

(2023) 02 UK CK 0056

In the Uttarakhand High Court

Case No : Writ Petition (MS) No. 1424 Of 2021

Rajeev Lochan Shah

APPELLANT

Vs

State Of Uttarakhand & Others ?

RESPONDENT

Date of Decision : 13-02-2023

Acts Referred:

Disaster Management Act, 2005 — Section 65, 65(i), 65(1), 66

Citation : (2023) 02 UK CK 0056

Hon'ble Judges : Sanjaya Kumar Mishra, J

Bench : Single Bench

Advocate : Yogesh Pant, Tribhuwan Fartiyal

Final Decision : Allowed

Judgement

Sanjaya Kumar Mishra, J

1. Upon hearing the learned counsel for the parties, the Court has passed the following judgment:-

By filing this writ application, the petitioner has prayed for the following reliefs:-

"I. To issue a writ order or direction in the nature of certiorati to quash the impugned order/communication dated 05.07.2021, passed by the respondent no. 3, whereby payment is denied to the petitioner which is required to be paid as a result of acquisition of 30 rooms of the petitioner's hotel, along with staff.

II. To issue a writ order or direction in the nature of mandamus directing the respondents to pay a sum of rupees Rs. 12,25,500/- as dues towards the payment of acquisition of 30 rooms, for 43 days, of the petitionener's hotel along with hotel staff, further to direct the respondents to pay an interest @18% per annum on the above said amount from the date of its being due (i.e. 08.06.2021) till its final payment."

2. The facts of the case are not disputed at this stage and it can be chronologically described as follows:-

(i). On 26.04.2021, the petitioner's hotel, namely, Ashok Hotel, situated in Tallital, Nainital, was requisitioned by the order of respondent no.2, i.e., District Magistrate, Nainital, under the Disaster Management Act 2005 and Epidemic Disease Act 1897. On 01.06.2021, the petitioner submitted a representation before respondent no.3 and Chief Medical Officer Nainital, requesting them to release his hotel because due to decrease in the Covid-19 cases even the Government facility (TRC Mallital) was almost vacant and in such circumstances continuing with the requisition of the petitioner's hotel will lead to unnecessary burden on the state exchequer. He further demanded a sum of Rs 10,26,000/- for the dues towards 39 days of acquisition of 30 rooms of the petitioner's hotel. On 03.06.2021, in consideration of the request for releasing the hotel of the petitioner, respondent no. 3 passed an order on 03.06.2021, the same was received to the petitioner on 08.06.2021.

(ii) On 11.06.2021, the petitioner moved a representation, before respondent no.3 along with respondent no.2 and Chief Medical Officer, Nainital for releasing Rs.12,25,500/- raising a bill for requisition, of the petitioner's hotel, for 43 days at the rate of Rs. 950/-for per room per day from 26.04.2021 to 07.06.2021.

(iii) On 02.07.2021 he moved another representation, before respondent no. 3 along with respondent no. 2 and Chief Medical Officer, District Nainital. However, no amounts were paid to the petitioner. On 05.07.2021, the petitioner sought information under the Right to Information Act, 2005 from respondent no. 2 on the action taken on his representation. Respondent no. 3, on 05.06.2021, communicated the petitioner that the demand of Rs. 12,25,500/- has been rejected as no Covid-19 infected person were kept in the requisitioned rooms of the petitioner's hotel and the payment for aforesaid period of acquisition could not be made. On 28.10.2020, the respondents were again approached, but they did not pay any amount to the petitioner.

(iv) On 23.07.2021, the writ petition has been filed.

3. A counter affidavit has been filed by respondent nos. 2 and 3. In paragraph no. 5, the respondents state that in view of the Covid-19 Pandemic situation and in order to check and control its spread, vide office order dated 26-4-2020 issued by respondent no. 2 i.e. District Magistrate, Nainital, as per the provisions of Government Order No. 319/USDMA-792 (2020) TC dated 29-3-2020, Ashoka Hotel Tallital, Nainital, with its staff was occupied by the District administration of Nainital District. As per point no. 2 of the said G.O. dated 29-3-2020 for providing quarantine & isolation accommodation facility for Covid positive patients at the fixed rate of Rs. 950/- per room per day was provisioned. It is further pleaded that, as per point no. 3 of the said G.O., for providing meals to the covid positive patients a maximum amount up to a limit of Rs. 150/- per meal was additionally provisioned. It is, however, pleaded by the State authorities that as per paragraph no. 4 of the G.O. there was no direction to pay to any Tourist Rest House or Private Hotel/ Government/ Non-Govt. Building/ Unit without actual occupation. Payment would be due only on the basis of the

actual occupancy. In compliance of the provisions of aforesaid G.O., the proceedings for the payment to the concerned Tourist Rest House or Private Hotel/ Government/ Non-Govt. Building/ Unit where the Covid-19 virus affected persons were quarantined/ isolated by the District Administration was accordingly initiated.

4. It is also relevant to mention here that as the Ashoka Hotel, Tallital, Nainital, was never used for lodging any affected persons either for the purpose of quarantine or for isolation, hence, the State Authorities submitted that the petitioner is not entitled to money that he has claimed. The respondents further submit that as per the aforesaid G.O., Ashoka Hotel, Tallital along with its staff was occupied by the District Administration.

5. Thus, on such admitted facts of requisition of 30 rooms in Ashoka Hotel, Tallital, for 43 days at the rate of Rs. 950/- per day per room and also the fact that admittedly the hotel was never used for the purpose of quarantine or isolation of patients, the question arises for determination in this case is whether the petitioner is entitled or not entitled to the money he has claimed and whether as per the paragraph no. 4 of the G.O. referred to above, which nullifies the effects of the Sections 65 and 66 of the Disaster Management Act, 2005. In order to consider the same, we took into consideration the exact words used by the District Authority in requisitioning the Hotel in question.

6. The G.O. dated 26.04.2021 reads as follows:-

7. Thus, it is clear that the G.O. lays down that the payment will be made to the owners of the premises only when there is actual occupation of patients. However, no such order was passed while requisitioning the resource i.e. Hotel premises. Though, it is in the G.O., the Sub Divisional Magistrate, Nainital has not mentioned this fact of non-entitlement of payment, in case of non-occupation.

8. Section 65 of the Disaster Management Act, 2005 provides for the powers of the authorities to requisition, resources, premises etc. in case of any emergency reads as follows:-

65. Power of requisition of resources, provisions, vehicles, etc., for rescue operations, etc.—(1) If it appears to the National Executive Committee, State Executive Committee or District Authority or any officer as may be authorised by it in this behalf that—

(a) any resources with any authority or person are needed for the purpose of prompt response;

(b) any premises are needed or likely to be needed for the purpose of rescue operations; or

(c) any vehicle is needed or is likely to be needed for the purposes of transport of resources from disaster affected areas or transport of resources to the affected area or transport in connection with rescue, rehabilitation or reconstruction, such

authority may, by order in writing, requisition such resources or premises or such vehicle, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning.

(2) Whenever any resource, premises or vehicle is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such resource, premises or vehicle is required for any of the purposes mentioned in that sub-section.

(3) In this section,—

(a) “resources” includes men and material resources;

(b) “services” includes facilities;

(c) “premises” means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;

(d) “vehicle” means any vehicle used or capable of being used for the purpose of transport, whether propelled by mechanical power or otherwise.

9. Section 66 of the same Act further provides for payment of compensation. It reads as follows:-

“66. Payment of compensation.—

(1) Whenever any Committee, Authority or officer, referred to in sub-section (1) of section 65, in pursuance of that section requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:—

(i) the rent payable in respect of the premises, or if no rent is so payable, the rent payable for similar premises in the locality;

(ii) if as consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the thirty days to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the Central Government or the State Government, as the case may be, to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.—In this sub-section, the expression “person interested” means the person who was in actual possession of the premises requisitioned under section 65 immediately before the requisition, or where no person was in such actual possession, the owner of such premises.

(2) Whenever any Committee, Authority or officer, referred to in sub-section (1) of section 65 in pursuance of that section requisitions any vehicle, there shall be paid to the owner thereof compensation the amount of which shall be determined by the Central Government or the State Government, as the case may be, on the basis of the fares or rates prevailing in the locality for the hire of such vehicle:

Provided that where the owner of such vehicle being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine:

Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined under this sub-section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the Central Government or the State Government, as the case may be, in this behalf may decide.”

10. A conjoint reading of both Sections 65 and 66 makes clear that it was within the jurisdiction of District Administration to requisition the hotel of the present petitioner and it is also apparent from the plain reading of the Section 66 of the Act that whenever any authority has requisitioned any premises by resorting the provision of sub-section 1 of Section 65 then the persons interested shall be paid compensation, the amount of which shall be determined by taking into consideration the rent payable in respect of the premises, or if no rent is so payable, the rent payable to similar premises in the locality; if as consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change would be paid to him.

11. It is further provided that any persons interested may be aggrieved by the amount of compensation so determined may make an application within the thirty days to the Central Government.

12. It is further provided that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the Central Government.

13. Explanation appended to the Section provided that the “person interested”

means the person who was in actual possession of the premises requisitioned under section 65 immediately before the requisition.

14. Sub-section 2 provides that when any Authority referred to in sub-section (1) of section 65 in pursuance of that section requisitions any vehicle etc. shall be paid compensation, which is not applicable to the present case.

15. Thus, it is clear that statute enacted by the Indian Parliament authorises the District Administration to requisition any property for use in a pandemic situation and for such requisition adequate compensation should be paid. In this case, it is not disputed that while petitioner's hotel was requisitioned, the authorities fixed the rate at the rate of Rs.950/- per day per room and Rs. 150/- for meals for a day. It is also not disputed that the hotel was never used by the District Administration for the purpose of quarantine and/or isolation. However, Section 66 of the Act does not lay down that in case the premise is requisitioned and it is not used in-actuality then the person interested shall not be entitled to the compensation. Whenever, the premises is requisitioned then the person interested, i.e., petitioner is interested, is entitled to receive the compensation for the same as per Section 66 of the Act, 2005. The G.O. relied heavily upon by the learned counsel for the State cannot override the provisions enacted by the parliament as the parliament is supreme in law making. Any government orders passed is in violation or in teeth of such provision of Central enactment then G.O. will not be countenanced by the Court. Hence, the writ application is meritorious and deserves to be allowed.

16. Learned counsel for the State does not dispute the amount claimed by the petitioner, but the State say that they are not liable to pay the same because of the aforesaid reasons.

17. In that view of the matter, the writ application is allowed. The rule is made absolute. Impugned annexure is quashed. Respondent no.2 is hereby directed to pay a sum of Rs. 12,25,500/- to the petitioner along with simple interest at the rate of 6% per annum from 03.06.2021 till actual payment is made. These payments shall be made within a period of two months hence.

18. Keeping in view of the nature of the litigation there shall be no orders as to costs.