IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.11931 of 2023
and
WMP No.11812 of 2023

N.Arunkumar .. Petitioner

vs.

1.The Director of Town Panchayats
7th & 8th Floors
Urban Administrative Office Campus
Chennai 600 028.

2.The Deputy Director of Town Panchayats
Erode.

3.Kannivadi Town Panchayat
Rep.by its Executive Officer
Kannivadi, Tiruppur District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in Na.Ka.No.74/2022 dated 18.01.2022 insofar as directing the petitioner to pay Rs.6,62,511/-, quash the same and direct the 3rd respondent to renew the license for collecting fee in Kannivadi Weekly market for the period commencing from 01.04.2023 to 31.03.2023 by receiving the license fee of Rs.36,53,134/-.

For Petitioner : Mr.C.Jagadish

For Respondents : Mrs.Mythreye Chandru
Special Government Pleader
for R1 and R2

Dr.S.Suriya
Additional Government Pleader

O R D E R

This writ petition has been filed challenging the proceedings of the 3rd respondent dated 18.01.2022 and for a further direction to the 3rd respondent to renew the license of the petitioner for collecting the fee in Kannivadi Weekly Market.

2.When the writ petition came up for admission on 19.04.2023, this Court passed the following order:

> *Mrs.S.Mythreye Chandru, learned Special Government Pleader takes notice on behalf of respondents 1 and 2 and Dr.S.Suriya, Additional Government Pleader takes notice on behalf of the 3rd respondent.*
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> *2.The subject matter of challenge in the present writ petition pertains to the impugned proceedings of the 3 rd respondent dated 18.01.2023, wherein, the petitioner has been directed to pay a sum of Rs.6,62,511/- towards the Goods and Services Tax (GST) on the license amount for the year 2021-22 and 2022-23 and insisting that unless the petitioner pays this amount, the license will not be renewed for a further period of one year.*
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> *3.The petitioner was given license to collect fee in the weekly market conducted by the 3 rd respondent and this license was given for a period of three years from 01.10.2021 to 31.03.2024. As per the tender condition, the petitioner has to pay 5% of the enhanced amount during every extension that is done for the 2nd and 3rd year.*
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> *4.The petitioner was willing to pay 5% of the enhanced amount for the 3 rd year also and had given a reply to that effect to the 3 rd respondent on 18.02.2023 expressing his willingness for the renewal of the license.*

5.The grievance of the petitioner is that the 3 rd respondent through the impugned proceedings dated 18.01.2023 insisted for the payment of 18% GST amount towards the license amount of the year 2020-21 and 2022-23 and on failure to pay this amount, the 3rd respondent was not inclined to renew the license. Aggrieved by the same, the present writ petition has been filed before this Court.

6.The learned counsel for the petitioner brought to the notice of this Court the advance ruling of the authority made under Section 98 of the Tamil Nadu Goods and Services Act on 28.04.2021, wherein, the authority had given a specific exemption from the payment of the GST with respect to the weekly market fee that was specifically dealt with at Serial No.3 of the order. This was further confirmed by the appellate authority by an order dated 01.12.2021. In view of the same, the learned counsel for the petitioner submitted that there is no question of payment of GST after exemption has been granted by the concerned authority. The learned counsel for the petitioner further submitted that the petitioner was always willing to pay the 5% of the enhanced amount to get the license renewed for the 3rd year.

7.The learned Standing Counsel appearing on behalf of the respondents seeks for some time to file a counter with respect to the issue that has been raised in this writ petition. The learned counsel further submitted that the period has already come to an end on 31.03.2023 and the petitioner did not pay the enhanced amount and there is no scope for any renewal of the license. The learned Standing Counsel also brought to the notice of this Court the Show Cause Notice that was issued by the Assistant Commissioner of GST and Central Excise, Erode, wherein, a demand was made from the 3 rd respondent for the payment of

GST, In view of the same, the learned Standing Counsel justified the collection of GST from the petitioner.

8.The issue that has been raised in this writ petition requires the consideration of this Court. The petitioner was willing to pay the 5% enhanced amount for the 3 rd year and had already sought for the renewal. A prima facie case has been made out and hence, there shall be a direction to the 3 rd respondent to receive the 5% enhanced amount from the petitioner and the renewal shall be granted till 30.06.2024. This will be the subject to the final result in this writ petition and if ultimately, the GST amount is payable, the petitioner has to necessarily pay that amount to the 3 rd respondent. Only on such payment, the further renewal will be done till 31.03.2024. An order in this writ petition will clarify the status of the 3 rd respondent as to whether they have to collect the GST amount even after an advance ruling has been given by the concerned authority under the GST Act. Such clarity will enable the 3 rd respondent to deal with all classes of licensees and the 3 rd respondent can have a clearer picture as to the collection of GST from the licensees.

9.Post this case under the caption 'For Orders' on 12.06.2023. In the meantime, the respondents shall file their counter along with all the relevant documents and an advance copy shall also be served on the learned counsel for the petitioner.

3.Thereafter, the writ petition came up for hearing on 12.06.2023 and this Court passed the following order:

Pursuant to the earlier orders passed by this Court on

19.04.2023, a counter affidavit has been filed by the 3 rd respondent and the copy of the same has also been furnished to the learned counsel for the petitioner.

2. The learned Additional Government pleader appearing on behalf of the 3 rd respondent submitted that the petitioner did not pay the 5% enhanced amount for the 3 rd year and hence, the renewal was not granted by the 3rd respondent.

3. The learned counsel for the petitioner seeks for time to take instructions and to go through the counter affidavit. Post this writ petition under the same caption on 27.06.2023.

4.When the matter was taken up for hearing today, the learned counsel for the petitioner submitted that the petitioner was not able to muster enough funds to pay the license fee and hence, he was not able to pay this amount to the 3rd respondent. It was also brought to the notice of this Court that this Court had directed the renewal of the license only till 30.06.2023 provided that the petitioner pays the 5% enhanced amount and since this amount has not been paid, there is no question of renewal of the license.

5.In the light of the above development, it is not necessary for this Court to go into the issue that has been raised in this writ petition since the petitioner was not even in a position to pay the enhanced license amount as provided in the terms and conditions of license. Hence, this Court does not find any ground to interfere with the decision that was taken by the 3rd respondent. Accordingly, this writ petition stands dismissed. It is left open to the 3rd respondent to proceed further to call for fresh auction for collecting the fee in Kannivadi Weekly Market. If the petitioner is otherwise entitled to participate in the auction, the petitioner can also submit the application and participate in the auction.

6.In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.06.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case: Yes/No
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N. ANAND VENKATESH, J.
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