

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24/2/2021

C O R A M

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WRIT PETITION NO.4466 OF 2021

A N D

W.M.P.NOS.5093 AND 5096 OF 2021

K. Santhalagan

...Petitioner

Vs

1. The Special Officer-cum-
Assistant Director of Town Panchayat
Dharmapuri District.

2. The Executive Officer
Harur Selection Grade Town Panchayat
Dharmapuri District.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the respondents 1 and 2 dated 15/2/2021 in Na.Ka.No.09/2021/Tha.Aa and to consequently direct the respondents 1 and 2 to extend the time period of the cycle stand in Harur Bus Stand granted to the petitioner for yet another period of one year in view of COVID lockdown imposed for 9 months along with the belated period of three months in handing over of contract to the petitioner or to adjust the auction amount in respect of earlier contract period as the market remained closed due to COVID 19 pandemic, into the account of auction amount for the fresh contract period from 1/4/2021 to 31/3/2022.

For petitioners Mr.P.Paramasiva Doss

For respondents Mr.M. Elumalai

Additional Government Pleader
for R.1

Mr.G.B.Rajesh
Standing Counsel for R.2

O R D E R

This writ petition has been filed to quash the order, dated 15/2/2021, passed by the respondents 1 and 2 in Na.Ka.No.09/2021/Tha.Aa and to consequently, direct the respondents 1 and 2 to extend the time period of the cycle stand in Harur Bus Stand granted to the petitioner for yet another

period of one year in view of COVID lockdown imposed for 9 months along with the belated period of three months in handing over of contract to the petitioner or to adjust the auction amount in respect of earlier contract period as the market remained closed due to COVID 19 pandemic, into the account of auction amount for the fresh contract period from 1/4/2021 to 31/3/2022.

2. The brief facts which are necessary for disposal of the writ petition is as follows:-

The petitioner is the successful bidder in the auction conducted by the respondents, in the year 2018 and it has been periodically extended upto 2021. During the COVID period, the Government has announced lockdown and due to that the entire operation has come to a stand still and the petitioner was deprived from running the business in the said cycle stand and therefore, his case is that the respondents in all fairness ought to have further extended the lease period.

3. Mr.M.Elumalai, learned Additional Government Pleader takes notice for the first respondent. Mr.G.B.Rajesh, learned Standing Counsel takes notice for the second respondent.

4. Mr.M.Elumalai, learned Additional Government Pleader appearing for the first respondent produced the written instructions received from the second respondent and submitted that the petitioner is due to pay a sum of Rs.94,536/-, to the Panchayat as the rent for the cycle stand, for the period 2020 - 2021 and without paying the arrears, he is now collecting the toll charges.

5. Considering the situation, the Government has granted some relief of waiver of license amount for a period of two months for April and May, 2020, vide G.O.Ms. (D) No.298, Municipal Administration and Water Supply Department, dated 2/9/2020.

6. In a similar issue, considering the force majeure circumstance, the Madurai Bench of Madras High Court in W.P. (MD).No.19596 of 2021 dated 01.02.2021 (R.Narayanan vs. Government of Tamilnadu) has allowed the writ petition. The relevant paragraph of the said order is extracted hereunder.

15. The respondents themselves have chosen to treat the lock down restrictions as a force majeure event. But they have relieved the licensees from the obligation to pay the fees only for two months. The reason for granting waiver for the months of April and May would equally hold good for the entire "total

lockdown" period. Vadaseri Bus Stand remained closed from 24.03.2020 to 06.09.2020. The respondents had directed the petitioner not to open the shop till 06.09.2020. Therefore, I hold that the petitioner is entitled to the benefit of complete waiver for the period from 01.06.2020 to 06.09.2020.

16. During early stages of the pandemic, I read an article in Business Line by R.Yashod Vardhan/P.Vinod Kumar. The article concluded as follows :

"The ICA does not profess to be a complete code on the subject of contracts and cannot provide nuanced solutions to deal with the various problems caused by Covid-19. If the Central Government does not come out with an Ordinance and bridge the gaps in the law, what are we left with. In an old case, a Judge observed sagaciously: "In administering the law, it is the duty of the Judge to amplify its remedies and without usurping jurisdiction, to apply its rules to the advancement of substantial justice."

G.O (D)No.298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.09.2020, endeavors to fill the gap. However, it is only a baby step, when giant strides are required. It is therefore left to the court to cover the remaining distance.

17. I have no difficulty in coming to the conclusion that the petitioner stands relieved of his obligation to pay the license fee for the period from 24.03.2020 to 31.08.2020, when there was total lockdown. It is pointed out that for two more months thereafter, the licensees were allowed to open their shops only for short duration every day. In other words, lockdown was not lifted completely. The bus stand was not operational fully.

18. Therefore, I am of the view that the petitioner is entitled to call upon the respondents to revisit the quantum of license fee for the period subsequent to the lifting of total lockdown. It may not be open to this Court to enter into the finer details. I permit the petitioner to submit a fresh representation projecting his grievances regarding the period commencing from 01.09.2020 onwards. The fourth respondent will forward the said representation along with their proposal to the respondents 1 and 2 who shall consider the same and pass appropriate orders in accordance with law as expeditiously as possible.

19. Let me summarise the reliefs granted. For the period when there was total lockdown that is from 24.03.2020 to 06.09.2020, the licensee/petitioner is totally relieved from the obligation to pay the license fee. He is entitled to complete waiver. For the period subsequent to 06.09.2020 that is when there was partial relaxation and lifting of lock down restrictions, the petitioner is permitted to move the respondents for relief. This Court believes in the principle of nudging as propounded by Richard H.Thaler. This Court would expect the authorities to take note of the ground realities and respond appropriately.

20. This Writ Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

7. In view of the above cited order, this writ petition is disposed of, with a direction to the petitioner to submit a representation to the respondents and on receipt of the same, the respondents shall consider the representation of the petitioner, in the light of the orders passed by this Court in W.P.(MD) No.19596 of 2021, dated 1/1/2021, as expeditiously as possible. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Special Officer-cum-
Assistant Director of Town Panchayat
Dharmapuri District.
2. The Executive Officer
Harur Selection Grade Town Panchayat
Dharmapuri District.

+1cc to Mr.Pradeep, Advocate, S.R.No.11324
+1cc to the Government Pleader, S.R.No.11577

Writ Petition No.4466 of 2021

MG(CO)
KKV/19/03/2021