

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2018

C O R A M

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

Writ Petition No.25074 of 2018
and W.M.P.No.29141 of 2018

L.Muthu

... Petitioner

Vs.

The Commissioner,
Thiruvathipuram Municipality,
Thiruvathipuram,
Cheyyar,
Tiruvannamalai District.

... Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in Na.Ka.No:5664/2014/A2 dated 12.09.2018 and quash the same and further direct the respondent to permit the petitioner to run the Bathroom & Toilet at Cheyyar Bus Stand.

For Petitioner: Mr.B.Jawahar
For Respondent: Mr.P.Srinivas

O R D E R

The Writ Petition has been filed challenging the order passed by the respondent cancelling the petitioner's license to collect the usage fees in the public toilet provided in the Cheyyar, Bus Stand.

2. The grievance of the petitioner is that, a license was granted to the petitioner for collecting fees in the public toilet provided in the Cheyyar, Bus Stand, and the license period expires only on 31.03.2019. On 09.09.2018, the District Collector, Tiruvannamalai, had inspected the bus stand, and directed the authorities to provide free toilet to the passengers. Thereafter, on 10.09.2018, the respondent issued a notice to the petitioner stating that, on inspection by the District Collector on 09.09.2018, it was found that, the petitioner has collected higher fees from the passengers more

than fixed by the Municipality, and also directed the petitioner to put up a board mentioning the charges for using the Toilet. The petitioner was also directed to submit his explanation on the very same day, pursuant to that he had submitted his explanation, without considering the same, the impugned order has been passed cancelling the license. Now, Challenging the same the present Writ Petition has been filed.

3. The respondent has filed a counter affidavit stating that, the District Collector, Tiruvannamalai, inspected the Bus Stand, premises on 10.09.2018, and found that the petitioner was collecting fees much higher than the permissible rates. The Municipality has fixed the fees at Rs.2/-, but the petitioner was collecting at the rate of Rs.5/- from the users. Thereafter, a show cause notice was issued to the petitioner on 10.09.2018, to rectify his mistakes within 24 hours and to submit his explanation. Since, no explanation was submitted the license was cancelled by the authorities by proceedings dated 12.09.2018. Only thereafter, on 15.09.2018, the explanation of the petitioner has been received by the respondent. The petitioner has paid the entire arrears upto 12.09.2018, as the license was already cancelled, it was decided to refund the amount to the petitioner.

4. I have heard the learned Counsel for the petitioner as well as the respondent and perused the materials available on record.

5. The petitioner is a licensee, and his license period is due to expire only on 31.03.2019. According to the respondent on 10.09.2018, the District Collector, Tiruvannamalai, inspected the Toilet and found that the petitioner was collecting fees more than the fees prescribed by the Municipality and he has also not displayed the fees prescribed by the Municipality outside the Toilet. In such circumstances on 10.09.2018, the respondent/Municipality issued a notice to the petitioner directing him to rectify all the mistakes and also to submit his explanation for the above allegation within a period of 24 hours.

6. The petitioner on receipt of the above said notice had submitted his explanation on 11.09.2018 itself. But without considering his explanation the impugned order has been passed for cancelling the license, it was disputed by the Municipality/respondent that the explanation submitted by the petitioner was received only on 15.09.2018 and before that the impugned order has been passed on 12.09.2018.

7. Be that as it may, on a perusal of the impugned order it could be seen that, the petitioner's license period is due to expire only on 31.03.2019. However, the Municipality cancelled the license prematurely on some allegations. The grievance of the petitioner, is that, the respondent did not give proper opportunity to the petitioner to submit his explanation, and conduct an enquiry before passing the order of cancelling the license.

8. Admittedly, in the instant case the respondent without conducting any enquiry whatsoever, has cancelled the license on the ground that no explanation was submitted by the petitioner. Hence, the impugned order is passed in violation of the principle of natural justice, and on the ground alone the impugned order is liable to be set aside.

9. Accordingly, the impugned order is set aside. The matter is remanded back to the respondent and the respondent is directed to conduct an enquiry by giving opportunity to the petitioner and pass orders after considering the objections raised by the petitioner. The above exercise is directed to be completed within a period of four weeks from the date of receipt of a copy of this order.

10. The writ petition is disposed of with the above direction. No Costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner,
Thiruvathipuram Municipality,
Thiruvathipuram, Cheyyar,
Tiruvannamalai District.

+1cc to Mr.B.Jawahar, Advocate sr.no.67922

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nr 26/12/2018