IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7177 of 2021
and
W.M.P.Nos.7691 & 7692 of 2021

R.Bhojan ... Petitioner

Vs.

1.State of Tamil Nadu,
Represented by the Secretary to Government,
High ways Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Collector of Nilgiris District,
Udhagamandalam.

3.The Sub-Collector,
Coonoor,
Nilgiris District.

4.The Revenue Divisional Officer,
Coonoor,
Nilgiris District.

5.The Tahsildar,
Coonoor,
Nilgiris District.

6.The Tahsildar,
Kotagiri,
Nilgiris District.

7.The Revenue Inspector,
Coonoor,
Nilgiris District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent comprised in its proceedings under Pro.No.A1/34196/2007 dated 07.12.2020 and quash the same and consequently direct the respondents to adjust the amount of Rs.4,08,669/- due to the petitioner, being the balance amount of loss incurred by the petitioner on account of exemption granted under G.O.Ms.No.135 Highways (HN 2) Department dated 02.05.1997, towards the amount due from the petitioner.

For Petitioner : Mr.Vishnu Mohan

For Respondents : Mr.V.Veluchamy
Additional Government Pleader

ORDER

The order of the District Collector dated 07.12.2020 rejecting the claim of the petitioner to grant waiver of the lease amount is under challenge in the present writ petition.

2. The petitioner was a Toll Contractor for a period from 15.06.1996 to 14.06.1997 in respect of Kunjapanai and Burliar in Coonoor division with a total bid amount of Rs.1,42,80,000/-. According to the conditions of this agreement, the successful bidder shall pay the bid amount in 12 EMI's at Rs.11,90,000/- on or before the 5th day of every month and shall remit a sum of Rs.23,80,000/- as security deposit. If the monthly instalments are not remitted within the prescribed date, a fine of Rs.200 for the first week and thereafter Rs.300 for the remaining days shall be levied. The petitioner has accepted these conditions and executed an agreement on 24.06.1996.

3. As per G.O.Ms.No.135 Highways Department dated 02.05.1997, the Government decided to exempt the vehicles belonging to the residents of the Nilgiris District from payment of Toll in the Nilgiris district. Pending necessary legislation to the Indian Tolls Act 1851, to provide for exemption. As per the directions of the Sub-Collector, the G.O. was implemented on 03.05.1997. With reference to the exemption granted by the Government, the petitioner is required to prove that after grant of exemption to the vehicles belonging to the residents of Nilgiris District, the daily toll fee collection at

Burliar and Kunjapanai toll stations have drastically came down by 60%. However, the loss alleged to have been sustained by the petitioner is not supported with any documents and thus, the contention of the petitioner was not accepted by the respondents.

4. In this context, the respondents have issued a demand notice on 31.07.1997 and the petitioner has challenged the demand notice in W.P. No.17139 of 1998. The destrain notice and attachment order in Form-I dated 13.10.1998 was also challenged in the said writ petition filed in W.P.No.17139 of 1998. This Court passed the final order on 22.08.2006 reads as follows:

> *"Without going into the merits of the case, the District Collector, the second respondent herein is hereby directed to dispose of the letter of the petitioner dated 19.10.998 within a period of four weeks from the date of receipt of copy of the order. As the letter is more than six years ole, the petitioner is permitted to send a copy of the letter dated 19.10.1998 along with the copy of this order, so as to enable the Collector to have a ready reference on the issue. Till that time, the fourth respondent-Tahsildar, Coonoor is hereby directed to keep in abeyance the proceedings vide Na.Ka.A5.No.7264 dated 03.09.1998 and the distraint order issued under Section 8 of*

the Tamil Nadu Revenue Recovery Act. These directions are issued without recording any finding as to the entitlement of the petitioner as to the relief prayed for in the letter dated 29.10.1998. With this observatio, the writ petition is disposed off."

5. Pursuant to the directions issued by the High Court in the Order dated 22.08.2006, the respondents again considered the case of the writ petitioner and rejected his request for reassessment of amount of loss incurred by the petitioner on account of exemption granted by the 1st respondent, in respect of the vehicles belonging to the residents of Nilgiris District. The petitioner again approached the High Court by filing W.P.No.15899 of 2007. The said writ petition was disposed of by this Court on 14.11.2019 and the case was remanded back to the Authorities for fresh consideration.The relevant portion of the order in W.P.No.15899 of 2007 is extracted hereunder:

"13. In the above circumstances, the impugned ordered is liable to set aside and the matter is remanded back to the second respondent to consider the petitioner representation dated 29.10.1998 with reference to clause 32 of the terms and conditions and pass suitable orders on merits and in accordance with law after giving an opportunity to the petitioner. The second respondent is

directed to complete the above exercise within a period of 12 weeks from the date of receipt of a copy of this order. The petitioner is also directed to appear before the second respondent with the relevant records to establish his case.

14. The writ petition is disposed of accordingly, No costs. Consequently, the connected miscellaneous petition is also closed."

6. Again the Authorities have reconsidered the issues relating to refund of loss occurred to the petitioner, on account of exemption granted by the Government by affording opportunity to the writ petitioner. The District Collector has conducted an enquiry and the petitioner has participated in the process of enquiry and a final order has been passed, rejecting the claim of the petitioner again *vide* proceedings dated 07.12.2020 and the said order is under challenge in the present writ petition.

7. Learned Counsel for the petitioner, Mr.Vishnu Mohan would submit that the report of the Sub-Collector, Coonoor dated 01.12.2020 has not been furnished to the petitioner. The said report reveals certain facts about the loss occurred to the petitioner on account of grant of exemption to the vehicles of the residents of that locality. That apart, the calculation made and the loss quantified is improper and therefore, the matter is to be

remanded back for fresh consideration and the report of the Sub-Collector also to be furnished to the petitioner. He would further submit that the exemption granted by the Government in G.O.Ms.No.135 Highways (EN-2) Department, dated 02.05.1997 to exempt the vehicles belonging to the residents of the Nilgiris District from payment of levy of tolls is not in dispute and therefore, the petitioner is entitled for refund of the loss occurred on account of non-collection of toll charges for the vehicles belonging to the residents of the Nilgiris District. Since, the said calculations have not been done, the present writ petition came to be instituted.

8. The counter affidavit filed by the 2nd respondent would reveal that pursuant to the directions issued by this Court in W.P.No.17139 of 1998, the District Collector has reconsidered the issues and passed an order on 28.03.2007. The said order had been challenged by the writ petition in W.P.No.15899 of 2007 and the said writ petition was disposed of by remanding the matter back to the Authorities for fresh consideration. The District Collector has conducted an elaborate enquiry by affording opportunity to the writ petitioner. The writ petitioner is unable to produce any documents to establish the financial loss. In the absence of any

supporting documents, the case of the petitioner was considered based on the records available and on merits.

9. The 2nd respondent in the Counter Affidavit would state that a notice dated 21.9.2020 was issued to the petitioner to appear along with relevant documents for enquiry. Even after receipt of notice of adjournments, the petitioner did not appeared for enquiry. Ultimately, on 02.11.2020 the petitioner has appeared for enquiry and submitted a letter seeking for the report of the 3rd respondent regarding the details of amount liable to be refunded and continue to harp on the same plea. The Authorities have conducted the enquiry and finally disposed of the matter on 30.11.2020. The impugned order has been passed based on the materials on record and accordingly the petitioner was directed to remit the balance amount of Rs.4,08,669/- within three months from the date of passing of the impugned order.

10. Pertinently, the original notice of demand was issued in the year 1997, an order of attachment was passed in the year 1998. The first Writ Petition was filed by the writ petitioner in W.P.No.17139 of 1998. The said

writ petition was disposed of to consider the claim of the petitioner. The District Collector rejected the same *vide* order dated 28.03.2007. A fresh writ petition was filed in W.P.No.15899 of 2007. This Court remanded the matter back to the Authorities for fresh consideration. Accordingly, the Authorities have issued a notice to the petitioner for enquiry, but the petitioner failed to participate in the enquiry proceedings. On the final date of adjournment, he appeared before the enquiry and submitted a letter seeking the report of the 3rd respondent regarding the details of amount liable to be refunded. The very conduct of the petitioner seeking the report after remanding the matter twice by this High Court is unacceptable. The petitioner was a Toll Contractor, the terms and conditions are agreed between the petitioner and the respondents and an agreement was executed on 24.06.1996. When the petitioner has executed the agreement by accepting the conditions, he cannot turn around seeking further documents at a belated point of time, only with an idea to frustrate the enquiry proceedings. Such conduct of the petitioner at no circumstances be appreciated. The petitioner has already dragged on the matter for about 26 years by filing writ petition after writ petition.

11. Perusal of the impugned order would reveal that the District

Collector has referred clause 32 and 38 of the Gazette notification which was accepted by the petitioner/Toll Contractor. With reference to those clauses, the issues were considered by the District Collector and the calculations are also provided. Without submitting any documents to establish his case, the petitioner cannot now plead before this Court that the calculations made by the respondents are erroneous. An opportunity was given to the petitioner to submit the documents to establish his case. But he filed to do so. Therefore, the Authorities passed the impugned order based on the records available.

12. The findings of the District Collector would reveal that the calculation sheet for Rs.8,31,231/- worked out by the Sub-Collector, Coonoor for the actual loss incurred to the petitioner during the period from 03.05.1997 to 14.06.1997 due to exemption granted *vide* G.O.Ms.135 Highways Department dated 02.05.1997 was confirmed. The said finding was made with reference to the letter of the Sub-Collector dated 01.12.2020, the documents sought for by the petitioner. Therefore, the District Collector has considered the report of the Sub-Collector dated 01.12.2020 and the actual loss incurred by the petitioner during the relevant period was taken into consideration and the amount of loss was calculated as Rs.8,31,231/-

The said amount was deducted. That being so, there cannot be any further reason to remand the matter back to the Authorities for fresh consideration. Further, the petitioner has not produced any additional documents to establish that he incurred loss over and above the loss calculated by the Sub-Collector in his report dated 01.12.2020. Thus, the District Collector has also confirmed the actual loss incurred to the petitioner during the period from 03.05.1997 to 14.06.1997 due to exemption granted in G.O.Ms.No.135 Highways (EN-2) department, dated 02.05.1997.

13. Thus, the order impugned and the findings therein would be sufficient to form an opinion that the petitioner is not entitled for any further relief. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

02.02.2024

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Index : Yes / No
Speaking order / Non-Speaking Order
Neutral Citation : Yes / No

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S.M.SUBRAMANIAM, J.

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