
(2011) 05 JH CK 0019

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3171 of 2009

Tapan Kumar Kapur

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Citation : (2011) 3 JCR 62

Hon'ble Judges : D.N. Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—The present writ petition has been preferred by the owner of the Mahindra Max Pick-up vehicle and having registration No. JH-06A-5236 of 2003 model. This vehicle was requisitioned by the Election Commissioner for the purpose of Lok Sabha Election of the year, 2009 and when the vehicle was under the control of the election officers, the vehicle was burnt to ashes and therefore, the Petitioner is claiming the damages and as the Respondents have not paid, this writ petition has been preferred.

2. Counsel for the Petitioner submitted that the vehicle, in question, is owned by the Petitioner having aforesaid registration number of the model, 2003. Because of Lok Sabha Election, vehicle, in question, was requisitioned. The vehicle, in question, was in total control and possession of the election officers of the Respondents-State. The vehicle was burnt on 24th April, 2009 when it was under the use by the election officers at village-Jamtai, Sonua Block at District-Singhbhum West. These facts have been stated in detail, in the memo of the present petition. As the vehicle was burnt into ashes, the Petitioner is entitled for the damages especially, in view of the decision rendered by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Deepa Devi and Others, .

3. Counsel for the Respondents submitted that it is true that the vehicle, in question, was requisitioned because of Lok Sabha Election by the electoral officers elected by the State. The vehicle, in question, was also in total

possession and control of the State authorities. It is also fact that the vehicle was burnt into ashes on the date and place, as stated in the memo of the petition. But, the question is that who has to pay the compensation to the Petitioner whether the Respondents-State or the Insurance Company because the vehicle, in question, was having insured and therefore, unless that aspect of the matter is decided, total liability is fastened upon the Respondents-State.

4. Having heard counsel for both the sides and looking to the facts and circumstances of this case, it appears that:

(i) the election notification for Lok Sabha was published in the State of Jharkhand for the year, 2009. The election officers have requisitioned the vehicle, in question, belonging to the Petitioner.

(ii) the vehicle, in question, is having registration No. JH-06A-5236 of 2003 model. The vehicle, in question, is popularly known as Mahindra Max Pick-up.

(iii) on 24th April, 2009, the vehicle, in question, when it was in total management and control and possession of the Respondents-State, was burnt to ashes.

(iv) these facts, which have been stated in the memo of the petition, have not been controverted by the counter affidavit, filed by the State. Now, with these facts, the question remains that whether the Respondents-State is responsible for making payment of compensation or the insurance company.

(v) this argument, which has been canvassed by the counsel for the Respondents-State, though attractive, is not accepted by this Court mainly for the reason that the vehicle, which was requisitioned for the election purposes, will be covered by the insurance, but, the fact remains that the vehicle, in question, or the vehicle, which was requisitioned was in total management and control and in custody of the State authorities. The issue of liability has also been argued at length and it has also been decided by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Deepa Devi and Others, and this Court has to walk on beaten path. Paragraph Nos. 10 and 19 read as under:

10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondents 3 and 4 continued to be the registered owners of the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of the power conferred upon him under the Representation of the People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remains under requisition, the owner does not exercise any control there over. The driver may still be the employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in charge thereof. Save and except for legal ownership, for all intent and purport, the registered owner of the

vehicle loses entire control there over. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period that vehicle remains under the Control of the State and/or its officers, the owner is only entitled to payment of compensation there for in terms of the Act but he cannot not (sic) exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view.

19. We, therefore, are of the opinion that the State shall be liable to pay the amount of compensation to the claimants and not the registered owner of the vehicle and consequently the Appellant herein.

(Emphasis supplied)

In view of the aforesaid decision, it appears that originally before the concerned High Court, the liability was fixed upon the National Insurance Company because the vehicle, which was requisitioned, was under Insurance policy. The said decision was challenged in the Hon"ble Supreme Court and as held in the aforesaid paragraphs, the liability has been fixed upon the State Government even though the vehicle is insured. The facts of the present case are similar to the facts of the aforesaid decided case. Hence, the arguments, canvassed by the Respondents-State is already decided by the Hon"ble Supreme Court.

5. I therefore, held that the Respondents-State are liable to make the payment of compensation to the Petitioner as the vehicle, in question, which was requisitioned, was burnt into ashes.

6. Now, the question left out is about the quantum of the compensation.

7. It is submitted by both the counsels that let the matter be remanded to the Deputy Commissioner to decide about the compensation because counsel for the Petitioner is unable to give the price of the vehicle, in question, as on the date of registration alongwith evidence and therefore, counsel for the Petitioner is also unable to point out depreciation upon value of the vehicle. All these details and calculations will be done by the Deputy Commissioner of the concerned district in accordance with law and the Deputy Commissioner will give adequate opportunity to the Petitioner or to his legal representative for deciding the amount of compensation. This process will be completed within a period of four weeks from the date of receipt of a copy of an order of this Court and the amount so decided will be paid to the Petitioner by account payee cheque within further period of two weeks.