



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.16504, 16510 and 16511 of 2021

M.Ponnusamy

... Petitioner in all WPs

-Vs-

1. The Secretary to Government
Revenue and Disaster Management Department
Secretariat, St.George Fort, Chennai 600 009.
2. The Director of Municipal Administration
11th Floor, Urban Administrative Building
Opposite to CIBA Building, Santhome High Road
M.R.C.Nagar, Raja Annamalaipuram
Chennai - 600 028.
- 3.The Commissioner
Namakkal Municipality
Namakkal - 637 001.

... Respondents in all WPs

Prayer in W.P.16504 of 2021 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 3rd respondent vide Na.Ka.No.1230/2018/A2 dated 23.07.2021 and quash the same and consequently directing the 3rd respondent to refund the licence amount of Rs.10,59,705/- remitted by the petitioner towards collection of parking charge for bicycle / two wheeler in the stand situated near Thottanna Clock Tower at Namakkal for the period from 22.03.2020 to 31.12.2020 by considering his representation dated 24.06.2021 (Prayer amended vide order dated 05.10.2021 made in WMP No.21164/2021 in WP No.16504/2021 by NAVJ)

Prayer in W.P.16510 of 2021 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 3rd respondent vide Na.Ka.No.1230/2018/A2 dated 23.07.2021 and quash the same and consequently directing the 3rd respondent to refund the license amount of Rs. 65 420/- remitted by the petitioner towards collection of Fee in Pay and Use Toilet near Parai Tank Namakkal for the period from 22.03.2020 to 31.12.2020 by considering his representation dated 24.06.2021.(Prayer amended vide order dated 05.10.2021 made in WMP No.21169/2021 in WP No.16510/2021 by NAVJ)



Prayer in W.P.No.16511 of 2021 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 3rd respondent vide Na.Ka.No. 1230/2018/A2 dated 23.07.2021 and quash the same and consequently directing the 3rd respondent to refund the license amount of Rs. 13 96 859/- remitted by the petitioner towards Anna Bus Stand Entrance Fee Namakkal for the period from 22.03.2020 to 31.12.2020 by considering his representation dated 24.06.2021. (Prayer amended vide order dated 05.10.2021 made in WMP No.21171/2021 in WP No.16511/2021 by NAVJ)

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.V.Manoharan,
Additional Government Pleader
- for RR 1 &2

Mr.P.Srinivas, Standing Counsel
- for R3

COMMON ORDER

Since the issue raised in all these writ petitions is one and the same, with the consent of the learned counsel for the parties, these writ petitions were heard together, and are being disposed of by this common order.

2. The petitioner is one and the same in all the writ petitions. He has taken out the lease for collecting toll from cycle and two wheeler parking stand in particular locality of the third respondent municipality, and to collect fee for pay and use toilet under the third respondent municipality and also to collect toll for the buses coming to the Central Anna Bus Stand at the third respondent Municipality. The lease period was from 01.04.2018 to 31.03.2021.

3. For the said three years lease period, every year the lease amount has to be paid. However, for the period starting from 01.04.2020 is concerned, due to the COVID-19 pandemic first wave, since there has been a complete lockdown for several months, there were no activities in these places ie., the cycle and two wheeler parking stand, pay and use toilet and the Anna Bus Stand of the third respondent municipality.

4. Subsequently, due to the second wave of COVID-19 also, there were no further activities as the second time also lockdown had been imposed. In the meanwhile, the lease period was over by 31.03.2021 and in order to provide for further lease from 01.04.2021, the third respondent Municipality has gone for



a fresh auction and the petitioner, though wanted to participate in the said auction, he was not permitted unless and until he pays the lease amount due for the period 01.04.2020 to 31.03.2021. Having no other option, as the petitioner wanted to participate in the auction for the subsequent period, he paid the said amount in respect of the three leases.

5. In respect of the first lease, ie., for cycle and two wheeler parking stand, he had paid a sum of Rs.10,59,705/- and for the second lease ie., pay and use toilet, he had paid a sum of Rs.65,420/- and in respect of the third lease ie., for collecting toll from the buses in the bus stand, he had paid a sum of Rs.13,96,859/-. It is to be noted that, these amounts have been paid as arrears of lease amount for the period from 01.04.2020 to 31.03.2021.

6. After having paid the above amounts, the petitioner was permitted to participate in the tender or public auction conducted by the third respondent to execute the lease in favour of the successful tenderer for the period commencing from 01.04.2021. The petitioner has become the successful tenderer in all the three leases and he has been confirmed the leases for the current period ie., from 01.04.2021 also.

7. At this juncture, now the plea of the petitioner is to return back the amount paid by the petitioner from 01.04.2020 to 31.03.2021, as during the period since most of the time there were no activities due to COVID-19 pandemic, absolutely there was no chance for the petitioner to collect any toll or fee from the public or the users of those facilities and therefore, in this regard, in respect of these three leases, the petitioner has made a representation on 24.06.2021 separately to the respondents to return back the amounts paid by him for the year 2020-2021 ie., from 01.04.2020 to 31.03.2021. Since the said representation has not been considered and the amount has not been returned, he has approached this Court by filing these writ petitions with the respective prayers.

8. Heard Mr. Shanmugaraja Sethupathi, learned counsel for the petitioner, who, after having reiterated the aforesaid facts, would submit that, insofar as the waiver of the lease amount for the lockdown period due to COVID-19, the Government had already passed a Government Order in G.O.(D) No.298 dated 02.09.2020, under which two months waiver has been given during the lockdown from 01.04.2020 to 31.05.2020. However, the lockdown was not over by 31.05.2020 and thereafter even after lifting the lockdown there had been only limited activities. Hence, there was no scope for the lessees like the petitioner to collect any amount and hence such a waiver granted by the Government under the said G.O., shall be extended for a further period at least



for six months ie., upto 31.12.2020 and if such extension is given, the petitioner would be able to get back at least half of the amount deposited in this regard.

9. Learned counsel for the petitioner would also refer to a decision of this Court made by a learned Judge in W.P.8940 of 2021 dated 19.07.2021 in the matter of "R.Sagunthala -Vs- The State of Tamil Nadu represented by the Secretary to the Government, Municipal Administration and Water Supply Department and Others", where this Court has directed the respondents therein ie., State Government as well as the concerned municipality under whom the writ petitioner entered into lease agreement, to consider the request of the petitioner to grant waiver for more period than the two months period. Relying upon the said decision, the learned counsel for the petitioner seeks the indulgence of this Court to issue similar direction to the respondents to consider his representation dated 24.06.2021 and to pass orders thereon.

10. Heard Mr.V.Manoharan, learned Additional Government Pleader appearing for respondents 1 and 2 and Mr.P.Srinivas, learned Standing Counsel appearing for the third respondent municipality.

11. Learned Additional Government Pleader and the learned Standing Counsel would submit that, insofar as the demand to grant the waiver is concerned, it is a decision to be taken by the Government, as that would have a repercussion in all such contracts given to various individuals throughout the State. Therefore, such a decision has to come from the State Government and in this regard the municipality cannot independently take any decision.

12. Insofar as the earlier two months waiver is concerned, beyond the said two months waiver, no further Government Order has been issued by the Government and it can be assumed that the Government has not come forward to give any further waiver beyond the waiver given for April and May 2020.

13. They would also submit that, insofar as the claim made by the petitioner that, waiver for further period at least for three months upto 31.12.2020 has to be given and in this regard, the amounts paid by the petitioner has to be refunded is concerned, the representation given by the petitioner in this regard may be considered by the respondents especially the third respondent, who, on consideration of the same, would await the decision to be made in this regard by the Government by issuance of a Government Order, without which, no positive decision can be taken by the third respondent as sought for by the petitioner.



14. I have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

15. The only grievance of the petitioner is that, at least for the period of six months i.e., from 01.06.2020 to 31.12.2020 waiver can be given and in this regard, out of the entire lease amount paid for all the three leases referred to above, 50% at least can be refunded to the petitioner, for which representation given by the petitioner can be directed to be considered.

16. In this context, the learned Judge, who dealt with a similar circumstance in the aforesaid judgment cited supra dated 19.07.2021, has passed the following order.

" 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



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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 Mannarkudi Bus Stand was closed completely during the lockdown period of six months without any



taken, the same can be communicated to the petitioner and in this regard, if any waiver is to be granted that can also be granted to the petitioner and the benefit of the same can be given to the petitioner.

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20. In the meanwhile, since during the pendency of the writ petition, the representation of the petitioner dated 24.06.2021 since has been rejected on the ground that, it can be decided only by the State Government, challenging the same the prayer also got amended. Mere rejection of the representation by the third respondent municipality as if they could not take any independent decision, may not hold good. Therefore, such rejection order would not preclude the petitioner to press for the waiver.

21. Therefore, considering all these aspects, this Court is inclined to dispose of these writ petitions with the following order.

- a) Unmindful of the impugned order passed by the third respondent municipality in all these cases, the representation in this regard, if any, to be made by the petitioner, shall be made within two weeks from the date of receipt of a copy of this order, by the petitioner. The same shall be addressed to the first respondent and second respondent as well as the State Government represented by the Director of Municipal Administration and Water Supply Department.
- b) If any such representation is made, the same shall be considered by the first and second respondents in the light of the Government Order in G.O.(D) No.298 dated 02.09.2020 and in this case a pragmatic decision has to be taken by taking into account the COVID-19 first wave period due to which there was complete lockdown and thereafter some partial lockdown even upto the month of October and December 2020 and this aspect has to be considered by the State Government with the recommendation or input to be supplied in this regard by the Director of Municipal Administration and Water Supply Department and accordingly a revised Government Order can be passed by the State Government, giving waiver to the petitioner as well as similarly placed persons in various municipalities. If such a decision is taken by the State Government, the third respondent can consider



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the plea of the petitioner and in that case, the amount if any to be refunded to the petitioner, can either be refunded or re-adjusted towards the licence or lease amount payable by the petitioner for the future period of lease.

- c) The aforesaid exercise shall be undertaken by the State Government on receipt of the representation in detail in this regard to be submitted by the petitioner and a decision shall be taken within eight weeks from the date of receipt of such representation. It is open to the petitioner to make a fresh detailed representation with input separately for each of the lease to the first respondent and second respondent as indicated above.

22. With the above observations and directions, these writ petitions are disposed of. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Secretary to Government
Revenue and Disaster Management Department
Secretariat, St.George Fort, Chennai 600 009.
2. The Director of Municipal Administration
11th Floor, Urban Administrative Building
Opposite to CIBA Building, Santhome High Road
M.R.C.Nagar, Raja Annamalaipuram
Chennai - 600 028.
- 3.The Commissioner
Namakkal Municipality
Namakkal - 637 001.

+3cc to M/s.D.Shanmugha Raja Sethupathi, Advocate, S.R.No.64267 to 64269

+1cc to M/s.P.Srinivas, Advocate, S.R.No.65177

+1cc to the Government Pleader, S.R.No.64867

W.P.Nos.16504, 16510 & 16511 of 2021

RGN(CO)

SB(15/02/2022)