

भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(पोत परिवहन, सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Shipping, Road Transport and Highways)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-110 075

G-5 & 6, Sector-10, Dwarka, New Delhi-110075

NHAI/13013/03-04/44/CMD-CO/JKP

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2nd June, 2005

CIRCULAR NO:NHAI/COMMERCIAL OPERATION/59

Sub: Procedure for fee notification in respect of Private Investment (BOT/SPV) Projects.

Please refer our circular no NHAI/Commercial Operation/29, dated 24.09.2003, which, among others, requires signing of an agreement between NHAI and DoRT&H in respect of every BOT/SPV projects. We have now been informed vide letter no. RW/NH-37011/45/2004-PIC dated 24.05.2005 from DoRT&H, enclosing a copy of opinion dated 5.4.2005, tendered by Legal Advisor and Additional Secretary (Conveyancing), Department of Legal Affairs, Ministry of Law & Justice that such an agreement is not required in respect of stretch/section of National Highways vested in or entrusted to NHAI. Thus to the extent of signing of an agreement is concerned, the circular no. 29 dated 24.09.2003 stands modified. You may kindly act accordingly.

This issues with the approval of Competent Authority.


(M M Lohia)

General Manager (CO)

Encls:

- (1) Letter No. RW/NH-37011/45/2004-PIC dated 24.05.2005 from DoRT&H
- (2) Opinion dated 5.4.2005 of Ministry of Law & Justice, Department of Legal Affairs

To:

All Members/CGMs/CVO
All GMs/TAG/Counsel (LA)
PS to Chairman
Librarian

All PIUs/CMUs:

Copy submitted for favour of information:

Secretary, DoRT&H
Chief Engineer (PIC), DoRT&H

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Government of India
Ministry of Shipping, Road Transport & Highways
Department of Road Transport & Highways
(PIC Zone)

Parivahan Bhawan
1, Parliament Street
New Delhi - 110001

No. RW/NH-37011/45/2004-PIC

Dated 24th May, 2005

To,

✓ The Chairman,
National Highways Authority of India,
Plot No. G-5 & G-6, Sector -10,
Dwarka, New Delhi-110045.

NHA - Already seen
GMC/500
M/K/S/M
30/5

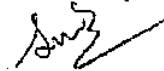
Sub: Opinion of Deptt. of Legal Affairs with respect to agreement by the Central Government with NHAI with regard to stretches/sections vested in NHAI.

Sir,

While vetting a recent BOT fee notification case of Satara-Kagal section of NH-4 in the State of Maharashtra, the Deptt. of Legal Affairs has expressed the view that Central Government (Deptt. of Road Transport & Highways) cannot make any agreement with NHAI with regard to the stretch/section vested in or entrusted to NHAI. NHAI may proceed in any manner within the purview of National Highways Act, 1956 and NHAI Act, 1988 for the stretch / section vested in NHAI.

2. Hence, for all future BOT projects of NHAI, there is no need for signing agreement with the Deptt. of Road Transport & Highways for stretches entrusted with NHAI. A copy of opinion by Legal Advisor & Addl. Secretary (Conveyancing) dated 5th April, 2005 is also enclosed herewith for reference & record.

Yours Sincerely,



(Sumit Kumar)
Executive Engineer (PIC)
for Director General (Road Development)

Encl: As above.

Copy along with copy of enclosure to Shri M.M. Lohia, General Manager, Commercial Operation, NHAI for information.

Sd/-

(Sumit Kumar)
Executive Engineer (PIC)
for Director General (Road Development)

Ministry of Law & Justice
Department of Legal Affairs

Dy. No. 188/05LA&AS(C)

Dy. No. 10496/05/A

This is a reference from Ministry of Shipping, Road Transport & Highways for vetting of a draft Agreement between NHAI and Department of Road Transport & Highways with regard to a stretch/section of National Highway No. 4 from Satara to Kagal. It is recorded in the draft Agreement that this stretch/section of National Highway is vested in and entrusted to NHAI by a Notification No. 78(E) dated 4th February, 1999, issued under the provisions of Section 11 National Highways Authority of India Act, 1988. As per the provisions of Section 11, any stretch/section of NHAI can be vested in or entrusted to NHAI by Central Government after issuing a notification. The notification has already been issued on 4th February, 1999, whereafter the stretch/section of National Highway is vested and entrusted to NHAI.

2. Once stretch/section of National Highway is vested in NHAI, the Central Government (Department of Road Transport & Highways) cannot make any agreement with regard to the same stretch/section either with NHAI or any other body. This stretch/section is vested in NHAI who may, if so thinks, proceed in any manner within the purview of National Highways Act, 1956, and National Highways Authority of India Act, 1988, but Central Government cannot sign the agreement with regard to a subject matter which is not vested in it and where the subject matter is already out from it. Moreover, after this aforesaid entrustment/vesting by way of statutory notification, the Central

Government cannot enter into an agreement with same stretch/section under Section 8A of the National Highways Act, 1956. This stretch/section is already with the NHAI for development, maintenance and management whereafter Central Government has to remain out of picture, except where specifically entitled to do anything provided in the statute.

3. It may also be recorded that earlier a legal opinion was tendered on 27.6.2003 on the aforesaid aspect of the matter. Action may be taken accordingly.



(O.P. Nahar)

Legal Adviser &

Additional Secretary (Conveyancing)

5th April, 2005

Department of Road Transport & Highways