

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM :

THE HONOURABLE MR. JUSTICE.S.VAIDYANATHAN

W.P.No.33021 of 2013

Erode Banian Merchants Association,
rep. by its Secretary,
TML. Arumugam,
19, Gandhiji Road,
Erode - 638 011.

.. Petitioner

Vs

1. The Commissioner,
Erode Corporation,
Erode - 638 001.

2. The Assistant Commissioner,
Region III, Teachers Colony,
Erode Corporation,
Erode - 638 011.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the production of records relating to Erode Corporation vide Resolution No.463, dated 29.05.2013 and consequential proceedings dated 24.06.2013 made in Na.Ka.No.A1/5829/12 passed by the 1st respondent herein, quash the same and refix the licence fee for the petitioner for the period 2011-12 and 2012-13 in accordance with law.

For Petitioner :Mr.S.Senthilnathan

For Respondents:Mr.R.Sivakumar
for Mr.Rajamathivanan

O R D E R

The petitioner has come forward with this Writ Petition seeking to quash the Resolution No.463, dated 29.05.2013 relating to Erode Corporation and the consequential proceedings dated 24.06.2013 passed by the 1st respondent herein and for a direction to re-fix the licence fee for their Association for the period 2011-12 and 2012-13, in accordance with law.

2. According to the petitioner-Association, they have been conducting Shandy for the past several years in Erode from 2002 onwards. The traders are not only from Erode District, but also from other Districts of Tamil Nadu. The

Society will allot space for each shop and provide all amenities. Nearly 300 to 450 shop-keepers used to participate in the Shandy depending upon the season. The Society will collect Rs.35/- from small shops and Rs.70/- from big shops. Out of the collections, 25% of the amount will be paid to the Erode Corporation as licence fee for conducting the Shandy.

3. While so, the 1st respondent arbitrarily fixed a sum of Rs.2,09,889/- as licence fee for the year 2005-2006 and the same amount was fixed for the year 2006-2007 also. As the said licence fee was 300 times higher than the fee fixed earlier, the petitioner-Association submitted its objections to the respondent-Corporation, but, the same was not considered. However, the 1st respondent, vide proceedings dated 23.05.2011 fixed the licence fee at Rs.4,71,770/- for each period between 2008-2009, 2009-2010 and 2010-2011 and the total amount was Rs.14,15,310/-. Aggrieved by the same, the petitioner made a representation dated 06.06.2011 to the 1st respondent. However, the 1st respondent rejected their representation vide proceedings dated 21.06.2011. Aggrieved by the same, the petitioner-Association filed an appeal dated 30.07.2011. In the said appeal, the 1st respondent pointed out that the licence fee has been fixed on the basis of the Report purported to have been given by the subordinate officials.

4. Thereafter, the petitioner, without prejudice to their rights, remitted the licence fee of Rs.14,15,310/- in two instalments. While so, the 1st respondent demanded licence fee for the subsequent period 2011-2012 and 2012-2013 and the petitioner remitted a sum of Rs.4,71,770/- by way of a Demand Draft vide letter dated 04.12.2012. However, the 1st respondent demanded the same amount as licence fee for 2012-2013 also. Then, the petitioner paid a sum of Rs.2,50,000/- vide Demand Draft dated 03.07.2013 to the 1st respondent. The balance sum of Rs.2,21,770/- was paid vide Demand Draft dated 23.07.2013. Thus, according to the petitioner-Association, no amount is pending towards licence fee and hence, challenging the Resolution of the Erode Corporation dated 29.05.2013, they are before this Court.

5. Learned counsel for the petitioner submitted that the respondent-Corporation came into existence from 01.01.2009 and previously, it was governed by the provisions of the District Municipalities Act, 1920. According to him, the petitioner-Association has paid all the arrears upto date and if at all, there are any dues, the petitioner is willing to pay the same, provided requisite details are furnished to them.

6. It is seen that when provisions of the District Municipalities Act, 1920 was applicable, the annual licence fee was collected at 5% and after the Erode Municipality was upgraded as a Corporation, 25% of the gross income of the

owners of the private market, who used to assemble in the Shandy once in a week, was collected as licence fee. Even though the licence fee as per the Act could be not exceeding 25%, it has been decided by the respondent-Corporation to grossly fix 25% as licence fee, that has to be collected from the gross annual income.

7. The contention of the petitioner is that there is fluctuation in the number of shops every year and that the respondent-Corporation cannot fix higher annual income of the previous year for the purpose of fixing 25% of the licence fee. While so, according to the respondent-Corporation, even if there is reduction of shops, the petitioner is bound to pay 25% as licence fee on the gross annual income based on the number of shops.

8. Though it has been stated in the counter that there has been inspection and that there is variation in the existing number of shops, the ultimatum for the respondent-Corporation is to collect licence fee on the actual gross income based on the number of shops. It is also submitted by the petitioner that they have paid a sum of Rs.4,71,770/- as licence fee for the last few years and that it is based on the gross annual income of the number of shops as per the list furnished by them.

9. As the petitioner has agreed to furnish the list of shops and also agreed to pay 25% of gross annual income, provided it correlates with the gross annual income of the turnover of the number of shops that participated in the Shandy, I find that no further adjudication is required on this issue. The petitioner-Association shall furnish the list of shops from the period in question to the respondent-Corporation within a period of one month from the date of receipt of a copy of this order. It is made clear that if there are any dues payable by the petitioner, it is open to the respondent-Corporation to demand the same from them.

The Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected M.P.No.2 of 2013 is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

(aeb)

To:

1. The Commissioner,
Erode Corporation,
Erode - 638 001.

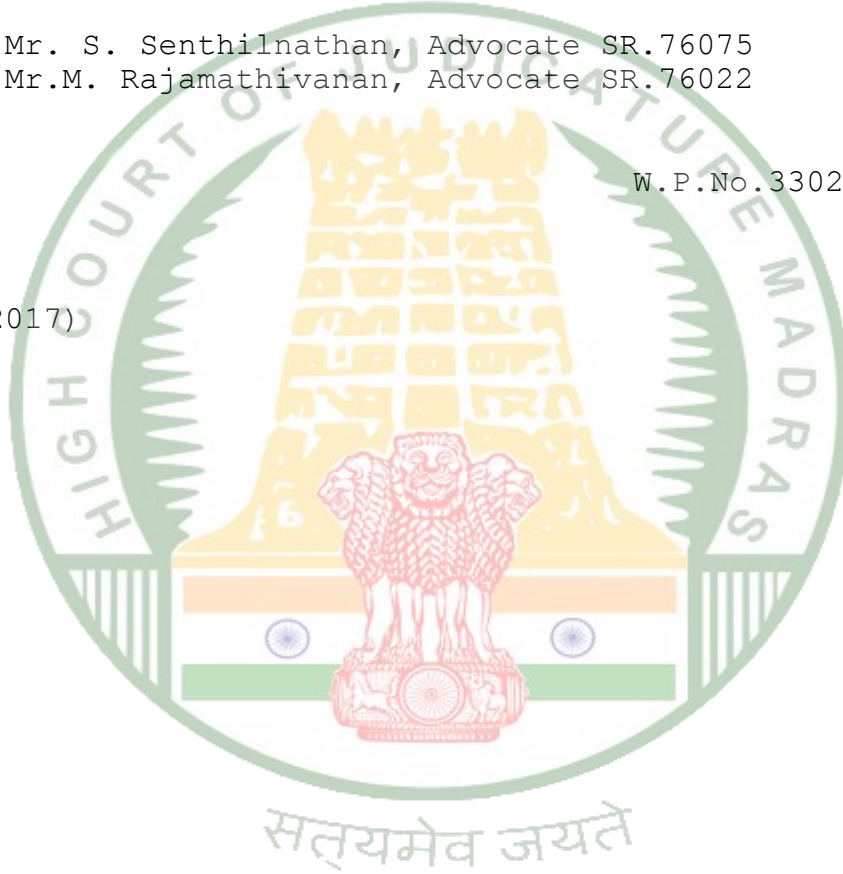
2. The Assistant Commissioner,
Region III, Teachers Colony,
Erode Corporation,
Erode - 638 011.

+ 1 cc to Mr. S. Senthilnathan, Advocate SR.76075

+ 1 cc to Mr.M. Rajamathivanan, Advocate SR.76022

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MSM(CO)
EU(21/11/2017)



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