

(2022) 07 KL CK 0261

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16211 Of 2021

Mybus United Service LLP

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 27-07-2022

Acts Referred:

Kerala Panchayat Raj (Granting of Remission to Contractors & Lessees) Rules 1998 — Rule 5

Citation : (2022) 07 KL CK 0261

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : Jinu Joseph, Anu Philipose, Liji.J.Vadakedom, Chithra Chandrasekharan, Jibu.T.S

Final Decision : Disposed Of

Judgement

P.V.Kunhikrishnan, J.

1. The above writ petition is filed with following prayers:

"(i) Issue appropriate writ or order and set aside Ext Exhibit P-4 notice of the 5th respondent and all recovery proceedings pursuant to the same.

(ii) Issue a writ of mandamus or such other writ, order or direction commanding the 1st respondent to take a decision on the pending approval of remission granted to the petitioner by the 4th respondent detailed in Ext P-2 proceedings within such time frame as may be fixed by this Hon'ble Court.

(iii) Issue a writ of mandamus or such other writ, order of direction commanding the 4th respondent to take a decision on Ext P-7 representation as per Rule 5 of Kerala Panchayat Raj (Granting of Remission to Contractors & Lessees) Rules 1998 within the time provided therein.

(iv) Such other writ or order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice. " (sic)

2. The petitioner is the successful bidder for the tender of collecting fees from private bus operators using the services of Mundakkayam Grama Panchayat Bus stand for the financial year 2020-21 and made advance payment of 1st Installment of Rs.1,52,000/-. Due to national lockdown and subsequent restrictions, it is the case of the petitioner that, the collections were badly affected even before 1st April 2020. Hence the petitioner submitted Ext P1 request to the 4th respondent for remission of the fees as per The Kerala Panchayat Raj (Granting of remission to contractors and lessees) Rules 1998 for the period 2020-21. The Panchayat council vide Ext P2 decided to allow a remission of Rs.72,210/- for the period 01.04.2020 to 31.07.2020 and sent the same for approval from the 1st respondent as per the rules. It is the case of the petitioner that the approval is awaited. Thereafter the petitioner was served with Ext P4 demanding the entire contract amount within 15 days without considering the pendency of approval from the 1st respondent. The petitioner's request to await the approval was not considered. The petitioner submitted Ext.P7 request for considering remission for the omitted period is also pending. Hence, this writ petition is filed.

3. Heard the counsel for the petitioner and the Standing Counsel appearing for the Panchayat. I also heard the Government Pleader.

4. The Standing Counsel takes me through the counter affidavit filed by respondents 4 and 5. The relevant paragraphs in the counter affidavit is extracted hereunder:

"3. That it is respectfully submitted that the petitioner was the successful bidder for the collection of fees from private stage carriages using the services of Mundakayam Panchayat bus stand for the year 2020- 21. The petitioner had made the bid for an amount of Rs.4,55,500/- excluding GST. The petitioner had remitted an amount of Rs.1,52,000/- as one third of the auction amount and Rs 50,000/- as security deposit respectively. Also an amount of Rs.50,000/- was paid as per the direction of this Honourable Court in the interim order out of Rs 50,000/- paid by the petitioner an amount of Rs.7,627/- was deducted towards GST. The remaining amount is credited in the account of the petitioner. An amount of Rs.72,210/- is permitted as remission subject to the approval of the Government. After keeping aside the amount (which is subject to the Government Order) the remaining amount to be paid by the petitioner is Rs.1,38,917/-

4. That it is humbly submitted that on 17.08.2020 the petitioner made an application to the 5 respondent that due to Covid-19 pandemic petitioner could not collect service charges from the buses entering the stand due to the restrictions imposed by the Government in this regard. The application dated 17.08.2020 was considered and the Panchayat Committee after evaluating the situation on 3.9.2020 decided to give a remission for an amount of Rs.72,210/- for 58 days during which period the lock down was in existence subject to the approval of the Government."

5. In paragraphs 3 and 4, it is stated that the remission is already granted in the light of Ext.P9 Government Order. The counsel submitted that the balance amount of Rs.1,38,917/-is to be paid by the petitioner. The counsel for the petitioner submitted that Ext.P7 request is submitted for getting the remission for the omitted period also. If that be so, there can be a direction to the Panchayat to consider Ext.P7 and pass appropriate orders, in accordance to law.

Therefore, this writ petition is disposed of with the following observations:

1. Paragraphs 3 and 4 of the counter affidavit dated 16.01.2022 of the respondents 4 and 5 are recorded.
2. The 4th respondent is directed to consider Ext.P7 and pass appropriate orders in it, after giving an opportunity of hearing to the petitioner, as expeditiously as possible, at any rate, within six weeks from the date of receipt of a copy of this judgment.