(2026) 01 JH CK 1721

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5863 Of 2025

Vanshidhar Electric Private Limited — APPELLANT

Vs

State Of Jharkhand, Through Principal Secretary — RESPONDENT

Date of Decision : 06-01-2026

Acts Referred:

Contract Act, 1872 — Section 23, 56
National Highways Act, 1956 — Section 9
National Highways Fee (Determination of Rates and Collection), Rules, 2008 — Rule 2(1)(hd), 6, 6(3)
Central Motor Vehicles Rules, 1989 — Rule 138A

Citation : (2026) 01 JH CK 1721

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Shilpi Sandil Gadodia, Anish Lal, Mohan Kumar Dubey

Final Decision : Disposed Of

Judgement

Rajesh Kumar, J

1. The present writ petition has been filed for the following relief(s):

(i) For issuance of an appropriate writ/order/direction, including Writ of Mandamus, directing Respondent-authorities to pay admitted due and payable amount in respect of Agreement No. 01 RFP of 2023-24 dated 15th September, 2023 (Annexure-3) entered by and between Petitioner and Respondents, after taking into consideration Force Majeure claim of Petitioner in terms of Clause 25 of the Agreement.

(ii) For issuance of further appropriate writ/order/direction, including Writ of Declaration, declaring that action of Respondent on one hand in not making payment of admitted due amount and on the other hand unilaterally extending the tenure of the Agreement is void ab initio; and status of Petitioner after expiry of the tenure of the Agreement is only that of an Agent of Respondent-authority.

2. Arguments of the petitioner on the factual matrix reads as under:

“1. Respondent-Executive Engineer, Road Division, Saraikela published a Notice Inviting Tender dated 03.01.2023 for appointment of User Fee Collection Agency in respect of Adityapur-Kandra Road Section (0.000 to 15,100),

2. Petitioner was declared as the highest bidder and vide Letter No. 798 dated 07.08.2023, it was appointed as User Fee Collection Agency for Kandra Junction Toll Plaza at Adityapur-Kandra Road Section of State Highway No.5.

3. An agreement dated 15th September, 2003 was entered into between Petitioner and Respondent-Executive Engineer, wherein the contract entered with the Petitioner was for a period of two years and was expiring on 03.10.2025.

4. Despite the fact that agreement was expiring on 03.10.2025 and Petitioner, on several occasions, wrote to Executive Engineer for taking over the Toll Plaza, Respondent-Executive Engineer, vide Letter No. 1089 dated 27.09.2025, extended the tenure of the agreement up to 03.04.2026.

5. Petitioner objected to said unilateral extension of tenure, which was contrary to Clause 2(ii) of the Agreement dated 15th September, 2023, which reads as under "-

"(ii) The period of contract shall be Two years. However, in case of urgency, the Authority reserves the right to increase the contract period mutually agreed upon but limited to 6 months."

6. It is an admitted fact that in Adityapur-Kandra Section of State Highway No. 5, there is no facility installed for collection of toll through FASTag.

7. The Toll Plaza, which was handed-over to Petitioner, was not having FASTag system which is compulsory as per Ministry of Road Transport and Highways and Petitioner, immediately upon taking over of Toll Plaza, requested Respondent-State of Jharkhand vide its Letter dated 17th October, 2023, to install FASTag system for toll collection.

8. Again on 25th October, 2023, Petitioner filed reminder representation for installation of FASTag system and it even obtained a tentative quotation for installation of FASTag from a vendor, costing about Rs. 72.00 Lakhs, and requested Respondent-authorities to grant necessary approval of installation of FASTag, but no approval was granted.

9. Ministry of Road Transport and Highways, vide Notification dated 2nd November, 2017 issued under Central Motor Vehicles Rules, 1989, amended Rule 138A of Central Motor Vehicles Rules, 1989, which reads as under:-

"138 A. Fitment of FASTag,-- Categories M and N motor vehicles sold on and after the 1st December, 2017, shall be fitted with FASTag as may be specified by the Central Government, from time to time, by the manufacturer of the vehicle or its authorized dealer, as the case may be:

Provided that in case of any vehicle which is sold in the form of drive-away-chassis without windscreen, FASTag shall be fitted on the windscreen by the vehicle owner before the registration of such vehicles.

Explanation.- For the purposes of this rule, FASTag means an onboard unit (transponder) or any such device fitted on the front windscreen of the vehicle."

10. Further, vide Notification dated May, 2018, under Section 9 of National Highways Act, 1956, amendment was carried out in National Highways Fee (Determination of Rates and Collection), Rules, 2008 and Rule 2(1)(hd) was inserted, which reads as under-

"(hd) "Electronic Toll Collection Infrastructure" means set of equipment comprising of hardware and software which shall facilitate electronic collection of user fees."

11. Further, in Rule 6(3), following proviso was inserted, namely;--

"Provided also that if a vehicle user with a valid, functional FASTag or any such device with Electronic Toll Collection infrastructure, is not able to pay user fee through FASTag or any such device owing to malfunctioning of Electronic Toll Collection infrastructure, the vehicle user shall be permitted to pass the fee plaza without payment of any user fee. An appropriate zero transaction receipt shall be issued mandatorily for all such transactions."

12. A bare perusal of the said Rule would reveal that any vehicle, which is fitted with FASTag and, if at the Toll Plaza, there is no facility of collection through FASTag, said vehicle would be required to pass without payment of user fee.

13 Aforesaid statutory Notification constitutes 'Law of land and is required to be followed, and, if it is not followed, the same would not only be violative of mandatory requirement of law, but would also have material bearing on effective collection of toll.

14. Ministry of Road Transport and Highways has further issued Notification dated 15th May, 2020, wherein, in exercise of power under Section 9 of National Highways Act, 1956, under Rule 6 of the Rules of 2008, following proviso has been substituted, namely.-

"Provided further that user of the vehicle not fitted with "FASTag" or vehicle without valid, functional "FASTag" entering into "FASTag lane" of the Fee plazas shall pay a fee equivalent to two times of the fee applicable to that category of vehicles as per sub-rule

(2) of rule 4."

15. Thus, aforesaid provisions would clearly show that not only that Toll Plazas are required to be fitted with equipment for facilitating collection of toll through electronic means i.e. FASTag, but even vehicles not fitted with FASTag, are liable to pay fee equivalent to two times of the fee applicable.

16. The FASTag system was primarily required in India to streamline toll collection and enhance travel efficiency, which serves following purposes, namely:-

(a) Faster movement at toll plazas;

(b) Reduces waiting time & fuel consumption;

(c) Transport toll collection;

(d) Helps the government to monitor road usage:

(e) Reduces cash handling at toll plazas.

17. Under the Motor Vehicles Act, 1988, Insurance Policy cannot be issued to Motor Vehicle unless it necessarily has FASTag installed and this requirement was made mandatory with effect from 1st April, 2021.

18. Despite the statutory mandate, at Toll Pláza of Adityapur-Kandra Section of State Highway No.5, no FASTag system was installed which prevented the Petitioner in view of statutory mandate from collecting toll from such vehicle which was fitted with FASTag, especially because, as per law of land, Petitioner could not have collected toll from vehicles fitted with FASTag at a Toll Plaza which was not having device collection of toll through electronic mode.

19. Petitioner, time and again, represented to Respondent-authorities that due to non-installation of FASTag collection mechanism, vehicle owners are not making payment of cash at the Toll Plaza and approximately within a week period, 1800 vehicles are passing through Toll Plaza without paying prescribed toll, by stating, inter alia, that in absence of FASTag mechanism, they are not required to pay toll at Toll Plaza.

20. Petitioner, vide several representation, brought to the notice of Respondent-State of Jharkhand the perpetual effect of non-payment of toll by several vehicles resulting into lessor collection of toll at the Toll Plaza. In fact, Respondent-State of Jharkhand itself was aware about aforesaid facts and the Engineer-in-Chief, Road Construction Department wrote a letter to Chief Engineer regarding necessity of installation of FASTag at the Toll Plaza.

21.In fact, in subsequent tender being N.I.T. dated 02.05.2025 (Annexure-22), Respondents have themselves mentioned that electronic device should be installed at the Toll Plaza enabling collection of toll through FASTag.

22. Despite such representation, no heed was paid by Respondent-authorities and, accordingly, Petitioner invoked Clause 25(c)(v)(iii) of the Agreement giving notice for termination of the contract, but neither Respondents settled the claim, nor relieved the Petitioner from liability towards collection of toll.

23.Petitioner filed repeated representations, dated 17th April, 2025, 25th August, 2025, 2nd September, 2025 and 22nd September, 2025, stating, inter alia, that it has a claim of Rs. 5,34,96,913/- as on 31.08.2025 and requested the

Respondents to settle the said claim and further stated that since the contract is expiring on 3rd October, 2025, it may be relieved from the Toll Plaza operation.

24. However, Respondents never settled the claim and even unilaterally extended the tenure of the agreement up to 03.04.2026.

25. The contract entered by Respondent-State of Jharkhand with Petitioner is contrary to statutory mandate under Section 23 of the Indian Contract Act, 1872. Further, the contract of Petitioner stands frustrated in terms of Section 56 of the Indian Contract Act due to event of impossibility of performance.

26. Under Clause 25 of the Agreement, being Clause 25(b)(i) following events have also been treated as Force Majeure events, namely:

(b) FORCE MAJEURE EVENT

Except as stated in Clause (a) above, Force Majeure event means an event or circumstances or a combination of events and circumstances referred to in this clause which are beyond the reasonable control of the Party or Parties to this Contract and which party could not have prevented or reasonably overcome with the exercise of its reasonable skill and care in relation to performance of its obligations pursuant to this Contract and which are of the nature, without limitation of those described below:

(i) Publicly declared strike by registered and recognized association of Transporters exceeding 7 days. The date of going on strike and withdrawal or start of movement of traffic will be inclusive for the purpose of calculation of 7 days under this clause.

27. Strike was started from 02.01.2024 and continued till 27.01.2024 and due to said strike toll collection was materially affected and Petitioner made Force Majeure claim of Rs. 42,83,090/-

28. In response to the said claim, Respondent-Executive Engineer, vide Letter No. 137 dated 07.02.2025, directed the Petitioner to submit proof of the fact that there was a strike called by publicly recognized registered Association of Transporters, so that its claim for Force Majeure can be considered.

29. Petitioner produced letter of Jamshedpur Truck and Trailer Owners Association, bearing No. 3839 certifying the fact that there was strike by Transport Owners Association between the period 02.01.2024 to 27.01.2024, but despite such letter being produced, no decision was taken by Respondents.”

3. On the above basis the petitioner has made the following claim:

1) Proportionate reduction of User Fee due to non-installation of FASTag.

2) Claim under Clause 25(b)(i) due to Transporters strike being an admitted Force Majeure event.

3) Treating the Petitioner as an Agent of Respondent-State of Jharkhand after

expiry of the period of contract i.e. 03.10.2025.

4) Refund of Bank Guarantee No. 014GTO2232440004 dated 01.02.2023.

4. This Court vide order dated 06.12.2025 has formulated four issues, which reads as under :

a. As per the agreement, who has to construct the toll plaza, whether the authority or the contractor/the petitioner?

b. Whether the petitioner can collect the toll from a vehicle fitted with “Fastag”.

c. If the provision is not there for collection of the Fastag, then who is at fault?

d. If the respondents are at fault, whether the petitioner can be punished for that or not?

5. Learned counsel for the respondent-State has submitted that there is no provision for fitting equipment for collection of toll through Fastag, so far as contract is concerned. The non-collection of the amount due to the Fastag shall be determined by taking evidence by the competent authority. In the absence of necessary evidence/ material on record, this amount cannot be ascertained by this Court.

6. It has been further submitted that it is a contractual matter and the Commercial Court is the proper forum.

7. Having heard learned counsel for the parties and on perusal of the record it appears that:

i. Petitioner has been appointed as an agent for collection of toll/ user fee.

ii. The toll plaza has to be constructed by the department and not by the agent/ petitioner.

iii. As quoted hereinabove, the law has been declared that the petitioner was not authorized to collect toll from the vehicle fitted with Fastag rather it is admitted position that no collection has been made from the vehicle fitted with the Fastag.

iv. Thus, the non-collection of toll/user fee by the petitioner is due to operation of law and for this the petitioner cannot be penalized.

8. In view of the above discussion, it is hereby declared that petitioner has to be compensated for the non-collection of the user fee by the vehicle fitted with Fastag. This required determination by the authority.

9. So far as transporter strike is concerned, that is also to be compensated by the authority.

10. In view of the above discussion, the matter is remitted back to the respondent no. 3- Chief Engineer (Communication), Road Construction Department for determination of the loss incurred due to non-collection of the

toll from the vehicle fitted with Fastag and also for the transporter strike period.

11. Needless to say, that the authorities are supposed to come out with proper procedure i.e., by looking into the toll collection from the near by plaza who was equipped to register the vehicle with Fastag. The authorities are further free to put into service other parameters for determination of the amount due to strike and non-collection of the toll as no provision has been provided in the toll plaza.

12. The above exercise must be completed within a period of 3 months from the date of production/ receipt of the copy of this order. After determination of the amount the follow up action will be taken by the authority including return of the bank guarantee.

13. With the above observation and direction, the writ petition stands disposed of.

