IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

C O R A M

THE HON'BLE MS.JUSTICE V.M.VELUMANI

W.P.NO.9009 OF 2022
AND
W.M.P.NOS.8811 & 8812 OF 2022

M/s.Felicious Fresh Fruits
Private Limited,
Plot No.G-114/1,
SIPCOT Industrial Park,
Vallam - Vadagal,
Reg.Off. Flat - 302,
Tower-20, Sky City Apartments,
Vanagaram, Chennai - 600 095.
Rep. by its Director,
Mr.Aryan Raja. ... Petitioner

.Vs.

The Managing Director,
The State Industries Promotion Corporation
of Tamil Nadu Ltd., (SIPCOT),
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008. ... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in impugned demand notice/letter, dated 04.04.2022, vide Ref.No.D1/SIP-VV/Fecilious Fresh/2021, to quash the same and consequently, direct the respondent to reasonably extend the time-limit by 18 more months, enabling the petitioner to complete the construction, by considering the extraordinary situation that arose in the interregnum, due to the tight and strict shut-down imposed all over the Country consequent to the outbreak of corona virus.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.S.Girish
For M/s.M.Karthikeyan
Standing Counsel for SIPCOT

O R D E R

The petitioner has come out with the present Writ Petition challenging the impugned demand notice/letter issued by the respondent dated 04.04.2022, in Ref.No.D1/SIP-VV/Fecilious Fresh/2021 and to quash the same.

2. The petitioner, with a view to set up a cold storage and fruit packing unit to import and export fruits, had sent an application on 20.08.2018 to the respondent seeking allotment of plot at SIPCOT Industrial Park, Vallam-Vadagal. After consideration of the application of the petitioner, the respondent by allotment order dated 19.09.2018, allotted plot No.G-114-1(Southern Side) to the petitioner to an extent of 2.50 acres in the SIPCOT Industrial Park for the purpose of setting up a cold storage and fruit packing unit. The cost of the plot was tentatively fixed as Rs.1.27 Crores per acre and the project (construction of cold storage facility) shall be completed within a period of 30 months from the date of order and that failure will lead to cancellation of allotment and forfeiture of initial deposit. The plot allotted to the petitioner was full of pits and ditches. The soil experts and engineers suggested that 400 lorry loads of savudu earth would be required to level the entire land area. The District Collector, Kancheepuram and the Mining Department processed the application of the petitioner dated 29.03.2019 and granted permission to take savudu earth from Echur Lake. Due to heavy rains and floods, the petitioner could not procure savudu earth from Echur lake as it was full of water. After rainy season, the petitioner leveled the ground with savudu earth and constructed compound wall at the cost of Rs.50 Lakhs. While the petitioner was taking steps to proceed further, due to the spread of COVID-19 pandemic, total lock down was imposed throughout India from March 2020 by both Central and State Governments. In view of the lock down, the migrant workers had gone out to their native places. Due to the strict imposition of lock down, there was no supply of construction materials like cement, sand, bricks, blue-metal, etc. The Government of Tamilnadu also, in an effort to arrest the spread of Covid 19 virus, issued G.O.Ms.No.172, Revenue & Disaster Management Department/Disaster Management Wing, DM II Section, dated 25.03.2020, directing closure of offices of the Government of India/State Government and all the Private and Industrial Establishments, Places of worship, Temples and all Transport Services-Air, Rail, Roadways, Hospitality services etc., The petitioner even though spent a considerable amount for levelling the ground and constructing the compound wall, could not get labour force, construction materials and could not proceed with the construction work to complete the project within the remaining short period. Taking into consideration of the

pandemic period, the Central and State Government and their institutions like RBI extended the limitation to pay income tax, property tax, EMIs on various loans etc. The Hon'ble Apex Court, taking suo motu cognizance of the Covid 19 pandemic situation, by order dated 23.03.2020 reported in 2020-SCC Online-SC-343, extended the period of limitation with effect from 15.03.2020 till further orders and again by subsequent order dated 08.03.2021, ordered the extension of exclusion of the period of limitation for any proceedings either under General law or Special law for the period from 15.03.2020 till 14.03.2021. The Hon'ble Apex Court, by noticing the surge of second wave of pandemic, on 27.04.2021, further extended the limitation period from 15.03.2020 until further orders. In view of the hardship and difficulties to which people have been subjected due to two big waves of pandemic, the extension of limitation was ordered by excluding the Covid 19 period. The respondent, without considering the above facts and ground reality and difficulties of the petitioner, issued impugned notice dated 04.04.2022.

3. The learned counsel appearing for the petitioner further contended that the respondent without proper assessment issued the impugned order. The respondent failed to see that the petitioner has taken every effort to complete the project by spending huge amount of Rs.50 Lakhs for levelling the ground and putting up the compound wall. The petitioner was unable to proceed with the completion of project due to the pandemic situation leading to the non-availability of labourers and materials. Therefore, the impugned demand notice suffers from arbitrariness as the respondent has extended time to some of the allottees for payment of cost of plot and extended time for completion of project without any penalty whereas the respondent did not consider the representation of the petitioner dated 26.02.2021 and issued the impugned demand notice in a casual way. The respondent, not only failed to take into consideration the huge investment spent by the petitioner to complete the project, but also the G.O.Ms.No.172, Revenue & Disaster Management Department/Disaster Management Wing, DM II Section, dated 25.03.2020, the orders of the Hon'ble Apex Court extending the period of limitation from 15.03.2020 until further orders as on 27.04.2021 and also the further extension period granted by the Government for payment of Income Tax, Property Tax, Statutory dues, EB charges, EMI for loans, etc.

4. The learned counsel appearing for the petitioner in support of his case, relying on the orders passed by the Hon'ble Apex Court argued that the Hon'ble Apex Court, taking suo moto cognizance of Covid 19 situation has ordered that Covid 19 Corona period shall stand excluded from 20.03.2020 till further orders. Therefore, the impugned order is liable to be quashed.

5. The learned counsel appearing for the petitioner citing the above reasons, prayed for quashing the impugned notice dated 04.04.2022 and direction to the respondent to extend the reasonable time preferably fifteen months to complete the project and render justice.

6. The respondent filed counter affidavit and typed set of papers. Mr.Girish, for Mr.M.Karthikeyan, learned counsel appearing for the respondent submitted that considering the application of the petitioner dated 29.08.2018, the respondent by the proceedings dated 19.09.2018 allotted Plot No.G-114-1 (Southern Side) on the conditions mentioned therein. As per the condition Nos.3(VII), the petitioner has to implement the project/commercial production within a period of 30 months from the date of the said order. If the petitioner failed to comply with the said conditions, the allotment will be cancelled and initial deposit and developments charges to that extent shall be forfeited. The petitioner accepted for all the conditions and the condition that project will be implemented within 30 months from the date of the allotment. Having accepted the said condition, the petitioner is not entitled to maintain the present Writ Petition. The Board of SIPCOT at its meeting held on 21.07.2020 has revised the surrender policy and resolved to levy penalty for extension of time towards utilization of excess/un-utilised land. As per the revised policy, the impugned notice is issued. The respondent by the impugned notice granted extension of time for completing the project with penalty as per the decision of the Board of SIPCOT. The impugned notice is not arbitrary. The impugned notice is valid and legal. The orders of Hon'ble Apex Court applies only to Judicial and Quasi Judicial proceedings. The petitioner is challenging the contractual condition and writ petition itself is not maintainable. The learned counsel, in support of his contention, relied on the judgment in Ranison Holdings v. V.Vijay Sai & Circular 157/13/2021GST dated 20.07.2021 issued by Central Board of Indirect Taxes and Customs clarifying the order of the Hon'ble Apex Court relied on by the learned counsel for the petitioner. The learned counsel appearing for the respondent referred the typed set of papers and averments, prayed for dismissal of the Writ Petition.

7. Heard the learned counsel appearing for the petitioner as well as Mr.Girish for Mr.M.Karthikeyan learned counsel appearing for the respondent and perused the materials on record.

8. From the above rival contentions and copies of the documents filed in the typed set of papers, the following are admitted facts:

(i) On 20.08.2018, the petitioner applied for allotment of industrial plot in SIPCOT, Industrial Park, Vallam-Vadagal.

(ii) The respondent by proceedings dated 19.09.2018 allotted plot No.G-114-1(Southern Side) to the petitioner. Apart from other conditions, the respondent imposed condition that the petitioner must complete the project within 30 months from the date of allotment.

(iii) The petitioner, on 29.03.2019 requested the District Collector, Kancheepuram for permission to extract savudu earth for levelling the ground in the plot allotted. During the pendency of the application, there was heavy rain all over the State of Tamil Nadu, as a result, the nearby water bodies received full water. Consequently, the petitioner could not procure soil and after the water drained, the pits were levelled, thereafter petitioner raised huge compound wall on all the four sides. In the meanwhile, Covid 19 pandemic situation intervened, therefore both the Central and State Governments imposed lock down.

(iv) The Government by G.O.Ms.No.172, Revenue & Disaster Management Department / Disaster Management Wing, DM II Section, dated 25.03.2020, ordered total lockdown.

(v) On 25.03.2020, when the total lockdown was imposed, to complete the project, the petitioner was having sufficient period of 12 months unexpired period, out of 30 months granted by the respondent to the petitioner.

(vi) The Hon'ble Apex Court in suo motu Writ Petition, taking into consideration the pandemic situation extended the period of limitation from 15.03.2020 in respect of general and special laws whether there is provision for condonation or not.

(vii) The Government extended time for filing Income Tax returns and payments, property tax, EB charges or other statutory dues, payment of EMI for loans and also waived payment of lease amount for two months payable to local bodies.

(viii) This Court granted waiver of payment of lease amount for six months payable to Nagercoil Municipal Corporation.

8.1 The issue whether the petitioner is entitled for extension of time without any penalty has to be decided taking into consideration the above admitted facts.

8.2 The petitioner was allotted plot on 19.09.2018, PlotNo.G-114-1 (Southern Side) with one of the condition that the petitioner must complete the project within 30 months i.e on or before 18.03.2021. Before expiry of said period, due to COVID-19 Pandemic, the total lockdown was imposed with effect from 25.03.2020. By G.O.Ms.No.172, Revenue & Disaster Management Department/Disaster Management Wing, DM II Section, dated 25.03.2020, Government ordered total lockdown and imposed restrictions for the following organisations and institutions.

(i) Offices of Government of India, its autonomous/ subordinate offices and Public Corporations

(ii) Offices of State Government, its autonomous bodies, Corporations etc.

(iii) Commercial and Private Establishments

(iv) Industrial Establishments

(v) All the transport services-Air, Rail, Roadways etc.,

(vi) Hospitality services

(vii) All educational training research and other Institutions.

8.3 The Government also in the said G.O., imposed certain restrictions with regard to the social activities. It is common knowledge that the normal life of all the people throughout India was affected. Most of the migrant workers left for their native place. The labourers for construction work as well as construction materials were not available during the lock down period except shops selling essential goods like milk medicine etc., Other establishments were not permitted to do business. The lock down was extended in phased manner permitting the business to be carried on for the limited time only during the day time. Another aspect to be taken into account is the order of the Hon'ble Apex Court in suo motu Writ Petition(Civil)No.3 of 2020. The Hon'ble Apex Court passed three orders. The first order was 23.03.2020. The Hon'ble Apex Court, taking into consideration the pandemic situation and resultant difficulties faced by the litigants in initiating legal proceedings, extended the period of limitation with effect from 15.03.2020 until further orders.

8.4 The learned counsel appearing for the petitioner relied on the following judgments:

(1) Suo Moto Writ Petition (Civil)No.3 of 2020 dated 23.03.2020 reported in 2020 SCC OnLine SC 343. Paragraph Nos.2 and 3 of the order is extracted hereunder:

> "2.To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f 15th March 2020 till further order/s to be passed by this Court in present proceedings.
>
> 3.We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities."

(2) Miscellaneous Application No.665/2021 in SMW(C) No.3 of 2020 dated 27.04.2021 reported in 2021 SCC OnLine SC 373. Paragraph No.6 of the order is extracted hereunder:

> "6 We also take Judicial notice of the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders."

(3) Miscellaneous Application No.21 of 2022 in Suo Motu Writ Petition (Civil)No.3 of 2020 dated 10.01.2022 Paragraph No.5(III) &(IV) of the order is extracted hereunder:

"III.In cases where the limitation would have expires during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV.It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29(A) of the Arbitration and Conciliation Act, 1996. Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

(4) W.P.(MD)No.19596 of 2020 dated 01.02.2021 in the case of R.Narayanan vs. The Government of Tamil Nadu. Paragraph Nos.4, 9 to 11 and 15 of the order is extracted hereunder:

"4. In the writ petition, the Government as well as the local body have been arrayed as respondents. The stand of the respondents is that the contractual obligation to pay the monthly license fee is absolute and that it is not excused by any supervening event. However, considering the hardship experienced by the licensees, the Government had issued G.O (D) No.298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.09.2020 ordering to waive payment of lease/rental amount for the period from 01.04.2020 to 31.05.2020. The petitioner has not challenged the said G.O. Therefore, this Court can grant relief to the petitioner only in terms of the said G.O and cannot travel beyond.

9. The question is whether notwithstanding the stipulation of absolute performance cast on the licensee, this Court would be justified in treating the "lock down" as a force majeure event which will relieve the licensee from performing his obligation to the corresponding extent.

10. My answer is in the affirmative. Section 51 of the Indian Contract Act, 1872 states that when a contract consists of reciprocal promise to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. As per Section 54, performance cannot be claimed till the other has been performed. The local body must keep the bus stand open and in good repair. The licensee must be permitted to keep the licensed shop open. If the local body had directed the licensee to close down the shop, it cannot demand fee from the licensee for the period when the shop remained closed. Of course, the licensee must be free of any wrong doing. If the licensee is made to suffer for no fault of his by direction to close down the shop, then, the question of payment of fee will not arise. This is clearly an implied term in the contract.

11. There is a greater reason too. The petitioner has contracted not with a private party but with Nagercoil Corporation. It is a State instrumentality. Local bodies have been given constitutional status. In the case on hand, their actions have been governed by the directives issued by the Central and State Governments. When one party to the contract is the local body, then this Court would be justified in applying the principles of reasonableness and fairness.

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.

(5) W.A.(MD).No.428 of 2021 dated 22.03.2022 in the case of The Nagercoil Municipal Corporation vs. R.Narayanan. Paragraph Nos.6.1 to 6.3 of the judgment is extracted hereunder:

"6.1 The difficulties faced by the nation (during March to September, 2020) was like once in century. The extraordinary circumstances can not be met with by ordinary measures. The State in its wisdom thought it proper not to permit any citizen even to walk on the road during the said period. No one would go out to earn money, no one would go out to spent money.

6.2 Considering this, Government passed order on 02.09.2020 accepting the proposal of the Commissioner of Municipal Administration dated 18.06.2020, which was for waiver of the license fee for the months of April and May 2020. We do not find any fault in the proposal of the Commissioner which was made in the month of June, 2020 because that would not have taken into consideration the eventualities of the months coming thereafter. If the said proposal was based on the lock-down for the months of April and May, 2020, we do not see any change of circumstances for remaining period of the lock-down upto September, 2020. Only because no proposal was made by the Commissioner of Municipal Administration in that regard or the Government not passing any consequential order can not be a guiding factor to meet with such circumstances. 6.3 We find that, these are circumstances in which the State on its own should have taken care of the citizen. Having failed to do so, when this Court in exercise of powers under Article 226 of the Constitution of India has granted that relief, the same can not be said to be erroneous in any manner. Not only we do not find any error therein, we confirm the said view. For these reasons, this appeal needs to be dismissed."

8.5 By the second order dated 27.04.2021, the Hon'ble Apex Court held that the period of limitation shall stand excluded from 15.03.2020 to 14.03.2021 and balance period of limitation shall become available from 15.03.2021. If the period of limitation expired during 15.03.2020 to 14.03.2021, again granted 90 days limitation from 15.03.2021. By the third order dated 10.01.2022 passed on the Miscellaneous Application No.21 of 2022 filed by the Supreme Court Advocate on record, extended the period of limitation from 15.03.2021 till 28.02.2022. The extension of period of limitation by the Hon'ble Apex Court is with regard to the limitation of legal proceedings under General and Special law but in the circumstances and basis for extending the period of limitation applies to all the period of limitations fixed by various authorities including the respondent herein. In the order of allotment of the respondent dated 19.09.2018, one of the conditions imposed by the respondent is cancellation of allotment, if the petitioner fails to complete the project within 30 months. From the impugned demand notice, it is seen that Board of SIPCOT at its meeting on 21.07.2020, revised the policy and decided to extend the time limit for completion of the project. The respondent without taking into consideration that before expiry of time granted by the respondent to the petitioner to complete the project, COVID-19 pandemic intervened and Government ordered total lock down with effect 25.03.2020. It is the case of the petitioner that due to the total lock down, labourers and materials were not available to the petitioner. The respondent while extending the period for completion of project failed to consider the pandemic situation, the total lockdown from 25.03.2020, representation of the petitioner dated 26.02.2021 and also unexpired period of 12 months to complete the project.

8.6 The stand of the respondent that the order of the Hon'ble Apex Court extending the time limit excluding the Covid 19 period to private contractors is inapplicable, is not acceptable. The Government of India, Ministry of Finance, Department of Expenditure, issued an Official Memorandum dated 19.02.2020 clarifying that the spread of corona virus in China or any other country will be covered in the Force Majeure Clause (FMC) and therefore it should be considered as a case of natural calamity and Force Majeure Clause (FMC) may be invoked, wherever considered necessary.

The relevant portion of the Office Memorandum is extracted hereunder :

NO.F.18/4/2020-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

Room No.512, Lok Nayak Bhavan
New Delhi dated the 19th February, 2020

OFFICE MEMORANDUM

Subject: Force Majeure Clause (FMC)

Attention is invited to para 9.7.7 of the "Manual for Procurement of Goods, 2017" issued by this Department, which is reproduced as under:

A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as merevent described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/ seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (Ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.

2. A doubt has arisen if the disruption of the supply chains due to spread of corona virus in China or any other country will be covered in the Force Majeure Clause (FMC). In this regard it is clarified that it should be considered as a case of natural calamity and FMC may be invoked, wherever considered appropriate, following the due procedure as above.

(Kotluru Narayana Reddy)
Deputy Secretary to the Govt. of India
Tel.No.24621305
Email: kn.reddy@gov.in

To,
Secretaries of all Central Government Ministries/Departments

* * * * *

8.7 The above Office Memorandum clearly shows that in the event of situation which is beyond the reasonable control of a party would include an epidemic, therefore non-performance or non-implementation of the project is justified. Moreover, this issue has been clearly dealt with by the Hon'ble High Court of Delhi in M/S.Haliburton Offshore Services Inc. vs Vedanta Limited & Another reported in 2020 SCC Online Delhi 542 wherein the Hon'ble Delhi High Court has held that lock down caused due to Covid 19 is prima facie, a Force Majeure event, therefore the Covid 19 period would be excluded in the contract between the parties. For better appreciation, the relevant paragraphs are extracted hereunder :

> 56. It is under this factual backdrop that the ground of Force Majeure taken in March, 2020 would have to be adjudged. The grounds taken to invoke the Force Majeure clause are that due to outbreak of COVID-19 experts from France who may be required cannot travel to India. Since the Force Majeure clause in the contract covers epidemics and pandemics, the Contractor claims that its non-performance is justified and the invocation of Bank Guarantees is liable to be stayed. There is no doubt that COVID-19 is a Force Majeure event. But was this event the cause of the non-performance?
>
> 57. The law relating to Force Majeure has been recently settled by the Supreme Court in the case of Energy Watchdog v. Central Electricity Regulatory Commission, (2017) 14 SCC 80. The principles laid down by the Supreme Court in paragraphs 34-42 are as under:
>
> > a) Force Majeure would operate as part of a contract as a contingency under section 32 of the Indian Contract Act 1872 (`ICA').
> >
> > b) Independent of the contract sometimes, the doctrine of frustration could be invoked by a party as per Section 56, ICA.
> >
> > c) The impossibility of performance under Section 56, ICA would include impracticability or uselessness keeping in mind the object of the contract.
> >
> > d) If an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement it can be said that the promisor finds it impossible to do the act which he had promised to do.
> >
> > e) Express terms of a contract cannot be ignored on a vague plea of equity.
> >
> > f) Risks associated with a contract would have to be borne by the parties.

g) Performance is not discharged simply if it becomes onerous between the parties.

h) Alteration of circumstances does not lead to frustration of a contract.

i) Courts cannot generally absolve performance of a contract either because it has become onerous or due to an unforeseen turn of events. Doctrine of frustration has to be applied narrowly.

j) A mere rise in cost or expense does not lead to frustration.

k) If there is an alternative mode of performance, the Force Majeure clause will not apply.

l) The terms of the contract, its matrix or context, the knowledge, expectation, assumptions and the nature of the supervening events have to be considered.

m) If the Contract inherently has risk associated with it, the doctrine of frustration is not to be likely invoked.

n) Unless there was a break in identity between the contract as envisioned originally and its performance in the altered circumstances, doctrine of frustration would not apply.

62. The question as to whether COVID-19 would justify non-performance or breach of a contract has to be examined on the facts and circumstances of each case. Every breach or non-performance cannot be justified or excused merely on the invocation of COVID-19 as a Force Majeure condition. The Court would have to assess the conduct of the parties prior to the outbreak, the deadlines that were imposed in the contract, the steps that were to be taken, the various compliances that were required to be made and only then assess as to whether, genuinely, a party was prevented or is able to justify its non-performance due to the epidemic/ pandemic.

8.8 In the present case, plot was allotted to the petitioner on 17.09.2018. The petitioner herein, after taking possession of the land, started filling up pits by taking sand from the nearby ponds and thereafter has raised compound wall. This has been admitted by the respondent in their counter affidavit. When the allotment of the plot was made granting 30 months time so as to implement the project, on completion of 18 months, the Government of India imposed Nation wide lock down on 20.03.2020 and the out break of pandemic has caused non-performance of the contract. Therefore, as per the judgment of the Hon'ble High Court of Delhi in M/S Haliburton Offshore Services Inc. vs Vedanta Limited & Another cited supra, followed by three orders passed by the Hon'ble Apex Court excluding the Covid 19 period, the out break of pandemic being the cause for non-performance of the contract, it is a fit case to exclude the corona Covid 19 period. Hence, in view of the above materials, the impugned order is liable to be set aside.

8.9 The respondent ought to have taken into account the extension of time for payment of income tax, property tax and other statutory dues etc., granted by the both the Central Government and State Governments, the COVID-19 pandemic situation, the total lock down, subsequent partial lock down and unexpired period of 12 months available to the petitioner to complete the project before the lock down imposed on 25.03.2020, while passing impugned demand of penalty for extension of time. This Court takes note of the reason and basis for extension of limitation by the Hon'ble Apex Court. Considering the above materials, in the entirety, the petitioner is entitled for extension of period during lock down and COVID-19 pandemic situation for calculating the period for completion of project.

9. The respondent having failed to consider the above facts, in the considered view of this Court, committed irregularity and erred in demanding penalty for extension of 12 months to complete the project. The portion of impugned demand notice dated 04.04.2022 calling upon the petitioner to pay a sum of Rs.25,13,754/- as well as production of Bank Guarantee for a sum of Rs.63,90,900/- is invalid, illegal and liable to be set aside, hence the same is hereby set aside. The contention of the learned counsel for the respondent that Writ Petition is not maintainable, is not acceptable in view of the order of this Court in WP (MD) No.19596 of 2020 and confirmed in W.A.No.428 of 2021. The judgment and circular relied on by the learned counsel for the respondent do not advance the case of the respondent in view of the order and judgment of this Court in Writ Petition and Writ Appeal referred to above and facts and circumstances of this case. The Government imposed lock down for autonomous bodies, Corporation, etc. The petitioner has entered into agreement with autonomous body and not with private party.

The respondent modified and revised the conditions originally imposed. While revising the conditions, the respondent failed to take into consideration the impact of pandemic situation and difficulties faced by people including the persons similarly placed like petitioner.

10. For all the above reasons, the impugned demand notice dated 04.04.2022 demanding the penalty of Rs.25,13,754/- and Bank Guarantee for a sum Rs.63,90,900/- for extension of time for completion of project is quashed. The respondent is further directed to permit the petitioner to proceed with completion of project within 12 months, being the balance period available as on 25.03.2020, from the date of the receipt of a copy of this order. The respondent is further directed to issue necessary revised order to complete the project by the petitioner, if any.

11. With the above directions, Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rst/rgr

To

The Managing Director,
The State Industries Promotion Corporation
of Tamil Nadu Ltd., (SIPCOT),
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.28744

W.P.NO.9009 OF 2022

MG(CO)
PBS/18/05/2022