



W.P. (MD).No.5985 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.11.2023

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD).No.5985 of 2021
and W.M.P(MD)No.4686 of 2021

Eeswaran

... Petitioner

Vs

1. The Additional Chief Secretary to Government,
Municipal Administration and Water Supply Dept,
St.George Fort, Secretariat, Chennai-600 009.
2. The Commissioner,
Commissioner of Municipal Administration,
Administrative Complex,
MRC Nagar, 10th Floor, No.65,
Santhome High Road, Raja Annamalaipuram,
Chennai- 600 028.
3. The Director of Town Panchayat,
Commissionerate of Municipal Administration,
MRC Nagar, 10th Floor, No.65,
Santhome High Road, Raja Annamalaipuram,
Chennai-600 028.
4. The District Collector,
Theni District Theni.



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5. The Commissioner,
Cumbum Municipality, Cumbum,
Theni District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned Government order issued in G.O. (D) No. 298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.9.2020 issued by the 1st respondent and to quash the said proceedings in so far as the petitioner herein and consequently direct the respondents to refund of the lease bid amount paid by the petitioner to the 5th respondent / Cumbum Municipality New Bus Stand for collecting Entrance Fees for buses from the period between 1.4.2020 to 31.10.2020 within a stipulated time as that may be fixed by this Court.

For Petitioner : Mr. A.Saravanan

For Respondents : Mr. A.K.Manikkam
Special Government Pleader

ORDER

The subject matter of challenge in this writ petition pertains to the impugned Government order issued in G.O. (D) No. 298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.9.2020 issued by the first respondent and for a consequential direction for



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refund of lease bid amount paid by the petitioner to the Municipality for collecting the entrance fees for buses.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

3.When the writ petition was taken up for hearing, the order passed by the Division Bench in W.A(MD) No.428 of 2021, dated 22.03.2022 was brought to the notice of this Court. The relevant portions in the order are extracted hereunder:

“5. The point at issue before this Court in this appeal is, whether the relief granted by learned Single Judge to the writ petitioner of waiver of license fee for the period of lock-down (from 24.03.2020 to 06.09.2020) can be said to be erroneous in any manner, which may call for any interference in this intra-court appeal.

6. Having heard learned advocates for the respective parties and having considered the material on record this Court finds as under:-

6.1 The difficulties faced by the nation (during March to September, 2020) was like once in century. The extraordinary circumstances can not be met with by ordinary measures. The State in its wisdom thought it



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proper not to permit any citizen even to walk on the road during the said period. No one would go out to earn money, no one would go out to spent money.

6.2 Considering this, Government passed order on 02.09.2020 accepting the proposal of the Commissioner of Municipal Administration dated 18.06.2020, which was for waiver of the license fee for the months of April and May 2020. We do not find any fault in the proposal of the Commissioner which was made in the month of June, 2020 because that would not have taken into consideration the eventualities of the months coming thereafter. If the said proposal was based on the lock-down for the months of April and May, 2020, we do not see any change of circumstances for remaining period of the lock-down upto September, 2020. Only because no proposal was made by the Commissioner of Municipal Administration in that regard or the Government not passing any consequential order can not be a guiding factor to meet with such circumstances.

6.3 We find that, these are circumstances in which the State on its own should have taken care of the citizen. Having failed to do so, when this Court in exercise of powers under Article 226 of the Constitution of India has granted that relief, the same can not be said to be erroneous in any manner. Not only we do not find any error therein, we confirm the said view. For these reasons, this appeal needs to be dismissed.”



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4.It is clear from the above that the attention of the Division Bench was drawn to the impugned Government order issued in G.O. (D) No. 298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.9.2020 and in respect of the same, the Division Bench had upheld the view taken by the learned Single Judge giving waiver of licence fee for the lockdown period from 24.03.2020 to 06.09.2020. In view of the same, the operation of the said G.O. itself has been rendered nugatory. Therefore, it is not necessary to go into the legality of the G.O at this length of time. The order passed by the Division Bench was challenged before the Hon'ble Apex Court and the same is pending in SLP(C) Nos.7792 - 7793 of 2022 and the Apex Court had stayed the order passed by this Court, insofar as directing the refund of the amount beyond the time stipulated in G.O(D) No.298 dated 02.09.2020.

5.In view of the same, insofar as the refund of the amount is concerned, the petitioner will have to wait for the final orders of the Apex Court and thereafter, revive his claim.



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6. Accordingly, this writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

28.11.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
PNM

To

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N.ANAND VENKATESH, J.

PNM

ORDER IN
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