



W.P. (MD).No.20809 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.11.2023

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD).No.20809 of 2021

P.Mohanraj

... Petitioner

Vs

1. The Secretary,
Government of Tamil Nadu,
Municipal Administration and Water Supply Dept.,
Secretariat, Chennai 9.
2. The Director of Town Panchayat,
Office of the Director of Town Panchayat,
7th and 8th Floor, Urban Administrative Office Campus,
Chennai 28.
3. The District Collector,
Dindigul District, Dindigul.
4. The Assistant Director (Town Panchayats),
Collectorate Campus, Dindigul.
5. The Executive Officer,
Nilakottai Selection Grade Town Panchayat,
Nilakottai, Dindigul District.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.102/2021/A2, dated 8.10.2021 issued to the Petitioner and quash the same as illegal and consequently direct the Respondents to refund the balance proportionate lease amount along with proportionate GST amount of Rs.10,10,721/- covered under the order issued to the Petitioner for the weekly market in Na.Ka.No.322/2019/A2, dated 15.7.2019 within a time frame that may be stipulated by this Court.

For Petitioner : Mr. R.R. Kannan.R.R

For Respondents : Mr.K.S.Selvaganesan (R1-R4)
Additional Government Pleader

Mr.D.Sasikumar (R5)

ORDER

This writ petition was filed challenging the impugned proceedings of the fifth respondent in Na.Ka.No.102/2021/A2, dated 8.10.2021 and for a consequential direction to the respondents to refund the proportionate lease amount along with a proportionate GST amount of Rs.10,10,721/-



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2.Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents 1 to 4 and the learned counsel appearing for the fifth respondent.

3.The petitioner was a successful bidder for the weekly market situated in Nilakottai Selection Grade Town Panchayat for the period from 15.07.2019 to 14.07.2020. The petitioner had remitted a total sum of Rs.54,43,340/- towards the weekly market lease amount and 18% GST (Rs.46,13,000/-+ Rs.8,30,340/-). The petitioner was able to collect the entry fee in the weekly market till 21.03.2020. For the period from 22.03.2020 to 14.07.2020 (17 weeks), the market was closed due to lockdown called for during the pandemic. The petitioner therefore, sought for the refund of these amounts along with the proportionate interest for 17 weeks. The request made by the petitioner was considered by the fifth respondent and through the impugned proceedings, dated 18.10.2021, the petitioner was informed that he is entitled only for the refund for two months in line with G.O(D) No. 298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.09.2020 and accordingly, a sum of Rs.7,68,832/- was paid to the



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petitioner on 12.05.2021. Insofar as the remaining period, the petitioner was held not to be entitled for the refund. Aggrieved by the same, the present writ petition was filed before this Court.

4.During the pendency of this writ petition, the fifth respondent through proceedings dated 08.09.2023, took into consideration of G.O(D) No. 337, Municipal Administration and Water Supply (MA.IV) Department, dated 16.06.2023 and refunded a sum of Rs.5,58,023/-.

5.The grievance that was expressed by the learned counsel for the petitioner is that the petitioner had remitted the entire GST amount at 18 percentage to the fifth respondent and that this amount was not in turn deposited and it is being retained by the fifth respondent. Therefore, it was contended that the petitioner is entitled for the proportionate GST amount to be paid @ 18% for the 17 weeks to the tune of Rs.4,52,698/-. The learned counsel for the petitioner, therefore, submitted that the fifth respondent must be directed to refund this amount to the petitioner.



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6.The learned Special Government Pleader appearing for the respondents 1 to 4 submitted that there is no scope for refund of the GST amount that was paid by the petitioner and that whatever lease amount was paid by the petitioner to the extent to which the petitioner was entitled, has already been refunded.

7.In the considered view of this Court, the GST that was paid by the petitioner cannot be retained by the fifth respondent. The fifth respondent was duty-bound to pay/deposit this amount, since this amount does not belongs to the fifth respondent. If that is not done by the fifth respondent, the fifth respondent has to necessarily refund the same to the petitioner, in view of the fact that the petitioner is entitled to take credit for payment of GST and since the amount of Rs.4,52,698/- is not paid/deposited by the fifth respondent, the petitioner is not able to take credit for this amount. Therefore, the petitioner is seeking for refund.

8.In the light of the above discussion, there shall be a direction to the fifth respondent to refund the GST amount that was paid by the petitioner to the tune of Rs.4,52,698/-, which is the corresponding GST



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amount pertaining to 17 weeks, during which period, the petitioner was not able to collect the entry fee or on the alternative to deposit the amount before the concerned Authority, so that the petitioner can take credit for the payment of the GST amount. This direction is given on the premise that the GST amount has not been paid/deposited by the fifth respondent. If the GST amount has not been paid/deposited, the above process shall be completed by the fourth respondent within a period of four weeks from the date of receipt of copy of this order.

9.This writ petition stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

29.11.2023

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



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N.ANAND VENKATESH, J.

PNM

ORDER IN
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