



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.8940 of 2021

R.Sagunthala

...Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Municipal Administration and Water
Supply Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Municipal Administration,
No.78, Urban Administrative Building,
Santhome High Road, MRC Nagar,
Raja Annamalaipuram,
Chennai-600 028.
- 3.The Regional Transport Authority/District Collector,
District Collector Office,
Thiruvarur District.
- 4.The Commissioner,
Mannargudi Municipality,
Mannargudi.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 02.01.2021 and grant waiver of licence fee for the period from 24.03.2020 to 06.09.2020 and to reduce, revise and refix the annual license fee in a manner proportionate with the Bus Services operated from 07.09.2020 in Municipality Bus Stand and Kamarajar Bus Stand, Mannarkudi.

For Petitioner : Mr.M.Sivavarthanan

For Respondents : Mr.M.R.Gokul Krishnan,
Government Advocate for R1 to R3
Mr.L.P.Maurya,
Standing Counsel for R4



the fourth respondent and due to the delay on the part of the fourth respondent in getting approval from the third respondent, the petitioner could not collect the bus stand fees till 19.09.2020.

2.4. Due to lockdown restrictions, the petitioner was unable to collect the Bus Stand Fees and suffered financial crisis and therefore, the petitioner submitted a representation dated 02.01.2021 to the second respondent requesting them to grant total waiver of payment of licence fee for the period from 24.03.2020 to September, 2020 and partial waiver for the subsequent period and also requested to reduce, revise and refix the licence fee in a manner proportionate with the operation of buses.

2.5. The Government had issued G.O.(D)No.298, Municipal Administration and Water Supply (MA.IV) Department dated 02.09.2020 ordering to waive payment of licence fee for the period from 01.04.2020 to 31.05.2020 and however, the subsequent lockdown period was not considered by the Government.

2.6. The grievance of the petitioner is that she is entitled for complete waiver of licence fee for the total lockdown period i.e., from 24.03.2020 to 06.09.2020 and also partial waiver of the subsequent period since there was limited operation of transport services and the lockdown was not lifted completely and the bus stand was not operational fully.

3. Mr.M.Sivavarthanan, learned counsel for the petitioner made the following contentions / submissions:

(i) The spread of Covid-19 pandemic and the lockdown imposed by the State are force majeure events, not within the control of the petitioner and therefore, the petitioner is entitled for waiver of entire licence fee from 24.03.2020.

(ii) The petitioner entered into contract with the fourth respondent on the premise that the shops will be allowed to be kept open and the bus stand will be kept open and operational and however, the fourth respondent is not able to allow the shops to be operational and since there was also a delay on the part of fourth respondent in getting approval from the third respondent, the petitioner could not able to collect the Bus Stand Fees till 19.09.2020.

(iii) The fourth respondent, being an instrumentality of State within the meaning of Article 12 of the Constitution of India, is expected to act fairly and reasonably and denial of waiver of licence fee will amount to arbitrariness, violating Article 14 of the Constitution of India.

(iv) Under similar circumstances, the Madurai Bench of this Court in W.P.(MD)No.19596 of 2020 vide order dated 01.02.2021 has held that licence of municipal shops in bus stand at



Nagercoil Municipal Corporation are entitled to complete waiver of payment of licence fee for the lockdown period from 24.03.2020 to 06.09.2020 and also directed the municipal authorities to reconsider the quantum of licence fee for the period subsequent to the lifting of total lockdown.

4. Mr.L.P.Maurya, learned Standing Counsel for the fourth respondent, has drawn the attention of this Court to the counter affidavit of the fourth respondent, wherein it has been stated that Clause 49 of the Tender Conditions provides that in case of unforeseen circumstances, arising out of protests, fire accidents and spread of communicable diseases, the commissioner has sole discretion to close the lease area and since the petitioner is bound by the terms of auction notice and having accepted the same, the petitioner cannot turn around and claim waiver as a matter of right. He would further contend that Section 54 of Indian Contract Act concerning performance of reciprocal promises will not be applicable to the factual matrix of the present case, in view of auction conditions dated 21.02.2018 and as regards the judgment dated 01.02.2021 in W.P.No.19596 of 2020 relied on by the petitioner, the said judgment has been stayed by a Division Bench of Madurai High Court in W.A.(MD)Nos.219 and 220 of 2021 and therefore, prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. The onset of Covid-19 pandemic has proven not only to be a humanitarian crisis, but also an economic crisis of an unprecedented scale. Specifically, restrictions on movement of persons and goods, save for those involved in essential services, have raised serious doubts on the ability of parties to perform their obligations under contract when these are not ordinarily classified as 'essential services'. Uncertainly as to the performance of contracts has led to parties envisaging breaches of contract and assessing their rights and remedies in relation to the same.

7. It is not in dispute that the petitioner is a licensee with the fourth respondent Municipality and on account of Covid-19 pandemic, the entire State was under lockdown from 24.03.2020 till September, 2020, except for few essential services, more particularly the movement of private carrier buses, mini buses, omni buses and other private vehicles were prohibited entirely. After 06.09.2020, the lockdown was partially lifted with relaxation of the restrictions and during April 2021, there was second wave of Covid-19 pandemic and the State Government once again announced lockdown from April 2021 to June 2021 and started lifting the lockdown with partial relaxation from July 2021 onwards.



8. The grievance of the petitioner is that during the complete lockdown period from 24.03.2020 to 06.09.2020, the Mannargudi Bus Stand was fully closed and therefore, she was not able to collect the Bus Stand Fees and even after partial lifting of the lockdown from 06.09.2020, only limited bus service was operated and the petitioner was put to severe financial crisis and therefore, the petitioner is entitled for complete waiver of licence fee for the total lockdown period and partial waiver of licence fee during the subsequent relaxation period with limited operation of transport services.

9. It is the stand of the fourth respondent that Clause 49 of the Licence Conditions dated 21.02.2018 squarely covers the filed and the petitioner, having accepts the terms and conditions of licence, cannot turn around and claim waiver of licence fee as a matter of right. It is the further contention of the fourth respondent that the Government has taken a policy decision in G.O.(D)No.298, Municipal Administration and Water Supply Department dated 02.09.2020 ordering waiver of lease/rental amount during the pandemic lockdown period from 01.04.2021 to 31.05.2020 and therefore, State Government is the competent authority to grant waiver of licence fee and the fourth respondent cannot decide on the aspect of waiver of licence fee.

10. It is to be noted that during lockdown period, only essential services like suppliers and seller of groceries, vegetables, milk, medicines were allowed to operate for particular working hours and as far as the petitioner is concerned, she is only a licensee under the fourth respondent Municipality to collect the Bus Stand Fee for entry of private buses in to the Mannarkudi Bus Stand and due to lockdown imposed by the Government vide G.O.Ms.No.152, dated 23.03.2020, the Mannarkudi Bus Stand was under complete close down between 24.03.2020 and 06.09.2020 and even after partial lifting of lockdown from 06.09.2020, only the shops involving essential services were allowed to run and there were only limited bus service and while that being the position, without the normal operation of buses, the petitioner could not be in a position to collect the Bus Stand Fee and therefore, she cannot be expected to pay the entire annual licence fee as claimed by the fourth respondent.

11. Though the petitioner has claimed that Covid-19 pandemic is a force majeure event and therefore, she is entitled for waiver of payment of licence fee from 24.03.2020 by relying upon the order of the Madurai Bench of this Court in W.P.(MD) No.19596 of 2010 dated 01.02.2021, the fact remains that the said order has been stayed by a Division Bench of this Court in W.A.(MD)Nos.219 and 220 of 2021 and therefore, this Court is not inclined to go into merits of the case.



12. It is to be noted at this juncture that the Government has taken a policy decision in G.O.(D)No.298, Municipal Administration and Water Supply Department dated 02.09.2020, after considering the request of the Commissioner of Municipal Administration and ordered waiver of lease/rental amount during the pandemic lockdown period from 01.04.2021 to 31.05.2020 by the lessee in respect of leased out properties or urban bodies covering Municipalities and Corporations based on humanitarian ground. This Court is of the view that the aforesaid waiver of licence fee was granted by the Government only for a limited period of two months and whereas in the case on hand, the Mannukudi Bus Stand was closed completely during the lockdown period of six months without any entry of buses in to the said bus stand and even after partial lifting of lockdown from 06.09.2020, there was only limited entry of buses and therefore, the grievance of the petitioner as well as similar class of licencees have not been addressed appropriately. This Court also cannot brush aside the important fact of augmentation of revenue by way of collections of taxes, rents and licence fees for running the Municipalities.

13. In view of the above facts and in order to strike a balance, this Court is of the view that it is for the first respondent / State Government to look into the grievance of the petitioner as well as similar type of licencees such as Cycle/Taxi Stands, Weekly Shandies, Daily Markets, Pay and Use Toilets etc., who could not be able to pay the licence amount on account of lockdown due to Covid-19 pandemic situation and shall take appropriate decision, either for complete waiver of licence amount or reduce/revise/refix the licence fee in a manner proportionate with the operation of buses or collect the licence fee in instalments by extending the period of licence. The aforesaid exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

14. With the above direction, this writ petition stands disposed of. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Jvm



To

1. The Secretary to Government,
State of Tamil Nadu,
Municipal Administration and Water
Supply Department,
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2. The Commissioner of Municipal Administration,
No.78, Urban Administrative Building,
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Raja Annamalaipuram, Chennai-600 028.

3. The Regional Transport Authority/District Collector,
District Collector Office,
Thiruvarur District.

4. The Commissioner,
Mannargudi Municipality,
Mannargudi.

+1 CC to Mr.L.P.Maurya, Advocate sr 34282

+1 CC to The Government Pleader sr 34639.

W.P.No.8940 of 2021

VGII(CO)
SP(09/08/2021)