



2026:DHC:3250-DB



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

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*Judgment reserved on: 17.04.2026*  
*Judgment pronounced on: 20.04.2026*  
*Judgment uploaded on: 20.04.2026*

+ W.P.(C) 4817/2026, CM APPL. 23578/2026, CM APPL. 23579/2026, CM APPL. 23580/2026 and CM APPL. 24716/2026

MD. KARIMUNNISA .....Petitioner

Through: Mr. Sanjoy Ghose, Sr. Adv.  
with Mr. Kaustubh Anshuraj,  
Mr. Parmod Kalirana, Mr.  
Manish Choudhary, Mr. Amaya  
Vaid, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA  
THROUGH ITS CHAIRMAN & ANR. ....Respondents

Through: Mr. N. Venkataraman, ASG  
with Mr. Namit Saxena, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**J U D G M E N T**

**ANIL KSHETARPAL, J. :**

1. Through the present Writ Petition under Article 226 of the Constitution of India, the Petitioner assails the order dated 08.04.2026 [hereinafter referred to as the 'Impugned Order'], along with the show cause notice dated 02.04.2026 [hereinafter referred to as the 'Impugned Show Cause Notice'], whereby the Contract dated 26.05.2025 [hereinafter referred to as 'Contract'] executed between



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the Petitioner and the NHAI for collection of user fee at Pawangaon Fee Plaza has been terminated prior to expiry of the contractual period. The Petitioner has also challenged the fresh tender dated 02.04.2026 issued for engagement of a new user fee collecting agency for three months for the said Fee Plaza.

2. The Petitioner contends that the termination of the Contract is arbitrary, premeditated and contrary to the contractual stipulations, particularly Clause 35(6) of the Contract [hereinafter referred to as 'Clause 35(6)'], inasmuch as no circumstances warranting invocation of the said clause existed. It is further urged that the impugned action has been taken despite the contract remaining valid till 17.06.2026 and without any breach attributable to the Petitioner.

3. In the aforesaid backdrop, the principal issues that arise for consideration before this Court are:

i. Whether the Respondent Authority was justified in terminating the Contract in exercise of its enabling powers under Clauses 35(2) [hereinafter referred to as 'Clause 35(2)'] and 35(6); and

ii. Whether any interference is warranted in exercise of writ jurisdiction with a contractual decision taken in the interest of public exchequer by a public authority in matters relating to the termination of a tender contract.



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### **FACTUAL MATRIX:**

4. In order to appreciate the controversy involved in the present case, the relevant facts, in brief, are required to be noticed.

5. The Petitioner had earlier operated as a User Fee Collection Agency at the Pawangaon Fee Plaza situated at Km. 57+935 on NH-353J in the State of Maharashtra for a period of two months during April and May 2025. The Respondent No.1, namely the National Highways Authority of India [hereinafter referred to as 'NHAI'], invited bids through e-tender for engagement of a User Fee Collection Agency at the said Pawangaon Fee Plaza, for a period of one year.

6. Pursuant to the competitive bidding process, in which multiple bidders participated, the Petitioner was declared the successful bidder with a daily remittance of Rs.2,62,430/- (Rs.2,58,737/- as per the stand of the Respondents) for a period of one year and a Letter of Award dated 13.05.2025 came to be issued in its favour. It is stated that the Petitioner's quoted remittance was substantially higher than the reserve price as well as the bid submitted by the second highest bidder.

7. Thereafter, the Contract was executed between the parties for collection of user fee at the said Fee Plaza for the period commencing from 17.06.2025 (08:00 hours) till 17.06.2026 (08:00 hours). The Petitioner furnished performance security and commenced toll collection operations in terms of the Contract.



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8. The Contract, *inter alia*, contained Clause 35 governing termination of the contract. While Clause 35(2) enabled termination upon issuance of seven days' notice without assigning reasons, Clause 35(6) provided for termination in case of “windfall gain” at new fee plazas where the moving average of ETC and cash collections for the preceding fifteen days exceeded forty percent of the existing remittance being paid by the toll agency.

9. On 02.04.2026, the Respondents issued a show cause notice cum seven days' termination notice invoking Clauses 35(2) and 35(6) of the Contract, stating their intention to terminate the contract. The notice alleged the occurrence of windfall gain and simultaneously afforded an opportunity of personal hearing to the Petitioner. On the same date, the Respondents also issued a fresh tender for engagement of a new user fee-collecting agency for three months for the very same Fee Plaza.

10. Subsequently, by order dated 08.04.2026, the Contract stood terminated prior to expiry of its contractual tenure. Aggrieved thereby, the Petitioner instituted the present Writ Petition under Article 226 of the Constitution of India challenging the Impugned Show Cause Notice, the Impugned Order and the fresh tender issued for appointment of a new agency.

11. The principal contention of the Petitioner is that the invocation of Clause 35(6) was wholly misconceived and impermissible, inasmuch as the said provision relating to “windfall gain” is expressly applicable only to new user fee plazas, whereas the Pawangaon Fee



Plaza is an already operational and existing fee plaza. Further, the premature termination of a subsisting contract, allegedly without existence of any breach or default on its part, is arbitrary, pre-determined, and violative of Article 14 of the Constitution of India.

12. During the course of hearing, the Respondents placed on record a tabulated compilation reflecting a substantial and consistent increase in toll collection at the Pawangaon Fee Plaza over successive months. The said compilation, produced to demonstrate the financial trajectory of collections vis-à-vis the contractual remittance, is extracted below for ready reference:

Month	ETC Collection	Annual pass Compensation amount	ETC Collection including Compensation	Present remittance per day	Comparison
Apr-25	2,31,734	0	2,31,734	2,58,737	10.44
May-25	3,38,228	0	3,38,228	2,58,737	30.72
June-25	4,50,264	0	4,50,264	2,58,737	74.02
Jul-25	4,81,012	0	4,81,012	2,58,737	85.91
Aug-25	5,19,804	2,716	5,22,521	2,58,737	101.95
Sep-25	6,41,192	5,150	6,46,341	2,58,737	149.81
Oct-25	6,21,503	8,682	6,30,185	2,58,737	143.56
Nov-25	7,79,651	12,915	7,92,566	2,58,737	206.32
Dec-25	8,72,630	17,590	8,90,220	2,58,737	244.06
Jan-26	8,64,490	18,933	8,83,422	2,58,737	241.44
Feb-26	9,37,590	20,970	9,58,560	2,58,737	270.48
Mar-26	8,92,866	19,780	9,12,646	2,58,737	252.73

13. A perusal of the aforesaid data indicates that the toll collection substantially exceeded the 40% benchmark contemplated under Clause 35(6) as early as June 2025 and thereafter demonstrated a steady upward trajectory. According to the Respondents, continuation



of the existing contractual arrangement despite such escalation in collections resulted in a significant revenue imbalance, causing an estimated loss of approximately Rs.7,50,000/- per day to the public exchequer.

14. By order dated 16.04.2026, after hearing learned counsel for the parties, this Court granted opportunity to the Petitioner to respond to the compilation produced by the Respondents and directed the Respondents to explain the delay in invoking Clause 35(6) of the Contract, however, no satisfactory explanation has been furnished.

#### **CONTENTIONS OF THE PARTIES:**

15. Heard learned Counsel for the parties at length and perused the record placed before the Court.

16. Learned Senior Counsel representing the Petitioner has made the following submissions:

i. The termination of the Contract is arbitrary, pre-determined and contrary to the contractual stipulations, inasmuch as Clause 35(6) could not have been invoked since the Pawangaon Fee Plaza is not a new user fee plaza and no “windfall gain” situation existed.

ii. The contract was admittedly valid till 17.06.2026 and no breach, deficiency, or contractual default has been attributed to the Petitioner. Therefore, exercise of termination powers under Clause 35(2) is *mala fide* and violative of Article 14 of the Constitution of India.



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iii. The Impugned Show Cause Notice and the consequential Impugned Order are non-speaking and were issued in a mechanical manner, particularly as a fresh tender was floated on the very same date, demonstrating a pre-decided intention to terminate the contract.

iv. The reply dated 04.04.2026 submitted by the Petitioner was neither considered nor dealt with prior to termination of the Contract.

v. The policy circular dated 26.03.2025 governing “overstay” situations has been wrongly applied during the subsistence of the contractual period, thereby causing serious financial prejudice.

17. *Per contra*, learned ASG appearing on behalf of the Respondents has made the following submissions:

i. The Contract expressly confers upon the NHAI the power to terminate the contract by issuance of notice under Clause 35(2), and such contractual power cannot be curtailed merely because the contract period had not expired.

ii. Invocation of Clause 35(6), read with the applicable policy circulars, is stated to be a policy and administrative decision taken in public interest to safeguard public revenue and ensure efficient toll operations.

iii. Judicial review in contractual matters is limited to examining the decision-making process and does not extend to



re-appreciation of commercial or policy decisions taken by a public authority.

18. No other submissions were urged by learned Counsel representing the parties.

### **ANALYSIS AND FINDINGS:**

19. This Court has considered the submissions advanced by learned Counsel for the parties and perused the material placed on record.

20. At the outset, it is necessary to delineate the scope of judicial review exercisable in contractual and tender matters under Article 226 of the Constitution of India. It is now well-settled that when the State or its instrumentalities act within the domain of commercial contracts, the Court does not sit as an appellate authority over contractual decisions. Interference is warranted only where the decision-making process is shown to be arbitrary, *mala fide*, irrational, or in violation of statutory or constitutional mandates.

21. The Supreme Court, in *Tata Cellular v. Union of India*<sup>1</sup>, authoritatively held that judicial review in contractual matters is confined to examining the decision-making process and not the merits of the decision itself. The Court cannot substitute its own view for that of the competent authority merely because another view is possible.

22. Similar principles have consistently been reiterated in *Jagdish Mandal v. State of Orissa*<sup>2</sup>, wherein it was held that interference in

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<sup>1</sup> (1994) 6 SCC 651

<sup>2</sup> (2007) 14 SCC 517



tender matters is permissible only when the action is so arbitrary or unreasonable that no responsible authority acting reasonably could have arrived at such a decision, or when public interest is demonstrably affected.

23. Recently, the Supreme Court in *N.G. Projects Ltd. v. Vinod Kumar Jain*<sup>3</sup> cautioned that courts must exercise restraint in contractual disputes involving State entities, as excessive judicial intervention delays public projects and adversely impacts the public exchequer.

24. Having delineated the settled contours governing judicial review in contractual and tender matters, this Court now proceeds to examine the controversy arising in the present case.

25. The principal challenge mounted by the Petitioner essentially relates to the validity of termination of the Contract, particularly the invocation of Clause 35(6), contending that the Pawngaon Fee Plaza was not a “New User Fee Plaza” and therefore the “windfall gain” provision could not have been invoked.

26. Clause 35(6) envisages its invocation where the moving average of electronic toll collection and cash collection for the preceding fifteen days exceeds forty percent of the existing remittance payable by the toll agency. In the present case, the material placed on record indicates that toll collections crossed the said forty percent threshold in the same month (June 2025) when the Petitioner took over operations at the fee plaza under this contract.

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<sup>3</sup> (2022) 6 SCC 127



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27. Once the contract, viewed as a whole, provides adequate safeguards to both contracting parties, it would not be appropriate to strike down an individual clause as arbitrary. Considerable arguments were advanced on the question whether the fee plaza constituted a “new” fee plaza. However, once Clause 35(6) forms part of the contractual framework accepted by the parties, the said controversy loses much of its significance, particularly when it is the stand of the Respondents that the fee plaza was less than one year old at the time of award of contract and that the Petitioner itself had operated the plaza for a limited period prior to execution of the Contract. In that context, the Respondents have treated the plaza as a new fee plaza.

28. Clause 35(6) expressly contemplates termination upon occurrence of specified financial contingencies relating to toll collections. Once such a contractual power stand reserved in favour of the NHAI, the contractor cannot claim an indefeasible right to continue till expiry of the contractual tenure merely because the Contract remained valid up to 17.06.2026. A commercial arrangement governed by agreed contractual conditions necessarily remain subject to termination in accordance with those very conditions, unless the decision is established as arbitrary passed with *mala fide* intent or biased.

29. Similarly, it has been consistently held that persons who enter into contractual dealings with the State with open eyes must accept both the advantages and the burdens flowing from such agreements. A contractor participating in a competitive bidding process cannot



subsequently challenge a mutually accepted termination mechanism solely because its operation has resulted in commercial disadvantage.

30. The doctrine invalidating unfair contractual terms, as explained in *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly & Anr.*<sup>4</sup>, applies primarily to situations involving gross inequality of bargaining power, such as employer-employee relationships. The present case, however, arises out of a commercial tender between business entities operating in a competitive market environment. The termination clause, forming part of the tender conditions, cannot therefore be characterised as unconscionable or oppressive.

31. It is pertinent to note that before declaring any particular clause of a contract to be arbitrary, the Court is required to examine the contract in its entirety. Testing a contractual stipulation on the aforesaid basis becomes necessary, for a clause read in isolation may lead to an incorrect conclusion. Selective reading of contractual terms is fraught with inherent dangers and must therefore be avoided.

32. Clause 35(5) itself provides for premature termination of the contract at the request of the contractor. Under sub-clause (a), the contractor is at liberty to submit a written request to the NHAI seeking premature termination within a period of thirty days of taking over the fee plaza. Further, sub-clause (g) of Clause 35(5) contemplates termination at the instance of the contractor in situations such as farmer agitations or where the fee plaza is likely to remain closed for a

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<sup>4</sup> AIR 1986 SC 1571



period exceeding thirty days. These provisions demonstrate that the contractual framework incorporates safeguards operating in favour of the contractor as well.

33. It is equally well settled that while State action in contractual matters remains amenable to judicial review under Article 14 of the Constitution of India, such review is confined to examining whether the decision suffers from *mala fides*, arbitrariness, or colourable exercise of power. Courts do not evaluate the commercial wisdom of the Authority or substitute their own assessment for that of the contracting agency managing public infrastructure.

34. In the present case, the NHAI issued prior notice, considered the Petitioner's reply, afforded a personal hearing, and thereafter proceeded to terminate the Contract. The decision-making process thus satisfies the requirements of procedural fairness. No material has been placed before this Court to indicate *mala fides*, bias, or manifest arbitrariness in exercise of the contractual power under Clause 35(2).

35. Once the Contract itself reserves an express right of termination upon notice, continuation of the contract till the last date of tenure cannot be claimed as a vested or enforceable right in writ jurisdiction.

36. Further, the Petitioner, in its reply, has itself asserted that it has been associated with the NHAI since the year 2020 and has successfully operated more than 80 Fee Plazas across the country without adverse remarks. The said assertion, rather than advancing the Petitioner's case, demonstrates that the Petitioner is an experienced and commercially sophisticated contractor, well acquainted with the



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operational, financial, and contractual framework governing toll plaza agreements. Consequently, the Petitioner cannot be permitted to contend that the implications or consequences flowing from Clause 35(6) were unforeseen or inequitable, the contractual stipulations having been accepted with full knowledge and understanding of their commercial ramifications.

37. Additionally, the Petitioner is estopped from challenging the validity of Clause 35(6) at this stage after having availed benefits under the Contract for nearly nine months out of the total contractual duration of twelve months. Having enjoyed the contractual arrangement for approximately eighty percent of its tenure, it would be inappropriate to permit a challenge to the very clause forming part of the agreed tender conditions.

38. In substance, the relief sought by the Petitioner amounts to enforcement of a commercial contract in the nature of specific performance while simultaneously assailing the validity of Clause 35(6). Under the scheme of the Specific Relief Act, 1963, contracts requiring continuous supervision or day-to-day monitoring by the Court are ordinarily not specifically enforceable, particularly where compensation or damages constitute an adequate remedy. The appropriate remedy, if any, available to the Petitioner would therefore lie in seeking damages or compensation in accordance with law.

39. Consequently, viewed either from the standpoint of valid invocation of Clause 35(6) or independently under Clause 35(2), the impugned termination cannot be said to be legally unsustainable. The



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challenge raised by the Petitioner, therefore, essentially seeks enforcement of contractual expectations rather than correction of any constitutional or public law infirmity.

40. The Petitioner has further alleged that the Impugned Show Cause Notice and the consequential Impugned Order were issued in a mechanical manner and that the simultaneous issuance of a fresh tender demonstrates a pre-determined decision to terminate the Contract. This contention does not merit acceptance.

41. As noted above, a perusal of the record indicates that the Petitioner was issued a seven days' notice, submitted a detailed reply dated 04.04.2026, and was afforded an opportunity of personal hearing on 06.04.2026. The Impugned Order records consideration of the submissions advanced and reflects the satisfaction of the Competent Authority that the explanation offered by the Petitioner was not tenable. The requirement of natural justice does not obligate an administrative authority to render a judgment akin to a judicial decree. It is sufficient if the order discloses application of mind to the material placed before it, which requirement stands duly satisfied in the present case.

42. The mere fact that a fresh tender process was initiated contemporaneously with the termination decision cannot, by itself, establish *mala fides* or pre-determination. In matters relating to toll collection on national highways, continuity of operations is directly connected with safeguarding public revenue. Administrative



preparedness to avoid disruption in user fee collection constitutes prudent governance rather than evidence of arbitrariness.

43. The Petitioner has also relied extensively upon alleged financial losses suffered at other fee plazas, blockage of performance securities, and the assertion that the Pawangaon Fee Plaza constituted its sole revenue-generating asset. In contractual matters, hardship or adverse commercial impact cannot override the express terms voluntarily agreed between the parties or justify exercise of writ jurisdiction in the absence of arbitrariness, *mala fides*, or violation of statutory or constitutional obligations.

44. It is well settled that writ jurisdiction under Article 226 cannot be invoked to renegotiate commercial bargains or to grant equitable protection against contractual consequences voluntarily undertaken. A contractor participating in a competitive tender assumes both commercial risks and contractual obligations, and subsequent financial inconvenience does not render lawful contractual termination arbitrary.

45. The material on record further indicates that the NHAI acted with the objective of protecting public revenue and ensuring efficient management of toll operations. Initiation of a fresh tender process and interim operational arrangements demonstrate continuity planning in discharge of statutory and public duties. Judicial interference in such administrative decisions, absent demonstrable illegality, would amount to substituting administrative discretion with judicial preference, which is impermissible in exercise of writ jurisdiction.



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46. Ultimately, the controversy raised by the Petitioner pertains to the applicability and exercise of contractual termination clauses, the financial consequences arising therefrom, and competing interpretations of contractual terms. Invocation of Article 226 cannot transform a commercial disagreement into a constitutional cause of action.

47. Before parting with the matter, this Court considers it necessary to record certain observations arising from the subsequent developments placed on record during the course of hearing.

48. The material produced before this Court, including the later administrative orders relied upon by the parties, indicates that the circumstances giving rise to alleged “windfall gain” were not acted upon with promptitude by the NHAI. Delay in timely assessment and invocation of contractual safeguards, particularly in contracts involving collection of public revenue, has the potential to result in avoidable loss to the public exchequer.

49. Public authorities entrusted with management of national highway toll operations discharge functions closely connected with public finance. Contractual clauses such as Clause 35(6) are incorporated precisely to enable timely corrective intervention where revenue projections undergo substantial variation. Any institutional delay in monitoring or enforcement undermines the very purpose of such contractual mechanisms.

50. During the course of hearing on 17.04.2026, learned Additional Solicitor General appearing for the NHAI fairly submitted that there



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had been a significant delay in invoking Clause 35(6) of the Contract, which, according to the Respondents, resulted in a loss of approximately Rs.7.5 lakhs per day to the NHAI and consequently to the public exchequer. It was further submitted that a senior official has already been issued a show cause notice in this regard. Learned Additional Solicitor General also informed the Court that steps are being undertaken to introduce an automated technological mechanism/software-based monitoring system to enable real-time tracking of toll collections and early identification of “windfall gain” situations so as to avoid recurrence of such lapses.

51. This Court appreciates the said statement and expects the NHAI to expeditiously implement robust monitoring mechanisms ensuring transparency, timely decision-making, and protection of public revenue. Keeping in view the aforesaid position, the NHAI is directed to place on record the ultimate decision taken pursuant to the said show cause notice. The disciplinary proceedings against the concerned officials shall be concluded, as far as practicable, within a period of six months, and the outcome thereof shall be placed before this Court, notwithstanding disposal of the present Writ Petition. These observations and directions are issued in the larger public interest and shall not be construed as affecting the legality of the impugned termination upheld herein.



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**CONCLUSION:**

52. In view of the foregoing discussion, this Court is satisfied that the present Writ Petition is devoid of merit and is, accordingly, dismissed. All the pending applications also stand closed.

**ANIL KSHETARPAL, J.**

**AMIT MAHAJAN, J.**

**APRIL 20, 2026**

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