

GAHC010192042023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5050/2023

METROPOLITAN TRANSPORTS ASSOCIATION GUWAHATI
A REGD. ASSOCIATION,
HAVING ITS REGISTERED OFFICE AT BAMUNIMAIDAM,
GOVERNMENT PRESS ROAD,
GUWAHATI-21,
REP. BY ITS PRESIDENT,
PULAK GOSWAMI

VERSUS

TH STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
STATE TRANSPORT DEPARTMENT
DISPUR,
GUWAHATI-06

2:THE PRINCIPAL SECRETARY
TO THE GOVERNMENT OF ASSAM
HOME DISPUR GUWAHATI-06

3:THE DEPUTY COMMISSIONER/ DISTRICT MAGISTRATE
KAMRUP (M)GUWAHATI-01 ASSAM

4:THE COMMISSIONER OF POLICE
GUWAHATI CITY
GUWAHATI-08
ASSA

Advocate for the Petitioner : MR. T K MISRA

Advocate for the Respondent : SC, TRANSPORT

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 19.02.2024

Heard Mr. T. K. Misra, learned counsel for the petitioner and Ms. M. D. Borah, learned Standing Counsel, Transport Department for the respondent No. 1. Also heard Mr. G. Bokalia, learned Government Advocate, Assam for the respondent Nos. 2 to 4.

2. The petitioner herein is an Association registered under the Societies Registration Act, 1860. The petitioner Association has claimed that its members are owners of city buses, which are run under the aegis of the petitioner Association in Guwahati city and its adjacent places. It is stated that from time to time, the respondent authorities, for the purpose of maintaining law and order situation, had requisitioned city buses belonging to the members of the petitioner Association purportedly exercising the power under Section 3 of the Assam Requisitions and Control of Vehicles Act, 1968 [‘the Act’, for short]. According to the petitioner Association, while requisitioning the city buses exercising the power under Section 3 of the Act, the procedure laid down therein were not followed by the respondent authorities. It is contended that an order in writing is sine qua non for requisitioning any vehicle. In the event the State respondents decide to requisition any vehicle without the consent of the owner in view of alleged non traceability of the owner, then such requisition has to be made by publishing the order in the Official Gazette. The petitioner Association has further contended that substantial amounts towards compensation/hiring charges, for requisitioning the city buses belonging to the members of the petitioner Association at earlier points of time, have not yet

been disbursed to them and the same are outstanding as on date.

3. The petitioner's counsel submits that he is not pressing the other prayer for payment of hiring charges, as the same issue will be taken up in subsequent writ petitions. He only prays for a direction to be issued to the respondents to strictly adhere to the provisions of Sections 3 and 4 of the Assam Requisitions and Control of Vehicles Act, 1968 (in short, 'the 1968 Act'), while requisitioning vehicles by the State respondents. The petitioner's counsel further submits that in cases where the requisition of vehicles have already been affected by the State respondents and no written order has been issued to them, in terms of Sections 3 & 4 of the 1968 Act, the respondents may be directed to issue the requisition orders in terms of the said Act.

4. Counsels for the respondents submit that they have got no objection to the prayer made by the petitioner's counsel. However, they submit that the requisition orders to be made by the State respondents would have to be done on a case to case basis and as such, the members of the petitioner's association may make separate claims in respect of the same, before the concerned authorities. On the other hand, Ms. M. D. Borah, learned Standing Counsel, Transport Department has submitted that the Transport Department is not involved in requisitioning vehicles. The Transport Department has issued notifications, from time to time, fixing only the rates of hiring vehicles under Section 4 of the Act.

5. The matter of requisitioning the vehicles are governed by the provisions of the Assam Requisition and Control of Vehicles Act, 1968 ['the Act', for short]. As the provision of Section 3 and Section 4 of the Act are of relevance, the same are quoted herein below :

3. Power to requisition vehicles. –

[1] If in the opinion of the State Government it is necessary or expedient so to do for purpose essential to the life of the community or for maintaining public order or for facility of public transport, it may pass an order in writing requisitioning any vehicle and may make such orders as may appear to it to be necessary or expedient in connection with such requisition.

[2] The State Government may requisition any vehicle by serving on the owner thereof, of where the owner is not readily traceable or the ownership is in dispute, by publication in the official Gazette, an order under sub- section [1].

[3] If the owner of the vehicle does not, after service of the order in the manner provided in sub-section [2], place the vehicle in the possession of the officer or authority mentioned therein, such officer or authority may seize the vehicle from any person who may for the time being be in possession thereof.

[4] Where the State Government has requisitioned any vehicle it may use or deal with in such manner as may appear to it to be expedient.

4. Payment of compensation. – *[1] Whenever in pursuance of section 3, the State Government requisition any vehicle, there shall be paid to the owner such compensation as may be determined by the State Government.*

[2] While determining the compensation under sub-section [1], the State Government shall take into consideration -

[a] The model, make, type, class and condition of the vehicle;

[b] The loss of earning, if any, sustained by the owner by reason of requisition; and fix the compensation at such rate as the State Government may deem fair.

[3] The compensation fixed under sub-section [2] shall be paid by the officer or authority requisitioning the vehicle; such officer or authority shall not be bound to pay any dues outstanding on mortgages and other encumbrances of the requisitioned vehicle.

6. I have heard the learned counsels for the parties.
7. On considering the prayer of the petitioner's counsel and keeping in view the no objection made by the counsels for the respondents, with regard to the first prayer of the petitioner, the State respondents are directed to adhere to the provisions of Sections 3 & 4 of the Assam Requisitions and Control of Vehicles Act, 1968, while requisitioning vehicles under the said Act.
8. In respect of the second prayer made by the petitioner's counsel, for a direction to be issued to the State respondents to issue necessary requisition orders in terms of Sections 3 & 4 of the 1968 Act, for vehicles which have been requisitioned earlier, this Court is of the view that the members of the petitioner's association should submit individual representations to the concerned authorities, who shall thereafter verify the same and issue necessary order/s.
9. Accordingly, this writ petition is disposed of.

JUDGE