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

+ **W.P.(C) 5534/2024**

GANESHGARIYA CONSTRUCTION PRIVATE LIMITED

..... Petitioner

Through: Mr. Parmod Kalirana, Ms. Amaya
Vaid, Advocates

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ORS.

..... Respondents

Through: Mr. Santosh Kumar, Standing
Counsel with Mr. Devansh Malhotra
for Respondent/NHAI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

%

22.04.2024

CM APPL. 22761/2024 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 5534/2024 & CM APPL. 22760/2024

1. The Petitioner has approached this Court with the following prayers:-

“i. Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing Respondents to take handover of the “Undewadi fee plaza (Toll Plaza/ Fee Plaza) located at km 18.585 of Patas – Baramati section from 0.000 Km to Km 41.369 of NH-965G in the state of Maharashtra and upkeep/ maintenance of adjacent Toilet blocks including recouping the consumable items” from the Petitioner with immediate effect or to handover the fee plaza to



new agency as the maximum time period of 30 days got completed on 31.03.2024 and without any valid reason the Respondents are not adhering to the contractual provisions or on the alternative only to collect the actual user fee collected after deducting the manpower cost till the fee plaza is not handed over or taken from the Petitioner.;

ii. Issue a writ order, or direction in the nature of mandamus, directing the Respondents to compensate the Petitioner for the losses suffered due to shortfall in toll collection at the Undewadi Fee Plaza by waiving off the difference amount between the agreed remittance amount quoted by the Petitioner and the actual toll collection amount received on daily basis w.e.f. 17-03-2024, and thus, allowing the petitioner to deposit the toll collected on an actual daily collection basis from 17-03-2024 till the handing over of the user fee plaza and by directing the respondents to reimburse the expenditure incurred in toll collection operation from 17-03-2024 by the Petitioner as the reason for delay in handing over the fee plaza is due to the Respondents and not attributable to the Petitioner.

iii. Pass any such/further orders or directions as this Hon'ble Court deems fit in the interest of justice."

2. The facts, in brief, leading to the instant writ petition disclose that the Petitioner was awarded a contract for running a toll plaza at Undewadi. The contract was entered into on 09.02.2024. The Petitioner exercised his rights under Clause 35(5) of the Contract Agreement and stated that he is not willing to perform the contract.

3. The list of dates as filed by the Petitioner reveals that the said letter was issued on 01.03.2024 and the period of 30 days ended on 31.03.2024. He states that though the tenders have been issued twice, the contract has not



been awarded to anybody else. He states that the Petitioner cannot be made liable to make any payments after the period of 30 days.

4. Though the learned Counsel for the Respondent states that even in terms of the contract, the Petitioner is bound to pay till the toll plaza is taken over, yet this Court is inclined to issue notice to the Respondent/NHAI to file its reply on the merits of the case.

5. Issue notice.

6. Learned Counsel for the Respondent, accepts notice. He seeks some time to file the reply.

7. Let reply be filed within three weeks from today. Rejoinder, if any, be filed within a week thereafter.

8. List on 30.07.2024.

9. In the meantime, the pendency of this writ petition should not be taken as an impediment on the part of the NHAI to handover the fee plaza to any other person who is successful in the tender.

SUBRAMONIUM PRASAD, J

APRIL 22, 2024

hsk