

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.08.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.13802 of 2021
and WMP No.14647 of 2021

N.Mohan

....Petitioner

Vs

The Commissioner,
Thiruvallur Municipality,
Municipality office,
N Road, Thiruvallur Uthukottai Road,
SH 57, Thiruvallur - 602 001

.....Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified Mandamus to call for the records of the respondent in Na.Ka.No.1379 /2020 / A3 dated 6.5.2021 quash the same and further restrain the respondent from interfering with the petitioners right to continue collecting fee from the road side temporary shops as per order dated 6.2.2020.

For Petitioner

: Mr.I.Abrar MD Abdullah

For Respondents : Mr.P.Srinivas
Standing Counsel

ORDER

The subject matter of challenge in the present writ petition is the impugned proceedings of the respondent dated 06.05.2021 cancelling the license issued in favour of the petitioner for collecting the fees from the road side temporary shops under the control of Thiruvallur Municipality.

2. The case of the petitioner is that he was the successful bidder in the auction conducted by the respondent municipality for collection of fees from the road side temporary shops belonging to the Municipality. The period of license is from 15.02.2020 till 14.02.2023 for a period of three years.

3. During the commencement of the license in the year 2020, the petitioner had paid the license amount of Rs.8,00,106/- along with tax and other charges. According to the petitioner, he was not able to effectively collect the fees from the road side temporary shops due to the lock down that was announced by the State Government. Therefore,

effectively the petitioner did not collect any fees for the period from March to November 2020.

4. The further case of the petitioner is that he was able to collect the fees only during brief intervals since there were repeated lock downs announced by the state Government. According to the petitioner, he was not able to reap the benefits of the license for more than eight months during the year 2020 - 2021.

5. The respondent by letter dated 12.10.2020 directed the petitioner to pay the balance deposit amount in the year 2020-2021 after giving a waiver of rent for two months and the petitioner was directed to pay a sum of Rs.2,62,704/- within 15 days. Since the petitioner suffered huge loss, the petitioner made a request for the refund of the deposit amount already made by taking into consideration the lock down period. In this regard, the petitioner has also filed WP No.10376 of 2021 and the same is pending.

6. In the meantime, a notice came to be issued by the

respondent stating that the petitioner had collected fees from persons other than those from whom he was authorised to collect the fees. The petitioner gave his reply for the same. The impugned proceedings came to be passed by the respondent on 06.05.2021, wherein the license granted in favour of the petitioner was cancelled. Aggrieved by the same, the present writ petition has been filed before this Court.

7. The main ground that was raised by the learned counsel for the petitioner is that the impugned order came to be passed without affording an opportunity to the petitioner and without conducting any enquiry.

8. When the matter came up for hearing on 05.08.2021, this Court passed the following order :-

Pursuant to the orders passed by this Court on 27.07.2021, Mr.P.Srinivas, learned Standing Counsel appearing on behalf of the respondent Municipality based on instructions, submitted that the petitioner had to pay the bid amount of Rs.8,00,100/- for the first year.

Insofar as the extension of the period for the second year, there will be an increase of 5% and hence, the petitioner has to pay a sum of Rs.8,40,000/- for the second year which will end on 14.02.2022.

2.The learned counsel submitted that the total amount that is due and payable by the petitioner is a sum of Rs.16,40,000/- and out of the same, the petitioner has only paid a sum of Rs.4,15,000/- and the petitioner is due and payable a balance sum of Rs.10,91,813/-. If the petitioner is willing to pay this amount, the matter can be remanded back to the file of the respondent to conduct a fresh enquiry after affording opportunity to the petitioner, as claimed by the petitioner.

3.The learned counsel for the petitioner seeks time to take instructions in this regard. Post this case on 13.08.2021.

9. The matter was again taken up for hearing on 23.08.2021

and this Court passed the following order :-

By an order dated 05.08.2021, this Court recorded the submission made by the learned standing counsel for the respondent Municipality that the total amount that is due and payable by the petitioner is a sum of Rs.10,91,813/- and if this amount is paid, this Court can consider remanding the matter back to the file of the respondent to conduct a fresh enquiry after affording an opportunity to the petitioner.

2. When the matter was taken up for hearing on 17.08.2021, the learned counsel for the petitioner sought for some time to file a calculation memo, since the amount claimed by the respondent Municipality was contested. When the matter was taken up for hearing today, the learned counsel for the petitioner, by pointing out to the calculation memo, submitted that as on today, the petitioner is due and payable only a sum of Rs.7,16,795/- and the petitioner is willing to pay this

amount and the matter can be remanded to the file of the respondent for fresh enquiry.

3. Mr.P.Srinivas, learned counsel for the Municipality, seeks time to take instructions about the calculation memo filed by the learned counsel for the petitioner. Post this case under the same caption on 31.08.2021.

10. When the matter was taken up for hearing today, Mr.P.Srinivas, circulated the fresh memo of calculation filed by the respondent. It is seen from this Memo of calculation that the petitioner has to pay a sum of Rs.9,51,795/-. There is some discrepancy in the total amount that is due and payable by the petitioner and the difference in the amounts that have been shown in the memo of calculation filed by the petitioner and the respondent is because of the fact that the respondent has not given account to a sum of Rs.2,35,000/- that was paid by the petitioner towards initial deposit.

11. The learned Standing counsel appearing on behalf of the respondent municipality submitted that the petitioner had collected the fees till 15.06.2021 and thereafter, the same is collected directly by the Municipality. If the period up to which the petitioner had collected the fees is taken into account and whatever amount has already been paid by the petitioner including the earnest money deposit and additional security deposit in lieu of the solvency, is given credit, the petitioner will be liable to pay a sum of Rs.61,739/-. Once this amount is paid, there will be nothing more payable either from the side of the petitioner or from the side of the respondent.

12. It is true that the respondent municipality was insisting for the payment of the entire amount as per the memo of calculation dated 25.08.2021, in order to afford an opportunity to the petitioner to put forth his explanation and to enable the respondent to pass fresh orders. However, the apprehension that remains in the mind of the petitioner is that if the respondent proceeds to confirm the earlier order, the petitioner will be put to a serious financial loss and the petitioner will not be able to get back the amount that has been paid by way of

deposits.

13. In the considered view of this Court, a balance has to be struck and the petitioner must be given an opportunity to put forth his defence before the respondent municipality and at the same time, the respondent municipality must also not incur any loss. In view of the same, it will be fit and proper if a direction is given to the petitioner to pay the sum of Rs.61,739/- to the respondent within a period of one week from the date of receipt of copy of this order. On such payment, the petitioner will be given an opportunity by the respondent to put forth his case and raise his defence on the allegations made against the petitioner. The respondent can conduct a personal enquiry and can take a decision in accordance with law. Once such a decision is taken, if the license of the petitioner is proposed to be continued, the petitioner can always be directed to pay the entire deposits along with the license fees. If in case, the earlier order is reiterated, there will be no requirement for the petitioner to pay any other amount and the respondent municipality also need not repay back any amount and both will be placed in the same footing without any further financial loss.

14. The respondent shall take a decision after affording sufficient opportunity to the petitioner by conducting a personal enquiry and shall take a decision within a period of two weeks from the date of receipt of the sum of Rs.61,739/-from the petitioner.

15. In the result, the matter is remanded back to the file of the respondent to conduct a fresh enquiry in accordance with the directions issued supra and pass final orders. The respondent shall provide the materials that are relied upon against the petitioner in order to enable the petitioner to make an effective defence.

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

WEB COPY 31.08.2021

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Index : Yes
Internet :Yes

N.ANAND VENKATESH.,J
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To
The Commissioner,
Thiruvallur Municipality,
Municipality office,
N Road, Thiruvallur Uthukottai Road,
SH 57, Thiruvallur - 602 001



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