(2017) 01 GAU CK 0006

In the Gauhati High Court

Case No : Case No. WP(C) 7363 of 2013

Ruma Bhuyan APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 2 GauLT 284

Hon'ble Judges : Mr. Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. R.K. Bora, Advocate, for the Petitioner; Mr. T.C. Chutia, GA, for the Respondents

Final Decision : Allowed

Judgement

Mr. Arup Kumar Goswami, J. (Oral)—Heard Mr. R.K. Borah, learned counsel for the petitioner. Also heard Mr. T.C. Chutia, learned State counsel, appearing for all the respondents.

2. The petitioner had purchased a vehicle (Bus) bearing registration No. AS-01/X-8799 and the vehicle was plying passengers from Guwahati to Dhemaji. The year of manufacture of the vehicle was 2005 and the vehicle was under insurance with Reliance General Insurance Company Limited. The insured declared value of the vehicle was Rs.4,04,478/- and the certificate of insurance was valid from 19.07.2012 to 18.07.2013. After the vehicle was requisitioned on 06.02.2013, the same was sent to Dhubri on 09.02.2013 with police personnel for election duty. The petitioner came to learn that the vehicle was set ablaze at Hatsingimari, Dhubri and the petitioner in such circumstances approached the authority vide letter dated 18.02.2013 (Annexure-4 of the writ petition) to release the vehicle and to make payment for the requisitioned period. The categorical and positive stand of the petitioner is that the vehicle got damaged totally. The petitioner requested the Superintendent of Police, Sonitpur for returning the vehicle in good running condition or to pay the whole compensation

for the damage caused to the vehicle vide representation dated 29.03.2013 (Annexure-5 of the writ petition). As no steps were taken by the authorities, the petitioner has filed the writ petition praying for the following reliefs :

"(i) to return the vehicle in good running condition as has been requisitioned by the authority, and/or,

(ii) to pay the whole purchase amount of the vehicle with the interest as applicable,

(iii) to pay the hired charges as due to the petitioner and/or,

(iv) to pay compensation as entitled by the petitioner and/or after perusing the show causes if any records of the case and upon hearing the parties be pleased to make the Rule absolute and/or pass such other or further order/orders as Your Lordship may deem fit and proper in the facts and circumstances of the case.

- And -

It is prayed that pending disposal of this petition an appropriate interim direction may be issued directing the respondent authority to the effect that the monthly instalment amount relates to the vehicle may be provided to the petitioner and/ or be pleased to pass such further other order (s) as Your Lordships may deem fit and proper."

3. In the affidavit filed by the respondent No. 3, it is stated that the vehicle of the petitioner was taken on hire in the evening of 06.02.2013 on requisition. In the affidavit filed on behalf of the respondent No.4, at Paragraph-5, it is categorically stated that the vehicle of the petitioner was requisitioned on 06.02.2013 for public purpose of conducting Panchayat Election, 2013 and the said vehicle was sent to Hatsingimari in the District of Dhubri on 09.02.2013 with police personnel for maintaining law and order during the Election. It is also admitted that the requisitioned vehicle was set on fire by an unruly mob near Hatsingimari Election Counting Hall on 15.02.2013, which resulted in the said bus being completely damaged and beyond repair. On receipt of information from the Superintendent of Police, Dhubri, request was made to the Superintendent of Police, Dhubri, to submit a detail report of the incident along with the MVI report of the damaged vehicle, which was still awaited. Information was given to the petitioner to take necessary steps from her end. It is also stated that as the detail report was not received from the Superintendent of Police, Dhubri, proposal for payment of adequate compensation could not be placed before the authority concerned.

4. The respondent No.5, the Superintendent of Police, Dhubri in his affidavit has stated that 2 (two) requisitioned vehicles including one of the petitioner were parked at Hatsingimari College field premises. On 15.02.2013 at about 10:30 AM, some unknown miscreants armed with lathi, dao, etc., by forming an unlawful assembly, entered into the College field premises and set fire on the vehicles and as a result of the same, the vehicles were completed gutted. An FIR

was lodged resulting in registration of South Salmara Police Station Case No.13/2013 under Sections 147/148/149/447/435 IPC read with Section 3(1) of the Prevention of Damage to Public Property Act, 1984. The affidavit of the respondent No.5 is silent on the detail report and MVI report, which was sought for by the Superintendent of Police, Sonitpur.

5. The respondent No. 7 had also filed an affidavit more or less in the same vein as the other affidavits filed by the State respondents.

6. Mr. Bora has submitted that there is no dispute that the vehicle of the petitioner had been burnt beyond repairs and that the same has practically become scrap material. It is submitted by him that as the vehicle still remains with the respondents, it is to be construed that the vehicle is still under requisition and, therefore, the petitioner is entitled to requisition amount for the entire period till the vehicle is handed over. In support of his submission, he has relied on the judgements of this Court, dated 10.04.2008, rendered in WP(C) 4275 of 2002 (Sailen Kumar Sarma v. State of Assam and Ors.), Jayanti Roy Choudhury v. Union of India and Ors., reported in 2010 (3) GLT 417 and Chandramati Devi v. Rajib Bora and Ors., reported in 2008 (4) GLT 293.

7. Mr. Chutia has submitted that the petitioner is not entitled to any requisition compensation as the State authorities were not using the vehicle, the same having been burnt by an unruly mob. Without conceding, he has submitted that at best the petitioner would be entitled to compensation for total damage of the vehicle from the insurance company and, therefore, this Court may not accede to the prayers made by the petitioner. He seeks to support his contention by placing reliance on the judgement of the Supreme Court, rendered in the case of Managing Director, Karnataka State Road Transport Corporation v. New India Assurance Company Limited and Another, reported in (2016) 2 SCC 382 and, more particularly, on paragraph 25 thereof.

8. In Sailen Kumar Sarma (supra), the vehicle was seized and fine was imposed for alleged violations of the provisions of Motor Vehicles Act, 1988, and the petitioner had prayed for, amongst others, release of the vehicle in the same condition as it was prior to seizure and for compensation for the loss sustained on account of seizure and detention of the vehicle in question. However, it appears from the perusal of the said judgement that the only issue that was pressed was one relating to the entitlement of the owner of the vehicle to compensation in view of the non-release of the vehicle of the petitioner despite direction by the court to release the vehicle. In the aforesaid backdrop, the Court had granted compensation to the petitioner on the principle of restitution taking the view that the petitioner had suffered because of non-release of the vehicle.

9. The question that arose in Jayanti Roy Choudhury (supra) was as to whether the insurance company was liable to pay compensation under the contract of insurance for the damages caused to the vehicle during the period when the vehicle was under requisition of the Government. The Court answered in the

negative relying on the case of National Insurance Co. Ltd. v. Deepa Devi and Others, reported in (2008) 1 SCC 414.

10. In Chandramati Devi (supra), though ostensibly the vehicle had been requisitioned for a particular period, on the expiry of such period it was not released and the same was released eventually after considerable lapse of time and it is in such circumstances the Court held that the vehicle shall be deemed to have been under requisition and, resultantly, the Court directed payment of requisition compensation till the date of actual release of the vehicle.

11. The vehicle, no doubt, was covered by insurance and as there was a contract of insurance, clearly the insurer is to claim the amount spent by her towards repairing cost of the vehicle from the insurance company under the contract of insurance. If the vehicle is also damaged beyond repair and, if such contract of insurance covers such eventualities, then also the insurance company will have to reimburse the amount to the insurer. The Supreme Court, in the case of Deepa Devi (supra), while considering the definition of "owner" within the meaning of Section 2(30) of the Motor Vehicles Act, 1988, vis-a-vis liability of the insurance company under the contract of insurance for payment of compensation under the said Act, had held that when a vehicle is requisitioned by a statutory authority pursuant to the provisions contained in a statute, the registered owner of the vehicle loses the entire control of the vehicle and he/she has no other alternative but to hand over the possession of the vehicle to the above said authority in view of the order of requisition and such owner would only be entitled to payment of requisition compensation for the period the vehicle was under the said authority or its officers and the insurance company will not be made liable for payment of any compensation under the provisions of the Motor Vehicles Act, 1988, even though there was a contract of insurance.

12. Similar view is expressed in the case of Purnya Kala Devi v. State of Assam and Another, reported in (2014) 14 SCC 142.

13. Though it is argued by Mr. Chutia that Deepa Devi (supra) was impliedly overruled in the case of Managing Director, Karnataka State Road Transport Corporation (supra), such contention is found to be without any merit. The question involved in the said case was whether in the wake of a lease agreement entered into by the registered owner with Karnataka State Road Transport Corporation (KSRTC), the registered owner and insurer along with KSRTC can be fastened with the liability to make payment to the claimants and whether KSRTC can recover the amount from the registered owner and its entitlement to seek indemnification from insurer. The issue in Deepa Devi (supra) and the one in Managing Director, Karnataka State Road Transport Corporation (supra) was entirely different and, therefore, the Supreme Court, at paragraph 30, had observed that the question in Managing Director, Karnataka State Road Transport Corporation (supra) was entirely different from that of Deepa Devi (supra). It was noted that in Deepa Devi (supra), the vehicle was under requisition by the State Government and that possession on requisition was not covered by the

definition of "owner" under Section 2(30) of the Motor Vehicles Act, 1988, and that such a situation having not been envisaged under the Motor Vehicles Act, 1988, the State was held liable to make payment of compensation.

14. Thus, during the period of requisition, it will be the State who will have to make payment of compensation even though there is in existence a policy of insurance.

15. Therefore, in the facts of this case, the petitioner could not have claimed any insurance amount from the insurance company for the damage of the vehicle.

16. The parties are in agreement that the vehicle of the petitioner was burnt beyond repairs in mob violence while the vehicle was under requisition of the State Government for election purpose. It is not in dispute that till the date when the vehicle got burnt, the petitioner was paid the requisition compensation. Can it be said that even after the vehicle was burnt beyond repairs the State would still be obliged to pay requisition compensation? The Court cannot be oblivious of the fact that the State could not have put the vehicle for any use. The incident itself is an unfortunate one and because of such incident, the petitioner had suffered loss, but such loss, in my considered opinion, cannot be made good by directing the State to pay requisition compensation. Because of intervening developments, the State is not in a position to return the vehicle in the same state as it was when the same was requisitioned and, therefore, release of the vehicle, which is completely burnt, would not have inured to the benefit of the petitioner as she could not have put the vehicle to use. It is also on record of the affidavit of respondent No. 7 that the owner of the other vehicle, which was also damaged, had taken Zimma of the said vehicle, but the petitioner had not approached the court to take Zimma of her vehicle.

17. Award of compensation in the exercise of jurisdiction in the domain of public law is based on the application of doctrine of strict liability for contravention of fundamental right. In a given case, when it is established that there had been infringement of fundamental rights of a citizen and no other form of appropriate remedy in the facts and circumstances is available, the Court, to advance the cause of justice, can award compensation and may not relegate the citizen to the ordinary process of the civil courts.

18. As noted earlier, the vehicle was damaged and burnt beyond repairs and, the petitioner cannot claim insurance from the insurance company. Therefore, as the vehicle was under the control of the State respondents, though not on the basis of doctrine of strict liability, but on the principles of restitution, the State has to make good the loss suffered by the petitioner. The court will not have to scout for material to quantify the loss suffered by the petitioner. As the value of the vehicle was mentioned in the Certificate of Insurance by the petitioner herself, the same will have to be taken as the value of the vehicle. In the Certificate of Insurance, the value of the vehicle was indicated as Rs. 4,04,478/- and as the vehicle is completely damaged, I am of the considered opinion that the amount

mentioned in the Certificate of Insurance, i.e., Rs. 4,04,478/-, should be quantified as the loss suffered by the petitioner. The court must, however, not lose sight of the fact that a period of 3? years have already gone by and, therefore, it will be wholly inequitable not to grant an additional amount for the intervening period. I am of the considered opinion that a further sum of Rs. 2 lakhs would be justified for delayed payment.

19. Accordingly, a writ of mandamus is issued to the respondents directing them to make payment of the aforesaid amount of Rs. 6,04,478/- to the petitioner within a period of three months from today failing which the aforesaid sum of Rs. 6,04,478/- will carry an interest at the rate of 6%, per annum, till the amount is paid.

20. Mr. Chutia will communicate this order to all concerned for compliance.

21. Writ petition is allowed to the extent as indicated above.

22. Let a copy of this order be furnished to Mr. Chutia.