



2025:DHC:4042-DB



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

+ W.P. (C) 6562/2025 & CM APPLs. 29766-67/2025

ASHISH JAISWALPetitioner

Through: Mr.Roopansh Purohit, Adv.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIARespondent

Through: Mr.Santosh Kumar, Adv.

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Date of Decision: 16th May, 2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J: (ORAL)

1. The present writ petition is filed under Article 226 of the Constitution of India, seeking issuance of an appropriate writ, order, or direction for quashing the entire bidding process initiated *vide* the invitation for e-quotation dated 27.03.2025, bearing reference No. NHAI/13013/547/CO/24-25/EQ/Ballepur Fee Plaza/E-273934, issued by the respondent/National Highways Authority of India (hereinafter referred to as "*the NHAI*"). The petitioner further seeks quashing of the Letter of Award (hereinafter referred to as "*the LOA*") dated 15.04.2025, as well as the order dated 08.05.2025, whereby the respondent/NHAI directed the petitioner to deposit the bid security amount of Rs.10,00,000/-. The petitioner also challenges the impugned action of the respondent/NHAI debarring the petitioner from participating in future bids with effect from 08.05.2025 from the list of pre-qualified bidders.



2. The petitioner's case is that he submitted his bid on 02.04.2025, prior to the stipulated deadline of 11:00 A.M., in response to the respondent's invitation for e-quotation dated 27.03.2025 for the operation of the Ballepur Fee Plaza. However, the respondent/NHAI subsequently extended the deadline for bid submission to 03.04.2025 at 11:00 A.M., without any prior notice or public intimation, thereby prejudicing the petitioner.

3. Upon learning of the extension, the petitioner, on 03.04.2025 and again on 04.04.2025, submitted written communications to the respondent/NHAI, seeking to withdraw his bid before the revised time for bid opening. A further representation reiterating the withdrawal of the bid and offering to forfeit the bid security of Rs.10,00,000/- was made by the petitioner on 05.04.2025. Despite this, the respondent/NHAI proceeded to issue the Letter of Award (LOA) on 15.04.2025, treating the petitioner's bid as valid and enforceable.

4. Thereafter, on 21.04.2025, the petitioner formally communicated his rejection of the LOA, reiterating that the bid had been submitted under a mistaken assumption and had been withdrawn prior to its consideration. On 25.04.2025, the respondent issued a communication directing the petitioner to deposit the bid security and submit a justification for waiver of debarment. In response, the petitioner submitted a detailed representation on 28.04.2025 explaining the bonafide circumstances surrounding the bid withdrawal. However, despite the representation, the respondent issued the impugned order dated 08.05.2025 directing deposit of an amount equivalent to the bid security and debarring the petitioner for a period of three months from participating in any future bidding process.

5. Aggrieved by the arbitrary, unreasonable, and disproportionate action of the respondent/NHAI, the petitioner has approached this Court



seeking appropriate relief including quashing of the impugned bidding process, Letter of Award, and the debarment order dated 08.05.2025.

6. Mr. Roopansh Purohit, learned counsel appearing for the petitioner at the outset makes a grievance out of the fact that the respondent/NHAI had extended the last date of submission of the bid from 11:00 AM on 02.04.2025 to 11:00 AM 03.04.2025 without any notice or public intimation causing grave prejudice to the petitioner. He states that the moment petitioner learnt about the extension, the bid submitted by him was sought to be withdrawn by the evening of 03.04.2025. As an abundant precaution the petitioner also by the communication dated 04.04.2025 informed the respondent/NHAI of his intention to withdraw his bid before the revised time for the bid opening. He states that on 05.04.2025 the petitioner submitted a representation reiterating the withdrawal and offering to forfeit the bid security of Rs.10,00,000/-. Learned counsel states that there was no response to the aforesaid letter of withdrawal dated 03.04.2025 as also the representation dated 05.04.2025. Having informed the respondent/NHAI about his intention to withdraw his bid on the last date of submission of bids, the action taken by respondent/NHAI in forfeiting Rs.10,00,000/- and simultaneously debaring the petitioner for three months is violative of the terms and conditions of the tenders as also in violation of the principles of natural justice.

7. Learned counsel also challenges and seeks quashing of the LOA dated 15.04.2025 on the ground that once the bids were withdrawn on 03.04.2025, the question of LOA being sanctioned in favour of the petitioner does not arise. Thus, according to him, the sanction of LOA as also the forfeiture of bid security of Rs.10,00,000/- and simultaneously debarment is illegal, unlawful, unjust and unconstitutional and ought to be quashed.



8. Learned counsel relies upon Clause 2.4 of the tender document, which according to him, creates an exemption from forfeiture of the bid security amount as also would disentitle the respondent/NHAI from passing any penalty of debarment. He emphasizes that once a bid submitted by the petitioner was withdrawn on the last date of bid submission, the bid could be treated as non responsive and the petitioner would be entitled to refund of the forfeited amount, leaving no right or authority left with the respondent/NHAI to levy a penalty of debarment. Thus, learned counsel for the petitioner submits that the writ petition be allowed and the reliefs sought be granted.

9. *Per Contra*, Mr. Santosh Kumar, learned Standing Counsel for the respondent/NHAI draws attention to the last paragraph of Clause 2.4 of the bid document to submit that it provides respondent/NHAI the right and entitlement to forfeit or appropriate a portion of the bid security as damages. That apart, he also draws attention of this Court to the data uploaded on the GeM Portal and invited attention particularly to serial No.9 thereof, respecting bid validity to the extent of 120 days. He further states that the bid submission start date was 27.03.2025 and the closing date which was originally fixed for 02.04.2025 at 11:00 AM was extended to 03.04.2025 at 11:00 AM. According to him, the bid validity period of 120 days commenced from 27.03.2025 and thus the respondent/NHAI had the right and authority to forfeit such sum in accordance with the last paragraph of Clause 2.4 of the tender document. According to him, the withdrawal claimed by the petitioner on 03.04.2025 would have been successful only if the same was informed before 11:00 AM on 03.04.2025. He states that the admitted case of the petitioner is that the withdrawal was informed to respondent/NHAI on its portal only in the evening hours of 03.04.2025. Thus, as a consequence, the bid was not treated as withdrawn



and the LOA was sanctioned on 15.04.2025. Having regard to the fact that the LOA was already sanctioned in favour of the petitioner, the withdrawal or opting out from performance would be treated as violation of the conditions of the tender entitling the respondent/NHAI not only to forfeit but also to levy a penalty of debarment. In view of the aforesaid, he contends that no case is made out for interference by this Court in the present writ petition.

10. We have heard Mr. Roopansh Purohit, learned counsel for the petitioner and Mr. Kumar, learned counsel for respondent/NHAI and perused the records.

11. Before we even advert to Clause 2.4 of the tender document, it is relevant to note that if any grave prejudice, muchless any prejudice at all would have been caused to the petitioner, it could have been if respondent/NHAI had preponed the last date of bid submission unilaterally. This action, if undertaken by the respondent/NHAI would obviously have been detrimental to the petitioner inasmuch as the right to withdraw his bid would have been curtailed without notice. However, the facts in the present case indicate that the original date of closure of bid submission was 11:00 AM on 02.04.2025 till which time admittedly the petitioner had not withdrawn his bid. In fact, the extension of the last date upto 11:00 AM on 03.04.2025 would have actually enured to the benefit of the petitioner in case of any truth or genuineness in its attempt to withdraw its bid. What is intriguing is that the petitioner, despite the last date of submission being extended to 11:00 AM on 03.04.2025 did not convey its intention to withdraw his bid till the evening hours of 03.04.2025. Any intimation post the time of closure of submission would, in the facts of the present case, become irrelevant. Equally irrelevant would be the letter dated 04.04.2025 or even the representation dated 05.05.2025. The sequitor of such non

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submission of withdrawal of the bid within the stipulated and extended time would obviously entail sanction of LOA in case the petitioner was eligible by the respondent/NHAI. The LOA having been awarded/sanctioned in favour of the petitioner on 15.04.2025, the resistance or non performance or refusal, post LOA, would obviously entail its own consequences in the nature of forfeiture, apart from debarment. Essentially, the facts as noted, appear to tilt in favour of the respondent/NHAI and against the petitioner. No explanation or justification worth its name has been furnished before this Court as to why the petitioner did not register its withdrawal of the bid prior to 11:00 AM on 03.04.2025. Thus, on this count, we find the petition absolutely meritless and the submissions addressed thereon, untenable.

12. Upon perusing the records further, we find that the reply of the petitioner dated 28.04.2025 to the show cause notice dated 25.04.2025 issued by respondent/NHAI as to why petitioner be not debarred, discloses clear admission of errors committed by the petitioner in filling up the details in his bid apart from the authorized person of the petitioner accepting and taking full responsibilities of such errors. It would be apposite to extract the relevant paragraphs of the reply dated 28.04.2025 which read thus:-

“Respected Sir,

I request reference to the captioned subject and the earlier correspondence regarding the same. I would like to further submit all the details pertaining to the said bid for Balleepur FP and give my humble submission with supporting documents to seek waiver of Debarment for not accepting the LOA Dtd. 15.04.2025 in relation to Balleepur FP. My submissions are docketed hereunder:-

1. As already represented earlier, the entire incident relating to wrong bidding was on account of my staff entering erroneous percentage number in the bid file in “%above” category rather than “%below” at the time of bidding on 02.04.2025. Since I was busy with handover and subsequent



operational issues of two more plazas, this incident came to my notice late at night on 02.04.2025. At this time, I was totally unaware of the fact that the bid deadline has in fact been increased by 24 hours to 11:00 AM of 03.04.2025. I had not received any intimation regarding this or else I would have either revised my bid or withdrawn it prior to bid submission deadline. Most importantly, the bid acknowledgement generated by the portal on 02.04.2025 also confirmed that the bid deadline was 11 AM of 02.04.2025. It was only when I could not see the live bid opening details on e-tender portal, that I realised that something was amiss and further enquiry in the matter revealed that the bid deadline has been extended to 03.04.2025. It is pertinent to mention here that the existing agency for Ballepur FP, M/s AK Construction was operating the plaza at an agreed remittance of Rs 6.40 lakhs at that time and had applied for pre-mature termination due to losses. In such a case, it is easy to deduce that the bid rate of Rs 6.89 lakhs placed by my staff, i.e., in excess of the rate at which the ongoing agency has surrendered, is nothing but a big mistake and that is what it actually is. The entire incident was borne out of a human error and we request you to treat it as such.

2. Subsequently, I had submitted my request seeking for disqualification from tender participation process well before the bid was opened, i.e, on the eve of 03.04.2025 and thereafter, again on the morning of 04.04.2025. I had cited strong grounds on which my request could have been treated favourably and my bid could have been treated as non-responsive. Since the bid results were not opened at this time, it would have been well within the legal boundaries of NHAI to accept my disqualification from bid process and proceed with H1 selection from amongst the other eligible bidders. This would have saved a lot of time and effort.

3. While I accept and take full responsibility for the erroneous bid from my side, I would humbly like to state that there was some erroneous information regarding deadline of bid on e-tenders website as well, which led to the confusion. My only request is to consider all the facts as brought out by me in this letter and allow waiver of debarment for non-responsive financial bid.

4. The bid had been opened during afternoon of 04.04.2025. Thereafter, I had immediately requested for non-issuance of LOA on 05.04.2025 as I was not in a position to accept the same. I had done this keeping in mind that if the retender process is started immediately without issuance of LOA, then a lot of time would be saved from your end as well. Despite my request, the LOA was issued in my favor. As already informed, I am not in a position to accept the said LOA and I request you to kindly cancel the LOA and proceed with re-tender of Ballepur FP without invoking any penalty on my account as I had already informed well before opening of the bid to not open my bid and treat the same as disqualified. Additionally, I would also like to mention that in the captioned LOA, the deadline for bid submission and the date of opening have been mentioned as 02.04.2025 and 03.04.2025 respectively,



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which is totally wrong. In fact, the last date of bid submission was extended by one day to 03.04.2025 without any intimation to me. It is for this reason that the entire confusion was created, and I had later sought for disqualification of our bid.

I request you to kindly consider the above facts and not to proceed with my debarment.

If my request is considered favourably, I shall always be grateful to your good office.”

(emphasis supplied)

The aforesaid letter discloses the actual facts which had transpired contemporaneously to the period when the tender process was continuing. Having admitted the gross errors committed by the petitioner, the submissions now raised before this Court appear to be an afterthought and an attempt to conceal the correct facts before this Court. We deprecate such attempt by the petitioner. Ordinarily, we would have imposed costs upon the petitioner for such conduct, however, are refraining since not only Rs.10,00,000/- of the security bid have been forfeited, a debarment order for three months has already been passed against the petitioner.

13. In view of the above we do not find any reason or justification to interfere with the action of respondent/NHAI in forfeiture or imposition of debarment upon the petitioner. The petition is dismissed, however, without any order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 16, 2025/aj/rl