged in fraudulent practice in Bidding Process. Accordingly, Indian Bank, Namakkal, Tamilnadu was requested to forfeit and appropriate the Bid Security vide Authority letter dated 29/03/2025 (copy enclosed) which has been credited to NHAI Bank Account, as confirmed by Finance Division (copy enclosed).

7. Therefore, this Show Cause Notice is issued seeking your detailed reason/justification as to why you should not be allowed to participate in any tender or RFP issued by the Authority during a period of 2 years as per Cl. 4.2 of RFP.

8. You are required to submit your written clarification within 10 days from date of this notice. Your failure to provide a cogent response or no response within stipulated time will result in the assumption that you have no clarification to offer and NHAI will proceed with action as proposed at Para 7 above.

9. This notice is issued without prejudice to the rights of the Authority.

Yours faithfully,

Sd/-

(W. Blah)

I/c CGM(T), Kerala Division"

2. Learned counsel for the respondent nos.1 and 2 enters appearance. She draws attention to the fact that the letter dated 21.03.2025 sent by the petitioner enclosing therewith two certificates / documents [which are allegedly false] was sent pursuant to a communication dated 21.03.2025. The said communication dated 21.03.2025 reads as under :-

"ADMIN-34/5/2024-Kerala Division (Comp.No.252409) Date:21.03.2025

*To,
All bidders*

(Tender ID : 2024_NHAI_221417_1)

Sub: Rectification of 17 Nos Blackspots/Accident spots under Annual Road Safety plan for 2024-2025 in the stretch of Walayar –



Vadakkancherry – Thrissur – Angamaly Section of NH-544 in Kerala on EPC mode – Result of Technical Evaluation – reg.

The Technical evaluation as per the provisions of RFP has been completed. Summary evaluation of Technical Bids is as under :

<i>S. No.</i>	<i>Name of the Bidder</i>	<i>Status</i>	<i>Remarks</i>
<i>1.</i>	<i>Uralungal Labour Contract Co-operative Society Limited</i>	<i>Responsive</i>	<i>Technically Responsive / Qualified</i>
<i>2.</i>	<i>Wagad Infraprojects Private Limited</i>	<i>Responsive</i>	<i>Technically Responsive/ Qualified</i>
<i>3.</i>	<i>PST Engineering Construction</i>	<i>Non-Responsive</i>	<i>The Bidder vide its letter dated 20.03.2025 has replied / accepted that “Since the project code – C is related to channel and the work has been done for Water Resource department, we hereby accept NHAI’s comment on the clarification. Therefore, the Project falls under Core sector (Category-4). Likewise we have changed the Annex II and the modified Annex II has been enclosed with this clarification.”</i> <i>In light of the reply submitted by the Bidder as mentioned above and pursuant to clause 2.2.2.2 (ii) of RFP, none of the Projects claimed by the Bidder in its Technical Bid are eligible.</i> <i>Therefore, the Bidder shall be considered as Non-Responsive pursuant to clause 2.2.2.2 (ii) of RFP.</i>



4.	<i>Sri Avantika Contractors (I) Limited</i>	<i>Responsive</i>	<i>Technically Responsive/Qualified</i>
5.	<i>EKK Infrastructure Limited</i>	<i>Responsive</i>	<i>Technically Responsive/Qualified</i>
6.	<i>Ravi Infrabuild Projects Limited</i>	<i>Responsive</i>	<i>Technically Responsive/Qualified</i>
7.	<i>Dhariwal Buildtech Limited</i>	<i>Responsive</i>	<i>Technically Responsive/Qualified</i>
8.	<i>KNR Constructions Limited</i>	<i>Responsive</i>	<i>Technically Responsive/Qualified</i>
9.	<i>KMC Constructions Limited</i>	<i>Responsive</i>	<i>Technically Responsive/Qualified</i>
10.	<i>S and P Infrastructure Developers Private Limited - CDR & Co. Constructions (JV)</i>	<i>Responsive</i>	<i>Technically Responsive/Qualified</i>

2. The result of technical evaluation shall be available on E tender website, for 4 days (i.e. upto – 25.03.2025) with the opportunity to the bidders for objection if any, before opening of financial bids.

Sd/-
(W Blah)
I/C CGM (T), Kerala Division”

3. As such, it is submitted that it is incorrect on the part of the petitioner to contend that the letter dated 21.03.2025 was issued after the petitioner’s bid had already been declared ineligible. Rather, the letter [enclosing the allegedly false certificates] was sent to overcome the objections/ deficiencies.

4. Be that as it may, since a show cause notice dated 02.04.2025 has been issued by the respondents to the petitioner, this Court considers it apposite to dispose of the present petition by directing that the said show cause notice be decided after considering all the pleas of the petitioner and after granting an opportunity of hearing to the petitioner.

5. The petitioner would be at liberty to file a reply/response to the show cause notice; the petitioner would also be at liberty to raise objection/s to the alleged unjustified encashment of the bank guarantee/s by the respondents.



6. The respondents shall grant an opportunity of hearing to the petitioner and pass a reasoned order as expeditiously as possible.
7. Let the response to the show cause notice be submitted by the petitioner within a period of two weeks from today and the hearing be scheduled thereafter.
8. Needless to say, if the outcome of the aforesaid exercise is that the petitioner is absolved from the allegation of committing any fraudulent practice, the amount realized by the respondents by way of the encashment of the bank guarantee/s shall be refunded to the petitioner.
9. In case the petitioner is aggrieved by the outcome of the aforesaid exercise, it shall be at liberty to avail appropriate remedies under law.
10. The petition is disposed of in the above terms. Pending application/s also stands disposed of.

SACHIN DATTA, J

APRIL 16, 2025/r