

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12/2/2021

C O R A M

THE HONOURABLE Mr.JUSTICE B.PUGALENDHI

Writ Petition No.18094 of 2020

S.Sankar

...Petitioner

Vs

1. The State
rep. By the Secretary to Government
Municipal Administration and Water Supply
(MA.IV) Department
Fort St. George
Secretariat
Chennai 600 009.
 2. The Director of Town Panchayat
Chennai 600 028.
 3. The Assistant Director of Town Panchayat
Salem Zone
Salem.
 4. The Executive Officer
Pillanallur Town Panchayat
Pillanallur Taluk
Namakkal District.
- ... Respondents.

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to refund Rs.5,63,768/- being the lease amount paid in advance for collection of Toll in the weekly shandy, during the period of lock down due to Covid 19 from 1/4/2020 to 30/9/2020, within a reasonable time.

For petitioner Mr.A.E.Ravichandran
For respondents ... Mr.Sathiyamurthi
Government Advocate

O R D E R

This Writ Petition has been filed to direct the respondents to refund Rs.5,63,768/- being the lease amount paid in advance for collection of Toll in the weekly shandy, during the period

of lock down due to Covid 19 from 1/4/2020 to 30/9/2020, within a reasonable time.

2. The case of the petitioner is that he is the licensee for collection of toll for the vehicles and goods coming to the weekly shandy in Pillanallur Town Panchayat, for the period 1/4/2020 to 31/3/2023. The petitioner had paid a sum of Rs.11,77,597/-. After confirmation, the petitioner executed a lease agreement with the fourth respondent dated 2/4/2020. Due to Covid-19 pandemic situation, the Government has announced lock down and therefore, there was immobility of general public and the cycle/scooter parking stand was completely closed from 1/4/2020 to 30/9/2020 and it resumed to function only from December, 2020 onwards. The petitioner was prevented from collecting parking charges from the public for about 8 months. In view of the stand taken by the Government, the petitioner was prevented from doing the business of collecting parking charges and he has suffered huge loss. Considering this situation, the Government has also granted some relief of waiver of license amount for a period of two months for April and May, 2020 vide G.O.No.(D).No.298 Municipal Administration and Water Supply Department dated 02.09.2020.

3. The case of the petitioner is that when the petitioner was prevented from doing any business upto November, 2020, the waiver given by the Government for two months is not appropriate and therefore, the Government ought to have refunded the lease amount already deposited by the petitioner or atleast should have extended the lease period for the non-operative period.

4. Admittedly, the Government has announced lock down for the entire operation of business from April, 2020 considering the pandemic situation and therefore, no activities were allowed in the bus stand and as such, the petitioner was also prevented from collecting any parking charges and the parking stand also remained closed during the relevant period.

5. 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.

6. The directions issued in the aforesaid writ petition is applicable to the present writ petition also. Accordingly, this Writ Petition is disposed of, directing the respondents to consider the case of the petitioner, in the light of the aforesaid order passed by this Court in W.P.(MD).No.19596 of 2021 dated 1/2/2021. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Secretary to Government
Municipal Administration and Water Supply
(MA.IV) Department
Fort St. George
Secretariat
Chennai 600 009.

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4. The Executive Officer
Pillanallur Town Panchayat
Pillanallur Taluk
Namakkal District.

+1 cc to M/s.A.E.Ravichandran , Advocate Sr.No. 8321

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PMK (CO)
RMP (29/03/2021)



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