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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.NO.16080 OF 2021

AND

W.M.P.NO.17009 OF 2021

A.Arul

... Petitioner

Versus

1. The Government of Tamil Nadu,
Represented by Secretary to Government,
Transport Department,
Secretariat, Chennai - 600 009.
2. The Managing Director,
The State Express Transport Corporation,
Pallavansalai,
Chennai - 600 002.
3. The Branch Manager,
The State Express Transport Corporation,
Chennai.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus seeking for direction to direct the respondents to grant waiver of monthly license fee during lock down period i.e., March 2021 to July 2021 in the light of judgements in W.P.(MD). No.19596/2020 and W.P.No.8940/2021 passed by this Court.

For Petitioner : Mr.S.Gajapathi Krishnan

For Respondents : Mr.LSM Haisan Faizal
For R2 & R3

O R D E R

The present writ petition has been filed praying to issue a Writ of Mandamus directing the respondents to grant waiver of monthly license fee payable by the petitioner for the period from March 2021 to July 2021 when a State wide lock down was imposed to curb the spread of Covid-19 Pandemic.



2. The petitioner is a licensee to run a tea shop in the bus stand at Coimbatore. The licence was issued by the respondents for a period of three years from 19.10.2020 to 31.03.2021. As a condition precedent for grant of licence, the petitioner paid a sum of Rs.3,64,500/- as security deposit, Rs.25,000/- towards electricity service connection, Rs.1,00,000/- in the form of bank guarantee apart from Rs.25,000/- towards tender application cost. In all, the petitioner paid a sum of Rs.4,89,500/-. Apart from the above, the petitioner also has to pay a sum of Rs.60,750/- per month with 18% Goods and Service Tax (GST) to the respondents. According to the petitioner, he was periodically remitting the monthly licence fee from the date on which he was inducted in Shop No.1 to run a tea shop. However, during March 2021, a nation wide lock down was imposed to curb the spread of Covid-19 Pandemic. During March 2021 to July 2021 for five months, he could not enjoy the amenities of the leasehold shop or he could run the shop to generate income. However, the third respondent called upon the petitioner to pay the licence fee for the aforesaid periods. Therefore, the petitioner submitted representations on 30.04.2021 and 19.07.2021 requesting the respondents to waive the monthly licence fee for five months from March 2021 to July 2021. As there was no response, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the licence fee was fixed based on the number of buses arriving or departing the Coimbatore bus stand. During the lock down period, neither the petitioner could run the shop nor was there any bus operated by the respondents to facilitate passenger movement. While so, the respondents cannot expect the petitioner to pay the licence fee for the period during which the tea shop was closed. The non-payment of the licence fee is beyond the control of the petitioner and therefore, applying the principles of Vis Major, the petitioner has to be granted exemption from paying the licence fee for five months. In this context, the learned counsel for the petitioner relied on the order passed by this Court in similar situation in WP (MD) No.19596 of 2020. In that case, the petitioner therein was running a shop in Vadaseri Christopher Bus Stand, Nagercoil. Due to the outbreak of Covid-19 Pandemic and the consequential lockdown imposed by the State Government, he sought for waiver of the monthly licence fee. By order dated 01.02.2021, this Court passed the following order:-

"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



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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 lockdown 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."

4. The learned counsel for the petitioner has also relied on the order dated 19.07.2021 passed by this Court in W.P.No.8940 of 2021 wherein it has been held as follows:-

"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/



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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."

5. Following the aforesaid order, the learned counsel for the petitioner prays this Court to issue appropriate direction to the respondents to waive the payment of monthly licence fee payable by the petitioner for five months from March 2021 to July 2021.

6. On the above contentions of the counsel for the petitioner, this Court heard the learned counsel for the respondents/corporation and perused the materials placed.

7. The issue involved in this writ petition is no longer res integra. The petitioner claims waiver of payment of monthly licence fee to the respondents by citing the lock down imposed by the State Government to arrest the spread of Covid-19 Pandemic, during which time, he could not run the tea stall business. Having regard to the claim of the petitioner and the earlier orders passed by this Court, mentioned supra, this Court directs the respondents to look into the grievance of the petitioner, who could not pay the licence amount on account of lock down imposed to arrest the spread of 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.

6. With the aforesaid direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

dhk/rsh



To

1. The Government of Tamil Nadu,
Represented by Secretary to Government,
Transport Department,
Secretariat,
Chennai - 600 009.
2. The Managing Director,
The State Express Transport Corporation,
Pallavansalai,
Chennai - 600 002.
3. The Branch Manager,
The State Express Transport Corporation,
Chennai.

+1cc to Mr.S.Gajapahi Krishnan, Advocate, S.R.No.44015
+1cc to the Government Pleader, S.R.No.43935

W.P.NO.16080 OF 2021

PL (CO)
PBS/06/10/2021