



WEB COPY

W.P.(MD)No.6168 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.6168 of 2022

W.M.P. (MD) .No.4779 & 4780 of 2022

P.Suresh

.. Petitioner

Vs

- 1.The Government of Tamilnadu,
Rep. by its Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George, Chennai - 9.
- 2.The Commissioner of Municipal Administration,
No.78, Urban Administrative Building,
MRC Nagar, Santhome High Road,
Raja Annamalai Puram, Chennai - 600 028.
- 3.The District Collector/
(Disaster Management Department),
Dindigul District.
- 4.The Commissioner,
Odanchathiram Municipality,
Dindigul District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned tender cum auction notification by the 4th Respondent in Na.Ka.No.1696/2021/E1, dated 22.03.2022, inviting for tender cum auction with regard to serial No.1 for conducting toll collection for weekly sandai and published in Dinakaran new Paper on 31.03.2022, for the auction to be held on 06.04.2022 and quash the same and consequently direct the 4th Respondent to extend the petitioners contract period from 01.04.2022 till 23.06.2022.

For Petitioner : Mr.M.S.Suresh Kumar

For Respondents : Mrs.S.Jeyapriya for R1 to R3
Government Advocate

Mr.LP.Maurya, for R4
Standing Counsel



ORDER

This writ petition has been filed challenging the impugned auction notification, dated 22.03.2022, on the ground that the petitioner, who is a licensee under the fourth respondent Municipality, was unable to run the weekly market due to the Covid - 19 lock down for a period of 84 days.

2.It is the contention of the petitioner that he has already submitted a representation, seeking for extension of his licence, which expired on 31.03.2022, to the fourth respondent. However, the said representation has not been considered till date. It is the contention of the petitioner that even without considering the petitioner's representation, the impugned auction notification has been issued. The petitioner has challenged the same on the ground that the procedure established under law has not been followed by the fourth respondent Municipality, while issuing the impugned tender notification.

3.Heard Mr.M.S.Suresh Kumar, learned counsel appearing for the petitioner, Mrs.S.Jeyapriya, learned Government Advocate, who accepts notice on behalf of the respondents 1 to 3 and Mr.LP.Mourya, learned Standing Counsel, who accepts notice on behalf of the 4th respondent.

4.The tender conditions, based on which the petitioner was awarded contract, which expired on 31.03.2022, for the weekly market makes it clear that the petitioner will have to pay the licence charges without committing any default. According to the learned counsel for the petitioner, the petitioner has paid the licence charges without committing any default for the first year and only for the second year due to Covid - 19 lock down, the petitioner did not pay the licence charges for certain months. However, according to the learned Standing Counsel for the fourth respondent, the petitioner will have to pay the licence charges without committing any default. According to him, there is no possibility for extending the period of licence in favour of the petitioner.

5.Further it is the contention of the learned counsel for the petitioner that before cancelling the licence, notice will have to be issued to the petitioner in accordance with Section 321 (4) of the Tamil Nadu District Municipalities Act, 1920. However, it is the contention of the learned Standing Counsel for the fourth respondent that sufficient notice was given to the petitioner and only thereafter, the impugned auction notification has been issued.

6.Admittedly, the petitioner has not paid licence charges for certain months during the second year of his licence. According to the petitioner, he is entitled for waiver for the non-operating period due to Covid - 19 lock down, which runs to 84 days. The



petitioner seeks extension of the licence only for the said period. However, the present writ petition has been filed challenging the impugned auction notification, calling for tender cum auction in respect of the weekly market, for which licence was granted to the petitioner earlier. Insofar as auction is concerned, the relief sought for by the petitioner stalling the auction cannot be granted by this Court, that too, when the petitioner has not paid charges for certain months during the second year of his licence.

7. Insofar as the extension of lease sought for by the petitioner as a consequential relief in this writ petition is concerned, the same also cannot be granted by this Court as it amounts to granting stay of the impugned auction indirectly. Though the learned counsel for the petitioner submits that the lease can be extended for the non-operating period of 84 days and thereafter, contract can be awarded to the successful bidder under the impugned auction notification, such a stand in the considered view of this Court cannot be accepted by this Court as it would indirectly amount to interfering with the impugned auction notification. It would result in un-certainty for the bidders they will not know as the exact date as to when they will be awarded the contract. There may be other persons who may be similarly placed as that of the petitioner who may be aggrieved if such a direction as sought for by the petitioner is issued by this Court and they may challenge any order passed by this Court accepting the contention of the petitioner seeking for extension of lease for another period of 84 days.

8. Therefore, this Court is of the considered view that the main relief namely stalling the impugned auction notification as well as the consequential relief sought for by the petitioner seeking for extension of lease by another period of 84 days cannot be granted by this Court. However, the only relief that can be granted by this Court is to direct the fourth respondent to consider the petitioner's representations dated 12.05.2021, 03.07.2021, 21.01.2022 and 04.02.2022, seeking for waiver of the licence charges for the non operative period due to the Covid-19 lock down, on merits and in accordance with law, after affording a fair hearing to the petitioner, including granting him the right of personal hearing, within a time frame to be fixed by this Court.

9. For the foregoing reasons, this writ petition is disposed of by directing the fourth respondent to consider the petitioner's representations, dated 12.05.2021, 03.07.2021, 21.01.2022 and 04.02.2022, seeking for waiver of licence charges for the non-operating period of 84 days and pass final orders on merits and in accordance with law, after affording a fair hearing to the petitioner, including granting him the right of personal hearing, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is at liberty to participate in the



10. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.D.I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

TM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Secretary to Government,
Government of Tamilnadu,
Municipal Administration & Water Supply Department,
Fort St. George, Chennai - 9.
2. The Commissioner of Municipal Administration,
No.78, Urban Administrative Building,
MRC Nagar, Santhome High Road,
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3. The District Collector/
(Disaster Management Department),
Dindigul District.
4. The Commissioner,
Odanchathiram Municipality,
Dindigul District.

+1 CC to M/s.M.S. SURESH KUMAR, Advocate (SR-16823[F] dated 06/04/2022)

W.P. (MD)No.6168 of 2022

05.04.2022

RD(13.04.2022) 4P 6C