



WP(MD)No.8039 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **11.12.2023**

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THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

W.P.(MD)No.8039 of 2021

and

W.M.P.(MD)No.6137 of 2021

K.Jyothi

...Petitioner

/Vs./

1.The Secretary,
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai.

2.Commissioner,
Municipal Administration,
No.78, Urban Administrative Building,
Santhome High Road,
Chennai – 600 028.

3.Regional Director,
Melakkal Road,
Kochadai,
Madurai – 625 016.

4.Commissioner,
Palani Municipality,
Anna Nagar,
Palani – 624 601.

...Respondents



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PRAYER:- Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records ad quash the demand notice issued by the 4th respondent in Na.Ka.No.949/2020/A1, dated 17.11.2020 followed by the notices dated 15.12.2020 and 24.02.2021 and directing the respondents to consider the petitioner's representation dated 06.11.2020, 06.12.2020 and 12.02.2021 in proper perspective for waiver of licence fee pertaining to toll collection and parking charges of tourist vehicles during the lock down period due to COVID-19 pandemic.

For Petitioner : Mr.V.Sri Ramakrishnan
For Respondents : Mr.B.Saravanan (R1 & R2)
Addl. Government Pleader
Ms.L.P.Maurya (R4)
Standing Counsel

ORDER

This writ petition has been filed challenging the impugned demand notice issued by the 4th respondent in Na.Ka.No.949/2020/A1 dated 17.11.2020 and for a consequential direction to the respondents to consider the representations made by the petitioner seeking for waiver of licence fee pertaining to toll collection and parking charges of tourist vehicles during lock down period.



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2. The case of the petitioner is that he was a successful bidder in the tender that was called for by the fourth respondent for collection of toll charges, which also includes parking charges from tourist vehicles in Palani for the years 2018 – 2021 (3 years). The period commences from 01.07.2018 and it ends with 30.06.2021. As per the terms and conditions of the licence, the petitioner was directed to pay licence fees for each year and the petitioner was permitted to collect charges from tourist vehicles as stipulated in the licence.

3. The grievance of the petitioner is that from August 2018 onwards, there was a complete drop in the number of tourists visiting Sabarimala and as a result, the petitioner suffered a huge setback. Similarly, there was yet another setback during the period from March 2019 to May 2019 due to severe floods in Kerala and again, there was a steep fall in the tourist inflow to Kerala. Thereafter, Covid-19 virus had set in, which resulted in lock down. Due to these factors, the petitioner suffered a huge loss, since she was not able to collect sufficient toll due to drop in the number of tourists. In view of the same, the petitioner made a representation to the respondents explaining about the precarious condition and she was seeking for the waiver of the licence fees.



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4. The further grievance of the petitioner is that the fourth respondent had issued the impugned demand notice dated 17.11.2020 calling upon the petitioner to pay huge licence fees for the year 2020-2021, even without taking into consideration the request made by the petitioner. On receipt of the same, the petitioner made various representations seeking for the waiver in payment of the licence fees. Since the same was not considered, the present writ petition has been filed before this Court.

5. The fourth respondent has filed a counter affidavit and has taken a stand that the petitioner is bound by the contract and that the petitioner cannot seek for any waiver of licence fees by citing any natural calamities. That apart, whatever waiver was granted under the relevant government orders was given to the petitioner and beyond that the petitioner is not entitled for any waiver of the licence fees. Accordingly, the fourth respondent has sought for dismissal of this writ petition.

6. When this writ petition was entertained by this Court, this Court directed the petitioner to deposit a sum of Rs.25,00,000/- as a pre-condition for the interim order and this amount was also deposited by the petitioner.



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7. When the matter was taken up for hearing today, the learned Standing Counsel appearing on behalf of the fourth respondent submitted the details of the amount paid by the petitioner, the waiver that is being granted under G.O. (D)No.298, Municipal Administration and Water Supply Department, dated 02.09.2020 and G.O.Ms.No.337. After deducting / giving credit to this amount, the fourth respondent has taken a stand that the petitioner is due and payable a sum of Rs.1,65,52,628/-.

8. The short issue that arises for consideration in this writ petition is as to whether the petitioner is entitled for waiver from payment of licence fees due to the various reasons that have been cited by the petitioner from paragraph 4 to paragraph 8 of the affidavit filed in support of this writ petition.

9. All the reasons that have been cited in the affidavit relate to certain natural calamities / act of god, which was beyond the control of the petitioner. According to the petitioner, he was not in a position to collect the toll including parking charges from the tourist vehicles in Palani, due to a sudden fall in the influx of the vehicles getting into Palani. The fall in the tourists has been attributed to various factors that have been explained from paragraphs 4 to 8 of the affidavit filed in support of this writ petition.



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10. Every business has its own pitfalls and risks have to be taken. The parties are bound by the terms and conditions of licence which is in the nature of a contract. One of the terms and conditions of contract shows that the fourth respondent will not in any way be responsible for the loss caused due to any natural disaster.

11. This Court had an occasion to deal with such waiver of licence fee sought for during the pandemic period. That writ petition was allowed and ultimately the matter is pending before the Hon'ble Apex Court. An interim order was passed to the effect that the waiver will be granted in terms of the government order and rest of the order passed by this Court was stayed by the Hon'ble Apex Court.

12. While exercising the jurisdiction under Article 226 of the Constitution of India, this Court must attempt to balance the rights of the parties. Those rights cannot be based on mere sympathy and it must have some legal basis.



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13. In the instant case, the parties are bound by a contract and this Court cannot pass any order in the writ petition against the terms of the contract. It is true that the petitioner might have suffered loss due to various factors. Those factors cannot impel this Court to direct the respondents to waive the licence fees, since an order cannot be passed in a writ petition by ignoring the terms of the contract. Considering the limited jurisdiction that is exercised, when it comes to cases involving contractual obligations, it is too difficult for this Court to grant the relief as sought for by the writ petitioner.

14. The deductions to which petitioner is entitled have already been taken note of by the fourth respondent and the fourth respondent has made a demand for the balance amount payable by the petitioner. This demand was made in line with the terms and conditions of the licence. This Court cannot disregard the terms and conditions and direct the respondents to grant some more waiver in payment of licence fees. By doing so, this Court will be exceeding its jurisdiction under Article 226 of the Constitution of India.



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15. In the result, this Court does not find any ground to grant the relief as sought for in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.12.2023

NCC : Yes/No
Internet :Yes/No
Index :Yes/No
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TO:-

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N.ANAND VENKATESH, J.

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Order made in
W.P.(MD)No.8039 of 2021

Dated:
11.12.2023