



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2021

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THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.17897 of 2021

WEB COPY

A.Sheik Mohammed

... Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water
Supply Department,
Secretariat, Chennai-9.

2. The Commissioner,
Madurai Corporation,
Madurai.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent not to insist the license fee during April 2020 to September 2020, May 2021 and June 2021 by considering representation dated 01.12.2020 and 20.08.2021.

For Petitioner	: Mr.M.Parameswari for M/s.Johnny Basha
For Respondents	: Mr.P.Subbaraj Counsel for the State for R1 Mr.K.K.Kannan for R2.

ORDER

The petitioner seeks waiver of licence fee during the period when a lockdown was announced pursuant to the first and second wave of the COVID-19 pandemic.

2. The petitioner states that he runs a hotel under the name "Hotel Vasantham" at the Mattuthavani Integrated Bus Stand. He was granted a licence in the year 1999 and the licence fee was increased every three years at the rate of fifteen percent. As on date, it is stated that the licence fee is about Rs.1,93,000/- per month. The petitioner states that such licence fee was paid without default until March 2020.

3. In the wake of the COVID-19 pandemic, the petitioner states that the State of Tamil Nadu declared a complete lockdown from 26.03.2020. While there was some relaxation in other areas, as regards the bus stand, no relaxation was granted and there was a



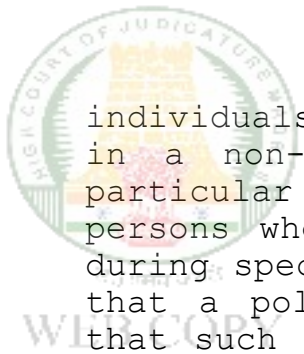
complete lockdown. The petitioner asserts that such lockdown extended from April 2020 to September 2020. Consequently, the petitioner was in a position to resume business only in October 2020. Such business was carried on until April 2021. Once again, on account of the second wave of the COVID-19 pandemic, a lockdown was announced and such lockdown was enforced as regard the bus stand in May and June 2021. In these facts and circumstances, the petitioner carried a representation to the second respondent seeking waiver of licence fee for the above mentioned eight months. The present writ petition is filed in view of the failure of the second respondent to act on such representation.

4. Mr.P.Subbaraj, learned counsel for the State, appears on behalf of the first respondent and Mr.K.K.Kannan, learned Standing Counsel, appears on behalf of the Madurai Corporation.

5. Mr.Kannan submits that the petitioner is liable to pay an aggregate sum of Rs.38,69,543/- towards outstanding licence fees for the period February 2020 to March 2021. He also points out that the Madurai Corporation is subject to policy decisions taken by the State. In fact, he points out that pursuant to G.O.Ms.No.298, waiver was granted for two months in 2020 extending from 01.04.2020 to 31.05.2020. He points out that the Madurai Corporation cannot take a decision in the matter and that it is for the State Government to take a policy decision with regard to establishments such as the Mattuthavani Integrated Bus Stand.

6. On the other hand, the petitioner points out that lockdown was enforced strictly during these eight months. As a consequence, the petitioner was unable to carry on business. Therefore, the second respondent cannot insist on payment of licence fees after preventing the petitioner from undertaking its business activities. In this regard, the petitioner relies upon an earlier order of this Court in W.P(MD).No.19596 of 2020, order dated 01.02.2021. The petitioner points out that the Court took into consideration the fact that the licensee cannot be called upon to fulfil its obligations when the licensor has not fulfilled the obligation of permitting the licensee to use the licensed premises. According to the petitioner, the said judgment is squarely applicable to the facts of this case.

7. As correctly contended by the petitioner, any contract, including a licence, imposes obligations on both parties thereto. In the context of a licence to use a property, the obligation to permit the use of such premises is a condition precedent for claiming a licence fee for the use of the premises. To that extent, in principle, the petitioner has made out a case for the consideration of the request for waiver of licence fee for the period of lockdown. However, these are policy decisions inasmuch as such decisions cannot be taken on an ad hoc basis at the instance of specific



individuals. The State should take a decision which would be applied in a non-discriminatory manner to all person who constitute a particular class. In the case at hand, such class would be all persons who were not permitted to run their respective businesses during specific months of 2020 and/or 2021. While it is pointed out that a policy decision was taken under G.O.Ms.No.298, it appears that such decision covered only two months in 2020. The petitioner asserts that the lockdown was enforced at Mattuthavani Integrated Bus Stand for six months. Therefore, the policy decision may also require re-examination as regards 2020. Insofar as 2021 is concerned, the lockdown was enforced in a more localized way. The petitioner contends that such lockdown was enforced both in May and June 2021 as regards the Mattuthavani Integrated Bus Stand. If such assertion is factually correct, the petitioner is entitled to the consideration of the representation for waiver.

8. At the same time, it should be noted that the Madurai Corporation points out that the licence fee arrears aggregates to about Rs.38.69 lakhs. As a condition precedent to the consideration of the petitioner's representation, the petitioner should remit the licence fee for all months other than the months when there was a lockdown. After making payment of licence fee in the manner indicated above, the petitioner is permitted to carry a fresh representation to the first respondent herein. Upon receipt of such fresh representation, the first respondent is directed to consider such representation by taking into account the earlier order of this Court in W.P(MD).No.19596 of 2020 dated 01.02.2021 as well as the observations in this order. Upon such reconsideration, the first respondent is directed to take a policy decision and communicate the same to the petitioner and all the relevant departments within a period of three months from the date of receipt of a copy of this order.

9. W.P(MD).No.17897 of 2021 is disposed of on these terms without any order as to costs.

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
Municipal Administration & Water
Supply Department,
Secretariat, Chennai-9.



2. The Commissioner,
Madurai Corporation,
Madurai.

+1 CC to M/s.K.K.KANNAN, Advocate (SR-31675[F] dated 07/10/2021)

+1 CC to M/s.SPL.GP (SR-31767[F] dated 08/10/2021)

W.P. (MD) No.17897 of 2021

07.10.2021

MGJ(25.10.2021) 4P 5C