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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 01.07.2020

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W.P.(C) 3853/2020

**PRAKASH ASPHALTINGS AND TOLL HIGHWAYS INDIA
LIMITED**

..... Petitioner

Through Mr.Sandeep Sethi, Sr. Adv.
along with Mr.Krishna Vijay
Singh, Mr.Manish Dembla,
Mr.Pradyuman Sewar,
Mr.Nachiketa Goyal,
Mr.Rishabha Sharma and
Mr.Sidhant Kumar Advocates

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ANR.

..... Respondents

Through Mr.Narender Hooda, Sr. Adv.
with Ms.Neetika Sharma, Adv.
for R-1.

Mr.Harish V.Shankar, CGSC
for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This hearing has been held by video conferencing.

CM No.13792/2020 (Exemption)

Allowed, subject to all just exceptions.

CM No.13793/2020 (Exemption from filing notarized affidavit and affixing of court fee)

1. This application has been filed seeking exemption from filing duly notarised affidavits and affixing requisite court fee. Binding the deponent of the affidavit to the contents of the application, the exemption is granted.
2. Court fee shall be deposited online with the concerned authority within one week and physical stamp be filed within 72 hours from the date of resumption of regular functioning of the Court, as mandated in terms of Office Order dated April 04, 2020 issued by this Court.
3. Application is disposed of.

W.P.(C) 3853/2020 & CM No.13791/2020 (Stay)

1. As a short question is involved in the present petition, the same is being taken up for disposal at this stage itself.
2. This petition has been filed by the petitioner *inter-alia* praying for the following reliefs:

“a) Issue a writ of certiorari or any other appropriate writ, order or direction thereby quashing / setting aside paragraph 2C of the office memorandum dated 18.05.2020 (Annexure P-1) issued by Respondent no. 2, in so far as it imposes a unilateral condition /formula for payment of force majeure compensation in derogation of the contracts executed between tolling contractors (such as the Petitioner) and Respondent No.1;

*b) Issue a writ of certiorari or any other appropriate writ, order or direction thereby quashing / setting aside policy circular bearing no.17.5.79 dated May 28, 2020 (**Annexure P-2**) issued by Respondent no. 1;*

*c) Issue a writ of certiorari or any other appropriate writ, order or direction thereby quashing / setting aside condition no. (viii) contained in Respondent No.1 's Policy No. 18.46/2020 dated June 22, 2020 (**Annexure P-3**);*

*d) Issue a writ of certiorari or any other appropriate writ, order or direction thereby quashing/setting aside the Impugned Notice dated 01.06.2020 (**Annexure P-4**) and letter dated 05.06.2020 (**Annexure P-5**) issued by Respondent No.1 in relation to the Jaswantgarh Project;*

e) Issue a writ of certiorari or any other appropriate writ, order or direction thereby setting aside the appropriation of cash performance security by Respondent No.1 to the extent of Rs.85,36,115/- in relation to the Jaswantgarh Project;

f) Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing Respondent No.1 to forthwith withdraw the direction to the Petitioner to replenish the cash performance security in relation to the Jaswantgarh Project;

*g) Issue a writ of certiorari or any other appropriate writ, order or direction thereby quashing/setting aside the Impugned Notice dated 20.06.2020 and letter dated 20.06.2020 (**Annexure P-45**) issued by Respondent No.1 in relation to the Raksha and Mundiyyar Projects respectively;*

h) Issue a writ of prohibition or any other appropriate writ, order or direction thereby restraining the Respondent No.1 from invoking the cash performance security and bank guarantees provided by Petitioner for the 9 projects, mentioned in the table contained in paragraph no.12 of the present writ petition, till: (i) all force majeure claims of the Petitioner under the said projects are decided by Respondent No.1 and (ii) toll collection with respect to each such project reaches 100% of the average toll collection during the month of February 2020;

i) Issue a writ of prohibition or any other appropriate writ, order or direction thereby restraining the Respondent No.1 from imposing any penalty, interest or taking any other coercive steps (including termination of the contract) on account of short / delayed remittances in relation to the 9 projects, the details of which are mentioned in the table contained in paragraph no.10 of the present writ petition till: (i) all force majeure claims of the Petitioner under the said projects are decided by Respondent No.1 and; (ii) toll collection with respect to each such project reaches 100% of the average toll collection during the month of February 2020;

j) Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing Respondent No.1 to forthwith withdraw the direction to the Petitioner to replenish the cash performance security or performance bank guarantee with respect to each project in respect of which the same may have been invoked before the Petitioner may have been able to obtain any relief under the present petition;

k) Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing Respondent No.1 to decide the force majeure claims of the Petitioner with respect to all 9 tolling contracts in terms of Clause 25(c)(ii)(5) of the contracts, at the earliest preferably within a period of 7 days;

l) Issue a writ of mandamus or any other appropriate writ, order or direction thereby declaring that the force majeure period shall continue with respect to the 9 tolling contracts, till the average user fee collection reaches 100% of the average collection in February 2020 i.e. in pre-lockdown period.”

3. The learned senior counsel appearing for the respondent no.1 raises a preliminary objection on the maintainability of the present petition before this Court. He submits that the petitioner is primarily aggrieved of the Demand Letters issued by the respondent no.1 with respect to the Agreement executed between the petitioner and the respondent no.1 for engagement of User Fee collection agency for the Jaswantgarh Fee Plaza at Km. 64.200 for the Section from km. 57.000 to km. 104.724 (Jaswantgarh- Debari Section) on NH-76 in the State of Rajasthan. He submits that the said Agreement relates to the area in the State of Rajasthan and unlike many other contracts of the respondent no.1, does not contain a clause vesting territorial jurisdiction to this Court. He further submits that in fact the Demand Letters have been issued by the Project Director in Rajasthan and therefore, this Court would not have the territorial jurisdiction to entertain the present petition.

4. On the other hand, the learned senior counsel for the petitioner submits that the basic grievance of the petitioner is the non-compliance of the respondent no.1 with the contractual terms for the nine Toll Collection Agreement(s) that have been executed by the petitioner and the respondent no.1 for various toll plazas across the country. He submits that this petition challenges the policy decision of the respondent no.1, which is not in consonance with the contractual terms and the Demand Letter in relation to the Jaswantgarh Fee Plaza Agreement have been filed only to highlight the grievance of the petitioner. He further submits that various agreements have been, in fact, executed in Delhi and therefore, even otherwise this Court would have territorial jurisdiction to entertain the present petition.

5. I have considered the submissions made by the learned senior counsels for the parties. The petition itself states that the petitioner is operating nine toll plazas of the respondent no.1 throughout the country. The grievance raised in the petition is also not confined only to the Impugned Demand Notices issued by the respondent no.1 for the Jaswantgarh Toll Plaza. It is clearly on a larger policy issue of compliance of respondent no.1 with the contractual terms for all the toll plazas operated by the petitioner. The prayers as reproduced herein above clearly prove the above fact. I therefore, find no merit in the preliminary objection raised by the learned senior counsel for the respondent no.1 on the maintainability of the present petition.

6. On the merits of the claim in the present petition, the learned senior counsel for the petitioner submits that the petitioner has filed claims with the respondent no. 1 under Clause 25 of the respective Agreements for all the nine toll plazas being run by it.

7. The learned senior counsel for the respondent no. 1 submits that such claims shall be decided strictly in accordance with the Agreement executed between the petitioner and the respondent no. 1 within a period of three weeks from today. It is directed accordingly. In case any additional document is to be sought from the petitioner, the respondent no. 1 shall demand the same within a period of one week from today. The petitioner shall supply the same to the respondent no. 1 within a period of three days thereafter.

8. As the claim of the petitioner under Clause 25 of the Agreement(s) is yet to be decided by the respondent no. 1 and having noted the scheme of Clause 25 of the Agreements, it is directed that pending such decision, no coercive action shall be taken by the respondent no.1 against the petitioner for the recovery of any claimed amount for the period in dispute. Incase on the final decision certain amount is found due against the petitioner, the same shall not be enforced for a period of one week from the communication of such demand to the petitioner. The petitioner, if aggrieved of such demand, shall be entitled to challenge the same in accordance with law and the contract by way of an appropriate proceeding. In the interregnum, till the interim decision is taken by the respondent no. 1 on the claim of the petitioner under Clause 25 of the Agreements, the petitioner, in

cases where it is yet to achieve 90% of the traffic in pre-lockdown period (as stipulated in Circular/Guidelines dated 28.05.2020 of the respondent no. 1), shall continue to deposit with the respondent no. 1, the admitted toll collected at various toll plazas after deducting the retention amount as claimed by it during this period. For the toll plazas where the petitioner has achieved 90% of the traffic in pre-lockdown period, the petitioner shall deposit the amount strictly in accordance with the Agreements with the respondent no. 1 from the date that the petitioner achieved such benchmark. Arrears, if any, of this amount shall be deposited by the petitioner with the respondent no. 1 within one week from today.

9. The petition is disposed of in the above terms with no order as to cost.

NAVIN CHAWLA, J

JULY 01, 2020/Arya