



W.P.No.4145 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2025

CORAM

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.4145 of 2021

C.Anandhi

... Petitioner

vs.

1. The Commissioner of Municipal Administration,
11th Floor, Urban Administrative Building,
No.75, Santhome High Road,
M.R.C. Nagar, Raja Annamalaipuram,
Chennai 600 028.

2. The Special Officer-cum-Assistant Director,
of Town Panchayat,
Cuddalore Region - 1,
Cuddalore District.

3. The Executive Officer,
Selection Grade Panchayat,
Sankarapuram 606 401,
Kallakurichi District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the impugned auction proceedings issued in Na.ka.No.A1/378/2021 dated 08.02.2021 by the respondents 2 and 3 and quash the same in so far as it relates to the Serial No.3 i.e. the Right to collect the Daily License Fee for the Roadside



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Shops is concerned and consequently direct the respondents 2 and 3 to return back the security deposit of Rs.6,17,354/- and allow the petitioner to collect the Daily License Fee for the period from 01.04.2021 to 31.03.2022 within the time stipulated by this Court.

For Petitioner : Mr.R.Bharath Kumar
For R1 : Mr.M.s.Pream Kumar
Govt.Advocate
For R2 : Mr.M.Rajendiran
Addl.Govt.Pleader
For R3 : Mr.V.Kadhirvelu

ORDER

The present writ petition has been filed challenging the impugned auction proceedings dated 08.02.2021 of the respondents 2 and 3 and consequential direction to the respondents 2 and 3 to return back the security deposit of Rs.6,17,354/- and allow the petitioner to collect the Daily License Fee for the period from 01.04.2021 to 31.03.2022.

2. It is the case of the petitioner that her husband late N.Chandrasekhar



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had participated in Tender-cum-Open Auction for the right to collect Daily License Fee for the roadside shops in the limit of Sasnkarapuram panchayat, which was conducted by the 3rd respondent for the period from 2018-19 to 2020-21. Her husband was declared as a successful bidder and paid a sum of Rs.6,15,000/- inclusive of Earnest Money Deposit of Rs.2,00,000/- together with the requisite G.S.T., Charges of Rs.1,20,300/- for the period 2018-19 with the 3rd respondent herein.

3. It is the further case of the petitioner that the successful bidder has to pay a security deposit (lease charges) every year in advance and thereafter to collect the Daily Licence Fee. Accordingly, her husband had exercised his right of collection of daily licence fee for the period from 2018-19 to 2019-20. Thereafter, the third respondent has issued a communication dated 02.04.2020 instructing the petitioner's husband to stop forthwith the collection of daily licence fee due to Pandemic and also in the interest of the general public. By the said communication, the 3rd respondent had also mentioned that no damages shall be paid in this regard. Further, it is stated that the petitioner's husband had deposited the lease charges of Rs.6,17,354/- with the 3rd respondent for the period 2020-21 to (April 2020 - March 2021) on 09.03.2020 and within a short span the said



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communication came to be issued, which shattered their entire family.

Due to the said loss, her husband suffered a heart attack and died on 23.08.2020. But, the third respondent has issued proceedings in Na.Ka.A1/37/2021 dated 08.02.2021, calling for Tender-cum Public Auction for the right to collect daily licence fee and also collection of weekly licence fee etc., for the period from 2021 to 2024. Pursuant to the same, the petitioner sent a representation dated 15.02.2021 to the respondents requesting them to stop the Tender Proceedings for the time being and requested for extension of time for collecting the daily licence fee for the period from April 2021 to March 2022 as the respondent earlier restraining them from collecting the licence fee due to Pandemic. The petitioner's husband deposited a sum of Rs.6,17,354/- towards security deposit for the period from March 2020 to May 2021 and issued a restrained order not to collect the daily licence fee, the 3rd respondent ought to have either at least returned the security deposit collected from them or called for tender-cum-open Auction for the period from April 2022 to March 2025. Aggrieved by the Proceedings of the 3rd respondent, the petitioner has filed the present writ petition.

4. The learned counsel appearing for the petitioner has placed reliance



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on the order passed by the Madurai Bench of this Court in
WP(MD)No.19596 of 2021 dated 01.02.2021. The relevant portion of the

said order is extracted hereunder :-

"Contract Act , 1872 (9 of 1872) Sections 32,51 & 54 – Constitution of India, Article 14 – Government Contract – Pandemic – Lockdown – Force Majeure' – Waiver of Licence fee- Tender for running shops within premises of Bus stand – petitioner paid licence-fee and occupied shop – within a few months, pandemic erupted and complete Lockdown declared by Government – petitioner seeking waiver of Licence -fee for said period – held, Tender, a Contract between parties governed by 1872 Act – Mandate of Sections 51 & 54 that in case of reciprocal promise, performance cannot be claimed till other has performed – In instant case, Local Body as per term of Contract bound to permit petitioner to keep shop open and have accss to same – Licence fee cannot be demanded from Licensee, if direction is issued to close shop – Licence cannot be made to suffer for no fault of his - Local Bdy, a State in instant case, also governed by Principles of Reasonableness and Fairness – Fact that petitioner did not challenge G.O.No.298 directing waiver of Licence-fee for period of two months, inconsequential - Government by said G.O. Itself recognised that Lockdown was a 'force majeure' – Petitioner entitled to waiver of Licence-fee for entire lockdown period from 24.03.2020 t 06.09.2020 – Respondents to reasonably consider request of petitioner for waiver of Licence-fee during partial lockdown – writ petition allowed."



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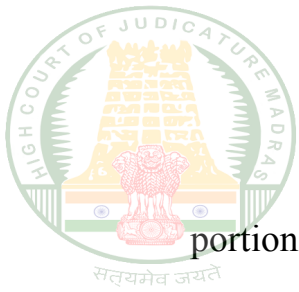


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"17. I have no difficulty in coming to the conclusion that the petitioner stands relieved of his obligation to pay the license fee for the period from 24.03.2020 to 31.08.2020, when there was total lockdown. It is pointed out that for two more months thereafter, the licensees were allowed to open their shops only for short duration every day. In other words, lockdown was not lifted completely. The bus stand was not operational fully.

18. Therefore, I am of the view that the petitioner is entitled to call upon the respondents to revisit the quantum of license fee for the period subsequent to the lifting of total lockdown. It may not be open to this Court to enter into the finer details. I permit the petitioner to submit a fresh representation projecting his grievances regarding the period commencing from 01.09.2020 onwards. The fourth respondent will forward the said representation along with their proposal to the respondents 1 and 2 who shall consider the same and pass appropriate orders in accordance with law as expeditiously as possible."

5. The learned counsel appearing for the petitioner further submitted that the respondent preferred an appeal before the Hon'ble Madurai Division Bench of this Court in W.A.(MD)No.428 of 2021 and the said writ appeal was also dismissed vide Judgment dated 22.03.2022. Aggrieved by the same, Commissioner of Municipal Administration preferred the SLP (C)Nos.7792 and 7793 of 2022 before the Hon'ble Supreme Court of India and the same was also dismissed vide order dated 12.02.2025. The relevant



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portion of the said order of the Hon'ble Supreme Court, reads as under :-

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"At this stage, the learned senior counsel appearing for the petitioners has brought on record GO(D) No.337 dated 16th June, 2023.

After having found that the High Court has passed an equitable order protecting the interests of the persons who were prevented from carrying on business due to lock down, we are of the view that on the basis of the Government Order referred above, no interference can be made with the impugned order.

However, we grant time of three months to the petitioners to pay the requisite amounts in terms of the impugned order. It is for the petitioners to seek reimbursement from the Government, if the petitioners are so entitled.

*The question of law shall remain open.
Pending application also stands disposed of."*

6. The learned Standing Counsel appearing for the third respondent filed a counter affidavit on 09.03.2021. Relevant paragraph of the said counter is extracted hereunder :-

5..... The bid amount for proceeding year must be remitted in advance, to the Town Panchayat. Accordingly, the petitioner's husband had remitted Rs.6,63,154/-, inclusive of Income Tax deduction at source and professional tax for the year 2020-21 and the contract for the Block years coming to end on 31.03.2021. It is admitted fact that the 3rd respondent issued direction under A2/115/2020 dated 02.04.2020, to stop the collection of Daily Licence Fee Collection



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till the general lockdown is revoked. Since the period of lock down required for controlling pandemic was not sure, it was mentioned in the advisory that they should not collect licence fee till the lockdown is revoked and compensation shall not be paid as the decision involved in public safety and Force Majeure.

9) ii) As regard the ground No.(b), it is submitte that the Block perio of three years is coming to end on 31.03.2021. The petitioner's husband was already given extension of two years without conducting public auction. The Government has waived the lease amount /rent for the period from 01.04.2020 to 30.05.2020. The advance for the period shall be refunded subject to submitting request from the petitioner and due approval of the same from the authority. The petitioner shall not stall the process of tender mandated by the Government orders and rules. Hence, this ground is not sustainable.

7. The learned Government Advocate appearing for the first respondent submitted that as per G.O.Ms.No.298, Municipal Administration and Water Supply Department, dated 02.09.2020, the petitioner is entitled only for two months waiver.

8. The learned Additional Government Pleader appearing for the second respondent submitted that the competent authority, namely second respondent, The special Officer-cum-Assistant Director of Town Panchayat



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will pay the EMD amount to the petitioner.

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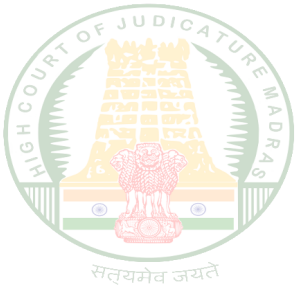
9. Heard the learned counsel appearing on either side and also perused the materials available on records.

10. In view of the order passed by the Madurai Bench of this Court in W.P.(MD)No.19596 of 2020 dated 01.02.2021, this Court is inclined to pass the following orders:-

i) the petitioner is directed to give a representation to the third respondent to return back the security deposit of a sum of Rs.6,17,354/-.

ii) After receipt of the same, the third respondent shall forward the said representation along with proposal to the second respondent, Special Officer cum Assistant Director of Town Panchayat.

iii) On such receipt of the same, the second respondent shall consider the payment of nominal interest since the amount of Rs.6,63,154/- is lying with the third respondent from 01.04.2020 till March 2025 (five years) and on merits and in accordance with law and pass appropriate orders within a period



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of eight weeks from the date of receipt of a copy of
this order.

This writ petition is disposed of with the above observation and
direction. No costs.

10.03.2025

Index : Yes/No.
Internet : Yes/No.
Neutral Citation : Yes/No
Speaking : Non-speaking Order
kkd

To

1. The Commissioner of Municipal Administration,

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3. The Executive Officer,
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J.SATHYA NARAYANA PRASAD, J.

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