IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 25576 of 2013 (V)

PETITIONER:

P.M.HARIDAS, AGED 46 YEARS
S/O.P.N.MADHAVAN PILLAI, PANDAPLACKAL,
CHIRAKADAVU P O,
KANJIRAPALLY, PIN-686507.

BY ADVS.SRI.M.P.RAMNATH
SRI.P.RAJESH (KOTTAKKAL)
SRI.M.VARGHESE VARGHESE
SMT.UMA R.KAMATH
SMT.S.SANDHYA

RESPONDENT(S)/RESPONDENTS:

1. KOTTAYAM MUNICIPALITY
MUNICIPALITY OFFICE, KOTTAYAM, PIN-686001
REP. BY ITS SECRETARY.

2. THE REVENUE OFFICER,
KOTTAYAM MUNICIPALITY, MUNICIPALITY OFFICE, KOTTAYAM
PIN-686001.

Addl.R3. LOCAL FUND AUDIT DEPARTMENT
GOVERNMENT OF KERALA, TRIVANDRUM -695 001
REPRESENTED BY LOCAL FUND AUDIT DIRECTOR.

(ADDL. R3 IS IMPLEADED AS PER ORDER DATED 30.10.2013
IN IA NO.14243/2013.)

R1 BY ADV. SRI.SIBY MATHEW
R1&R2 BY ADV. SRI.PHILIP J.VETTICKATTU
R3 BY GOVERNMENT PLEADER SRI RAFEEK.V.K

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 25576 of 2013 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:TRUE COPY OF THE JUDGMENT DTD 21/4/2009 IN WPC NO 10959/2007 OF THIS COURT.

P2:-TRUE PHOTO COPY OF THE REPRESENTATION/APPLICATION DTD 14/8/2009 SUBMITTED BY THE PETITIONER TO THE RESPONDENTS WITH THE RESPONDENT'S ENDORSEMENT DTD 17/8/2009 THEREUPON.

P3:-TRUE PHOTO COPY OF THE AGENDA (KARYAKURIPPU)BEARING FILE NO R6-1729/2009(1) OF THE RESPONDENT'S COUNSEL WITH THE DECISION NO.6 DTD 9/12/2009 ISSUED TO THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT.

P4:-TRUE COPY OF THE DEMAND NOTICE DTD 17/8/2013 BEARING NO 1729/2009 ISSUED BY THE RESPONDENTS TO THE PETITIONER AND RECEIVED BY THE PETITIONER ON 3/9/2013.

P5:-TRUE PHOTO COPY OF THE REPLY DTD 20/9/2013 SUBMITTED BY THE PETITIONER TO THE RESPONDENTS IN PURSUANCE OF EXT P4 DEMAND NOTICE.

RESPONDENT(S)' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.25576 of 2013-V

Dated this the 1st day of July, 2015

JUDGMENT

The petitioner is challenging the order Ext.P4 by which he was directed to remit a sum of Rs.3,36,783/-, the bid amount, by way of remission as per Ext.P3 resolution.

2. The facts leading to the impugned action of the Municipality is as follows: The petitioner was the successful bidder in the auction for collection of bus stand fees from Kottayam Municipal Bus Stand for the year 2009-2010. The auction notification was for collection @ Rs.15/- per bus per day, entering the bus stand. But the rate of fees happened to be reduced on account of Ext.P1 judgment dated 21.04.2009 in W.P (c) No.10959 of 2007, filed by the Kottayam District Private Bus Operators Association and another challenging the levy of fees @ Rs.15/- per bus per day. This Court fixed the rate of fees per bus at Rs.12.50 per day.

3. Therefore the petitioner could collect the fees only @ Rs.12.50. Since the petitioner had bid the auction under the

impression that he will be able to collect fees @ Rs.15/-, he had to suffer considerable loss, as far as the bid amount is concerned with respect to the amount he could collect from the buses.

4. In these circumstances, he submitted a representation Ext.P2 requesting for proportionate reduction in the auction amount, considering the reduction effected in the rate of fees @ Rs.2.50 and to calculate the auction amount accordingly. Based on Ext.P2 representation, the council of the Municipality considered the matter and accepted the request of the petitioner as per Ext.P3 decision No.6 in its meeting convened on 12.09.2009. On the basis of the said decision the auction amount was reduced from Rs.22 lakhs to Rs.19,33,217/-. Thus there was a remission of a sum of Rs.3,37,783/-. But on 17.08.2013, the Municipality issued Ext.P4 notice directing the petitioner to remit the amount with the Municipality threatening revenue recovery proceedings, in the event of non remittance.

5. Even though the petitioner submitted Ext.P5 representation before the Municipality on 20.09.2013, the Municipality did not take any positive action. Hence this Writ Petition was filed.

6. The Municipality has filed counter affidavit stating

that the notice was issued on account of the audit objection raised by the Local Fund Audit saying that the Government's sanction was necessary for remission of the bid amount. The objection was to the effect that the deduction was in violation of the provisions contained in the Kerala Municipality (Grant of Remission of Kists to Lessees, Licensees and Contractors) Rules, 1998, according to which, remission exceeding Rs.10,000/- can be granted only with the approval of the Government. The Municipality stated that the petitioner has not complied with Rule 5 and the remission granted was contrary to proviso to Rule 4, without getting approval from the Government.

7. Heard the learned counsel Shri M.P.Ramnath appearing for the petitioner, Shri Philip J.Vettikkadu appearing for respondents 1 and 2 and the learned Government Pleader.

8. The objection raised is in terms of the proviso to Rule 4 as well as Rule 5 of the Kerala Municipality (Grant of Remission of Kists to Lessees, Licensees and Contractors) Rules, 1998, which read as follows:

> "4. Grant of remission of kist:-- If any loss occurs to a lessee, licensee or contractor, not because of his fault but because of his unableness to enjoy or utilise the property, the right conferred under the contract, for

> reasons unexpected and beyond human control such as closing down of institutions due to natural calamity or epidemic and unableness to collect the profits, which he had agreed to collect, from the crop bearing trees due to their uprooting by storm and torrential rain, remission of kist proportionate to the actual loss suffered may be granted in accordance with the decision of the council:
>
> Provided that prior sanction of the Government shall be obtained in each case where the granting of remission exceeds ten thousand rupees.
>
> 5. Conditions of contract to be fulfilled:-- No application for remission of kist shall be considered by the council unless the conditions of lease, contract or licence are strictly fulfilled and the whole amount as per such conditions have been remitted within the specified time.”

Rule 4 provides for the procedure to be adopted in the event of loss being caused to a lessee, licensee or contractor not because of his fault but because of his inability to enjoy or utilise the property, the right conferred under the contract for reasons unexpected and beyond human control such as closing down of institutions etc. It is under these circumstances, that the Rule requires Government's sanction where the grant of remission exceeds Rs.10,000/-. As rightly contended by the learned counsel for the petitioner, in this case the loss was caused to the petitioner only because of the intervention of this Court by way of Ext.P1 judgment in which the rate per vehicle was fixed at Rs.12.50 per day as against the notification for auction in which the rate prescribed was Rs.15/- per day. Therefore in effect this is not a condition envisaged under Rule 4. Similarly when this Court directed that the rate has to be fixed at Rs.12.50, the petitioner as well as the Municipality were bound to comply with the same. Loss was caused in the above circumstances. Therefore it was quite reasonable, just and proper on the part of the Municipality to grant remission proportionate to the reduction in the rate fixed per vehicle. Regarding the contention of the Municipality the concerned section is Rule 5. Rule 5 only provides that no application for remission of kist shall be considered by the council unless the conditions of lease, contract or licence are strictly fulfilled and the whole amount as per such conditions has been remitted within the specified time. But in this case the contract was entered into at a time when the Municipality council fixed the rate of fees at Rs.15/-, which was reduced not at the instance of the petitioner or the Municipality. Therefore, the contract itself has undergone a change in view of Ext.P1 judgment. In the above circumstances, the remission granted by the Municipality was proper and in the circumstances of the case prior sanction from the Government as stipulated in the proviso to Rule 4 was not required. The audit objection raised in the above circumstances also will not lie. The notice Ext.P4 will stand quashed. It is declared that petitioner is not liable to remit any amount towards the remission already granted.

Accordingly this Writ Petition is allowed.

Sd/-
(P.V.ASHA, JUDGE)

rtr/