



WP.No.4810 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P.No.4810 of 2021

G.Arunachalam

: Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai – 600 091.

2.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk,
Chennai – 600 005.

3.The Commissioner,
Tiruvannamalai Municipality,
Tiruvannamalai.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus calling for the records comprised in Na.Ka.No.3470/2020 A1 dated 07.01.2021 on the file of the third respondent, quash the same and consequently, direct the third respondent to refund the loss suffered by the petitioner for the period the petitioner was prevented from collecting the license fee based on his representation dated 05.11.2020.



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For Petitioner : Mr.V.Prakash Babu

For Respondents : Mr.D.Venkatesan
Government Advocate for R.1, R.2

Mr.L.P.Mouriah for R.3

ORDER

The petitioner before this Court is the successful bidder for collecting payments from road side temporary shop owners in the third respondent Municipality, for the period from 2018-2021 and has also remitted the lease amount for the period 2018-19, 2019-20 & 2020-21.

2.It is his case that due to the outbreak of Covid-19, the Government has announced lockdown and as such, the petitioner was not in a position to collect the payments from 22.03.2020 to 30.09.2020. The petitioner has, therefore, made a representation dated 05.11.2020 that due to the lockdown announced by the Government, the shops were fully closed and as such, no payments were collected and therefore, he requested for a refund. The said representation of the petitioner was rejected and the third respondent has announced public auction in respect of license for collecting fees for the period 2021-2024. Hence, the petitioner has moved the instant writ petition.



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3.Learned Counsel for the petitioner submitted that the petitioner suffered huge loss in view of the lockdown announced by the Government, since the shops were not in operation during that time. The outbreak of Covid-19 is a force majeure situation and it has to be treated as a case of natural calamity. Therefore, the respondents ought to have considered the case of the petitioner for the period, in which the shops remained close.

4.Learned Counsel for the third respondent Municipality submitted that the lockdown announced by the Government was relaxed systematically, however, the shops did not run by following the Covid-19 preventive guidelines issued by the Government. In any event, there is a specific Clause in the tender notification itself that at any situation, the allottee should not ask for any waiver of lease amount. The petitioner, who participated in the auction, knowing this clause, could not ask for a waiver.

5.This Court paid it's anxious consideration to the rival submissions and also perused the available materials.



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6.The petitioner has participated in a bid conducted by the third respondent Municipality to collect payments from road side shops Thiruvannamalai Municipality for the period from 2018-2021. He was awarded license and accordingly, he paid the lease amount for the period 2018-19, 2019-20 & 2020-21. However, due to Covid-19 outbreak, the Government has announced lockdown and resultantly, the shops were not in operation from 22.03.2020 to 30.09.2020. According to the petitioner, there was no business activities and he was not in a position to collect any fee and therefore, he sought for a refund. However, the respondent Municipality has rejected the request of the petitioner and issued tender notification calling for applications for the subsequent periods.

7.Perusal of the tender notification shows that the following clause has been mentioned:-

“பொருட்கேடு நேர்ந்தாலாவது வேறு எக்காரணத்திற்காவது உரிமைத் தொதையை குறைத்து தர வேண்டும் என்றோ அல்லது நடட்டரு கொடுக்க வேண்டும் என்று கோர உரிமை கிடையாது,”

8.There is a specific clause in the tender notification that the lease holders are not entitled to claim damages from the respondent Municipality in any event. Knowing this clause, the petitioner has participated in the bid and performed the contract for sometime and by recording the same, the respondent Municipality has rejected the petitioner's



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representation.

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9.The term 'force majeure' is defined under the Black's Law Dictionary as “an event or effect that can be neither anticipated nor controlled especially an unexpected event that prevents someone from doing or completing something that he or she had agreed or officially planned to do. The term includes both acts of nature and acts of people”.

10.The term 'force majeure clause' is defined in the Black's Law Dictionary as “a contractual provision allocating the risk of loss if performance becomes impossible or impracticable especially as a result of an event or effect that the parties could not have anticipated or controlled.”

11.Frustration brings the contract to an end forthwith, without more and automatically. Covid-19 outbreak can be considered as a frustrating event, which is an extraneous change of situation. The outbreak can also be called as a catastrophe and the force majeure clause may be applied in this case. Due to the pandemic, the petitioner could not perform the contract, which is an extraneous event, for which, the Municipality cannot be fault with. In view of the Doctrine of Frustration, the respondent Municipality



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cannot be blamed or faulted for non performing the contract.

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12. There is a specific clause in the tender notification and knowing the same, the petitioner has participated in the tender and also became the successful bidder. Therefore, the petitioner cannot claim waiver as a matter of right and as such, this Court is not inclined to entertain this writ petition. However, it appears that the Government has already shown some indulgence and a Government Order came to be passed in G.O.(D)No.298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.09.2020, waiving the payment of lease / rental amount for the lockdown period from 01.04.2020 to 31.05.2020. Since the Government has already considered the issue and granted relief to some extent, it is open to the petitioner to approach the Government for further waiver, if so advised and if he is otherwise eligible, which shall be considered depending upon the circumstances of the case.

In fine, this writ petition stands dismissed. No costs.

Index : Yes / No
Internet : Yes
gk

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To

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