

(2023) 09 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6116 Of 2014

Mukul Bayan

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 14-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Representation Of The People Act, 1951 — Section 160, 166

Citation : (2023) 09 GAU CK 0018

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : S. Choudhury, M.D. Borah, B.J. Talukdar, M.U. Mondal

Final Decision : Disposed Of

Judgement

1. The Petitioner herein aggrieved at the inaction of the Respondent Authorities in not returning the vehicle of the Petitioner is compelled to approach this Court for the second time by way of the instant writ petition.

2. From a perusal of the materials on record, it reveals that the Petitioner herein had purchased a Maruti Van bearing Registration No.AS 15/3227 at a price of Rs.2,20,000/- from one Md. Minul Hussain. The Petitioner used the said vehicle as a Taxi for which the petitioner had also obtained a permit. On 16.04.2001, the Additional Deputy Commissioner, Barpeta vide an order requisitioned the vehicle of the Petitioner in terms with Section 160 read with Section 166 of the Representation of Peoples Act, 1951 (for short 'the Act of 1951') and thereby directed the Petitioner to report the said vehicle of the Petitioner along with his driver and spare tyres on 17.04.2001 at 8:00 a.m. Thereafter the said vehicle had not been de-requisitioned or returned to the Petitioner, for which the Petitioner had approached the concerned Deputy Commissioner, Barpeta vide various representations. As the said representations submitted by the Petitioner beard no result, the Petitioner was compelled to approach this Court by filing a writ petition which was registered and numbered as WP(C) No.2981/2002.

3. In the said writ proceedings this Court while issuing notice on 13.05.2002 directed in the interim that the Respondents should release the vehicle of the Petitioner in serviceable condition. Thereupon also the Respondent Authorities did not return the vehicle to the Petitioner, for which the Petitioner not only was deprived of the vehicle but also incurred huge business loss. The said writ petition i.e. WP(C) No.2981/2002 was disposed off vide an order dated 18.05.2010 observing inter alia, that vide the interim order dated 13.05.2002 the final relief was already granted in the writ petition and accordingly the writ petition was disposed off in terms with the interim order dated 13.05.2002. Thereupon also nothing happened and the Petitioner was compelled to submit representations as well as issue a Legal Notice to the Respondents herein. The representations of the Petitioner as well as the Legal Notice fell into the deaf ears of the Respondents for which the Petitioner had been again compelled to approach this Court by filing the instant writ petition in the year 2014.

4. From the records it reveals that on 28.11.2014 Notice was issued. Various affidavits have been filed by the Respondent Nos.2, 3 & 5 and there were additional affidavits filed by the Respondent Nos.3 & 5. From the affidavits so filed by the Respondents there is no mention whatsoever as to when the vehicle of the Petitioner bearing Registration No.AS 15/3227 was de-requisitioned. Although there has been various statements being made in the affidavits as well as in the additional affidavits to the effect that the vehicle was being driven without a number plate for which the vehicle was seized but without the de-requisitioning of the vehicle, the custody of the vehicle continues to remain with the Deputy Commissioner, Barpeta, who had requisitioned in terms with Section 160 read with Section 166 of the Act of 1951. Therefore all the statements so made in the affidavits pertaining to the said aspect that the vehicle was seized as the vehicle was driven without the number plate in the month of November 2001 has no relevance.

5. The record further shows that the Petitioner had filed an additional affidavit claiming the Petitioner had purchased the vehicle at Rs.2,20,000/- and ass such sought for the value of the vehicle along with the business loss which occasioned to the Petitioner. This Court further finds it relevant to take note of the additional affidavit filed by the Respondent No.3, who is the Additional Deputy Commissioner, Barpeta wherein also it is mentioned that in order to compensate the Petitioner there was a move for getting necessary sanction for funds but as the matter is pending before this Court the same has not yet been determined.

6. In the backdrop of the above facts, it is seen that the vehicle of the Petitioner admittedly was requisitioned vide an order dated 16.04.2001 and the custody of the vehicle was handed over by the Petitioner on 17.04.2001. There is no materials on record produced by the Respondent upon whom the burden lies that the vehicle in question was handed back to the Petitioner or there the vehicle in question was de-requisitioned by the Respondent Authorities. This Court also cannot unmindful of the fact that on 13.05.2002 there was a direction by this

Court in WP(C) No.2981/2002 directing the Respondent Authorities to release the vehicle and thereupon also the vehicle had not been released. The instant writ petition is now being taken up in the year 2023 and more than 22 years have already elapsed. It is not known as to what would be the condition of the vehicle now but it can be presumed that the said vehicle would not be in a condition by which the Petitioner would be able to carry out his business. Under such circumstances, it is the opinion of this Court that the Petitioner at the least is entitled to the value of the vehicle which is Rs.2,20,000/- as stated in his additional affidavit.

7. This Court has also duly taken note of the submission made by the learned counsel for the Petitioner that apart from the value of the vehicle, the Petitioner is entitled to further amounts on account of the business loss during this period of requisition. In the opinion of this Court the said aspect cannot be ascertained in a proceedings under Article 226 of the Constitution but as the Petitioner at present has been agitating the said rights before this Court claiming the said compensation for the business loss diligently, liberty is given to the Petitioner to approach the Civil Court claiming such compensation as deem fit. Moreover the non returning of the vehicle to the Petitioner gives the Petitioner a continuing cause of action. It is therefore made clear that if the Petitioner approaches the competent Civil Court, this aspect of the matter would be duly taken note of while computing the period of limitation.

8. In that view of the matter the instant writ petition therefore stands disposed off with a direction to the Deputy Commissioner, Barpeta to disburse to the Petitioner an amount of Rs.2,20,000/- within 45 (forty five) days from the date of a certified copy of the instant order is served upon the Deputy Commissioner, Barpeta. It is further observed and directed that if the Deputy Commissioner, Barpeta fails to pay the said amount within the time stipulated hereinabove, the Petitioner not only would be entitled to other remedies on account of the violation of the directions passed by this Court but would also be entitled to interest @ 12% p.a. from the date of default of the directions so passed herein.