(1996) 02 PAT CK 0010

In the Patna High Court

Ram Narayan Singh APPELLANT

Vs

The Election Commission and Others RESPONDENT

Date of Decision : 27-02-1996

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 300A
Motor Vehicles Act, 1988 — Section 146
Representation of the People Act, 1951 — Section 160, 161

Citation : (1998) 1 ACC 32

Hon'ble Judges : N. Pandey, J;Chaudhary S.N. Mishra, J;A.K. Ganguli, J

Bench : Full Bench

Judgement

N. Pandey, J.—The salient and meaningful questions which arise for determination before this Full Bench may be formulated in the following terms:

(i) Whether an owner of a vehicle, which was requisitioned by the State Government u/s 160 read with Section 161 (1) and (2) of the Representation of People Act, 1951 (hereinafter called the Act), in the event of an accident on election duty, is entitled to compensation and, if so, from whom ?

(ii) If it is contended that Section 160 read with Section 161 (1) and (2) of the Act only provides for hire charges but no compensation, even due to loss or damages, whether such provisions are not in conflict with the provisions of Article 19 read with Article 300A of the Constitution ?

2. The relevant facts of the case are not in serious dispute and, therefore, may be noticed with relative brevity. The petitioner is the owner of a vehicle (Jeep) bearing registration No. BHD 7273. The said vehicle was insured with the Oriental Insurance Company Limited for the period commencing from 5.10.1989 to 4.10.1990. The District Magistrate-cum-Returning Officer, Muzaffarpur, while exercising a delegated power on behalf of the State Government under Sections 160 and 161 of the Act, requisitioned and seized the Jeep for election purpose on 17.11.1989. This is not in dispute that while the jeep was on election duty, met with an accident with a running train on 26.11.1989.

3. When the jeep was released by the G.R.P. men, the petitioner made a claim before the Additional District Magistrate, Muzaffarpur, for payment of hire charges and also due compensation for the loss and damages due to accident. The Additional District Magistrate, therefore, on 15.3.1990 wrote a letter to the Divisional Manager, Oriental Insurance Company to inform whether any payment in shape of compensation was made, since the jeep had met with an accident near railway gumti on 26.11.1989. The Divisional Manager by his letter dated 2.4.1990, informed the Additional District Magistrate that as per condition No. 7 of the "General exceptions" of the policy the company was not liable for the loss or damages sustained or incurred during the period of requisition of a vehicle by the Government.

4. In would be appropriate to notice condition No. 7 of the general exception of the Insurance policy hereunder:

General Exceptions

The company shall not be liable under the policy in respect of

(1) to (6) xxx xxx xxx

(7) any accident, loss, damage or liability caused, sustained or incurred during the period of requisition or commandeering by the Government for any purpose:

xxx xxx xxx 5. Thereafter, as would appear from the letter contained in Annexure 1 dated 18.8.1990, the Deputy Election Officer informed the petitioner that there was no provision for payment of compensation for the loss or damages of a vehicle during the period of requisition for election duty. The petitioner, therefore, can lay his claim before the railway administration.

6. In the counter affidavit filed on behalf of the respondent State authorities, a plea has been taken that Section 161 of the Act is the only provision which prescribes for payment of compensation for the use of a vehicle to the owner. But there is no provision to compensate loss or damages. Therefore, in absence of any such statutory provision for payment in a case of damage or loss due to accident etc., the Court should refuse to exercise its jurisdiction under Article 226 of the Constitution.

7. A counter affidavit has also been filed on behalf of the Insurance Company and the Divisional Manager (respondent Nos. 4 and 5). The stand is that insurance under the Motor Vehicles Act, is a guarantee to the owner of the vehicle, that on any claim for loss or damage of a vehicle the insurer shall discharge the liability of such owner or compensate loss in terms of the policy. Therefore, this is an exclusive contract between the two parties. It is not a universal guarantee for others. The liability under policy during a period of requisition in such a case has been specifically excluded by condition No. 7 of the "general exceptions" on the policy. Therefore, once the possession of a vehicle is taken away by requisition u/s 160, the insurance company will have no liability under the terms of the policy even in case of loss or damages due to accident.

8. Admittedly, the vehicle in question was requisitioned by the District Magistrate for the election purpose under his delegated power u/s 160 of the Act. The submission is, though the petitioner was not deprived of his right of the vehicle, but certainly the vehicle was taken out of his control at the relevant time by the State Government. Therefore, the owner becomes entitled to compensation. The "requisition" of a property amounts to temporary deprivation from possession. Because by virtue of a requisition user of the vehicle is changed from the real owner. Therefore, in the event of an accident that takes place while the vehicle was in possession of the Government, claim for compensation for loss or damages has to be made against the Government.

9. It is well known that in event of "acquisition" or ''requisition'' of a vehicle or any other property by the Government, either perennial or permanent, no owner can raise objection, except to the extent as provided by a particular statute. But in both the cases, the owner will have no control over the property while the same remains under the possession of the Government. There cannot be any dispute that on strict interpretation of Article 300A of the Constitution, there will be definitely a difference under ''requisition'' or ''acquisition'' of a property. The Supreme Court white examining the difference, in the case of Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, , held that normally the expression ''requisition'' is taking possession of a property for a limited period in contradiction of ''acquisition''. But the two concepts are different. In case of ''acquisition'', title passes to the acquiring authority, while on ''requisition'' the possession goes to such authority. One is taking over of the title and the other is taking over of possession. But admittedly, the real owner losses its control and possession. In these backgrounds, it can safely be urged that for the purpose of liability of requisitioning authority becomes owner of the vehicle.

10. In the background of the facts noticed above, it would be appropriate to advert specifically to some of the statutory provisions of the M.V. Act, which commands to owner of the vehicle as well insurance company to comply with the requirements of chapter VIII.

11. There is no dispute that in view of Sub-section (1) of Section 94 of the M.V. Act, 1939 (Section 146 of the M.V. Act, 1988), no person can use or allow any other person to use the motor vehicle in a public place unless there is in force in relation to the use of the vehicle by that person, a policy of insurance complying with the requirements of chapter IX (old).

In view of Sub-section (2) of Section 94 (Sub-section (2) of Section 146 of the M.V. Act, 1988) the aforesaid provision is not applicable to any vehicle owned by the Central or State Government and used for Government purposes. Sub-section (3) vests power in the appropriate Government to exempt from the operation of Sub-section (1) of Section 94 any vehicle even owned by local authority or any transport undertaking. Section 94 of the old Act as well as Section 146 of the new one, requires that a policy of insurance must provide insurance against any liability to third party incurred by the person using the vehicle. But there is no such requirement so far as the vehicle owned by the Central Government or the State Government is concerned. In these backgrounds the Court while judging the liability of the State Government or the local authorities, which are exempted from the provisions of Sub-section (1) of Section 94 are to be more cautious in recording a finding whether in the facts and circumstances of a particular case, the Central Government or the State Government can be held vicariously liable for the loss or damages.

12. The liability of the vehicle requisitioned by the Government stands on a different footing than a vehicle that has been hired by the third party for a limited purpose. I have already noticed that during the period, when the vehicle was requisitioned in terms of condition No. 7 of the exception clause of the policy, the liability of the insurance company was specifically excluded. This is not in dispute that at the time of accident, the, vehicle was proceeding on Government duty. Therefore, it can be safely inferred that at the relevant time, for the purpose of user, the owner of the vehicle was the State Government. It must be deemed that liability of Insurance Company, as required u/s 94(1) and (2) of the M.V. Act, was transferred to the State Government. Mere payment of compensation for use of the vehicle, therefore, cannot exclude the liability of the State Government.

13. In these backgrounds, although there is no specific provision for making payment of compensation due to loss or damage, it is always open to the Court, while exercising extraordinary power under Article 226 of the Constitution, to grant such relief in public interest and equity.

14. This cannot be denied that Article 226 is couched power on the High Court to reach injustice wherever it is found. The power of the High Court as held by the Supreme Court in different cases is wider than the powers of English Courts to issue prerogative writs under English law. The Supreme Court while examining the ambit and scope of Article 226 in the case of Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, , held thus:

Courts of equity may and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interest are involved. Accordingly the granting or withholding of relief may properly be dependent upon considerations as of public interest....

15. More or less, a similar question arose for determination before the Gauhati High Court in the case of Sita Rani Gupta Vs. State of Assam and Others, in the matter relating to payment under Workmen''s Compensation Act. In that case, a claim was made by a widow of the deceased driver who died in a motor accident. At the time of accident, the vehicle was requisitioned by the Deputy Commissioner, Kamrup, to escort an N.S.A. Detenu. The contention was raised that as the vehicle had been requisitioned by the State Government, the petitioner''s husband became an employee of the State and as such he was

entitled to such compensation which was paid to the Police personnel who had also met with tragic end in the accident. The notification whereby the vehicle was requisitioned indicated that the driver shall be paid daily wages at the rate of Rs. 20/- per day. It was held that in order to protect the dignity, the preamble of our Constitution requires protection of dignity of an individual and also promotion of social justice. A Court while exercising, such questions, should be alive with the reality of the situation and has to adopt a creative attitude which may be in consonance with the human rights. Therefore, keeping in mind such aspect of the matter, the Court held that the State was under legal obligation to pay compensation to the dependents of the driver. The relevant passage of the report in this regard is reproduced hereunder:

4. xxx xxx xxx This would show that for the period during which a vehicle is under requisition the driver becomes an employee of the State. As such the driver or his heir is entitled to as much of compensation as is paid to other. Government employees. We are, therefore, satisfied that the State is, in a case of the present nature, under a legal obligation to pay compensation to the dependents of a driver if he were to meet his end in an accident while driving the vehicle for the purpose for which it was requisitioned and the Workmen''s Compensation Act come into force as the accident would be arising out of and in course of the employment.

16. Admittedly, the vehicle in question met with an accident while on election duty. I have noticed if the word ''owner'' in this case is to be liberally interpreted, while the vehicle was requisitioned, for the purpose of liability, the Government becomes "owner" of the vehicle. There is no dispute that as per the condition No. 7 of the exception clause of the policy, the Insurance company be held liable for payment of damages or loss caused to the vehicle when requisitioned by the Government for election purposes. It is obvious if the vehicle was hot requisitioned by the Government, in case of accident, in terms of the policy the petitioner would have been entitled for "compensation or damages" etc. from the Insurance Company.

17. Therefore, having regard to the facts stated above, I aim satisfied that a case of award of just compensation has been made out by the petitioner. Therefore, there is no option but to hold that the State Government is vicariously liable. In support of my views, I would like to notice a decision of the Andhra Pradesh High Court in the case of New India Assurance Co. Ltd. Vs. S. Ramulamma and Others, , where a similar question was answered in these words:

5. The liability during the period of requisition, in this case, has been specifically excluded under the terms of the policy Exh.B-1. When a valid requisition is there for a vehicle and the user of the vehicle has been changed from the real owner to the State Government, in the event of an accident that takes place by the requisitioned vehicle, the claim should be against the Government alone. When a specific condition, i.e. Clause 9 is envisaged in Exh.B-1, the policy as contemplated u/s 94(2) of the Motor Vehicles Act, it must be deemed that the

liability also has been transferred during the period of requisition by the Government. Mere payment of bhatta to the driver to whom the vehicle is entrusted does not mean that the effect of requisition has been lost. Once the vehicle is given out by way of requisition, the effect of requisition divests the liability of the Insurance Company during the period of requisition. The G.Os. Exhs.B-2 and B-3 issued by the Government, clearly point out that during the period of requisition, the owner has no right over the vehicle.

18. Yet a reference can also be made with regard to the views expressed by the Orissa High Court in the case of The National Insurance Co. Ltd. Vs. Durdadahya Kumar Samal and Others, . In that case also, in view of Clause 7 of general exception of the policy, the State Government was held liable for payment of compensation. Therefore, it would be advisable to reproduce the relevant findings from the said report in these words:

9. Insurance under the Motor Vehicles Act is a guarantee to the owner of the vehicle that in case of any claim with respect to the vehicle concerned, the insurer shall discharge the liability of the owner under the terms of the policy. It is a contract between the parties. It is not universal guarantee for the vehicle whosoever becomes the owner. Therefore, the Collector having not been insured in respect of the requisitioned vehicle, there will be no liability of the insurer in respect of the accident during the period of requisition. Besides, the term of the policy which has been prayed to be accepted as additional evidence by the insurer which is not challenged by any party, clearly proves in the General Exceptions that during the period of requisition by the Government the insurer will not be liable....

19. The ambit and scope to fix liability against the State Government in the matter relating to payment of compensation was also examined by the Supreme Court in a recent decision in the case of State of Maharashtra and Others Vs. Kanchanmala Vijaysing Shirke and Others, . This was a case where a Government vehicle while being driven by an unauthorised person, met with an accident. On behalf of the State of Maharashtra, a plea was taken that the driver of the vehicle under influence of liquor had handed over the key to a clerk of the office to drive the vehicle. The accident took place by the negligence of a person who was not at all authorised by the Government to drive the vehicle. The Supreme Court while rejecting the plea of the State Government, held since the accident took place when the vehicle was on Government duty, therefore, the State cannot escape its vicarious liability to pay compensation to the victims.

20. Therefore, in the background of the facts noticed above, as well as the view of different Courts and also having regard to Clause 7 of the General Exceptions of the Insurance Policy, to conclude the answers, it has to be held that in such cases, the State Government alone can be held liable for compensation for the loss and damage caused to the vehicle on account of accident.

21. But a question may arise that in the facts and circumstances of this case,

what would be the basis on which the Government can assess the extent of damages caused to the vehicles at this stage when the same is admittedly in possession of the petitioner. From the supplementary Court affidavit of the respondent Insurance Company as well as copies of other documents, enclosed therewith, it is evident that the Motor Surveyor of the respondent company had submitted his spot survey report about the extent of damage to the vehicle. It also appears at the time of insurance, price of the vehicle was assessed at Rs. 75,000/- (seventy-five thousand).

22. In view of the discussion made above, we direct the Divisional Manager of the Insurance Company to transmit the original report of the surveyor along with other documents before the appropriate authority of the Government positively within two months from the date of the production of a copy of this judgment. We also direct the District Magistrate (respondent No. 2) to finalise the amount of compensation on the basis of the said report and make payment positively within three months from the date of receipt of the report.

23. As a necessary consequences, on the findings recorded above, this writ application is thus'' allowed. But in the circumstances of the case, the parties are left to bear their own costs.

Chaudhary S.N. Mishra, J.

24. I agree.

A.K. Ganguly, J.

25. I agree.

