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Court : Patna

Decided On : Aug-17-2009

Judge : S.P. Singh, J.

Appeal No. : CWJC No. 12540 of 2008

Appellant : Narendra Kumar @ Singh

Respondent : The State of Bihar and ors.

Judgement :

S.P. Singh, J.

1. The issues relate to seizure of buses, trucks and other vehicles during election period may it be Parliamentary, State or Panchayat. The vehicles are seized for purposes of maintaining law and order or for movement of security forces from one district to other or directly for election purposes itself. At times the vehicles are seized in one district and passed on to the other districts. In some cases the vehicles are passed to different agencies. The vehicles at times are released in the same district and sometimes in other districts.

2. The State Government has thus fixed the compensation for various types of vehicles payable to the owners on day to day basis to compensate for deprivation of their vehicles. The aforesaid decision of the State Government has been communicated in letter dated 7.10.2005 issued by the Commissioner cum

Secretary, Transport Department in view of letter No. 1-008/05-2409 dated 6.8.2005 of Chief Electoral Officer cum Commissioner and Secretary, Cabinet Election Department. For instance, for seizure of a bus having capacity of 50 persons, compensation has been fixed at Rs. 1200 per day, whereas compensation for detaining an Auto Rickshaw has been fixed at Rs. 150 per day. Likewise, the compensation fixed for other vehicles have also been enumerated therein.

3. The vehicles are seized for helping the administration in conducting elections which is a basic feature of democracy, however, the process involved for payment of compensation is most undemocratic.

4. In the instant case, the vehicles were seized on eve of last Assembly Election held in October-November, 2005. The vehicles seized were used in various districts and by various authorities including para military forces. Once battle of ballots was over, the vehicle owners were left in lurch to fight now their own battles for getting their due compensation. Some district administrations promptly comply with their obligations of making payment. But in some cases, only part payments are made and the rest is unduly delayed. What is still shocking is that in some cases even movement and detention of vehicles in the district concerned is denied. It is also seen that the liability of making payment of compensation is also shifted to the other district.

5. The Government of Bihar in its letter No. 908 dated 11.10.2005, issued by the Secretary (Home), Department of Home Special, has resolved that District Administration in which the vehicle is used would be liable to pay compensation. The aforesaid circular stipulates that the district which is requisitioning vehicle would get a log book opened, and in case vehicle is passed on to other district, the District requisitioning the vehicle would pay its compensation forthwith. The aforesaid resolution of the government is being followed more in breach than in compliance.

6. In C.W.J.C. No. 12540 of 2008, the bus of the petitioner bearing No. BR 21P 6322 was seized at Nawadah on 22.1.2005 for Assembly Election-2005 and released on 1.3.2005 at Muzaffarpur. Similarly, the other two vehicles of the

petitioner were also seized and released subsequently without paying the compensation.

7. In C.W.J.C. No. 6315 of 2009, the bus of the petitioner bearing registration No. BR-33A-5514 was seized on morning of 13.10.2005 by Bhojpur administration and handed over to the Vehicle Cell, Arrah, Bhojpur for the purpose of Assembly Election, 2005. Thereafter, the Vehicle Cell, Ara opened Log book No. 78 and then the said vehicle was handed over to Kerala Police for the purpose of Assembly Election duty. The vehicle was used in various districts like Muzaffarpur, Madhubani and Siwan. The vehicle was detained for 43 days.

8. After the vehicles were released, the petitioners filed representation but payments were withheld on one pretext or the other.

9. Seeing the callousness and indifference of the district administration, as major portion of the compensation were not paid even after 3 1/2 years, the Chief Secretary, Bihar, Home Secretary, Bihar, Chief Electoral Officer, Bihar, State Election Commissioner, Bihar, Finance Secretary, Bihar and Transport Commissioner, Bihar were added as party respondents by order dated 27.3.2009. In some cases even the concerned district administrations were not even aware that the vehicles have been used in their districts. In one of the cases the court noticed that as against Rs. 79,200/- only Rs. 42,000/- was paid.

10. This Court in its earlier order dated 11.5.2009 noticed that the stand of the district administration stood falsified in view of their own documents. As such show cause notice was issued to the District Magistrate cum Collector, Patna and District Magistrate cum Collector, Sitamarhi as to why they should not be proceeded with for swearing false affidavits.

11. It would be relevant to quote the following extracts of order dated 11.5.2009 which would indicate the chaos and lack of transparency in payment of compensation:

The two counter affidavits cannot stand together because if the first one was correct then there was no need for the second counter affidavit and if the second

counter affidavit is correct then first counter affidavit was deliberately a false affidavit.

Prima facie petitioner correctly submits that because he failed to pay illegal gratification, wrong figures were mentioned only to harass him and payments were withheld to force him to approach the authorities once again. The system is sick and need cleaning.

Let the District Magistrate-cum-Collector file a show cause in detail within four weeks. In the meantime, it would be open for him to take suitable action in this regard against any body in his department, if he finds they are responsible for this unfortunate situation.

I may mention here that this is not the solitary case. There are large number of claims pending for such payments in different Districts and the problem will only multiple with election which has just been held. State including State Election Commission must evolve a transparent hassle free system devoid corruption in this regards.

12. At this juncture this Court may merely suggest that in order to avoid delay in making compensation and to upkeep public confidence, the requisitioning authority would get a log book opened. Some officers may be authorized to certify the opening of the log book. If the vehicle is handed over to another agency, there should be entry to the aforesaid effect. Further more, if the vehicle is carried in another district, then the authorized officer of that district would also be required to sign the log book, to avoid dispute whether the vehicle has been used in the district concerned or not. In case the vehicle is carried into third district, the same process be adopted.

13. This Court finds that the government has also fixed the rate of compensation vide letter dated 7.10.2005 of Commissioner cum Secretary, State Transport Department. Further more, letter No. 908 dated 11.10.2005 of Secretary, Home (Special) Department has also clarified that the districts in which the vehicles have been used would be liable to pay compensation.

14. Thus what essentially remains is framing of a scheme or guide lines regarding entry in the log book and its due verification by various agency or district administration to which it has been handed over. The State Government may also consider it expedient to nominate one or two authorized officers, who would be certifying the log book. The Government may also indicate that whether without due certification of the authorized officer, the vehicle should be allowed to be used in that district.

15. Various letters of the government including the letter No. 908 dated 11.10.2005 contained in Annexure-A to the counter affidavit would show that they do not get enough vehicles for supervising the work of election etc. If prompt payment of compensation is ensured, the response coming from the public in this direction would be more enthusiastic. The election process is key to establishment of democratic Government wherein the people choose their representatives. Thus all loose ends involved in the process of election, including tiding over shortage of vehicle should be strengthened.

16. Thus in view of the facts noticed above, the State Government in consultation with the Electoral Department including the Chief Electoral Officer and State Election Commissioner to frame guide lines for requisitioning of the vehicle, its movement from one district to another or passing from one agency to the other payment of compensation and other incidental matters.

17. This Court has been informed that the payment of compensation have now also been made to the petitioners. In view of the explanations offered and apology tendered, the show cause filed by the respondents are accepted. However, as the payment has been withheld for over the years, the petitioners would be entitled to simple interest of 9% per annum over the delayed payment with effect from the date of filing of the writ petitions.