

(2016) 03 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1311 of 2009 c/w Contempt (SWP)
No. 53 of 2010

Vijay Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JKJ 282

Hon'ble Judges : Mr. Dhiraj Singh Thakur, J.

Bench : Single Bench

Advocate : Mr. B.S. Manhas, Advocate & Mr. Sandeep Gupta, Advocates, for the Petitioner; Mr. W.S. Nargal, AAG, for the Respondent

Final Decision : Disposed off

Judgement

Mr. Dhiraj Singh Thakur, J.(Oral) - The petitioner is the owner of a vehicle (Matador) bearing Registration No. JK02H-8267, which was hired

by the respondent-State for being used in election duty during the parliamentary elections held in Kashmir valley. This was done through Police

Control Room, Jammu on terms and conditions, which are covered by notification dated 29th of October, 2008.

2. It appears that on 12.05.2009 at about 12 noon during the election period while the said vehicle was ferrying the policemen to Baramulla, a

crowd of miscreants pelted stones on it and set the vehicle of the petitioner on fire, causing full damage to the said vehicle. The driver of the vehicle

suffered major injuries and had a narrow escape. An FIR in this regard was registered at Police Station, Baramulla and the damaged vehicle is still

lying in the premises of the Police Station at Baramulla.

3. The present petition was filed by the petitioner claiming damages on account of loss caused to his property on the ground that since the vehicle

was requisitioned by the Government for being used in election duty, it was the duty of the Government to protect the property and in addition to

the rental, which was to be paid to the petitioner in terms of the notification aforementioned, the Government should be held vicariously responsible

for indemnifying the petitioner to the extent of the loss suffered by him.

4. Objections have been filed by the Respondent-State wherein the incident has not been denied. It was, however, urged that the vehicle in

question owned by the petitioner was hired through a contractor and on that basis, it was sought to be urged that there was no privity of contract

with the petitioner, who is the owner. The incident of total damage caused to the vehicle of the petitioner is, however, not denied. It is stated that

this court vide order dated 7.12.2009 issued directions to ascertain the loss to the vehicle by directing as under:

Meanwhile, Director General of Police (respondent No. 3) is directed to verify all the facts and in case the vehicle of the petitioner is found

parked at Police Station Baramulla in a damaged condition, loss of it shall be ascertained by an expert so that a complete report with regard to it is

placed on record"".

5. Pursuant to the said direction, a committee of seven members had been appointed, who were all officers of the respondent-State, who certified

that the vehicle was a total loss.

6. The report of the survey committee, however, apart from reporting that the vehicle was a total loss, did not quantify the same in terms of money.

7. The issue that arises for consideration before this court is as to whether the State can be saddled with the responsibility of indemnifying the

petitioner to the extent of loss suffered by the petitioner during the period when the vehicle was in the possession of the respondent-State.

8. This issue, however, is no longer res integra. A Full Bench of the Patna High Court in Ram Narayan Singh v. Election Commission.(1996)

1 PLJR 621 decided on February 27, 1996 while dealing with a similar situation where a vehicle was requisitioned for being used in election

duty was damaged has held as under:

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 cannot 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 not 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.

9. The facts in the aforementioned case were similar to the facts before this court. In that case, the vehicle belonging to the owner had been requisitioned by the District Magistrate for election purposes under his delegated power under Section 160 of the Representation of People Act, 1951. During the course of user of the vehicle in election duty, the same was damaged. The Full Bench held that requisition of a property by the Government amounts to temporary deprivation of the owner from possession and in the event of an accident that takes place while the vehicle was in possession of the Government, any claim for compensation for loss or damages has to be made against the Government.

10. The aforementioned Full Bench judgment squarely applies to the facts and circumstances of the present case and I find no reason to persuade myself to take a view different from the one as has been settled in the same. Having held that the State of Jammu and Kashmir is liable for making good the loss suffered by the petitioner, the next question that arises for consideration is as to how to quantify the damages. From a report of the survey committee while the vehicle of the petitioner has suffered a total loss, yet there is no report of actual damages that has been suffered on account of the total loss. As to what was the depreciated value of the vehicle on the date of the incident needs to be verified and actual damages quantified.

11. With a view to ascertain the actual loss, it, thus, becomes necessary to ascertain the same through a surveyor to be appointed by the National Insurance Company with which the vehicle in question had been insured for third party risks only.

12. During the course of arguments, Mr. Manhas, upon verification from the petitioner, however, stated that the wreckage of the vehicle had since been disposed of by the petitioner and that the only way to ascertain actual loss would be upon the value as reflected in the Insurance Policy of the relevant year when the incident took place.

13. Be that as it may, it is ordered that the National Insurance Company, Divisional Office, Jammu would appoint a surveyor to ascertain and quantify the loss suffered in terms of money on account of the total loss of the vehicle owned by the petitioner with reference to the depreciated value of the vehicle in the year in which the incident had taken place as also the value of the wreckage. The report shall be prepared within three weeks from today and the amount shall be paid by the respondents within two months thereafter. The value of wreckage be deducted from the amount payable.

14. It is made clear that in case the amount is not paid within the calendar so fixed, the petitioner shall be entitled to receive interest on the amount so compute @ 6% w.e.f. the date of the accident till realization.

15. Disposed of as above.

16. In view of the disposal of the main petition, Contempt petition does not survive, which is also disposed of accordingly.