

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.1944 of 2021

and

W.M.P. No.2201 of 2021

K.Jagadeesan

... Petitioner

Vs

1. The Union of India,
represented by its Principal Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
 2. The Railway Board,
represented by its Chairman,
Rail Bhawan, New Delhi.
 3. The General Manager,
O/o.The General Manager,
Southern Railway,
Park Town, Chennai-3.
 4. The Senior Divisional Commercial Manager,
O/o.The General Manager,
Southern Railway,
Park Town, Chennai-3.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, by calling upon the records of the 4th respondent herein, pertaining to the impugned order No.M/C.300/Cycles/ANNR dated 07.01.2021 and quash the impugned order as improper, bad in law and against the spirit of the order dated 14.12.2020 passed by this Court in W.P. No.16907 of 2020 as well as the 2nd respondent's Circular dated 07.09.2020 and Notification dated 24.12.2020 respectively and direct the 2nd respondent herein to consider petitioner's representations dated 29.05.2020 in the light of the 2nd respondent's Notification dated 24.12.2020 and the order of this Court dated 14.12.2020 in W.P. 16907 of 2020 after providing the petitioner with an opportunity to explain

the petitioner's position by affording a physical appearance or otherwise within a reasonable time frame fixed by this Court.

For petitioner ...Mr.Velayutham Pichaiya

For respondents...Mr.P.T.Ramkumar,
Standing Counsel for Railways

ORDER

Heard Mr.Velayutham Pichaiya, learned counsel for the petitioner and Mr.P.T.Ramkumar, learned Standing Counsel accepts notice on behalf of the respondents.

2. By consent of both the parties, this Writ Petition is taken up for final disposal.

3. This Writ Petition has been filed challenging the order dated 07.01.2021 passed by the fourth respondent rejecting the petitioner's request for extension of his licence for a further period due to Covid-19 pandemic. A representation was given by the petitioner on 29.05.2020 requesting the respondents to show concessions in his licence contract with the respondent in respect of the vehicle parking facility at railway stations in Chennai zone due to the lock down imposed by the Government on account of Covid-19 pandemic. Since the representation dated 29.05.2020 was not considered by the respondents, the petitioner filed Writ Petitions before this Court in W.P.Nos.16896, 16905, 16907 and 16909 of 2020 seeking for a mandamus to direct the respondents to consider his representation dated 29.05.2020 referred to supra and pass final orders within a time frame to be fixed by this Court. By order dated 14.12.2020, in the aforesaid batch of Writ Petitions filed by the petitioner, this Court directed the respondents to fix the date of hearing as 28.12.2020 with regard to the petitioner's representation dated 29.05.2020 and after affording an opportunity of personal hearing to the petitioner pass final orders within a period of two weeks thereafter. Pursuant to the directions given by this Court on 14.12.2020 in the aforesaid batch of Writ Petitions filed by the petitioner, the respondents by the impugned order dated 07.01.2021, rejected the representation dated 29.05.2020 on the ground that the petitioner is not entitled for any extension / renewal of the vehicle parking contract. Aggrieved by the same, this Writ Petition has been filed by the petitioner.

4. The learned counsel for the petitioner drew the attention of this Court to paragraph No.5 of the agreement dated 25.11.2017 entered into between the petitioner and the Railways and would submit that the petitioner's licence expired on 08.11.2020, but, however, he would submit that the licence can

be renewed at the option of the administration. He then drew the attention of this Court to paragraph 10 of the same agreement and would submit that the contract of the petitioner can be terminated only after giving 6 months prior notice. He would submit that though there is a procedure available under the contract for termination of the contract, there is no procedure provided under the contract for closure. However, according to him, the respondents have arbitrarily and illegally closed the petitioner's contract, despite the lock down imposed by the Government due to Covid-19 pandemic.

5. The learned counsel for the petitioner then drew the attention of this Court to a Circular issued by the Government of India, Ministry of Railways (Railway Board) dated 07.09.2020 and in particular he referred to Clause (i) therein and would submit that as per the said circular, 90 days relaxation in licence fee will have to be granted to existing commercial earning operational contracts treating the period from 25.03.2020 to 22.06.2020 as "dies-non". According to the learned counsel for the petitioner, such a relaxation has not been given to the petitioner. Learned counsel for the petitioner also drew the attention of this Court to another Circular issued by the Government of India, Ministry of Railways (Railway Board) on 24.12.2020 affording concessions to licence holders. According to him, the respondents have not implemented both the circulars in letter and spirit. The learned counsel for the petitioner drew the attention of this Court to the impugned order dated 07.01.2021 rejecting the petitioner's representation dated 29.05.2020 referred to supra. According to him, both the aforementioned circulars issued by the Government of India, Ministry of Railways (Railway Board) has not been considered by the fourth respondent and arbitrarily and by total non-application of mind to the aforementioned circulars, the petitioner's representation dated 29.05.2020 has been rejected. Hence, the learned counsel for the petitioner would submit that the impugned order is bad both in law and on facts and it has be quashed and the petitioner's representation will have to be considered, in the light of the aforementioned circulars dated 07.09.2020 and 24.12.2020.

6. Per contra, Mr.P.T.Ramkumar, the learned Standing Counsel for the respondents would submit that the petitioner's contract with the respondents has already come to an end on 08.11.2020 itself. He also drew the attention of this Court to the impugned order dated 07.01.2021 and would submit that the petitioner has not paid the licence fee from 08.02.2020 onwards even before the lock down was imposed by the Government of India on 23.03.2020. Therefore, according to him, the petitioner is not entitled to seek benefit under the Circulars dated 07.09.2020 and 24.12.2020. He would also submit that the

petitioner has been given a fair hearing before the impugned order came to be passed. The learned standing counsel also drew the attention of this Court to the closure notice issued by the respondents to the petitioner on 06.11.2020 w.e.f. 09.11.2020 (i.e) after the expiry of the period of the contract. According to him, the procedure contemplated under the contract with the petitioner has been duly followed by the respondents.

7. Admittedly, the contract between the petitioner and the respondents with regard to the parking facility belonging to the railways has come to an end on 08.11.2020. The petitioner seeks implementation of the Circulars dated 07.09.2020 and 24.12.2020 issued by the Government of India, Ministry of Railways (Railway Board). Those circulars are applicable only for subsisting contracts, which have not come to an end. In the case on hand, the contract with the petitioner has come to an end on 08.11.2020 itself. It is also the case of the respondents, as seen from the impugned order that the petitioner has paid the licence fee to the respondents only upto 08.02.2020 and thereafter, he has not paid. The same is also not disputed by the petitioner. The Government of India imposed lock down only from 23.03.2020. As seen from the Circulars issued by the Government of India, Ministry of Railways (Railway Board) on 07.09.2020 and 24.12.2020 respectively, the concessions are applicable only to subsisting contracts and not for contracts, which have already come to an end. The respondents have also issued the closure notice to the petitioner on 06.11.2020 w.e.f. 09.11.2020. Since the period of the contract has come to an end, there is no necessity for the respondents to issue prior notice to the petitioner before issuing the closure notice. Under the impugned order, the respondents have given sufficient reasons for rejecting the petitioner's representation.

8. For the foregoing reasons, this Court does not find any infirmity in the impugned order dated 07.01.2021 passed by the fourth respondent and there is no merit in this Writ Petition.

9. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srn

To

1. The Principal Secretary,
Union of India,
Ministry of Railways,
Rail Bhawan, New Delhi.

2.The Railway Board,
represented by its Chairman,
Rail Bhawan, New Delhi.

3.The General Manager,
O/o.The General Manager,
Southern Railway,
Park Town, Chennai-3.

4.The Senior Divisional Commercial Manager,
O/o.The General Manager,
Southern Railway,
Park Town, Chennai-3.

+1 cc to M/s.P.T.Ramkumar, Advocate Sr.No. 5250

+1 cc to M/s.Velayutham, Advocate Sr.No. 5221

W.P. No.1944 of 2021 and
W.M.P. No.2201 of 2021

SSI (CO)
RMP (03/03/2021)



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