



WP.No.16604 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2023

CORAM:

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

W.P.No.16604 of 2020
and
W.M.P.No.20595 of 2020

H.Firoz Khan

: Petitioner

Vs.

1.The Commissioner of Municipal Administration,
11th Floor, Urban Administrative Campus,
Santhome High Road, MRC Nagar,
Chennai – 600 028.

2.The Commissioner,
Ranipet Municipality,
No.1, Railway Station Road,
Ranipet, Vellore District – 632 401.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus calling for the records relating to the final notice issued by the second respondent in Na.Ka.No.2970/2017/A3, dated 19.10.2020 and quash the same and consequently, directing the respondents to waive the lease amount for the Shandy during non-operative period from 20.03.2020 to 10.09.2020 and further directing the respondents to accept 50% of the lease amount for the remaining period from 09/2020 to 03/2021.



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For Petitioner : Ms.S.Hemalatha

For Respondents : Mr.P.S.Siva Shanmugasundaram,
Special Government Pleader
for R.1

Mr.M.Kirubakaran for R.2

ORDER

The petitioner before this Court is the successful bidder for collecting toll fee from the sellers of weekly shandy at Ranipet, owned by the second respondent Municipality, for the period from 2018-2021 and has also remitted the lease amount for the period 2018-19 & 2019-20.

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 toll fee from 20.03.2020 to 10.09.2020. While so, by notice dated 21.05.2020, the petitioner was asked to remit the lease amount for the period 2020-21. The petitioner has made a representation that due to the lockdown announced by the Government, the shandy was fully closed and as such, no toll fee was collected and therefore, he requested to waive the lease amount for the period from 20.03.2020 to 10.09.2020. Since the same was not considered, 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 shandy was 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 shandy remained close.

4.Learned Counsel for the second respondent Municipality submitted that the lockdown announced by the Government was relaxed systematically, however, the market 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 second respondent Municipality to collect toll fee from the sellers of weekly shandy in Ranipet 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. However, due to Covid-19 outbreak, the Government has announced lockdown and resultantly, the weekly shandy was not in operation from 20.03.2020 to 10.09.2020. Therefore, according to the petitioner, there was no business activities in the market and he was not in a position to collect any toll fee. However, the respondent Municipality has directed the petitioner to remit the lease amount for the entire period, without any waiver.

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

“7, மழைக்காரணத்தினாலோ (அ) வேறு காரணத்தினாலோ சந்தை நடைபெறாவிடில் அதற்கு நகராட்சி நடட்டத்தை ஏற்காது. பொது சுகாதாரம் மற்றும் கால்நடை சுகாதாரத்தை அனுசரித்து சந்தை நடத்துவதை தடை செய்ய நேர்ந்தால் அதற்கு குத்தகைதாரர் நடட்டக் கோரலாகாது.”

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 the event of any rain, etc., which force the closure of the shandy. Knowing this clause, the petitioner has participated



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in the bid and performed the contract for sometime.

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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. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
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