



2025:DHC:6885-DB



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

Judgment reserved on: 13.05.2025.

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Judgment delivered on: 14.08.2025.

- + W.P.(C) 813/2025 & CM APPL. 4026/2025
- + W.P.(C) 1721/2025, CM APPL. 8305/2025 & CM APPL. 14515/2025
- + W.P.(C) 3304/2025 & CM APPL. 15616/2025
- + W.P.(C) 814/2025 & CM APPL. 4028/2025
- + W.P.(C) 848/2025 & CM APPL. 4184/2025
- + W.P.(C) 849/2025 & CM APPL. 4186/2025

TPF ENGINEERING PVT LTD & ANR.

.....Petitioners

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ANR.

.....Respondents

APPEARANCE:-

For Petitioners

Mr. Sandeep Sethi, Sr. Advocate with Mr. Malak Bhatt, Mr. Nikunt Rawal, Ms. Neeha Nagpal, Mr. Shreyansh Chopra and Ms. Riya Kumar, Advocates in W.P.(C) 813/2025.

Mr. Dayan Krishnan, Sr. Advocate with Mr. Malak Bhatt, Mr. Nikunt Rawal, Ms. Neeha Nagpal, Mr. Shreyansh Chopra and Mr. Sukrit Seth, Advocates in W.P.(C) 1721/2025 & W.P.(C) 849/2025.

Mr. Darpan Wadhwa, Sr. Adv. with Mr. Malak Bhatt, Mr. Nikunt Rawal, Ms. Neeha Nagpal and Mr. Shreyansh Chopra, Ms. Divita Vyas, Advocates in W.P.(C) 3304/2025 & W.P.(C) 814/2025

Mr. Malak Bhatt, Mr. Nikunt Rawal, Ms. Neeha Nagpal and Mr. Shreyansh Chopra, Advocates in W.P.(C) 848/2025.

For Respondents



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Mr. Santosh Kumar, Standing Counsel with Mr. Kartik Gupta, Ms. Nidhi Rani, Mr. Vaibhav Mishra, Mr. Adithya Ramani and Mr. Devansh Malhotra, Advocates R-1/NHAI in all matters.

Mr. Premtosh K. Mishra, CGSC with Mr. Manish Vashist and Mr. Sajal, Advocates for R-2/IOI in W.P.(C) 813/2025, W.P.(C) 814/2025, W.P.(C) 848/2025 & W.P.(C) 849/2025.

Mr. Chetan Sharma, ASG and Mr. Rohan Jaitley, CGSC with Mr. Dev Pratap Shahi, Ms. Yogya Bhatia, Mr. Amit Gupta and Mr. Varun Pratap Singh, Advocates for R-2/IOI in W.P.(C) 1721/2025 & W.P.(C) 3304/2025.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. Heard the learned counsel for the respective parties and perused the records available before us on these writ petitions. Since the subject matter of these writ petitions are intertwined, they were heard together and are being decided by the common judgment which follows:

2. The petitioner M/s. TPF Engineering Pvt Ltd. in all these writ petitions is the same, which for the sake of convenience, shall be referred hereinafter as the petitioner. The petitioner is a registered company primarily engaged in the business of construction of roads and bridges, and admittedly, it has been and is a part of a global conglomerate, namely, M/s TPF SA.

SUBJECT MATTER AND CHALLENGE IN EACH WRIT PETITION



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W.P.(C.) No. 813/ 2025

3. In August 2023, the respondent No.1/ National Highways Authority of India (hereinafter referred to as ‘NHAI’) issued a Request for Proposal (hereinafter referred to as ‘RFP’) for providing Consultancy Services for Authority Engineer for Rehabilitation and Upgradation to Four Lanning of NH-31D from Km./Ch. 83+340 to Km./Ch.113+200 (Package-II B) of Dhupguri to Falakata Section in the State of West Bengal on EPC Mode. The said RFP, which engages the attention of this Court in this writ petition bears Tender ID: 2023_NHAI_164355_1.

4. Under challenge in this writ petition is the communication dated 14.01.2025, whereby the bid of the petitioner was adjudged as disqualified from participating in any bidding process for Consultancy Services. The reason for such disqualification is given in the communication dated 14.01.2025, which is as under:

S.No.	Name of the Applicant	Previous Marks	Revised Marks	Rank/ Remark	Responsive/ Non-Responsive
11.	TPF Engineering Pvt. Ltd. in JV with MSV International, Inc. in association with MAV Associates LLP	M/s. TPF Engineering Pvt. Ltd. being an allied firm of the debarred entity M/s TPF Gentisa Eurostudios S.L. is disqualified from participating in any bidding processes for consultancy services, including Independent Engineer (IE), Authority Engineer (AE), or similar roles, under any executing agency of MoRTH, including NHAI, for the duration of the debarment period specified in the order dated 05.06.2023.			Non-Responsive



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5. It is this decision of the respondent No.1 whereby the petitioner was declared disqualified in technical evaluation of its bidding which is under challenge herein.

6. Another prayer made in the writ petition is that the respondents be directed to consider the petitioner as a responsive bidder in the technical evaluation.

W.P.(C.) No. 814/ 2025

7. The petitioner has instituted this writ petition challenging the communication dated 08.01.2025 made by the respondent No.1/ NHAI whereby its bid submitted in response to the RFP issued in October 2024, for Authority Engineer Services for Balance Works for Six Lanning of Sriperumbudur to Karapettai Section of NH-4 (New NH-48) from Km 37+000 (Existing Km 37+000) to Km 71 +015 (Existing Km 71 +000) in Tamil Nadu on EPC Mode, has been declared to be non-responsive for the reason contained in the said communication itself. The RFP, which is the subject matter of this writ petition, bears Tender ID: 2024_NHAI_212092_1. The reason for declaring the petitioner's bid as non-responsive is communicated in the communication dated 08.01.2025 itself, which is as under:

<i>S.No</i>	<i>Name of Bidder</i>	<i>Status</i>	<i>Technical Score</i>
6	<i>M/s MSV International INC. JV with TPF Engineering PVT. LTD. In Association with MAV Associates LLP.</i>	<i>Non-Responsive</i> <i>As per Clause 15(C) of Section-1 and Clause 17 of Section 1 of RFP</i>	74.54



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8. It is also to be noticed that the petitioner's participation in the subject bid was as a Joint Venture (JV) partner with M/s MSV International, Inc.

9. Apart from challenging the decision of the respondent No.1 declaring the petitioner's bid as non-responsive, the other prayer made in the petition is for issuing a direction to the respondent No.1 to consider the petitioner as responsive in the technical evaluation.

W.P.(C.) No. 848/ 2025

10. Under challenge in this writ petition is the communication dated 09.01.2025 whereby the petitioner's bid qua the RFP issued in November, 2023 for Independent Engineer services for Development of 4 lane Economic Corridor from Guskara-Katwa Road to Mayurakshi Bridge Approach section Km 133.000 to Km 180.000 of NH 116A (Package-4) in the state of West Bengal under Bharatmala Pariyojana on Hybrid Annuity Mode, was declared to be non-responsive.

11. The reason for declaring the petitioner's bid as non-responsive is mentioned in the result of technical evaluation which forms part of the communication dated 09.01.2025 which is as under:

<i>Bid No.</i>	<i>Name of the Bidder (M/s)</i>	<i>Marks</i>	<i>Rank</i>	<i>Status</i>
7/15	<i>M/s Global Infra Solutions in JV with M/s TPF Engineering Pvt Ltd in association with</i>	<i>Non-Responsive</i> <i>The Bidder JV Partner M/s TPF Engineering Private Limited has been debarred by NHLML vide letter dated 05.06.2023. M/s Global Infra Solutions in JV with M/s TPF Engineering</i>		



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	<i>M/s MAV ASSOCIATES LLP</i>	<i>Pvt Ltd in association with M/s MAV ASSOCIATES LLP is considered as non-responsive as per the NHAI/ Guidelines/ Non-Performer & Debarment/ 2022 Policy Circular no. 16.12/2022 dated 18.01.2022,</i> <i>"Debarment/declaration as non-performer of a particular firm shall automatically extend to all its allied firms. In case of joint venture/ consortium is debarred, all partners/ member shall stand debarred for the entire period."</i>
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12. The subject RFP in this writ petition bears tender ID: 2023_NHAI_172924_1.

13. Apart from seeking quashing of the decision of the respondent No.1 declaring the petitioner's bid as non-responsive in technical evaluation, it has also been prayed that a direction be issued to the respondent No.1 to consider the petitioner as responsive.

W.P.(C.) No. 849/ 2025

14. This writ petition challenges the decision of the respondent No.1 as contained in the communication dated 10.01.2025, whereby the petitioner's bid has been declared to be non-responsive. The subject RFP, which engages the attention of this Court in this writ petition, was issued in April 2023, for Independent Engineer services for the Construction of 4 Lane Bypass to NH114A Connecting NH-333 and NH-133 (Deoghar Bypass) from design km 0.000 to design Km 49.000 (Total Length 49.000 km) in the state of Jharkhand. The reason for declaring the petitioner's bid as non-responsive in this writ petition can be found in the communication dated 10.01.2025, which is as under:



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S.No.	Description	Relevant experience for the assignment	Experience in use of technology for road inspection	Qualifications and competence of the key staff for the assignment	Total
	Firm	40	20	40	100
10.	M/s TPF Engineering Pvt. Ltd. In Association with M/s Rotrans Infra Projects Pvt. Ltd.	Non-Responsive-Being Allied company of M/s. TPF Gentisa Eurustudios S.L which has been debarred for a period of 2 years w.e.f 15.06.2023 vide NHAI's letter no. DC/53/DraftTermination/NewAE/eFile-201323 dated 05.06.2023 to be read with Judgement of Hon'ble Supreme Court of India dated 27.11.2024 in W.P. (C) 2326/2024 and Judgement of Hon'ble High Court of Delhi dated 03.11.2023 in W.P. (C) 8619/23 and CM APPL. 32714/2023 & CM APPL. 36561/2023 against TPF Engineering Private Limited:) and also the bidder does not meet the minimum eligibility as per clause 15 C.			

15. It is to be noticed that apart from praying for quashing of the said decision declaring the petitioner's bid to be non-responsive, it has also been prayed that an appropriate direction be issued to respondent No.1 to consider the petitioner as responsive in technical evaluation.

16. The Tender ID attached to the subject RFP in this writ petition is Tender ID: 2023_NHAI_151115_1.

W.P.(C.) No. 1721/ 2025

17. This writ petition has been instituted with two prayers. The first prayer is for quashing the circular letter dated 07.10.2021 issued by the Government in the Ministry of Road Transport & Highways [hereinafter referred to as the 'MoRTH'] on the subject of Standard Operating



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Procedure to debar/ penalize/declare as Non-Performer the Authority's Engineer/ Independent Engineer/ Construction Supervision Consultant/ Project management Consultant in National Highways and centrally sponsored road projects.

18. Challenge has been made to this circular letter to the extent it provides that upon declaration of a firm as non-performer, it is not only that the concerned AE/IE/CSC/PMC will not be able to participate in any bid till such time the debarment persists or such an entity is removed from the list of non-performers, but such AE/IE/CSC/PMC shall include its JV partners, promoters etc., whose credentials were considered while qualifying them for the project. Thus, the primary challenge to the circular letter dated 07.10.2021 is to clause 9 of the said circular, which is as under:

“9. Upon declaration of non-performer, the AE/IE/CSC/PMC will not be able to participate in any bid for National Highways projects with MoRTH or any other executing agencies till such time the debarment persists or the AE/IE/CSC/PMC is removed from the list of non-performers. The AE/IE/CSC/PMC shall include its JV partners, promoters etc. whose credentials were considered while qualifying them for the project. Non-performer/ debarment status of a bidder on the bid due date will be the criteria for eligibility of a bidder to participate in the said bid.”

19. Challenge in this petition has also been made to another circular letter dated 04.01.2022 issued by the Government of India in the MoRTH, which provides that Debarment/declaration as a non-performer of a particular firm shall automatically extend to all its allied firms. It also provides that in case a joint venture/ consortium is debarred, all partners/members shall stand debarred for the entire period. The impugned clause in the circular dated 04.01.2022 is as follows:



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<i>Existing Provisions</i>	<i>Amended Provisions</i>
9.xxxx	9.1 xxxx 9.2 xxxx 9.3 Debarment/declaration as non-performer of a particular firm shall automatically extend to all its allied firms. In case a joint venture/consortium is debarred, all partners/members shall stand debarred for the entire period.

20. The petitioner is also praying for the issuance of a direction to the respondent No.1 to consider its bid and declare the same as responsive.

W.P.(C.) No. 3304/ 2025

21. This writ petition seeks a prayer to quash the fresh tender notice dated 16.01.2025, as also the communication dated 20.01.2025 issued by the respondent No.1 whereby the letter of award dated 10.12.2024 issued in favour of the petitioner has been withdrawn due to debarment. The other prayer made in the writ petition is for issuing a direction to the respondent No.1 to issue letter of award in favour of the petitioner for Consultancy Services for Authority Engineer for supervision of Construction of 4 Nos of Standalone safety structures/works at different locations on various National Highways (Package-II) in the state of Maharashtra.

CERTAIN OTHER RELEVANT FACTS

22. The primary grievance of the petitioner raised in W.P.(C.) No. 813/2025, W.P.(C.) No. 814/2025, W.P.(C.) No. 848/2025 and W.P.(C.) No. 849/2025 is against the decision of the NHAI declaring the bids to be non-



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responsive in technical evaluation. It is the assertion of the NHAI that the petitioner is an ‘Allied Firm’ of the debarred entity, M/s. TPF Gentisa Eurustudios S.L., which is disqualified from participating in any bidding process for Consultancy Services, including Independent Engineering, i.e. Authority Engineer (AE) for similar roads under any executing agency of MoRTH, including NHAI. The duration of the debarment period is prescribed in the order of debarment dated 05.06.2023. The relevant condition in the RFP, which appears to be similar in nature in all the subject RFPs can be found in Clause 17 of Section 1 of the RFP, which is extracted herein below:

“17. The Bidder including individual or any of its Joint Venture Member should, in the last 2 years, have neither failed to perform for the consultancy services pertaining to Expressways, National Highways, ISC (Inter State Connectivity) & EI (Economic Importance) works, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder including individual or any of its Joint Venture Member, as the case may be, nor has been expelled or terminated by Ministry of Road Transport & Highways or its implementing agencies for breach by such Bidder including individual or any of its Joint Venture Member. Consultants (sole firm or lead firm and any of the JV partners) who do not fulfil the aforesaid condition as on last date of submission of proposal, need not apply as their RFP proposal will not be entertained.”

23. The said condition in the RFP provides that the bidder in its individual capacity or any of its Joint Venture Member, should, in the last two years have neither failed to perform, as evidenced, by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, against the Bidder including individual or any of its Joint Venture Member, nor has it been expelled or terminated by MoRTH or its



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implementing agencies for breach by such Bidder including individual or any of its Joint Venture Member. The condition, in fact, provides that a bidder will not be eligible to participate not only in a situation where the bidder individually has failed to perform or has been expelled or terminated for breach, but it also provides that in case of such failure or breach by any of the Joint Venture partners, the concerned bidder shall be disqualified.

24. The Government of India for regulating Standard Operating Procedure to debar/ penalize/ declare as non-performer any entity has issued a circular letter dated 17.10.2021, Clause 9 whereof provides that upon declaration of an entity as non-performer, such entity will not be able to participate in any bid and the entity shall include its Joint Venture partners and promoters etc., whose credentials were considered while qualifying them for the project.

25. Clause 9 of the circular dated 07.10.2021 was further amended by another circular issued by the MoRTH on 04.01.2022, which provides that debarment/ declaration as a non-performer of a firm shall automatically be extended to all its allied firms. It further provides that in case a Joint Venture consortium is debarred, all partners/members shall stand debarred for the entire period.

26. The term 'Allied Firm' is defined in the guidelines on debarment of firms from bidding annexed with the Office Memorandum dated 02.11.2021 issued by the Department of Expenditure, Ministry of Finance, Government of India, to mean all concerns which come within the sphere of effective influence of the banned/suspended firms. The definition Clause as contained in the guidelines on debarment of firms from bidding issued by the Office



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Memorandum dated 02.11.2021 provides that in determining as to whether a firm is 'allied firm', certain factors may be taken into consideration, such as (a) whether there is common management, (b) whether majority interest in the management is held by the partners or directors of banned/ suspended firm, (c) whether substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice, (d) whether the firm directly or indirectly controls or is controlled by or is under common control with another bidder and (e) all successor firms will also be considered as allied firms.

27. Clause 3 of the guidelines contained in the Office Memorandum dated 02.11.2021 is extracted hereinbelow:

"3. Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:

a. Whether the management is common;

b. Majority interest in the management is held by the partners or directors of banned/ suspended firm;

c. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.

d. Directly or indirectly controls, or is controlled by or is under common control with another bidder. All successor firms will also be considered as allied firms."

28. It is also to be noticed that by means of the order dated 05.06.2023, passed by the NHAI, M/s. TPF Gentisa Eurustudios S.L. was debarred from participation in tenders for a period of two years in future projects of NHAI/ MoRTH. The said order dated 05.06.2023 also debarred the executing agencies of M/s. TPF Gentisa Eurustudios S.L. either directly or indirectly.



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29. It is on the basis of the relationship of the petitioner with M/s. TPF Gentisa Eurustudios S.L. and M/s TPF S.A. that the petitioner firm has been treated to be an allied firm of M/s. TPF Gentisa Eurustudios S.L., and on this basis, the petitioner's bids have been declared to be non-responsive on account of the debarment order dated 05.06.2023, passed in respect of M/s. TPF Gentisa Eurustudios S.L.

30. As observed above, the respondent No. 1 has treated the petitioner as an allied firm of M/s. TPF Gentisa Eurustudios S.L. in view of what has been provided in the office memorandum dated 02.11.2021 and, accordingly, the petitioner's bids have been declared to be non-responsive placing reliance on Clause 9 of the circular letter dated 07.10.2021 as amended per Clause 9.3 of the circular dated 04.01.2022.

**Relationship Between M/s. TPF ENGINEERING Pvt. Ltd. (Petitioner),
M/s. TPF Gentisa Eurustudios S.L. and M/s TPF S.A.**

31. In the counter affidavit filed in these petitions, the NHAI has stated that undisputedly 98.19% shares of M/s. TPF Gentisa Eurustudios S.L. are held by M/s TPF S.A., and M/s TPF S.A. holds a 51% shareholding of M/s TPF Engineering Pvt. Ltd. (petitioner) and that M/s TPF S.A. is the holding/parent company of both M/s. TPF Gentisa Eurustudios S.L. and M/s TPF Engineering Pvt. Ltd. (petitioner). In the counter affidavit the NHAI has also disclosed the shareholding pattern of M/s. TPF Gentisa Eurustudios S.L. and M/s TPF Engineering Pvt. Ltd. (petitioner). The relevant assertion made in this regard by NHAI in the counter-affidavits can be extracted from



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paragraph 10 of the counter-affidavit filed in W.P.(C.) No. 813/ 2025, which is as under:

“10. That, TPF Engineering Pvt. Ltd. & TPF Getinsa Euroestudios S.L. are allied firms in terms of above cited SOP and OM for the following reasons:

A. Undisputedly, the 98.19% shares of TPF Getinsa are held by another company i.e., TPF SA and the same TPF SA hold 51 % shareholding of TPF Engineering. TPF SA is the holding/ parent company of both TPF Engineering and TPF Getinsa. The shareholding pattern of TPF Engineering and TPF Getinsa is as below:

Shareholder	Shares held in TPF Engineering	Shares held in TPF Getinsa
M/S TPF SA	51%	98.19%
Atul Damodar Bhohe	49%	0%
Gregorio Lopez Vallejo	-	0.75%
Jonathon Morgan	-	0.76%
Ahmed El Khadri	-	0.07%
Joie Manual Ballesteros Lopez	-	0.23%
Total	100%	100%

Following crucial facts about TPF Engineering being an allied firm of TPF Getinsa and being under common management have been suppressed:

B. The TPF Getinsa is the company incorporated in Spain and also operate in India through its authorised representatives. Mr. Jose Manuel Vacas Munoz, the Authorised Representative of TPF Getinsa in India is also the director of TPF Engineering.



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C. The "TPF Getinsa Euroestudios SL JV TPF Engineering Pvt. Ltd" is the subsidiary of TPF Engineering.

D. TPF Engineering and TPF Getinsa applied for a project in the state of Maharashtra as a Joint Venture wherein TPF Engineering had 95% shares and TPF Getinsa had 5% shares and even then TPF Getinsa was the Lead Partner, which signifies the control and effective influence of TPF Getinsa over TPF Engineering. The said information form part of the Technical Proposal submitted by TPF Engineering in the bid pertaining to the present matter and still the same was not disclosed in the Petition under reply.

E. Effectively, it is the TPF S.A. who exercise control over both its subsidiaries i.e., TPF Engineering & TPF Getinsa."

32. We may also note that replying to the averments made in paragraph 10 to the counter affidavit filed by the NHAI, the petitioner in its rejoinder affidavit has not specifically denied the share holding pattern of the petitioner and M/s. TPF Gentisa Eurustudios S.L. as disclosed by the NHAI in its counter affidavit. In replying to the said assertion made by the NHAI regarding the share holding pattern of the petitioner and M/s. TPF Gentisa Eurustudios S.L. and also the relationship between the petitioner, M/s. TPF Gentisa Eurustudios S.L. and M/s TPF SA, all that the petitioner in its rejoinder affidavit has stated is that the assertions made by the NHAI are disputed and denied. It has further been asserted by the petitioner that it is not an allied firm of M/s. TPF Gentisa Eurustudios S.L. The reply to the contents of paragraph 10 of the counter affidavit filed by the NHAI can be found in paragraph 23 of the rejoinder affidavit filed by the petitioner which is extracted hereinbelow:

"23. The contents of Paragraph 10 are disputed and denied in view of the submissions made herein above and, in the Petition, which are not repeated herein for the sake of brevity. Petitioner No. 1 is not an allied firm of TPFGE. Respondent No. 1 solely relied on the fact that both



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Petitioner No. 1 and TPFGE had majority shareholding of one M/s TPF S.A., a globally renowned consultancy firm despite the management, staff and for all other working purposes the two companies were distinct and had independent existence and Petitioner No. 1 is independently managed and controlled through its Board of Directors. While TPFGE is a wholly owned subsidiary of M/S TPF S.A., the shareholding of M/S TPF SA in Petitioner No. 1 is only 51 % and the Board of Directors of the Petitioner No. 1 is also independent, professionally managed and separate. The management of TPFGE do not hold a majority interest in Petitioner No. 1 company as the management of both the entities are distinct and separate. TPFGE does not hold any substantial or majority shares in Petitioner No. 1. TPFGE is not the subsidiary company of Petitioner No. 1. The Petitioner No. 1 had bid for the tender in joint venture with MSV International, Inc in association with MAV Associates LLP. MSV International, Inc and MAV Associates LLP does not control or has any relationship with TPFGE. Petitioner No. 1 and TPFGE are not successor firms within the definition of clause 3 of the OM dated 02.11.2021. ”

33. It is also the case of the NHAI that though M/s. TPF Gentisa Eurustudios S.L. (debarred firm) does not hold any shares in the petitioner firm but there are two common directors. The fact that Mr. Thomas Spitaels is a common director in both M/s TPF Engineering Pvt. Ltd (petitioner) and M/s. TPF Gentisa Eurustudios S.L. is admitted by the petitioner which is apparent from a perusal of the communication dated 21.04.2025 which was made by the petitioner to the NHAI and has been annexed as Document-2 along with submission of documents made by the petitioner as per order dated 04.04.2025 in W.P.(C.) No. 1721/ 2025.

34. Another relevant fact which deserves our notice for appropriate adjudication of the controversy involved in these matters is the provisions of Clause 1.6 of Section 2 of the RFP, which reads as under:

“1.6 Consultant have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or than may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the



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Consultant or the termination of its Contract and/or any other action as deemed fit by the Authority at any stage. ”

35. We may also note certain facts relating to filing of W.P.(C.) No. 8619 of 2023 by the petitioner which was decided by a co-ordinate Bench of this Court on 03.11.2023. The said writ petition was filed by the petitioner challenging the decision of the National Highways Logistics Management Limited & Anr (**NHLML**) which is a subsidiary company of NHAI challenging a decision of NHLML whereby NHLML had declared the petitioner technically non-responsive qua the RFP issued by NHLML for the feasibility study for development of certain identified ropeway projects. The bid submitted by the petitioner in this respect was declared non-responsive for the same reason which has been assigned to declare the petitioner non-responsive in the instant matters. The NHLML declared the petitioner non-responsive on the ground that the petitioner is an allied firm of M/s. TPF Gentisa Eurustudios S.L. The reason for debarment of the petitioner qua this RFP was that the debarment order passed in respect of M/s. TPF Gentisa Eurustudios S.L. stood automatically extended to the petitioner being an allied firm of M/s. TPF Gentisa Eurustudios S.L. The Division Bench, however, by means of the judgment dated 03.11.2023 dismissed the said writ petition.

36. The judgment dated 03.11.2023 passed by this Court was challenged by the petitioner in Special Leave to Appeal No. 2326/ 2024 which was disposed of by means of an order dated 27.11.2024 by observing that in view of the fact that the tender itself has been cancelled, nothing survives for adjudication in the said SLP. The Hon'ble Supreme Court, however,



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noticed in the said order that ‘*We have further been informed that there is no blacklisting of the petitioner involved. The statement of the learned senior counsel appearing for the respondent to that effect stands recorded*’.

37. Another relevant fact which needs to be noted is that an order was passed on 04.04.2025 by this Court in these matters on the statement made by learned counsel representing the NHAI that representation dated 16.01.2025 preferred by the petitioner stating therein that the petitioner firm cannot be treated as an allied firm of M/s. TPF Gentisa Eurustudios S.L. shall be decided by the said order dated 04.04.2025 it was directed that an appropriate decision be taken on the aforesaid representation by the competent authority of the NHAI after providing an opportunity of hearing to the petitioner. In compliance of the said order dated 04.04.2025, the representation was considered by the NHAI, and was decided by the NHAI holding that the petitioner has rightly been considered non-responsive as the petitioner stands debarred in terms of the circular dated 04.01.2022 and the office memorandum dated 02.11.2021, as also the circulars/SOP dated 07.10.2021, for the reasons that the petitioner is an allied firm of M/s. TPF Gentisa Eurustudios S.L. The said decision of the NHAI is embodied in the communication dated 25.04.2025, where the background of the case as also the issue raised by the petitioner in the representation dated 16.01.2025 have been considered and it has been held that the petitioner is the allied firm of M/s. TPF Gentisa Eurustudios S.L. in terms of clause 3 of the guidelines of debarment of firms from bidding as contained in the office memorandum dated 02.11.2021 issued by the Ministry of Finance. The reasons have also been disclosed in the said order of communication dated 25.04.2025.



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38. The relevant extract of the communication/order dated 25.04.2025 holding the petitioner to be an allied firm of M/s. TPF Gentisa Eurustudios S.L. is extracted hereinbelow:-

*“B. On perusal of (i) documents, (ii) representation made by TPF Engineering, (iii) submissions made in personal hearing, it is observed that TPF Engineering is the ‘allied firm’ of TPF Getinsa in terms of **clause 3** of the “guidelines of debarment of firms from biddin” (“**Guidelines**”) provided in OM dated 02.11.2021 issued by Ministry of Finance, on the basis of the following:*

i. As evident from MCA Master data of TPF Engineering and Technical Proposal of TPF Getinsa and also admitted by TPF Engineering in their letter dated 21.04.2025, Mr. Thomas Spitaels, the member of board of directors of TPF Getinsa, is also one of the directors of TPF Engineering.

ii. As admitted by TPF Engineering in their letter dated 21.04.2025, TPF SA hold 98.19% shares of TPF Getinsa and 51% shareholding of TPF Engineering. Thus, TPF Engineering and TPF Getinsa are under common control of TPF SA.

iii. As evident from the CA Certificates constituting part of Technical Proposal of TPF Engineering, TPF Engineering in joint venture with TPF Getinsa applied for a project in the state of Maharashtra wherein TPF Engineering had 95% shares and TPF Getinsa had 5% shares and still TPF Getinsa was the Lead Partner. No explanation was given by TPF Engineering as to why this would happen. It could not have happened without them being allied firm.

iv. As disclosed in Technical Proposal of TPF Engineering “TPF Getinsa Euroestudios SL JV TPF Engineering Pvt. Ltd” is the subsidiary of TPF Engineering.

v. Mr. Christophe Gilain, who is the director of TPF Engineering, has also been the advisor in TPF Getinsa.

3. TPF SA completely control TPF Getinsa and as per the provisions of Companies Act, 2013, by virtue of TPF SA having 51% shareholding in TPF Engineering, TPF SA exercise effective control over the general affairs of the TPF Engineering and effectively run the business as it:

A. Has effective control over day-to-day decisions of TPF Engineering via having a upper hand in ordinary resolutions (51% shareholding) in terms of Section 114(1) including but not limited to:



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- i. Appointment/removal of auditors (Section 139)
- ii. Approval of director's report and financial statements (Section 134)
- iii. Declaration of dividend (Section 123)
- iv. Appointment of directors (other than independent director) (Section 152)

B. Can restructure the board as long as procedural compliance is met (special notice, opportunity to be heard, etc.):

It can initiate and pass a resolution to remove a director, even before the expiry of their term, subject to the provisions of Section 169.

C. Can block Special Resolutions:

- i. As per Section 114(2), the requirement of number of voting for effectively passing of a special resolution is not less than three times the number of votes, if any, cast against the resolution by members so entitled and voting i.e., 75% votes in favour.
- ii. Therefore, no other shareholders/ members can pass a special resolution on their own as TPF SA holds 51% shares in TPF Engineering.
- iii. TPF SA having 51% shares in TPF Engineering can block any special resolution initiated by other members.
- iv. Some of the issues for which special resolution is required are:
 - Alteration of Memorandum or Articles (Sections 13 & 14)
 - Issue of shares on a preferential basis (Section 62(1)(c))
 - Buy-back of shares beyond 10% (Section 68)
 - Approval for loans/guarantees beyond limits (Section 186)

4. Also, 'Control' is defined under Section 2(27) of the Companies Act, 2013 to mean the right to appoint majority directors (de-jure control) or to control management and policy decisions (de-facto control). Admittedly, TPF Engineering and TPF Getinsa (debarred firm) are both subsidiaries of a common holding company, being TPF SA. Thus, as enumerated herein, both companies share common control and resultantly, TPF Engineering is an 'Allied Firm' of TPF Getinsa.

5. Hence, from the above it is quite clear that the TPF Engineering Pvt. Ltd. is the 'Allied Firm' of TPF Getinsa in terms of clause 3 of the Guidelines. Thus, the bid of TPF Engineering has rightly been considered non-responsive as TPF Engineering stands debarred till 05.06.2025 in terms of Circular dated 04.01.2022 issued by Ministry of Road Transport and Highways ("MoRTH") amending para 9 of MoRTH SOP dated 07.10.2021, Office Memorandum dated 02.11.2021 issued by Ministry of Finance and NHAI's Circular/ SOP dated



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18.01.2022 because it is the allied firm of TPF Getinsa which, vide NHAI's letter dated 05.06.2023, has been debarred for 2 years w.e.f. 05.06.2023.

6. This is issued without prejudice to the rights and remedies available to NHAI as per extant provisions of Contract Agreement/ Rules.”

39. The petitioner had preferred SLP (C) No. 2743/2025 against the order dated 24.01.2025 whereby it was provided by this Court that further proceedings pursuant to the tender shall be subject to further orders which may be passed by this Court. Simultaneously, the petitioner also filed W.P. (C) No. 88/2025 challenging the validity of the circulars dated 07.10.2021 and 04.01.2022.

40. The aforesaid SLP and the Writ Petition were taken up together by the Hon'ble Supreme Court. By means of an order dated 03.02.2025, this Court was requested to make an endeavour to dispose of the matters on the next date. In respect of W.P.(C) No.88/2025, the Hon'ble Supreme Court permitted the petitioner to seek withdrawal of the said writ petition with liberty to approach this Court, and accordingly W.P.(C) No.1721/2025 has been filed challenging both the aforesaid circulars.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

41. It has been vehemently argued on behalf of the petitioner that the impugned decision of the NHAI declaring the petitioner's bid to be non-responsive on the ground that the petitioner stood debarred being an allied firm of M/s. TPF Gentisa Eurustudios S.L. is not sustainable for the reasons that: (i) in the facts of the case, the petitioner cannot be said to be an allied firm of M/s. TPF Gentisa Eurustudios S.L.; and (ii) that there cannot be any automatic debarment as a result of the debarment of a sister concern.



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42. It has also been urged on behalf of the petitioner that before arriving at a conclusion that the petitioner firm is an allied firm of M/s. TPF Gentisa Eurustudios S.L., neither any opportunity was given nor such an opportunity is provided under the impugned circulars dated 07.10.2021 and 04.01.2022 issued by the MoRTH. The submission in this regard is that debarment or blacklisting of a firm from participation in tender process results in virtual civil death of the firm concerned and as per law, before treating an allied firm to be automatically debarred, the principle of natural justice ought to be adhered to, in absence whereof such a decision treating the petitioner firm to have been automatically debarred cannot be sustained. It has further been argued that the Hon'ble Supreme Court in its order dated 27.11.2024 had, while disposing of the said SLP in the background of the fact that the tender in question which was subject matter of the said SLP was cancelled, also noted the statement made on behalf of NHLML that there is no blacklisting of the petitioner.

43. In this view, it has been argued by learned senior counsel representing the petitioner that by treating the petitioner's bid as non-responsive, the NHAI seeks to overreach the said order dated 27.11.2024 passed by the Hon'ble Supreme Court. Further submission on behalf of the petitioner is that automatic debarment in terms of the impugned circulars dated 07.10.2021 and 04.01.2022 results in visiting a firm, other than the debarred firm, with civil death vicariously, that too without providing any opportunity of hearing and, therefore, it was incumbent on the part of the NHAI to have provided opportunity to the petitioner before taking decision declaring the



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petitioner's bid to be non-responsive on the ground that petitioner is an allied firm of M/s. TPF Gentisa Eurustudios S.L..

44. It has also been argued on behalf of the petitioner that merely because one of the Directors in the petitioner company and in M/s. TPF Gentisa Eurustudios S.L. is common; such a singular fact cannot qualify the petitioner to be an allied firm of M/s. TPF Gentisa Eurustudios S.L.

45. Drawing our attention to the definition of the term 'allied firm' as occurs in the guidelines of debarment of firm from bidding enclosed with the office memorandum dated 02.11.2021, it has been submitted on behalf of the petitioner that even on the factors which are to be taken into consideration for determining as to whether a firm is an allied firm of the debarred firm, as given in the definition contained in clause 3 of the said guidelines, the petitioner cannot be said to be an allied firm of M/s. TPF Gentisa Eurustudios S.L. Elaborating further, learned senior counsel for the petitioner have submitted that clause 3 of the said guidelines enclosed with the office memorandum dated 02.11.2021 provides that for determining as to whether a firm is an allied firm of a debarred firm there are certain factors which are to be taken into consideration as (i) whether the management is common, (ii) whether majority interest in the management is held by the partners or Directors of banned/suspended firm, (iii) whether substantial or majority share owned by banned or suspended firm and by virtue of this it has a controlling voice, (iv) whether directly or indirectly the debarred firm controls or the firm is under common control with another bidder. The submission is that the petitioner and M/s. TPF Gentisa Eurustudios S.L. are two separate entities and independent juristic persons, where management is



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not common, nor is any interest in the management of the petitioner held by Directors of the debarred firm, namely M/s. TPF Gentisa Eurustudios S.L. Further submission is that M/s. TPF Gentisa Eurustudios S.L. does not have any shareholding in the petitioner company, nor does the petitioner holds any share in M/s. TPF Gentisa Eurustudios S.L. It has, thus, been argued that merely because the parent/umbrella company, namely M/S TPF S.A., holds shares in both these companies, namely the petitioner company as well as M/s. TPF Gentisa Eurustudios S.L., it cannot be said that M/s. TPF Gentisa Eurustudios S.L. in any manner has interest in the petitioner company; nor can it be said that M/s. TPF Gentisa Eurustudios S.L. (the debarred company) controls either directly or indirectly the petitioner company.

46. In the aforesaid view, the submission is that the decision of the NHAI holding the petitioner firm to be an allied firm of M/s. TPF Gentisa Eurustudios S.L., and thereby declaring the petitioner's bid as non-responsive in technical evaluation on the ground that the petitioner stood debarred automatically on the debarment of M/s. TPF Gentisa Eurustudios S.L. *vide* order dated 05.06.2023, is not sustainable.

47. So far as challenge to the Standard Operating Procedure dated 07.10.2021, and circular dated 04.01.2022, issued by MoRTH, is concerned, it has been argued on behalf of the petitioner that the impugned Standard Operating Procedure and circular do not provide for any opportunity of hearing to the allied firm before treating the allied firm to be automatically debarred on debarment of the sister firm, which is absolutely illegal, arbitrary and irrational for the reason that it excludes observance of principle



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of natural justice. It is also the submission of the petitioner in this regard that as it is well established debarment of a tenderer from participation of a tender process visits such a tenderer with very serious consequences and debarment, in fact, is termed to be civil death of the tenderer concerned for the reason that it is prohibited from doing any business and, therefore, in these circumstances, not making any provision for observance of the principle of nature justice cannot be approved of and for this reason the impugned circulars dated 07.10.2021 and 04.01.2022, are not sustainable.

48. In support of their submissions, learned senior counsel for the petitioner have relied upon the following judgments: -

1. ***Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731***
2. ***Sunrise House Keeping & Support Services (P) Ltd. v. Chandigarh Industrial & Tourism Development Corpn. Ltd., 2017 SCC OnLine P&H 6554***
3. ***Raghunath Thakur v. State of Bihar, (1989) 1 SCC 229***
4. ***Frontier Alloy Steels Ltd. v. Union of India, 2007 SCC OnLine All 940***

ARGUMENTS ON BEHALF OF THE NHAI AND UOI

49. Opposing the Writ Petitions and prayers made therein it has been contended on behalf of the respondents/NHAI and UoI that the petitioner being an allied firm in terms of clause 3 of the guidelines on debarment of firm from bidding enclosed with the Office Memorandum dated 02.11.2021, the petitioner has rightly been held to be an allied firm of M/s. TPF Gentisa



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Eurustudios S.L., for the reason that the petitioner firm as also M/s. TPF Gentisa Eurustudios S.L., are under common management considering the shareholding of the umbrella company, namely M/S TPF S.A., in these two companies which are 51 % and 98.19% respectively.

50. Further submission on behalf of the respondents is that the petitioner and M/s. TPF Gentisa Eurustudios S.L., submitted their application for grant of a project in the State of Maharashtra as a Joint Venture(JV), wherein the petitioner had 95% shares and M/s. TPF Gentisa Eurustudios S.L., had 5% shares, and even then M/s. TPF Gentisa Eurustudios S.L., was projected as the lead partner of the said JV. According to learned counsel for the NHA and learned ASG, this fact itself signifies the control and effective influence of M/s. TPF Gentisa Eurustudios S.L., over M/s TPF Engineering Pvt Ltd. It has also been argued that effectively, it is the M/S TPF S.A., which exercises control over both its subsidiaries, i.e. the petitioner company and M/s. TPF Gentisa Eurustudios S.L. The submission, thus, is that in terms of the factors to be taken into account for treating the petitioner as an allied firm of M/s. TPF Gentisa Eurustudios S.L., as per clause 3 of the guidelines of debarment of firms from bidding enclosed with the Office Memorandum dated 02.11.2021, there is enough material, which establishes that the petitioner is an allied firm of M/s. TPF Gentisa Eurustudios S.L., Learned counsel representing the respondents have also stated that the petitioner did not disclose the debarment of M/s. TPF Gentisa Eurustudios S.L., and its relationship with this firm in terms of clause 1.6 of Section 2 of RFP, whereas the said clause obligated the petitioner to disclose



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any situation of conflict that may impact or that may be perceived to impact the petitioner's capacity to serve the best interest of NHAI.

51. In respect of challenge laid by the petitioner against the circulars dated 07.10.2021 and 04.01.2022, it has been argued that prior to filing of W.P (C) No. 1721/2025, in the earlier Writ Petitions namely in W.P (C) No. 813/2015, W.P (C) No. 814/2025, W.P (C) No. 848/2025 and W.P (C) No. 849/2025 no challenge to these circulars was made, as a result of which the petitioner has acquiesced to these circulars and waived the right to challenge the same.

52. On behalf of the NHAI, it has been also argued that once the tendering authority decides that a particular tenderer is not trustworthy, then naturally its allied firm also cannot be trusted and, therefore, any circular providing for automatic debarment of the allied firm cannot be said to be arbitrary. Further submission is that at the time of passing of the order of debarment of the debarred firm, the principles of natural justice had been followed and, therefore, consequential automatic debarment of the allied firm does not require issuance of a show cause notice for the reason that it will be only an empty formality. It is also the submission of learned counsel for the NHAI that it is well within the discretion of a tendering authority to not enter into a contract with an untrustworthy entity and its allied firms, and accordingly, no direction can be sought against the tendering authority to enter into a contract with the allied firm.

53. It is also the submission on behalf of the respondents that the scope of judicial review in the tender matters by this Court is very limited and any



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inference should be confined to an action of a public authority only if it is found to be arbitrary, discriminatory, mala fide, or actuated by bias.

54. In support of these submissions reliance has been placed on the following judgments by the respondents:-

1. ***Jagdish Mandal v. State of Orissa***, (2007) 14 SCC 517
2. ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.***, (2016) 16 SCC 818
3. ***Michigan Rubber (India) Ltd. v. State of Karnataka***, (2012) 8 SCC 216
4. ***Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)***, (2016) 8 SCC 622
5. ***Montecarlo Ltd. v. NTPC Ltd.***, (2016) 15 SCC 272
6. ***Silppi Constructions Contractors v. Union of India***, (2020) 16 SCC 489
7. ***N.G. Projects Ltd. v. Vinod Kumar Jain***, (2022) 6 SCC 127
8. ***Tata Motors Ltd. v. Brihan Mumbai Electric Supply & Transport Undertaking***, (2023) 19 SCC 1

55. As far as the ground taken by the petitioner in respect of violation of principle of natural justice is concerned, it has been argued on behalf of the respondents that the said principles cannot be formulated in any straitjacketed formula and that in case in the facts of a particular case, issuance of notice and providing opportunity results in a futile exercise, the principle of natural justice will have no application. Reliance in this regard has been placed on the following judgments:-



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1. *S.L. Kapoor v. Jagmohan*, (1980) 4 SCC 379
2. *Dharampal Satyapal Ltd. v. CCE*, (2015) 8 SCC 519
3. *State of U.P. v. Sudhir Kumar Singh*, (2021) 19 SCC 706
4. *Karnataka SRTC v. S.G. Kotturappa*, (2005) 3 SCC 409
5. *Sunrise House Keeping & Support Services (P) Ltd. v. Chandigarh Industrial & Tourism Development Corpn. Ltd.*, 2017 SCC OnLine P&H 6554

56. Drawing our attention to the order dated 25.04.2025 passed by the NHAI it has been argued by the learned counsel representing the NHAI that in any case in compliance of the order dated 04.04.2025 the petitioner's representation was considered and an opportunity of hearing was also provided and, therefore, the petitioner cannot take the plea of violation of principle of natural justice.

57. It is further submitted on behalf of the NHAI that the order rejecting the representation of the petitioner, which has been passed by the NHAI on 25.04.2025, contains detailed reasons as to why the petitioner has rightly been held to be an allied firm of M/s. TPF Gentisa Eurustudios S.L., According to NHAI, the order dated 25.04.2025 contains unimpeachable reasons and, therefore, in the facts and circumstances of the case, the petitioner has rightly been held to be an allied firm of M/s. TPF Gentisa Eurustudios S.L.

ISSUES



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58. On the basis of the pleadings available on record and the competing submissions made by learned counsel representing the respective parties following issues emerge for our consideration and decision:-

- (a) As to whether the petitioner is an allied firm of M/s. TPF Gentisa Eurustudios S.L.; and
- (b) As to whether the impugned circulars dated 07.10.2021 and 04.01.2022 issued by MoRTH are liable to be quashed for the reasons that these circulars do not provide for issuance of notice; neither do they provide for an opportunity of hearing to the allied firm before treating it as debarred automatically.

DISCUSSION AND CONCLUSION

ISSUE ‘a’-

59. The term allied firm is defined in clause 3 of the guidelines on debarment of a firm from bidding enclosed with the office memorandum dated 02.11.2021 issued by the Ministry of Finance, Government of India. Clause 3 of the said guidelines has already been extracted in one of the preceding paragraphs. According to the said definition, all concerns coming within the scope of the “*effective influence*” of the debarred firm are treated as allied firms. The factors which are to be taken into consideration for determining as to whether a firm is an allied firm of the debarred firm are also given in clause 3 of the said guidelines.

60. A perusal of the clause 3 of the guidelines enclosed with the Office Memorandum dated 02.11.2021 leads us to infer that the most significant factor to be considered for declaring a firm to be an allied firm of a debarred firm is the “effective influence” being exercised by the debarred firm.



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“Effective influence”, in our opinion, has to be inferred not only on the basis of the factors given in clauses ‘a’ to ‘e’ of the guidelines enclosed with the Office Memorandum dated 02.11.2021. We are further of the opinion that the factors mentioned in clause ‘a’ to ‘e’ of clause 3 of the guidelines are not exhaustive, that is to say other than the factors given therein, if the tendering authority for certain other reasons comes to the conclusion that debarred firm exercises “effective influence” on its sister firm, such a firm has to be treated as an allied firm.

61. In this respect, we may note that the fact that at least one Director in the petitioner company and M/s. TPF Gentisa Eurustudios S.L., is common and has not been denied by the petitioner. Further, the assertion made by the NHAI to the effect that the petitioner and M/s. TPF Gentisa Eurustudios S.L., had applied as a JV to procure a project in the State of Maharashtra, where the petitioner had 95% shares and M/s. TPF Gentisa Eurustudios S.L. had 5% shares, and even then M/s. TPF Gentisa Eurustudios S.L., was projected as the lead partner has also not been denied by the petitioner. In our opinion, this fact itself establishes the control and “effective influence” of M/s. TPF Gentisa Eurustudios S.L. over the affairs of the petitioner company.

62. We may further note that the order dated 25.04.2025, which was passed by NHAI pursuant to our direction issued on 04.04.2025 for deciding the representation preferred by the petitioner, has considered the issue in detail as to whether the petitioner company is an allied firm of the debarred firm, namely M/s. TPF Gentisa Eurustudios S.L., on the basis of documents and materials, that too, after giving opportunity of a hearing to the petitioner.



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The decision contained in the order/communication dated 25.04.2025 is based on documents, representation preferred by the petitioner and submissions made during the course of personal hearing.

63. The NHAI, while passing the order dated 25.04.2025, has taken into consideration the MCA Master Data of the petitioner and the technical proposal of M/s. TPF Gentisa Eurustudios S.L., the letter of the petitioner dated 24.04.2025 and has concluded that Mr.Thomas Spitaels, who is a member of the Board of Directors of M/s. TPF Gentisa Eurustudios S.L., is also one of the Directors of the petitioner company.

64. The NHAI, while passing the order dated 25.04.2025, has also recorded that it has been admitted by the petitioner in its letter dated 21.04.2025 that M/s TPF S.A. holds 98.19% shares of M/s. TPF Gentisa Eurustudios S.L., and 51% shares of the petitioner company and accordingly has concluded that the petitioner and M/s. TPF Gentisa Eurustudios S.L., both are under the common control of the umbrella or the parent company, namely, M/s TPF SA.

65. The decision of the NHAI holding the petitioner company to be an allied firm of M/s. TPF Gentisa Eurustudios S.L., as embodied in the communication/order dated 25.04.2025, is also based on the fact, which was evident from the CA certificate, that the petitioner in JV with M/s. TPF Gentisa Eurustudios S.L. had applied for a project in the State of Maharashtra, where the petitioner had 95% shares and M/s. TPF Gentisa Eurustudios S.L. had 5% shares, and even then M/s. TPF Gentisa Eurustudios S.L. (the minority shareholder to the extent of 50% in the JV) was the lead partner. The NHAI has thus concluded that such an



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arrangement, where a minority shareholder company in a JV is projected as the lead partner, can happen only if the petitioner company is an allied firm of M/s. TPF Gentisa Eurustudios S.L.

66. To conclude that M/s. TPF Gentisa Eurustudios S.L., exercises effective influence over the petitioner, NHAI has in its order dated 25.04.2025 relied on the fact that Mr.Christophe Gilain, Director of the petitioner, has also been Advisor in M/s. TPF Gentisa Eurustudios S.L. In view of certain admissions made by the petitioner which form the basis of NHAI's decision as contained in the communication/order dated 25.04.2025 holding the petitioner company to be an allied firm of M/s. TPF Gentisa Eurustudios S.L., and also considering the fact that there is nothing on record to arrive at a conclusion contrary to the conclusion arrived at by NHAI in its decision dated 25.04.2025, so far as issue 'a' as culled out above is concerned, we have no hesitation to hold that the petitioner firm is an 'allied firm' of M/s. TPF Gentisa Eurustudios S.L. in terms of clause 3 of the guidelines of debarment of firms from bidding enclosed with the office memorandum dated 02.11.2021.

ISSUE-'b'

67. Challenge to the Standard Operating Procedure/Circular dated 07.10.2021 and 04.01.2022 has been laid primarily on the ground that since debarment of an allied firm meets it with very severe civil consequences, which is termed as civil death, and therefore the said circulars by providing automatic debarment of the allied firm are in utter violation of the principles of natural justice for the reason that they do not provide for any opportunity



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of hearing to the allied firm. Further submission made in this regard is that there cannot be any automatic debarment of an allied firm without affording it an opportunity of hearing or representing its cause.

68. In this regard, we may observe that as laid down by the Hon'ble Supreme Court in various pronouncements as cited on behalf of the respondents, principles of natural justice cannot be enunciated in any straitjacket formula and that the rule of natural justice is flexible and depends primarily on the facts of a particular case. Para 39 and 40 of the judgment of ***Dharampal Satyapal Ltd.*** (*supra*) is apposite to be quoted here, which is as under:

*“39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing “would make no difference”—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corpn.* [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)] , who said that : (WLR p. 1595 : All ER p. 1294)*

“... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.”

*Relying on these comments, Brandon L.J. opined in *Cinnamond v. British Airports Authority* [(1980) 1 WLR 582 : (1980) 2 All ER 368 (CA)] that : (WLR p. 593 : All ER p. 377)*

“... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.”

In such situations, fair procedures appear to serve no purpose since the “right” result can be secured without according such treatment to the individual.



40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of “prejudice”. The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.”

69. The Hon’ble Supreme Court in ***Sudhir Kumar Singh*** (*supra*) has observed that natural justice is a flexible tool to reach out in a fit case to remedy injustice, and further that breach of the *audi alteram partem* rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. Para 42 of the judgment of ***Sudhir Kumar Singh*** (*supra*) is extracted herein below:

“42. An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.



42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

70. In ***Karnataka State Corporation (supra)***, the Apex Court has held as under:

“24. In any event, in the instant cases, it has not been found that the respondent was entitled, before his services were terminated, to receive compensation in terms of the provisions of Section 25-F of the Industrial Disputes Act. It was not a case where the services of the respondent could have been terminated only in compliance with the provisions of Section 25-F and on the appellant's failure to do so he had derived a right to continue in service. Furthermore, in Govindaraju [(1986) 3 SCC 273 : 1986 SCC (L&S) 520] there was no case of proved misconduct made out against the workman unlike the present cases. In this case, the appellant's contention that before imposing the punishments upon the respondent, opportunities of hearing had been granted to the workman concerned is not denied or disputed. Imposition of such punishment upon the workmen had not been questioned by them. They accepted the same and, thus, the same attained finality. The history sheets of the respondents clearly show that opportunities after opportunities had been given to them to improve themselves but they did not avail the same. It was in that situation if the services of the respondents were found not satisfactory and they were discontinued in service, no fault can be found with the action of the appellant herein. There is another aspect of the matter which cannot be lost sight of. The High Court of Karnataka had declared the last sentence of sub-regulation (5) of Regulation 10 as invalid. In view of such declaration, the respondent did not forfeit his right for being considered for appointment from the select list subject, of course, to fulfilment of other conditions, if any. The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction



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stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given. (See Escorts Farms Ltd. v. Commr., Kumaon Division [(2004) 4 SCC 281] , Bar Council of India v. High Court of Kerala [(2004) 6 SCC 311] , A. Umarani v. Registrar, Coop. Societies [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] and Divisional Manager, Plantation Division v. Munnu Barrick [(2005) 2 SCC 237 : 2005 SCC (L&S) 200] .)”

71. Thus, in view of the aforesaid legal principles enunciated by the Hon’ble Supreme Court in respect of application of principles of natural justice or violation thereof, what needs to be considered by us in this case is as to whether the impugned Standard Operating Procedure/Circulars dated 07.10.2021 and 04.01.2022 by not providing for application of principles of natural justice before treating an allied firm to be automatically debarred, causes any prejudice to the allied firm. In this regard, it is to be noticed that it is not that the debarred firm, before an order of debarment is passed or a declaration as non-performer is made, is not provided an opportunity of hearing. It is only after affording an opportunity of hearing that the decision in respect of the debarred firm is taken. As per the impugned circulars, debarment/declaration as a non-performer of a particular firm automatically extends to all its allied firms and further that in case a JV/consortium is debarred, all partners/members shall stand debarred for the entire period.

72. To appreciate the submissions made by learned counsel for the petitioner regarding non-observance of principles of natural justice, what needs to be taken into account is the fact as to what is the impact/effect on the allied firm once its sister firm is debarred or declared as a non-performer. In the business world, the concept of collaboration amongst the



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sister firms/concerns is not unknown, and in a situation where the debarred firm is in a position to exercise “effective influence” on the sister concern/firm, permitting such firm to participate, in our considered opinion, will not be in the interest of the tendering authority, and will also not be in public interest if the tendering authority is a public body/entity as in the instant case (NHAI).

73. Debarment of a firm necessarily reflects the corroded capacity and credibility of the debarred firm to perform or execute a work under a tender and therefore, it also, in our opinion, reflects the corroded capacity and credibility of its sister concern as well to execute the work under the tender concerned.

74. Further, we may also note that the impugned Standard Operating Procedure/Circulars dated 07.10.2021 and 04.01.2022 contain a policy decision of the government where the interference of the Court in the exercise of its powers of judicial review under Article 226 of the Constitution of India is very limited. Unless such a policy decision is shown to be absolutely irrational or arbitrary or contrary to any law, interference will neither be permissible nor possible for the Court.

75. Having regard to the possibility of eroded capacity and credibility of the allied firm on debarment of its sister firm/concern, we do not find any unreasonableness in the provisions contained in the impugned Standard Operating Procedure/Circulars dated 07.10.2021 and 04.01.2022, which provide for automatic debarment of the allied firm. Such automatic debarment, is in fact, is the result of debarment of the sister firm, which is done only after providing opportunity of hearing to the debarred firm and



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therefore, in our considered opinion, the submission of the learned counsel for the petitioner that such provision for automatic debarment is bad in law for the reason that it does not provide for opportunity of hearing to the allied firm, is not sustainable.

76. Having observed as above, we may, however, state that as to whether a particular firm is an allied firm of the debarred firm or not, depends on the facts and circumstances of a particular case and in a given circumstance, it is quite possible that the firm being treated as allied firm of the debarred firm, may not be a correct conclusion and therefore, we hold that opportunity of hearing to the firm being treated to be allied, at this juncture, is required to be given. In other words, once a firm has been declared to be debarred, before treating its allied firm to be automatically debarred, an opportunity needs to be given to the sister firm to explain as to whether it is an allied firm of the debarred firm or not. We conclude, thus, for the reason that it is possible in particular cases that the firm being treated as allied firm, may not be allied firm of the debarred firm on facts, in terms of Clause-3 of the guidelines on debarment of firms from bidding as enclosed with the Office Memorandum dated 02.11.2021 and therefore, before arriving at a conclusion that the firm concerned is an allied firm of the debarred firm, opportunity of hearing needs to be provided. This, in our considered opinion, will fulfill the requirement of observance of principles of natural justice.

77. So far as the present case is concerned, as already noted above, this Court, *vide* order dated 04.04.2025, had directed the NHAI to take an appropriate decision on the representation preferred by the petitioner, dated



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16.01.2025 and while issuing such direction, it was also directed that representative of the petitioner shall also be provided an opportunity of personal hearing before decision on the said representation is taken. The said direction was issued, as is apparent from a perusal of the order dated 04.04.2025, considering the statement made by the learned counsel for the NHAI that the representation preferred by the petitioner stating therein that petitioner firm cannot be treated as an “allied firm” of M/s. TPF Gentisa Eurustudios S.L shall be decided. The order dated 04.04.2025 passed by this Court in these proceedings is extracted herein below:

- “1. Pursuant to our order dated 02.04.2025, learned counsel representing the National Highways Authority of India (NHAI) has instructions to say that the representation dated 16.01.2025 preferred by the petitioner stating therein that the petitioner firm cannot be treated as an ‘Allied Firm’ of M/s Gentisa shall be decided.*
- 2. Accordingly, it is ordered that let an appropriate decision in the aforesaid representation be taken by the appropriate Authority of the NHAI within a period of ten days.*
- 3. The representative of the petitioner shall also be provided an opportunity of personal hearing before any such decision is taken.*
- 4. The decision taken under this order by the NHAI shall be brought on record of this Court by the next date of hearing.*
- 5. List on 28.04.2025.”*

78. In compliance of the said order dated 04.04.2025, decision by NHAI was taken which is embodied in the communication/order dated 25.04.2025. A perusal of which makes it clear that opportunity of hearing (post decisional) was also provided to the petitioner.

79. In view of the aforesaid discussion, we conclude that challenge to the impugned circulars dated 07.10.2021 and 04.01.2022 lacks merit.

80. In respect of the reliance placed by the petitioner on certain observations made by Hon’ble Supreme Court in its order dated 27.11.2024



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passed in SLP (C) No. 2326/2024, we may note that NHAI was not a party either before Hon'ble Supreme Court or before this Court in the said proceedings; instead the action which was challenged firstly before this Court and therefore in the Supreme Court pertained to some tender issued by NHLML. The submission that any statement made on behalf of NHLML, which is a subsidiary of NHAI, will bind the NHAI as well, in our opinion, merits rejection.

81. It is to be further noticed that Hon'ble Supreme Court while passing the order dated 27.11.2024 has clearly stated that, *"in the event of any future eventuality pertaining to the very same issue, the impugned judgment and the order of stay which was granted by this Court will not stand in the way of parties in raising their respective contentions"*. Thus, the issue raised in the said matter was kept open to be considered. The Hon'ble Supreme Court has also left all the issues open to be decided by the appropriate Court in future without being influenced by the observations and the reasonings in the judgment which was impugned before the Supreme Court, namely the judgment dated 03.11.2023 passed by this Court in W.P. (C) No. 8619/2023 which was filed by the petitioner not against any action of NHAI but the action under challenge in the said writ petition was by NHLML.

82. In any view, we have considered the entire matter in the light of respective submissions made by learned counsel for the parties on all issues raised. Thus, the submission of the petitioner that NHAI seeks to overreach the order dated 27.11.2024 passed by Hon'ble Supreme Court, in our considered opinion, does not appear to be sustainable.



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83. As far as the judgments cited by the petitioner are concerned, we may first refer to ***Sunrise House Keeping & Support Services (P) Ltd. (supra)***. Reliance has been placed on this judgment to submit that the petitioner's bid could not have been declared non-responsive merely on account of M/s. TPF Gentisa Eurustudios S.L, being disqualified in absence of a prior opportunity of hearing. In ***Sunrise House Keeping & Support Services (P) Ltd. (supra)***, the tendering authority had blacklisted a tenderer by piercing the corporate veil and after identifying common Directors between the blacklisted firm and the petitioners therein to justify extension of blacklisting in absence of any policy or guidelines mandating such a procedure. This judgment is clearly distinguishable on facts for the reason that in the instant case there is a policy decision as embodied in the circulars dated 07.10.2021 and 04.01.2022, which permit debarment of an allied firm.

84. Reliance placed by learned counsel for the petitioner upon ***Kulja Industries Ltd. (supra)***, also does not improve the case of the petitioner. In the said case, Hon'ble Supreme Court has held that between two private parties right to take any decision is absolute and untrammelled by any constraint whatsoever and further, that freedom to contract or not to contract is unqualified right of private parties, however, any such decision is subject to judicial review when such decision is taken by the State or any of its instrumentality. Hon'ble Supreme Court has further held that any such decision may be open to scrutiny not only on the touchstone of principles of natural justice but also on the doctrine of proportionality.

85. So far as the principles enunciated by the Apex Court in ***Kulja Industries Ltd. (supra)*** is concerned, there cannot be any quarrel about the



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same, however for the reasons given in the foregoing paragraphs, we are of the opinion that this judgment does not, in any manner, help the cause of the petitioner in this case.

86. Reliance has also been placed by learned counsel for the petitioner upon ***Raghunath Thakur*** (*supra*), which emphasizes the requirement of giving notice and affording opportunity of hearing before any order of blacklisting is passed, which is elementary to the principles of natural justice. We may state that principles laid down by Hon'ble Supreme Court in ***Raghunath Thakur*** (*supra*), also cannot be disputed, however said judgment does not have any application in the instant case for the reasons already given above.

87. As far as the emphasis laid by the petitioner on the judgment in ***Frontier Alloy Steels Ltd.*** (*supra*) is concerned, we may observe that it has been held by a Division Bench of Allahabad High Court therein that for examining the issue as to whether a firm can be termed to be an "allied firm" of the debarred firm, it is necessary that opportunity of hearing should be afforded to the sister concern before debarring it from business. We have already held above that for determining the issue as to whether the petitioner/firm was/is an allied firm of M/s. TPF Gentisa Eurustudios S.L, opportunity of hearing was required to be given by the NHAI, which in this case was provided in the form of post decision hearing pursuant to our order dated 04.04.2025, in compliance of which the decision by NHAI was taken which is embodied in the communication/order dated 25.04.2025, wherein upon consideration of all relevant facts and material, it has been concluded



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by NHAI that petitioner is an allied firm of M/s. TPF Gentisa Eurustudios S.L.

CONCLUSION

88. For the discussions made and the reasons given above, we conclude as under:-

(1) Challenge to the decision holding petitioner's bid as non-responsive in technical evaluation, fails, and, accordingly W.P.(C) 813/2025, W.P.(C) 814/2025, W.P.(C)848/2025 and W.P.(C) 849/2025, are hereby dismissed.

(2) Challenge to circulars dated 07.10.2021 and 04.01.2022 issued by the Ministry of Road, Transport and Highways, Government of India also fails and accordingly, W.P.(C) 1721/2025 is also hereby dismissed.

(3) Since fate of W.P.(C) 3304/2025 where prayer has been made to quash the fresh tender dated 16.01.2025 and also to quash the decision dated 20.01.2025 by which letter of award dated 10.12.2024 was withdrawn on account of debarment of petitioner as allied firm, is dependent on the outcome of other five petitions in this bunch which have been dismissed, the W.P.(C) 3304/2025 is also hereby dismissed.

89. The parties shall bear their own costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

AUGUST 14, 2025

N.Khanna & S.Rawat