



WP.No.11445 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.11445 of 2021

K.Srinivasan
Proprietor,
S.S.Advertisers,
Having Officer at
No.1-A, Annai Nagar 2nd Street,
Parasurampatty, K.Pudur,
Madurai-625007.

... Petitioner

Vs.

1. The Managing Director,
Tamilnadu State Transport Corporation (VPM) Ltd.,
3/137, Salamedu, Valudhareddy Post,
Villupuram.

2. The General Manager,
Tamilnadu State Transport Corporation (VPM) Ltd.,
3/137, Salamedu, Valudhareddy Post,
Villupuram.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records in communication No.Lr.No.121/360/A1(civil)TNSTC(Villupuram) 18 dated 27.01.2021 issued by the second respondent corporation and quash the same



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and consequently direct the respondent corporation to adjust arrears for the month of September, October, November, December 2020, the total sum of Rs.8,25,852/- (Rupees Eight lakh twenty five thousand eight hundred and fifty two only) from the petitioner's security deposit of Rs.9,30,465/- (Rupees Nine lakhs thirty thousand four hundred and sixty five only)which is in the hands of respondent corporation.

For Petitioner : Mr.P.T.Perumal

For Respondents : Mr.M.Aswin
for Ms.S.Pavithra

ORDER

The relief sought for in this Writ Petition is to quash the communication No.Lr.No.121/360/A1(civil)TNSTC(Villupuram) 18 dated 27.01.2021 issued by the second respondent corporation and also direct the respondent corporation to adjust arrears for the month of September, October, November, December 2020, the total sum of Rs.8,25,852/- from the petitioner's security deposit of Rs.9,30,465/- which is in the hands of respondent corporation.

2(i). The gist of the writ petition reads as follows:

The respondent is the State Transport Corporation having head



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Office at Villupuram. It is a State Government Undertaking engaged in the transport operation of passenger buses. Its Operation covers Villupuram and Kanchipuram.

2(ii). The petitioner has canvassed advertisement works from customers. The petitioner has fixed the advertisement panel boards inside and outside the transport corporation buses.

2(iii) The petitioner has participated in the tender proceedings of the respondent corporation for advertisement in the buses for the year 2017. He was the successful bidder for that year, but, the "offer and acceptance" letter was issued on 09.04.2018. In that letter, the tender rates and other terms and conditions have been mentioned. It was also stated in the offer and acceptance letter that the tender is for eleven months and renewable for further period of two spells, i.e., (11 + 11 months), with enhancement of 10% tender rate. At the end of the said letter, the petitioner was directed to execute a License Agreement in Rs.100/- non judicial stamp paper. Soon thereafter, the petitioner has visited the Office of the respondent corporation at Villupuram and submitted the requisite stamp paper, but, the petitioner did not sign any agreement.



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2(iv) By virtue of the above said tender, the petitioner has carried out advertisement works in the passenger/mofussil buses for the years 2018-2019, 2019-2020, 2020-2021 till February 2021 under the arrangement of automatic renewal. During these years of business operation, the petitioner has made a deposit of total amount of Rs.9,30,465/- with the corporation as security deposit, apart from EMD of Rs.50,000/-. Unfortunately, due to Corona Pandemic, there was total lock down in the State of Tamil Nadu from March 2020 to September 2020, no transport was in operation and buses were not plied.

2(v) In the beginning of September 2020, the lockdown was relaxed and very few buses were put on the road, public did not use the buses for travel. There was a very limited number of buses in operation. The restriction for bus operation was relaxed only in the end of December 2020. At that time, due to lack of operation of buses, the petitioner's business was also suffered. No payment was made by the petitioner's customers.

2(vi) The respondent corporation on 14.12.2020 issued a demand notice to the petitioner to claim arrears amount of Rs.2,01,438/- for the months of September and October 2020. The petitioner has given a



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representation on 18.12.2020 and explained about the pandemic position and loss of business and also explained the inability to make payments.

Thereby, the petitioner has requested the respondent corporation to deduct the arrear amount from his total security deposit of Rs.9,30,465/-.

2(vii) On 31.12.2020, the respondent has again sent a show cause notice to him as to why the tender agreement cannot be terminated and his EMD be forfeited. On 05.01.2021, the respondent sent another letter rejecting his request to adjust from the security deposit and insisting immediate payment of arrears with interest of 18%. In this connection, on 13.01.2024, the petitioner has sent a letter to the respondent corporation wherein, it explained about the past three years transactions, the reason of Covid Pandemic and total business loss and the retention of security deposit of Rs.9,30,465/-. Despite his explanation, the respondent corporation has made a demand notice on 13.01.2021 demanding the arrears of Rs.8,25,852/- for the months of September, October, November and December 2020.

2(viii) On 21.01.2021, the respondent Corporation issued a letter in Lr.No.121/360/A1/(civil)TNSTC (Vpm) 18 for terminating the license



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agreement, forfeiting his EMD and stated that the display boards would be removed at petitioner's costs. On 28.01.2021, the petitioner has requested the Corporation to close the tender operation by 04.02.2021, by deducting the arrears of Rs.8,25,852/- from the total deposit of Rs.9,30,465/- and refund the balance to the petitioner's company. The attitude and behaviour of the respondent corporation is unreasonable and against the principles of natural justice. Hence, the present petition.

3(i). Counter affidavit has been filed on behalf of the respondents Corporation, wherein the respondents denied all the averments made in the writ petition filed by the petitioner.

3(ii) It is stated that the petitioner was a Proprietor of an advertisement company named as S.S.Advertisers. The respondent called for tender “ Advertisement on Buses in Kancheepuram Region” and the respondent has conducted bus advertisement tender on 23.10.2017 in which the petitioner has participated and submitted his tender bid along with EMD of Rs.50,000/- The petitioner was successful H1 bidder of the tender. After scrutinization by the evaluation committee the acceptance was sent to the petitioner on 09.04.2018 with request to pay security deposit of



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Rs.8,43,030.00/-. The petitioner has paid his security deposit of Rs.8,43,030/- vide BR No.V-429/28.04.2018, Additional Security Deposit for 2nd Spell Rs.22,338/- vide BR No.V-3251/31.01.2019 and Additional Security Deposit for 3rd Spell Rs.65,097/- vide BR No.V-2732/30.12.2019 to the tune of Rs.9,30,465/-. Thereby, the petitioner and the respondent corporation had entered into a license agreement on 05.04.2018 and agreed to all terms and conditions as applied.

3(iii) The total license period as per the agreement is 33 months which is divided into three spells, first spell commences from 05.05.2018 to 04.04.2019, second spell commences from 05.04.2019 to 04.03.2020 and the third spell commences from 05.03.2020 to 04.02.2021. The petitioner has remitted his license fee every month promptly until March 2020 and renewed his agreement to second spell period from 05.04.2019 to 04.03.2020 and the renewal order issued vide Lr.No.121/360/A-1(Civil)TNPSTC(Vpm)/2018 dated 25.02.2019 and the third spell period from 05.03.2020 to 04.02.2021 renewal order issued vide Lr.No.121/360/A-1((Civil)/TNSTC(Vpm)2018 dated 18.02.2020.



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3(iv) It is further stated that due to Covid pandemic, the Government has implemented lockdown on 25.03.2020, in which the operation of buses was fully stopped from 25.03.2020 to 31.08.2020. For such period, the respondent itself waived the licence fee. After relaxation of covid lockdown, more than 50% of buses were operated from September 2020 to December 2020 and the license fee has been claimed for such period based on the number of buses plied, but the petitioner did not pay the same from September 2020.

3(v) As per the license agreement under Clause 10.5, “ if the license fee is not paid for more than one month within stipulated date, the license agreement will be liable to be terminated besides forfeiting the EMD. In this matter, the decision of the corporation will be final and binding on the license.” As per agreement, on demand notice for payment of license fee was intimated to the petitioner for pending license fee dues upto December 2020 Rs.8,25,852/-. Since there was no response from the petitioner, notice was issued to the petitioner on 31.12.2020 indicating that on failure of payment of license fee, the license agreement will be terminated. There were no proper responses from the petitioner, so final call



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was sent to the petitioner on 13.01.2021 as agreed by the petitioner to remit the license fee during the officers committee meeting held on 05.11.2020.

3(vi) It is further stated that inspite of several demands, the petitioner has refused to pay the license fee as agreed by terms and conditions of license agreement. Due to default of payment, the license agreement dated 05.05.2018 was terminated on 27.01.2021 with forfeiture of EMD and security deposits. The earnest money deposit and security deposit shall be forfeited when the terms of the contract entered between the parties are not fulfilled or withdrawn or failure to pay license fee which results in terminating the license impliedly even before notice. After termination of license before the end of contract, the deposited amount will not be refunded either fully or partially. Even huge financial loss was incurred by the respondent for non-operational of buses during covid pandemic. Despite exemption and relaxation for payment of license fee, the petitioner has failed to follow the tender rules.

3(vii) The petitioner has violated the terms of agreement even before the end of contract and the respondent has no other options to terminate the license by forfeiture of the EMD and the security deposit as



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agreed and signed by petitioner while entering into an agreement. If the license amount was paid in time, after expiry of agreement, the respondent would have refunded the EMD and security deposit.

3(viii) The petitioner is an advertising company and he had received advertising funds from original company who is the original owner. After successful bid the petitioner would have received the entire amount for the advertisement from the original owners and there will not be any loss and the entire amount has been paid by the original owner already. Since the dispute is arising out of the contract, the remedy has to be addressed before the Civil Court not under the writ jurisdiction under Article 226 of the Constitution of India. Hence, he prayed to dismiss the petition. Otherwise, the respondent corporation would be put to great prejudice and irreparable injury would be caused.

4. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials placed before this Court.

5. Taking note of the petitioner's plea that by deducting the arrears of Rs.8,25,852/- from the total deposit of Rs.9,30,465/-, refund of balance to



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the petitioner's company is fair, reasonable and justifiable. So, the respondent corporation cannot demand the arrears of Rs.8,25,852/- apart from the security deposit made by the petitioner.

6. Considering the facts and circumstances of the case, submissions made by both counsel and on perusal of the materials available on record, this Court is inclined to direct the respondent corporation to refund the balance amount to the petitioner after deducting the arrears of Rs.8,25,852/- from the total deposit of Rs.9,30,465/- within the period of eight weeks from the date of receipt of a copy of this order. The petitioner is directed to participate in the future tender.

7. In view of the above direction, this writ petition is disposed of. No order as to costs.

07.08.2024

Vv



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To
WEB COPY

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