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Anirban Ghosh v. Dist. Election Officer (Calcutta) : Law Finder Doc Id # 471295

2006(35) RCR(Civil) 692

**CALCUTTA HIGH COURT**

Before:- [Girish Chandra Gupta, J.](#)

W.P. No. 9275 (W) with 9344 (W) with W.P. No. 9349 (W) of 2006. D/d.18.4.2006.

Anirban Ghosh - Petitioner

**Versus**

Dist. Election Officer and another - State

For the Petitioner in W.P. No. 9275(W) of 2006 :- Pranab Palit, Advocate.

For the Petitioner in W.P. No. 9344(W) of 2006 :- Tapas Singha Roy, Advocate.

For the Petitioner in W.P. No. 9349(W) of 2006 :- K. Chatterjee, Advocate.

For the State :- Abha Ray and A. Banerjee, Advocates.

**A. Representation of The People Act, 1951 Sections 160 and 161 Conduct of Election Rules, 1961, Rule 98 - Motor Vehicles Act, 1988, Sections 66, 2(35) and 2(47) Constitution of India, 1950 Articles 14 and 226 Requisition of vehicle for election purpose - Representation of the People Act does not authorise indiscriminate requisitioning of vehicles - Section 66 of the Motor Vehicles Act imposes complete ban upon use of a vehicle as a transport vehicle in public place except those have a permit granted for that purpose - Exemption under Section 66(3)(f) and (n) of the Motor Vehicles Act for a transport vehicle is only for Central or State Government - Motor car or an omnibus meant for personal use does not fall within the purview of a "public service vehicle" or a "private service vehicle" are "transport vehicle" which cannot legally be used for "hire or reward" - Violation of Section 66 of Motor Vehicles Act would expose the owner to punishment - Hire of vehicle to be a bailment - Compensation have to be paid for use of vehicle being lost or damaged.**

[Paras [17](#) and [18](#)]

**B. Representation of The People Act, 1951 Sections 160 and 161 Requisition of a "public service vehicle" or a "transport vehicle" would mean for an illegal purpose - Such act of the authorities is irrational, arbitrary and is patently opposed to Article 14 of the Constitution - Order of requisition of car without an application of mind held to be an abuse of discretionary power by the executive authority - Using authoritative power to requisition private cars instead of contract carriage, only to harass the citizens in the name of election, is a clear**



**abuse of power of the State authorities - Highwaymen or police personnel not to conduct by taking advantage of the authority in the name of election - Requisition of cars on road and driver of cars forced to part with driving licences or registration certificate or possession of tax token - This type of requisition cannot be expected from the Executive of a Welfare State - Intention of legislature was not to cause any inconvenience or oppression to the citizens - Requisition of cars or which cars suitable for election purpose without ascertaining or caring for the law on subject or procedure laid down - Impugned order of requisitioning private cars quashed.**

[Paras [28](#) to [30](#)]

### Cases Referred :-

[Anjum M.H. Ghaswala, 2002 \(1\) SCC 633.](#)

[Bangalore Medical Trust v. B.S. Muddappa, 1991 \(4\) SCC 54.](#)

[Captain Sube Singhv. Lt. Governor of Delhi, 2004 \(6\) SCC 440.](#)

[R.C. Cooper v. Union of India, 1970 \(1\) SCC 748.](#)

### JUDGMENT

**Girish Chandra Gupta, J.** - Common questions of law and fact have arisen in these three writ petitions viz W.P. No. 9275(W) of 2006, and W.P. No. 9344(W) of 2006, and W.P. No. 9349(W) of 2006. These three writ petitions are therefore disposed of by a common judgment.

2. In each of the three writ petitions the subject-matter of challenge is an order issued under Section [160](#) of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act'). The order dated 12th April, 2006 issued to the petitioner in W.P. No. 9275 (W) of 2006 reads as follows:

"WHEREAS it appears to the undersigned that the vehicle/vessel/animal mentioned in the Schedule below is needed/ is likely to be needed for the purpose of transport of E.V.M.S. to or from the polling station at...Police Station...Sub-Division...District North 24-Parganas in connection with the transport of officers or other persons for performance of duties in connection with the General Election to Legislative Assembly, 2006 from all the Assembly Constituencies to be held on 27th April, 2006.

NOW, THEREFORE, in exercise of the power conferred by Section [160](#) of the Representation of the People Act, 1951 (43 of 1951), read with notification No. 1976-Home (Elec) dated 18.3.06 the undersigned hereby requisitions the said vehicle/vessel/animal mentioned in the Schedule below and directs that the possession of, and control over, the said vehicle/ vessel/animal be made over to the MTO Dolfole on 20.4.2006, at 20.00 p.m./a.m. when he or an officer deputed by him will take charge and possession of the said vehicle/vessel/animal.



3. The order dated 9th April, 2006 which is the subject-matter of challenge in W.P. No. 9344 (W) 2006 reads as follows:

"WHEREAS it appears to the undersigned that the vehicle/vessel/animal mentioned in the Schedule below is needed/ is likely to be needed for the purpose of transport of Electronic Voting Machine to or from the polling station at...Police Station Dornjur, Sub-Division Howrah, District Howrah in connection with the transport of officers or other persons for performance of duties in connection with the General Election to Legislative Assembly, 2006 from all the Assembly Constituencies to be held on 22.4.2006.

NOW, THEREFORE, in exercise of the power conferred by Section 160 of the Representation of the People Act, 1951 (43 of 1951), read with notification No. 1976-Home (Elec) dated 18.3.06 the undersigned hereby requisitions the said vehicle/vessel/animal mentioned in the Schedule below and directs that the possession of, and control over, the said vehicle/ vessel/animal be made over to the undersigned on 20.4.2006, at 08.00 p.m./a.m. when he or an officer deputed by him will take charge and possession of the said vehicle/vessel/animal.

4. The order dated 28th March, 2006 which is the subject-matter of challenge in W.P. No. 9349 (W) of 2006 reads as follows:

"WHEREAS it appears to the undersigned that the vehicle/vessel/animal mentioned in the Schedule below is needed/is likely to be needed for the purpose of transport of E.V.M.S. to or from the polling station at Kamarhati, 136, Police Station Belharia, Sub-Division Barrackpur, District North 24-Parganas in connection with the transport of officers or other persons for performance of duties in connection with the General Election to Legislative Assembly, 2006 from all the Assembly Constituencies to be held on 27th April, 2006.

NOW, THEREFORE, in exercise of the power conferred by Section 160 of the Representation of the People Act, 1951 (43 of 1951), read with notification No. 1976-Home (Elec) dated 18.3.06 the undersigned hereby requisitions the said vehicle/vessel/animal mentioned in the Schedule below and directs that the possession of, and control over, the said vehicle/ vessel/animal be made over to the Belgharia on 18.4.2006, at 08.00 p.m./a.m. when he or an officer deputed by him will take charge and possession of the said vehicle/vessel/animal.

5. Each of the writ petitioners has alleged that he purchased the car for his personal use and is registered for such user only. Each one of them has an ailing member in the family who is in constant need of medical care so that the vehicle is indispensable. The modus operandi adopted in each of the three cases was also identical. The car was stopped on the road by police. They seized the registration certificate or the tax token and the driving licence of the driver. Receipt for the seized documents has been acknowledged in the body of the order itself. Each one of the impugned orders is a printed form with blank spaces containing signature of the District Magistrate-cum-District Election Officer in facsimile. There is a column provided for the purpose of indicating the papers and documents retained/ received



by the issuing authority which is invariably the police officer.

6. On behalf of the writ petitioners it has been contended in substance that the State/respondents have abused their power and acted arbitrarily in issuing the orders under challenge.

7. Mrs. Abha Ray, the learned Advocate, appearing for the respondents submitted that the orders were issued in exercise of power under Section 160 of the Act and there is nothing wrong in doing so. She has disputed the submissions made on behalf of the petitioners.

8. The questions which fall for determination in these writ petitions to my mind are as follows:

(a) Does the Representation of the People Act, 1951 authorise indiscriminate requisitioning of vehicles?

(b) Did the respondents act arbitrarily in issuing the orders under challenge?

(c) Is an interference called for?

9. Before I answer the issues formulated above it would be appropriate to notice the relevant provisions contained in the Act, the rules framed thereunder and the orders issued by the Ministry of Law and Justice.

10. The relevant portion of Section 160 of the Act insofar as the same is material for our purpose provides as follows:

**"Section 160. Requisitioning of premises, vehicles, etc., for election purposes.**(1) If it appears to the State Government that in connection with an election held within the State-

(a) ...

(b) any vehicle, vessel or animal is needed or is likely to be needed for the purpose of transport of ballot boxes to or from any polling station, or transport of members of the police force for maintaining order during the conduct of such election, or transport of any officer or other person for performance of any duties in connection with such election,

that Government may be order in writing requisition such premises, or such vehicle, vessel or animal, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the State Government to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.



**Section 161. Payment of compensation. - (1)....**

(2) Whenever, in pursuance of Section 160, the State Government requisitions any vehicle, vessel or animal, there shall be paid to the owner thereof compensation the amount of which shall be determined by the State Government on the basis of the fares or rates prevailing in the locality for the hire of such vehicle, vessel or animal.

**11. Rule 98 of Conduct of Election Rules, 1961 provides for:**

**"98. Manner of serving the order of requisition of premises, vehicles, etc.** An order or requisition under Section 160 shall be served

(a) where the person to whom such order is addressed is a corporation or firm, in the manner provided for the service of summons in Rule 2 Order 29 or Rule 3 Order 30, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908); and

(b) where the person to whom such order is addressed is an individual

(i) personally by delivering or tendering the order, or

(ii) by registered post, or

(iii) if the person cannot be found, by leaving an authentic copy of the order with any adult member of his family or by affixing such copy of some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

12. An office memo No. Ministry of Law and Justice (Legislative Department), (Budget and Accounts Unit) O.M. No. G.27031(6)/87-B & A, dated 17th December, 1987 contains the following directions:

"In terms of Section 161 of the Representation of the People Act, 1951, whenever a vehicle is requisitioned, the owner of the vehicle shall be paid compensation by the State Government, determined on the basis of the fares or rates prevailing in the locality for the hire of such a vehicle."

13. The aforesaid survey of law, the rules and order go to show that compensation shall be paid on the basis of rates prevailing in the locality for the hire of such a vehicle. What is compensation? In *R.C. Cooper v. Union of India reported in 1970 (1) SCC 748*, Their Lordships of the Apex Court observed:

"In its dictionary meaning "Compensation" means anything given to make things equal in value; anything as an equivalent, to make amends for loss or damage". When the compensation offered is determined on the basis of the prevailing rate of hire it can safely be inferred that the object really is to hire a vehicle or vehicles for election purposes. For what after all is meant by the expression "hire"? In Bouvier's Law Dictionary "hire" has been interpreted to mean "as a bailment in which compensation is to be given for the use of a thing."



14. Having thus ascertained the law on subject I shall now try to deal with the issues formulated above.

15. Does the Representation of the People Act, 1951 authorise indiscriminate requisitioning of vehicles?

16. It has already been noticed that the object is to hire vehicles for election purposes. Under the Motor Vehicles Act there is provision for a private service vehicle defined under Section 2(33) of the Motor Vehicles Act, 1988. There is provision for public service vehicle defined under Section 2(35) of the aforesaid Act and there is provision for transport vehicle defined under Section 2(47) of the aforesaid Act. It would be convenient to set out Sections 2(33), 2(35) and 2(47) which are as follows:

"2(33). "Private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;"

2(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a taxicab, a motorcab, contract carriage, and stage carriage;

2(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

17. The expression "taxicab" has been defined in Section 2(22), the expression "motorcab" has been defined in Section 2(25), the expression "omnibus" has been defined Section 2(29), the expression "motor car" has been defined in Section 2(26) of the Motor Vehicles Act, 1988. A taxicab and a motorcab are included within the definition of a contract carriage under Section 2(7) of the aforesaid Act. They are also included within the definition of a "public service vehicle" under Section 2(35) which in its turn is included within the definition of "transport vehicle" under Section 2(47). An omnibus or a motor car meant for personal use of the owner cannot come within the purview of a 'private service vehicle' for that class of vehicles are those which are meant for private commercial use. A motor car or an omnibus meant for the personal use of the owner is thus outside the purview of 'private service vehicle'.

18. Section 66 of the aforesaid Act imposes complete ban upon use of a vehicle as a transport vehicle in public place except in accordance with the conditions of a permit granted for that purpose. This section insofar as the same is material for our purpose reads as follows:

**"Necessity of permits.-** (1) No owner of a motor vehicle shall use or permit the use of the vehicles as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in



that place in the manner in which the vehicle is being used.

19. There is however an exemption for a transport vehicle under Section 66(3)(f) and (n) of the aforesaid Act for public purposes or such other purpose as the Central or State Government may, by order, specify. But the exemption will apply only to a transport vehicle. A motor car or an omnibus meant for personal use does not come within the purview of a private service vehicle, and therefore is outside the purview of a 'transport vehicle'.

20. Section 74 of the Motor Vehicles Act provides for grant of contract carriage permit subject to rules. Sub-section (2) of Section 74 provides the terms and conditions of such permit. The term which is material for our purpose is as follows:

"XII. that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers shall not be refused.

21. It would thus appear that a motor car or an omnibus meant for personal use of the owner cannot legally be used for hire or reward. The ban under Section 66 is complete. Any violation thereof shall expose the owner to punishment under Section 192.

22. Section 160 of the Representation of the People Act, 1951, therefore, in order to give a harmonious construction, has to be held to have authorised requisition of only a 'public service vehicle' or at any rate a 'transport vehicle' for otherwise it would mean requisition for an illegal use. I already have held that neither a motor car nor an omnibus meant for personal use of the owner is covered within the definition of a 'public or private service vehicle' or a 'transport vehicle'.

23. There is still another way of looking at the matter.

24. Anyone contemplating to hire a car would naturally look for a contract carriage or a cab owned by a transport operator. No one in his senses would think of gaining access to a motor car or omnibus meant for personal use of the owner nor would he insists upon using the same for no better reason than that he is prepared to pay the hiring charges. This is precisely what the respondents have or have been seeking to do. Such an act is irrational and arbitrary and is patently opposed to Article 14 of the Constitution of India. The issue is answered accordingly.

25. Did the respondents act arbitrarily in issuing the orders under challenge?

The orders under challenge in these writ petitions have been issued without any application of mind. They are in printed forms with signature in facsimile of District Magistrate-cum-District Election Officer with blank spaces to filled up by the police personnel for the purpose of requisitioning cars. In some cases even the blank portions have not been filled up or have partly been filled up. The redundant portions have not been struck out in any or the orders under challenge.

26. There has also been abuse of the discretionary power vested by Section 160 of the Act. Rationality, reasonableness and objectivity are implied conditions for exercise of



the power vested in the executive. If any authority is needed reference can be made to the case of ***Bangalore Medical Trust v. B.S. Muddappa and Ors., 1991 (4) SCC 54***. Their Lordships stated the law as follows:

"Discretion is an effective tool in administration. But wrong notions about it results in illconceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use unfairly.

27. When Section 161 of the Act provides for compensation based on prevailing rate of hire, why should the authorities have chosen to requisition private cars instead of a contract carriage unless the object was to harass the citizens in the name of election.

28. I have noticed above that in each case the cars were requisitioned on the road taking advantage of the authority which a police personnel wields. Cars were stopped. The drivers and/or the person driving the car was forced to part with his driving licence in all cases. In some cases the registration certificate and in some cases the tax token was taken possession of and the order of requisition was made over whereas Section 160 Sub-section (2) of the Act specifically provides "such order shall be served in the prescribed manner on the person to whom it is addressed". The Executive obviously if not take recourse to the manner laid down in Rule 98 (supra) for service of an order under Section 160 of the Act. Only a highwayman can be expected to conduct himself in this fashion. This is not expected from the Executive of a Welfare State.

29. In the case of ***Captain Sube Singh and Ors. v. Lt. Governor of Delhi and Ors., 2004 (6) SCC 440***, Their Lordships referred to an earlier judgment and held as follows:

"In ***Anjum M.H. Ghaswala, 2002 (1) SCC 633***, a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner? then the said authority has to exercise it only in the manner provided in the statute itself.

30. Section 162 of the Act provides for power to obtain information. The object of the legislature appears to be that for the purpose of conducting election those in charge of it are expected to obtain correct information as to which vehicle is suited to their purpose and then to form an opinion under Section 160 of the Act and to issue and serve an order to the person owning public service vehicle or a transport vehicle in the manner provided. It was not the intention of legislature to cause any inconvenience far less any oppression to the citizens. The officials should have



conducted themselves in that spirit alone. It appears that no investigation as required under Section 162 was at all made. They indulged themselves into requisitioning of cars without ascertaining the law on the subject, without ascertaining which car was suitable for their purpose and without caring for the procedure laid down by the law. I also have great reservation about the legality of the signature, on the orders purporting to have been issued under Section 160 of the Act, in facsimile. The Act does not authorise this. I however express no final opinion on this question because that is not absolutely necessary.

31. For the reasons indicated I answer the issue in the affirmative.

32. Is an interference called for?

33. Having regard to the view I have taken an interference is indeed called for.

34. For the reasons aforesaid the requisitions issued to the petitioners under Section 160 of the Representation of the People Act, 1951 are quashed. There shall, however, be no order as to costs.

35. Let xerox plain copy of this order, duly countersigned by the Assistant Registrar (Court), if applied for, be delivered to the learned Advocates, for the parties upon usual undertaking.

**Girish Chandra Gupta, J.**

Writ petitions allowed/Requisitions issued to petitioners quashed..