IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.15899 of 2007
& M.P.No.2 of 2007

R.Bhojan .. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by the Secretary to Government,
Highways Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Collector of Nilgiris District,
Udhagamandalam.

3.The Revenue Divisional Officer,
Coonoor, Nilgiris District.

4.The Tahsildar,
Coonoor,
Nilgiris District.

5.The Tahsildar,
Kotagiri,
Nilgiris District.

6.The Revenue Inspector,
Coonoor, Nilgiris District. ..Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent comprised in its proceedings under Ref.Rc.A1/80618/96 dated 28.3.2007 and quash the same and consequently direct the respondents to adjust the amount of 15,04,800/- due to the petitioner, being the amount of loss incurred by the petition on account of exemption granted under G.O.Ms.No.135 Highways (HN 2) Department dated 2.5.1997, towards the amount due from the petitioner and to refund the balance amount to the petitioner together with interest thereon from 16.6.1997 till the date of payment at such rate as may be determined by the Hon'ble Court.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.I.Satish,
Additional Government Pleader

O R D E R

The writ petition has been filed challenging the order passed by the second respondent rejecting the petitioner request for refund of the license fees.

2.The petitioner is a lessee to collect toll fee from various classes of vehicles entering into Nilgiris District for a period of one year from 15.06.1996 to 14.06.1997 in respect of Burliar and Kunjapanai toll stations. The bid amount was for Rs.1,42,80,000/-(Rupees One Crore Forty Two Lakhs and Eighty Thousand only). The petitioner was collecting toll fees in both the toll stations. In the meantime, the Government issued an Order in G.O.Ms.No.135, Highways (HN 2) Department dated 02.05.1997, exempting vehicles belonging to the residents of Nilgiris District from the payment of toll fees in both toll stations. The said Government Order came into effect from 03.05.1997. According to the petitioner, he has remitted a total kist amount of Rs.1,30,90,000/-(Rupees Once Crore Thiry Lakhs and Ninety Thousand only) towards the toll fees.

3.Earlier the fourth respondent had initiated a proceedings under Section 8 of the Tamil Nadu Revenue Recovery Act, to recover the amount payable by the petitioner to the tune of Rs.12,39,900/-. Challenging the above proceedings, the petitioner filed a writ petition before this Court in W.P.No.17139 of 1998 on the ground that in view of the exemption granted to the vehicles belonging to the residents of Nilgiris District on payment of toll fees, the petitioner suffered a loss to an extent of Rs.15,00,000/- and that the respondent without considering the petitioner representation, has initiated proceedings against the petitioner.

4.This Court by an order dated 22.08.2006 disposed of the writ petition with a direction to the second respondent/District Collector to consider the petitioner representation and pass suitable orders on merits and the fourth respondent was directed to keep the revenue recovery proceedings at abeyance. Pursuant to the order passed in the above writ petition, the second respondent/District Collector passed the impugned order rejecting the petitioner request on the ground that in the Government Order granting exemption to the vehicles belonging to the residents of Nilgiris District on payment of toll, there is no condition that the toll amount will be adjusted towards the balance kist amount. That apart, as per clause 38 of the auction notification no remission or abatement of the lease amount shall be allowed on any ground. In the above circumstances, the claim of the petitioner for refund was not considered and the same was rejected. Thus, this order is now under challenge in the present writ petition.

5.The first respondent has filed a counter affidavit stating that the petitioner has remitted a total licence fees of Rs.1,30,90,000/-(Rupees One Crore Thirty Lakhs and Ninety Thousand Only) leaving a balance of Rs.11,90,000/-(Rupees Eleven Lakhs and Ninety Thousand Only) and apart from that, the petitioner has to pay a sum of Rs.49,900/-(Rupees Forty Nine Thousand and Nine Hundred Only)towards the default in payment of amount within the due date. But, the petitioner did not come forward to pay the balance of licence fees. So far as the exemption granted to the vehicles of the residents of the Nilgiris District from payment of toll fees, in G.O.(Ms).No.135, Highways(HN2) Department, dated 02.05.1997, the exemption was granted only for a negligible period from 03.05.1997 to 14.06.1997, hardly for 43 days and the above Government Order did not mention anything about the adjustment of the toll fees from the kist payable by the petitioner and clause 38 of the auction notification states that no remission or abatement of lease amount shall be allowed on any ground. In the above circumstances, the petitioner is not entitled for any adjustment for the present to the exemption granted to the vehicles of residents of Nilgiris District and the second respondent has considered the entire material and has correctly rejected the request of the petitioner.

6.Heard, the learned counsel appearing for the petitioner and the respondents and perused the materials placed on record.

7.The petitioner is a lessee to collect toll fees in two toll centres at Nilgiris District. The total bid amount was for a sum of Rs.1,42,80,000/-(Rupees One Crore Forty Two Lakhs and Eighty Thousand only) and admittedly, the petitioner had remitted the licence fees of Rs.1,30,90,000/-(Rupees One Crore Thirty Lakhs and Ninety Thousand Only) and there was a balance of Rs.11,90,000/-(Rupees Eleven Lakhs and Ninety Thousand only) to be paid by the petitioner. The contention of the petitioner is that the during the licence period, the Government issued a Government Order in G.O.(Ms.)No.135, dated 02.05.1997, whereby the vehicles belonging to the residents of Nilgiris District were exempted from paying toll fees. The above exemption order covered 43 days in the licence period. In view of the above

Government Order, the petitioner could not collect toll from the vehicles belonging to the residents of the Nilgiris District and suffered a loss to an extent of more than Rs.15,00,000/-, for which the petitioner requested the respondent to adjust the amount from the amount payable from the petitioner and he has also made a representation to the respondent to that effect. Without considering this representation, the fourth respondent has initiated revenue proceedings to recover the balance kist amount. When the same was put to challenge in W.P.No.17139 of 1998, this Court by an order dated 22.08.2006 had directed the second respondent/District Collector to consider the petitioner representation and pass suitable orders of merits. Pursuant to the same, the order impugned in this writ petition has been passed.

8.According to the petitioner, after the Government Order was issued by the respondent, the petitioner was not in a position to collect the toll from the vehicles belonging to the residents of Nilgiris District and he suffered loss. Earlier, considering the petitioner request, the RDO, Coonoor has also deputed some authorities to the concerned toll centers to collect data about the number of vehicles passing through the toll centers which belong to the residents of Nilgiris District. After collecting the said data, without considering the same, now, it is not open to the respondent Government to contend that the petitioner is not entitled for the adjustment.

9.On the other hand, the learned counsel appearing for the respondents, on instructions, would submit that no such proceedings has been issued by the R.D.O, Coonoor and no records are available to that effect. Considering the fact that now the second respondent/District Collector rejected the petitioner’s claim mainly on the ground that the Government Order granting exemption did not provide for refund of toll amount to the petitioner and as per clause 38 of the terms and conditions of the auction notification, the petitioner is not entitled for any remission of lease amount.

10.On a perusal of G.O.(Ms)No.135, Highways(HN2) Department, dated 02.05.1997, it could be seen that the Government exempted the vehicles of residents of Nilgiris District from payment of toll in entire Nilgiris District. Since it is a general notification issued by the Government, exempting vehicles from paying toll, it is not necessary for the Government to issue any specific direction for refund of the toll amount. That apart, there are number of tolls situated in various parts of the Nilgiris District. So far as the instant case is concerned, clause 32 of the terms and conditions of the auction notification clearly states that the Collector has discretion to grant exemption to any vehicle from payment of toll and the fees levied for such licences shall be adjusted to the credit of the lessee's account. Clause 32 of the auction notification reads as following:

> "The Collector may in his/her discretion on the application of any person issue a license for the passage of a vehicle without payment of toll at a specified toll station for a specific period. The fees levied for such licences shall be adjusted to the credit of the lessee's account."

11.Further, Clause 38 of the auction notification states that no remission or abatement of lease amount shall be allowed on any ground. The second respondent relying upon Clause 38 has held that the petitioner is not entitled for remission of lease amount. Admittedly, the petitioner is not asking for any remission of lease amount. The request of the petitioner is that pursuant to the exemption notification issued by the Government, the petitioner was not in a position to collect the toll fees from the vehicles belonging to the residents of Nilgiris District and as per clause 32 of the terms and conditions of the auction notification, he is entitled for adjustment towards the lease amount.

12.The second respondent without considering clause 32, relying upon clause 38 of the terms and conditions of the auction notification has rejected the petitioner representation. In the above circumstances, I am of the view that as per clause 32 of the terms and conditions of the auction notification, the petitioner is entitled for adjustment of toll fees which was exempted by the Authorities. The second respondent without considering the same has rejected the petitioner representation mainly relying upon clause 38 of the terms and conditions. In the above circumstances, I am of the view that the order passed by the second respondent in total non-application of mind, without reference to the relevant clause of the terms and conditions of the auction notification.

13.In the above circumstances, the impugned ordered is liable be set aside and the matter is remanded back to the second respondent to consider the petitioner representation dated 29.10.1998 with reference to clause 32 of the terms and conditions and pass suitable orders on merits and in accordance with law after giving an opportunity to the petitioner. The second respondent is directed to complete the above exercize within a period of 12 weeks from the date of receipt of a copy of this order. The petitioner is also directed to appear before the second respondent with the relevant records to establish his case.

14.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//
Sub Assistant Registrar

tsg

To

1.The Secretary to Government,
Highways Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Collector of Nilgiris District,
Udhagamandalam.

3.The Revenue Divisional Officer,
Coonoor, Nilgiris District.

4.The Tahsildar,
Coonoor,
Nilgiris District.

5.The Tahsildar,
Kotagiri,
Nilgiris District.

6.The Revenue Inspector,
Coonoor, Nilgiris District.

+1cc to Mr.R.Parthasarathy, Advocate SR.94490
+1cc to the Government Pleader SR.95157

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BR(CO)
CB(04/02/2020)