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Writ Petition No.31260 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED :21.07.2023**

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**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**Writ Petition No.31260 of 2022**

K.C.Saravanan

...Petitioner

Vs

The Commissioner,  
Madurantagam Municipality,  
Madurantagam,  
Chengalpattu District.

... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, praying to call of the records relating to the impugned proceedings dated 09.09.2022 passed in Na.Ka.No.39/2018/A1 on the file of the respondent herein, quash the same and consequently direct the respondent herein to refund the sum of Rs.8,79,810.00/- towards non-conducting of the Shandy due to lock-down/restrictions imposed by the Government or in the alternative to extend the period of lease by another 15 weeks on the expiry of the current lease period.



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For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.P.Srinivas  
Senior Counsel

**ORDER**

The petitioner herein filed this writ petition challenging the order passed by the respondent dated 09.09.2022 rejecting his request for refund of proportionate amount paid by the petitioner towards Covid-19 lock down period.

2. According to the petitioner, the petitioner is a successful bidder for collection of licence fees from vendors participating in weekly Shandy at Maduranthagam for a period from 11.09.2020 to 10.09.2023. It is the case of the petitioner that licence fee will be paid by the petitioner in advance for every year. The licence fee of Rs.30,50,000/- for the period from 12.10.2020 to 11.10.2021 was paid by the petitioner in advance.

3. It is the case of the petitioner that the weekly Shandy will be conducted every Monday at Sandhai, Madhuranthagam bus stop and number of vendors used to participate in the Shandy.



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4. It is also stated by the petitioner that during the pre-Covid-19 period nearly 120 shops would be put up on Shandy day. However, after pandemic the number of shops have come down to 40. Therefore, the licence fee collection for the petitioner got reduced.

5. It is also stated by the petitioner that during the 2<sup>nd</sup> wave of Covid-19, the Government of Tamil Nadu imposed lock down for the period from 26.04.2021 to 28.06.2021 and therefore, Shandy could not be conducted. Thereafter, till 02.08.2021 permission was not granted for conducting Shandy in spite of partial lifting of lock down. Therefore, Shandy could not be conducted for 15 weeks and the petitioner suffered a loss.

6. The petitioner sent a representation to the respondent requesting him to extend the licence period by 15 weeks or to repay the licence amount already deposited proportionate to 15 weeks. The respondent by impugned order rejected the request of the petitioner by relying on clause 44 of licence agreement entered between the petitioner and



respondent. Aggrieved by the same, the petitioner has come before this Court.

7. The learned counsel appearing for the petitioner by relying on (i) G.O.Ms.No.351, dated 24.04.2021; (ii) (i) G.O.Ms.No.354, dated 03.05.2021; (iii) G.O.Ms.No.394, dated 05.06.2021; (iv) G.O.Ms.No.504, dated 07.08.2021 submitted that at the relevant point of time, the people were prohibited by Covid-19 restrictions and therefore, the petitioner could not conduct Shandy.

8. Per contra, the learned counsel appearing for the respondent by taking this Court to Clause 44 of the agreement entered into between the petitioner and respondent submitted that in case of failure to conduct Shandy due to un-expected events like Cyclone, rain, flood, fire accidents, drought, strike and agitation etc., the petitioner is not entitled to seek any damages. Therefore, as per the agreement, the petitioner is not entitled to seek rebate from paying the licence fee for the Covid-19- period. The learned counsel further submitted that as per GOs referred to by the petitioner, there was not total lock down and certain activities were allowed



to go by imposing restrictions only in respect of the closed door areas and in respect of open space activity, there was no restriction by the Government of Tamil Nadu. Therefore, the petitioner is not entitled to seek rebate of licence fee.

9. A perusal of clause 44 licence agreement between the petitioner and respondent would suggest that only in cases where un-expected events like Cyclone, rain, flood, fire accidents, drought, strike and agitation etc. takes place, the petitioner is not entitled to seek any damages. However, in the case on hand, Covid-19 Pandemic is a new unexpected event which is not mentioned in clause 44 of the agreement. Therefore, clause 44 of the agreement will not cover other events which are not specifically mentioned therein. Hence, the contention of the learned counsel for the respondent that the petitioner is not entitled to seek any damages cannot be accepted.

10. As per G.O.Ms.No.351, dated 26.04.2021, the following activities are restricted:

(i) Marriage related gathering shall be permitted with guests not exceeding 50;



(ii) In respect of funeral/last rites, the number of persons shall not exceeded 25;

(iii) All sports Training Academies including Golf and Tennis Clubs shall not be permitted to function.

11. The above said restrictions came into force from 26.04.2021 and it was in force till 06.05.2021. The next G.O issued by the Government on 03.05.2021, reads as follows:

*Social/political/sports/entertainment/academic/cultural/festival related and other gathering in both open and closed spaces shall be prohibited. All Cinemas/Multiplex/Theatres shall remain closed.*

12. A reading of said G.O would suggest that gathering activities even in open places were prohibited from 06.05.2021 to 20.05.2021. The next G.O.Ms.No.394 issued by Government on 05.06.2021, the said G.O reads that complete lock down was enforced through out the State with effect from 10.05.2021 to 07.06.2021, in order to control the spread of Covid-19. The complete lock down was further



extended from 07.06.2021 to 14.06.2021. The said G.O only permitted certain activity in all District. The Shandy is not one of the permitted activity as per G.Os, Therefore, from a reading of the above G.Os, it is clear that there were restrictions from 26.04.2021 to 14.06.2021 owing to 2<sup>nd</sup> wave of Covid-19.

13. In the affidavit filed in support of this writ petition, it is specifically mentioned by the petitioner that the Shandy activity did not take place from 26.04.2021 to 02.08.2021. The said averments of the petitioner has not been controverted by the respondent in the counter. The respondent only said that as per the Government Order issued Shandy activity was not prohibited.

14. A reading of above mentioned GOs clearly established there was lock down in the State of Tamil Nadu during period from 26.04.2021 to 14.06.2021, wherein the Shandy activity was not permitted. Therefore, there is a force in the contention made by the learned counsel for the petitioner that the respondent has to consider refund of the licence fee for the period during which the petitioner was unable to conduct the Shandy during Covid-19 restrictions.



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15. In view of the discussions made earlier, the impugned order passed by the respondents is set aside, the petitioner is entitled to refund of the proportionate licence fee for a period from 26.04.2021 to 14.06.2021 or proportionate extension of the licence period.

16. With these observations, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**21.07.2023**

Index : Yes/No  
Speaking order: Yes/No  
Neutral citation: Yes/No  
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To  
The Commissioner,  
Madurantagam Municipality,  
Madurantagam,  
Chengalpattu District.



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**S.SOUNTHAR, J.**  
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