

Dond

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODG) NO.3216 OF 2014

M/s Sahakar Global Ltd.

..Petitioner

Vs.

The State of Maharashtra & Anr.

..Respondents.

**WITH
NOTICE OF MOTION (L) No.31 of 2015**

Mr. Vinay Hegde for Petitioner.

Mr. S.V. Manohar, Advocate General with Mr. Khaire, AGP for
Respondent No.1.Mr. R.A. Dada, Senior Counsel a/w Mr. P.P. Chavan i/b R.J. Nathani,
for Respondent No.2.Mr. Devendra V. Chandran i/b Filji Fedrick for the applicants in Notice of
Motion (L) No.31/2015.

**CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.**

DATE : 20th March 2015.

P.C.:

1 The Petitioner has filed the present petition for a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus thereby directing the Respondent to forthwith revoke/recall the impugned letter/order dated 1st December 2014 issued by the Respondent No.2 herein, and also for a writ, order or directions, thereby prohibiting the

Respondents from in any manner interfering, impeding or obstructing the toll collection by the Petitioner from Tadali Main toll station pursuant to the impugned letter/order dated 1st December 2014 and/or save strictly in accordance with the Toll Collection Agreement dated 24th May 2014 and in any event without there being existing a legitimate, bonafide and valid cause to foreclose the contract or in the event of existence of the conditions stipulated in clause-26 of the Offer document.

2 The Petitioner is a Company registered under the provisions of the Indian Companies Act and amongst other business, is also carrying on the business of management of Octroi collection stations and Toll stations and other similar facilities at Public places. That the Respondent No.2 had in the month of November 2012 issued tenders through e-tendering system for the appointment of the contractor for collection of toll near ROB at Tadali Main at KM. 72/760 on the Jam-Warora-Chandrapur road pursuant to the powers vested in them vide the notification bearing no.PSP-2004/CR 161/Road-8, published in the official Gazette dated 13th October 2010.

3 The bids submitted by the Petitioner for the said tender was accepted by the Respondent No.2 for Rs.25.47 crores and by the first letter of acceptance dated 28th January 2013, the Respondents while provisionally accepting the tender of the Petitioner, called upon them to pay to the

Respondents a sum of Rs.2.98 crores as per clause 25.1 of Chapter 1 of the Offer Document. That the Respondent, after completing formalities issued final letter of acceptance dated 5th April 2013 calling upon the Petitioner to pay the balance upfront payment of Rs.6 Crores towards the first year's installment and to furnish the Bank Guarantee in the sum of Rs.2,54,70,000/- towards the Performance Security as per the terms of the contract entered into between the Petitioner and the Respondent No.2 for toll collection, which was commenced with effect from 24th February 2013.

4 It is the case of the Petitioner that the Petitioner in pursuance of the Instructions to Offerers and other Agreements entered into by and between the Petitioner and the Respondent No.2, carried out the work of collection of toll diligently and performed its part of obligation as per the said terms and conditions of the contract. The Petitioner has further contended that since the middle of 2014 the State of Maharashtra has been toying with the idea of closing down toll stations and toll collection at several locations where the cost of the development of the road is fully recovered. That the subject Toll station i.e. Tadali Main on the Jam-Warora, Chandrapur road was however not amongst the list where the toll collection was to be stopped as the Respondent reportedly were to recover the development costs. It is further contended by the Petitioner that however

on account of agitation made by the Member of the Legislative Council, the Petitioner was required to stop the toll collection at Tadali Main since 20th August 2014. After the Respondents clarified the position with respect to the subject Toll station to the Police Authorities, the Petitioner again started collecting toll from from 10th October 2014. It is the case of the Petitioner that as the toll collection between the period 20th August 2014 and 9th October 2014 could not be done because of the political agitation, he suffered heavy financial losses.

5 The Petitioner has further contended that by a vague and cryptic order dated 1st December 2014, the Respondent No.2 directed the Petitioner to temporarily suspend the toll collection and hand over toll booths, receipts and other material to the representative of the Respondent. The said letter/order dated 1st December 2014 is impugned in the present petition.

6 It is to be noted here that in pursuance of the ad-interim order dated 24th December 2014 passed by this Court, the petitioner was allowed to start its activities i.e. collection of toll at subject Toll stations and the Petitioner is carrying out the said toll collection activities till date.

7 After receipt of notice of the present petition, Shri Sanjay Shriram Solanki, the Deputy Secretary (Privatisation-1) Mantralaya,

Mumbai for and on behalf of the Respondent No.1, has filed a detailed affidavit dated 2nd February 2015. Mrs. Trupti Nag, the Executive Engineer of the Respondent No.2 has also filed an affidavit dated 14th January 2015.

8 In the affidavit dated 2nd February 2015 filed by the Respondent No.1, it is stated that the terms of the contract stipulate the authority for the redressal of disputes and in view of the alternate efficacious remedy available to the Petitioner, the present petition under Article 226 of Constitution of India is not maintainable. Apart from preliminary objection raised by the Respondent No.1 about the maintainability of the present petition, it has been stated in the said affidavit that various complaints are received in respect of Toll station at Tadali Main, Chandrapur. After the receipt of those complaints, the Public Works Department called a report from the Vice Chairman and the Managing Director of the Respondent No.2 on 15th November 2014 and 17th November 2014. As the said report was not received from the Respondent No.2, the Hon'ble Minister convened a meeting on 26th November 2014 in respect of various complaints received pertaining to Tadali toll station J.M.D.(1) of the higher officers of the MSRDC along with higher officers of the Public Works Department which was chaired by the Hon'ble Minister, P.W.D. That after a detailed discussion on the various

complaints received in respect of Tadali Toll station the Minutes were recorded on 26th November 2014. That after various deliberations in the said meeting, it was transpired that there is substance in the various complaints received against the Tadali Toll station. It was also observed in the said meeting that there was breach of the conditions stipulated in the Agreement by the Petitioner, and therefore, the Respondent No.2 was directed to stay the operation of the said Toll station with effect from midnight of 30th November 2014 till the time enquiry is completed. It is further stated that the Petitioner Contractor was appointed for collection of toll through the E-Tendering system and the role of the Petitioner was limited to the terms of the Contract and its main job was to collect toll for the maintenance for the ROB and the approach road mentioned in the contract. It is specifically contended by the Respondent No.1 that the said work was not carried out under the BOT Scheme. The Respondent No.1 has further submitted that main complaint against the Petitioner are (i) The accounts of the said Toll station have not been properly maintained, (ii) The receipts issued to the vehicles are not in authentic format receipts, (iii) There was vast difference between the traffic count at the Tadali and Nandori Toll stations and (iv) Considering the traffic count, the concession agreement ought to have been altered.

9 The Respondent No.1 has stated that there was no satisfactory explanation on the aforesaid issues, and therefore, the Respondent No.1 had no option than to direct the Respondent No.2 to stay the operation of toll station at Tadali as per Agreement.

10 Mrs. Trupti Nag, the Executive Engineer of the Respondent No.2 in her affidavit dated 14th January 2015, apart from raising the preliminary objection about the maintainability of the present petition under Article 226 of Constitution of India, has also in detail stated about the contract entered into between the Petitioner and the Respondent No.2, the conditions of the contract and the complaints received against the Petitioner from various persons. The Respondent No.2 has further stated that the present petition under Article 226 of Constitution of India is not a remedy for any disputes arising out of the contract and the same may not be entertained by this Court. The Respondent No.2 in its affidavit has in detail elaborated various deficiencies which were found during the course of inspection of the said toll station and directions which were issued by the officers of the Respondent No.2 to the Petitioner for its removal and/or rectification. The Respondent No.2 has further pointed out various irregularities and breach of the conditions of the contract committed by the

Petitioner. It is further stated in the said affidavit that the Petitioner for redressal of his grievance can adopt other alternate efficacious and appropriate legal remedies as the dispute between the Petitioner and Respondent No.1 is arising out of the contract. It is lastly prayed that the present petition may be dismissed with costs.

11 We have heard Shri Vinay Hedge, the learned Counsel appearing for the Petitioner, Shri S.V. Manohar, the learned Advocate General for Respondent No.1-State of Maharashtra and Shri R.A. Dada, the learned Senior Counsel with Mr. Chavan for Respondent No.2. We have also perused the record/documents annexed to the petition and the affidavits filed herein.

12 The learned Counsel appearing for the Petitioner submitted that the terms of the contract does not provide for 'temporary suspension' of the contract at the whims and fancies of the politicians or the bureaucrats representing the Respondent without any extenuating circumstances prevailing or based on telephonic instructions. He further submitted that till date the present toll collection is being conducted smoothly and peacefully without any hint of agitations or objections from any quarters so as to enable the Respondent No.2 to claim recourse to clause 26 of the offer document.

13 At this stage, we may note here that the Petitioner had stopped the collection of toll from the said toll station in pursuance of letter/order 1st December 2014 issued by Respondent no.2 with immediate effect and said collection of toll again started after 24.12.2014 in pursuance of the ad-interim relief granted by this Court and therefore, the Petitioner cannot be permitted to say that the toll collection is being conducted smoothly and peacefully without any hint of agitations or objections from any quarters of the society. The learned Counsel appearing for the Petitioner further submitted that there existed no express or implied authority to issue letter/order thereby calling upon the Petitioner to temporarily suspend toll collection and action of the Respondent was totally contrary to the Agreement dated 25th April 2014. It is further submitted that the Respondent having taken the upfront money for the entire year from the Petitioner cannot resort to such whimsical conduct particularly when the Respondent is aware that the Petitioner is required to make regular payment to offset the loan which the Petitioner had taken for upfront payment and particularly when the Respondent No.2 is even a party to such financial agreement. It is further submitted that the Respondent No.1 had no reason to override and ignore the basic principles of fairness and transparency even in their contractual relationship and cannot act arbitrarily

after having taken the entire upfront money from the petitioner . The learned Counsel for the Petitioner submitted that the Respondent being the State within the meaning of Article 12 of the Constitution of India are expected to act reasonably and fairly even in their commercial transactions and in any event are not entitled to act in a manner which is detrimental to the interest of the Petitioner. The learned Counsel for the Petitioner lastly submitted that the acts and conduct of the Respondents is highly illegal, malafide, iniquitous, discriminatory, vexatious, harassive and in violation of the fundamental rights guaranteed to the Petitioner under Part III of the Constitution of India and as such liable to be quashed and set aside by this Court by exercising its jurisdiction under Article 226 of Constitution of India.

14 Mr. S.V. Manohar, the learned Advocate General appearing for the Respondent No.1-State, while supporting the letter/order dated 1st December 2014 issued by the Respondent No.2, submitted that the right of the Petitioner is arising out of a Contract and the Petitioner is having efficacious alternate remedy for recovering the damages if at all the Petitioner has suffered and the present petition for enforcement of the contract is not maintainable under Article 226 of Constitution of India.

15 The learned Advocate General has invited our attention to various clauses of the instructions to offerers/contract and in particular the Clauses Number 27.3, 28.4, 35.3 and 39 of the said terms of the Contract which deals with the various obligations to be performed by the Contractor including clause for dispute arising between the contractor and the Respondent No.2 and its resolution. He further submitted that the Contract of the Petitioner has been suspended after taking into consideration the complaints received against the Petitioner which amongst others also involved that the Petitioner did not issue receipts to the vehicles in the authentic format and the number of vehicles which were passing during the said road were shown less. The learned Advocate General further submitted that the State of Maharashtra, has taken a policy decision and is intending to implement it as a public policy to close down various toll stations in the State of Maharashtra where the costs of development of road is fully recovered. He further submitted that the Respondent No.2 is a Government Company and the Petitioner has entered into a contract with the Respondent No.2. He further submitted that it is the Government of Maharashtra who has taken the decision to suspend toll collection of the subject toll station and the said decision is binding on the Respondent

No.2. He further submitted that the Petitioner if aggrieved by the decision taken by the Respondent No.2, would at the most will suffer monetary losses and for recovery of the same, can adopt appropriate legal remedy against the Respondent No.2, if permissible under the law and if so advised.

16 We find substance in the argument of the learned Advocate General and we note here that the alleged right which the Petitioner wants to enforce, flows from the contract entered into by and between the Petitioner and the Respondent No.2. The Petitioner, as a matter of right, cannot claim enforcement of the contract by way of approaching this Court under Article 226 of the Constitution of India. The alleged right of the Petitioner is derived from the contract and for enforcement of the said alleged right flowing from the said contract, the present petition is not tenable in law. The Petitioner can adopt appropriate legal remedies for seeking damages from the Respondent No.2. We are of the considered view that when the State of Maharashtra itself has taken a policy decision to stop collection of toll at various places, where the cost of development of the road is fully recovered, the Petitioner even if appointed as a contractor to collect the toll, cannot as a matter of right claim its enforcement by invoking the jurisdiction of this Court under Article 226 of the Constitution

of India. The Respondent No.2 has no independent right to levy a toll on the development of roads. The right absolutely vests in the Respondent No.1-State by virtue of sovereign powers vested in it. The contract between the Petitioner and the Respondent No.1 is on account of delegation of sovereign functions vested in Respondent No.1 to the Respondent No.2. When the Respondent No.1 itself finding that the cost of the development of the road has been recovered and as such decides to stop levy of toll, merely because there is a contract between the Petitioner and the Respondent No.2, a writ which is in the nature of an order of injunction restraining the State Government from implementing its decision, cannot be granted

17 We are of the considered opinion that the present petition is misconceived and is not tenable under the law and hence is dismissed in limine.

In view of the dismissal of the petition, the Notice of Motion (L) No.31 of 2015 does not survive and the same is disposed of.

18 At this stage, the learned Counsel appearing for the Petitioner seeks continuation of the interim protection granted by this Court earlier for further period of four weeks. As stated herein above, we have found and

noticed that the State who had decided to impose the toll upon the citizens, does not wish to collect the toll on certain public roads. When the State of Maharashtra itself does not wish to impose toll on the public roads as a matter of public policy, by interim order the toll cannot be thrust upon the citizens at large. In view of the same, the prayer for extension of interim relief stands rejected.

(A.S. GADKARI, J.)

(B.R. GAVAI, J.)