



WEB COPY

W.A(MD)No.961 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A(MD)No.961 of 2021

and

C.M.P. (MD)No.4317 of 2021

The Nagercoil Municipal Corporation,
166, Balamore Road,
Nagercoil - 629001,
Kanyakumari District,
Rep. by its Municipal Commissioner.

... Appellant /
4th Respondent

Vs.

1.P.M.Harshan Hassan

... 1st Respondent / Petitioner

2.The Government of Tamilnadu,
Rep. by its Secretary to Government,
Municipal Administration and Water Supply Department,
St. Fort George, Chennai - 600 009.

3.The Commissioner of Municipal Administration,
No.78, Urban Administrative Building,
Santhome High Road,
MRC Nagar, Raja Annamalaipuram,
Chennai - 600 028.

4.The District Collector,
Kanyakumari @ Nagercoil, Nagercoil,
Kanyakumari District - 629 001.

.. Respondents 2 to 4 /
Respondents 1 to 3

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 01.02.2021 passed in W.P(MD)No.19767 of 2020 by the learned Single Judge.

Prayer in WP(MD). 19767/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records of the impugned notice of the 4th respondent dated 07.12.2020 made in Na.Ka.No.7841/2017/A13 and quash the same and consequently forbear the respondents from demanding license fee from the petitioner for the period from 24.03.2020 to 06.09.2020 and to reduce revise and

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re-fix the license fee in a manner proportionate with the opening time permitted for the period from 07.09.2020 onwards for Municipal Cape Road shop.No.9, Anna Bus Stand, Nagercoil in view of Covid -19 Pandemic Government Total Lockdown Regulations as per petitioner representation dated 12.12.2020.

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For Appellant : Mr.P.Athimoolapandian

For Respondent No.1 : Mr.N.Dilipkumar

For Respondents 2 to 4: Mr.K.Balasubramani,
Special Government Pleader.

J U D G M E N T

[Delivered by PARESH UPADHYAY, J.]

Challenge in this appeal is made to the order dated 01.02.2021 recorded on W.P(MD)No.19767 of 2020. This appeal is by the respondent Municipal Corporation. By the impugned order, learned Single Judge has granted relief to the writ petitioner of not paying any licence fee to the Municipal Corporation (for the shop he is occupying), for the lock-down period (March to September, 2020).

2.Learned advocate for the appellant has submitted that the relief granted by learned Single Judge of waiving the licence fee for the entire lock-down period i.e., for the period from 24.03.2020 to 06.09.2020 is inconsistent with the policy of the State and no relief could have been granted to the petitioner. It is submitted that, when the shop in question was leased, the tender condition also stipulated that in the event of default of payment of rent / license fee, no concession will be granted under any of the circumstances including pandemic. Learned advocate for the appellant - Municipal Corporation has further submitted that, in view of the Government Order dated 02.09.2020 waiving the lease / rent for only two months i.e., for April and May, 2020, it is not open to the Corporation to give any further concession. It is submitted that this appeal be entertained.

3.Learned Special Government Pleader for the State Authorities submitted that the action of the Municipal Corporation, on the basis of the Government Order cannot be said to illegal and therefore no interference should have been made by the Writ Court. It is further submitted that, since the proposal by the Commissioner of Municipal Administration dated 18.06.2020 was for two months, consequential Government Order was passed and beyond that no Government Order is passed by the State and therefore the writ petitioner not entitled to any relief. It is further submitted that it is the policy of the State and therefore in such policy decisions, discretion under Article 226 of the Constitution of India should not be exercised.



4. On the other hand, learned advocate for the original writ petitioner has submitted that the entire affair of the Country was standstill in view of the total lock-down announced by the Government and the petitioner could not have gone to attend his livelihood much less to pay to the Government and therefore the discretion exercised by learned Single Judge is just and proper and no interference be made by this court. Attention of the Court is also invited to G.O.(D)No.298, dated 02.09.2020, which was stated to have been issued on the basis of the recommendation of the Commissioner of Municipal Administration dated 18.06.2020. It is submitted that this appeal be dismissed.

5. The point at issue before this Court in this appeal is, whether the relief granted by learned Single Judge to the writ petitioner of waiver of license fee for the period of lock-down (from 24.03.2020 to 06.09.2020) can be said to be erroneous in any manner, which may call for any interference in this intra-court appeal.

6. Having heard learned advocates for the respective parties and having considered the material on record this Court finds as under:-

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 be dismissed.



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10. For the above reasons, this appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(AD I)

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/ /2022

Sub Assistant Registrar(CS)

To

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
St. Fort George, Chennai - 600 009.

2. The Commissioner of Municipal Administration,
No.78, Urban Administrative Building,
Santhome High Road,
MRC Nagar, Raja Annamalaipuram,
Chennai - 600 028.

3. The District Collector,
Kanyakumari @ Nagercoil, Nagercoil,
Kanyakumari District - 629 001.

+1 CC to M/s.SPL GP (SR-13927[F] dated 23/03/2022)

+1 CC to M/s.P.ATHIMOOLAPANDIAN, Advocate (SR-14124[F] dated 24/03/2022)

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MK/31.03.2022/4P/6C