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W.P.No.37954 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.1.2023

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THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

W.P.No.37954 of 2016

T.Saraswathi

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Petitioner

Vs.

1 The Director of Municipal Administration,
The Commissionerate of Municipal Administration,
Ezhilagam Annex, Chepauk Chennai-5

2 The District Collector
Tirupur District, Tirupur

3 The Commissioner,
Paladam Municipal Administration Cum Water
Supply Department, Palladam, Tirupur District. ...

Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the 1st respondent herein pertaining to the order made in Na.Ka.No.4671/2016/R2 dated 22.3.2016 and quash the same and further direct the 3rd respondent herein to refund the proportionate lease amount for the period of 198 days lost in the renovation of Palladam Bus Stand, Palladam, Tirupur District along with accrued interest to the petitioner out of the lease amount of Rs.11,03,050/- deposited with the 3rd respondent herein for the year 2014-2015.

For Petitioner : Mr.P.M.Durariswamy
For Respondents 1 & 2 : Mr.N.Naveen Kumar, G.A.
For Respondent No.3 : No appearance



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ORDER

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Writ petition is filed challenging the impugned order dated 22.3.2016 of the Joint Director of the Municipal Administration, rejecting the request of the petitioner for refund of proportionate license fee.

Brief facts leading to filing of the writ petition are as follows:

2. The petitioner was granted licence by the Palladam Municipality for a period from 1.4.2012 to 31.2.2015 for collection of entry fee for the buses entering into the palladam bus stand. However, from 3.8.2014 to 17.2.2015, the bus stand was temporarily closed for the purpose of renovation and hence the petitioner was unable to collect the entry fee. As the bus stand was closed during the said period, the petitioner gave representation to pay back his licence fee proportionate to the period which bus stand closed and he also requested the Palladam Municipality for refund of licence fee proportionate to the period. The third respondent Municipality also passed resolution acceding to the demand of the petitioner. Despite resolution passed by the third respondent Municipal Council, the first respondent passed the impugned order rejecting the request made by the petitioner citing tender condition. Challenging the same, the petitioner has filed the instant writ petition before this Court.

3. No counter affidavit filed by the respondents.



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4. Learned counsel appearing for the petitioner would submit that despite resolution passed by the Municipal Council for refund of the licence fee for the proportionate period, the first respondent has rejected the said request mechanically citing tender conditions. According to him, tender conditions cannot be applied mechanically, since if the petitioner who was permitted to carry on business and during the course of business, he has suffered any loss, in such case conditions viz., Clause 15 and 24 can be applied. Whereas in the case on hand, the very operation of the bus stand itself closed by the authorities and therefore, said clause cannot be relied upon by the first respondent.

5. The learned Government Advocate appearing for the first respondent would submit that there are tender conditions, clause 15 and 24 which makes it clear that refund of licence fee, compensation for any loss suffered cannot be claimed and accordingly, the first respondent has rightly passed the impugned order.

6. Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the first respondent and perused the materials available on record.



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7. It is not disputed by the respondent that licence fee has been paid for a period of 1.4.2012 to 31.2.2015 for collection of entry fee for the buses entering into the palladam bus stand. The petitioner has paid a sum of Rs.11,03,050/- by way of Demand draft in favour of the third respondent on 31.3.2014. It is also not in dispute that bus stand was closed by the respondent from 3.8.2014 to 17.2.2015. The petitioner also gave representation for refund of licence fee for the specific period which the bus stand was closed. Palladam Municipality Council also passed resolution on 17.11.2014 acceding to the demand of the petitioner and sought permission from the first respondent. However, the first respondent rejected the same mainly on the ground that as per the tender conditions clause 15 and 24, petitioner is not entitled to claim any amount for the loss suffered by him. It is relevant to note that in previous occasion for a similar prayer, the first respondent has passed an order dated 6.7.1998 waiving the rent for the shops, whereas in the very same identical issue, the respondent has taken a different stand by stating that as per the tender conditions no refund can be claimed.

8. A careful perusal of the Clause 15 of the tender conditions states that any loss suffered by the licensee during the licence period, he cannot claim refund of licence fee or compensation. Similarly, Sec.24 says that no interest can be claimed for the loss suffered during the licence period. However, in the



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petitioner's case, licence itself kept in abeyance by closing the bus stand by the authorities themselves for renovation and the licence was not in operation during the relevant period. If the petitioner was allowed to continue business to collect entry fee throughout the licence period, certainly, the petitioner cannot claim any loss suffered during licence period or any compensation as per Sec.15 and 24 of the tender conditions.

9. Such view of the matter, this Court is of the view that impugned order cannot be sustained in the eye of law and the same is set aside. The matter is remitted to the first respondent to consider afresh the representation made by the petitioner dated 19.10.2015 and pass orders to refund the amount for proportionate period whereby bus stand was closed, within a period of two months from the date of receipt of copy of the order. However, it is made clear that interest will not be payable to the petitioner.

With the above directions, the writ petition stands disposed off. No costs.

24.1.2023

Speaking/Non Speaking order

Neutral citation: Yes/No

Index: Yes/No

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To

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The Commissionerate of Municipal Administration,
Ezhilagam Annex, Chepauk Chennai-5



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