
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.5711 of 2015
Date of decision: 04.07.2018**

Cr. Hardev Raj Sandhu

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Naresh Kaushik, Advocate,
for the petitioner.

Mr. Rajesh Bhardwaj, Senior DAG, Punjab.

Rakesh Kumar Jain, J.

The petitioner has prayed for the issuance of a writ in the nature of *mandamus* seeking a direction to award him compensation of ₹5 lacs on account of impounding of his vehicle, which has caused monetary loss to him besides mental agony and other sufferings and also for the issuance of a direction to hold an enquiry in order to fix the liability of the officials who have committed inordinate delay in releasing the vehicle of the petitioner.

In brief, the petitioner is the owner of a white Tata Safari vehicle bearing registration No.HR41-D-7811. During the Lok Sabha elections of 2014, on account of the Code of Conduct imposed by the Election Commission of India, the Video Surveillance Team of Boha Assembly area, consisting of Naresh Mahajan, XEN, Irrigation Department, Harbans Lal, Pawan Kumar and Suraj Kant (In-charge Flying Squad), intercepted the vehicle of the petitioner near Police Station Taragarh, District Pathankot. At that time, the vehicle was

being driven by the Driver Vijay Kumar and it had a flag of Indian National Congress mounted on its bonnet without any permission and during search, a box having 10 bottles of Blender Pride (Whisky) was also recovered. On the recovery of whisky, information was sent by the Video Surveillance Team to the Excise and Taxation Officer, Pathankot, who reached at the spot and imposed a fine of ₹1 lac for allegedly keeping whisky without license. The vehicle was impounded and handed over to ASI Hardeep Singh, who was allegedly on duty with his team at that time, who had further parked the vehicle at the Police Station and recorded DDR No.19 dated 27.04.2014 at Police Station Taragarh in this regard. On 28.04.2014, Driver of the vehicle appeared in the office of Assistant Excise and Taxation Commissioner, Pathankot and deposited the penalty of ₹1 lac in terms of Section 81 of the Punjab Excise Act, 1914. Since the vehicle was not released, the petitioner made a representation to the Chief Electoral Officer, Punjab for the illegal retention of his vehicle, on which an enquiry was conducted by the Electoral Registration Officer (ERO), Boha Assembly Constituency, who drew the following conclusion:-

- “A) In accordance with CEO, Punjab letter No. Elec-2014/R-7366 dated 21.08.2014, any articles/cash seized during elections where no FIR has been lodged are required to be released immediately. Therefore, in this case, since no FIR has been lodged, the vehicle should be released with immediate effect.
- B) Further, it is evident from both the reports (i.e. Report of Video Surveillance Team and Report of Excise and Taxation Officers dated 27.04.2014) that SHO Police Station Taragarh was to take necessary action as per law. Whereas neither any action has been taken by the SHO nor any communication has been sent by the police authorities to the ADC(D)-cum-ERO of Boha Assembly Constituency or District Election Officer, Pathankot. And the vehicle is

standing in the Police Station for over 5 months without any legal action on the part of the Police. It is evident that SHO Police Station, Targarh has failed miserably in the discharge of his lawful duty. Therefore, suitable action in accordance with law should be taken against him by the competent authority.”

Ultimately, the vehicle was released after an order was passed by the Deputy Commissioner-cum-District Electoral Officer, Pathankot on 27.09.2014 in compliance of the letter No.Elect-2014/R-7366 dated 21.08.2014 issued from the office of Chief Electoral Officer, Punjab.

The petitioner, thereafter, sent a legal notice on 05.01.2015 to the respondents for the purpose of taking legal action for illegal retention of his vehicle and also for award of compensation. Since there was no response from the respondents, therefore, the present petition is preferred.

Although various replies have been filed by the respondents but at one point of time, this Court, vide its order dated 01.04.2016, had asked the State of Punjab to file specific affidavit to the effect that if during elections, a person puts a flag of a particular political party on a vehicle and carried liquor etc. alleged to be meant for distribution to the voters, whether the said vehicle can be impounded. In this regard, an affidavit dated 23.09.2017 of Harmandeep Singh Hans, IPS, Assistant Superintendent of Police (Rural), District Pathankot, is filed in which he has averred that *“as per the checklist for District Election Officer under Model Code of Conduct, General Elections 2014, Clause 16.8 (ii), (iii) and (iv) & ECI letter No. 437/6/2006-PLN-III dated 23.11.2007, if during elections, a person puts a flag of a particular political party on a vehicle and carries liquor etc. to be meant for distribution to the voters, the vehicle can be impounded. The said check list is already*

attached as Annexure R-4 with the reply if respondents dated 06.08.2016.”

In the said affidavit, it is further averred that the vehicle in question was not impounded by the police rather it was impounded by the Election Surveillance Team and could not have been released without the order of the Deputy Commissioner-cum-District Electoral Officer, Punjab, which was received on 27.09.2014 and, thereafter, the vehicle was immediately released.

The respondents have also appended an inquiry report regarding retention of the vehicle in question, prepared by the Deputy Chief Electoral Officer, Punjab and District Election Officer, Pathankot, in which the following conclusions were drawn:-

“It is correct that the vehicle Tata Safari bearing registration No. HR-41D-7811 has been impounded in Taragarh Police Station on 27.04.2014 and released by the police authority on 28.09.2014 on the basis of the report of ARO-002-Bhoa (SC)-cum-ADC(D) Pathankot dated 26.09.2014 and as per direction of the Deputy Commissioner-cum-District Election Officer Pathankot vide letter No.Elec-2014/8515 dated 27.09.2014. The Excise and Taxation Department has already completed required action on 27.04.2014. It is submitted that the O/o the Deputy Commissioner, Pathankot had sent representation of the owner of the vehicle to the Senior Superintendent of Police Pathankot from time to time but the Senior Superintendent of Police Pathankot had filed these representation on the basis of the enquiry report as mention in para No. 13 above. The instructions of Election Commission of India to release cash and article seized during Election, where no FIR has been lodged was issued by Chief Electoral Officer Punjab vide letter No. Elec-2014/R-7366 dated 21.08.2014 which is also addressed to Additional Director General of Police Election Cell Punjab Police Headquarter Sector 9, Chandigarh and all the District Election Offices-cum-Deputy Commissioners in the State of Punjab, and same was circulated to all the ARO's District

Pathankot. In the meantime, a legal notice dated 16.09.2014 was received in the District Election Office, Pathankot from Shri Hardev Raj Sandhu through Shri Kartar Singh Advocate on 22.09.2014. In response to the enquiry report of ARO-002-Bhoa (SC)-Cum-ADC(D) Pathankot dated 26.09.2014 release order of the said vehicle was issued to Senior Superintendent Of Police Pathankot on 27.09.2014 by the District Election Office, Pathankot. Keeping in view the instructions dated 21.08.2014 of O/o Chief Electoral officer, Punjab letter No. Elec-2014/R-7366 dated 21.08.2014 the vehicle in dispute could be released by detaining authority.”

Interestingly, there is a reference of various representations made by the petitioner to the SSP, Pathankot from time to time but the said representations were filed, which fact is mentioned in para no.13 of the enquiry report dated 22.06.2015, attached as Annexure R/4 with the reply filed on behalf of respondents no.2 to 3. Para no.13 of the said inquiry report is also reproduced as under for the ready reference:-

“13. As per the record of the Public Grievance Branch of Deputy Commissioner office, the representations dated 24.06.2014 and 22.07.2014 of Er. Hardev Raj Sandhu House No. 278 Gali No. 6, New Kalgidhar Gurdwara Dashmesh Nagar, Moga addressed to the Chief Election Commissioner India, New Delhi with a copy to Deputy Commissioner Pathankot were received in the office on 03.07.2014 and 07.08.2014 respectively. Thereafter, the representation received on 03.07.2014 was sent to the Senior Superintendent of Police Pathankot by the Deputy Commissioner Pathankot Office letter No. HB;H 3/1/857 dated 17.07.2014 and second representation dated 07.08.2014 was also sent to the Senior Superintendent of Police Pathankot by the Deputy Commissioner Pathankot Office letter; HBH; 3/1/1065 dated 28.04.2014 for enquiry and report in response to Deputy Commissioner Pathankot letter dated 17.07.2014 the Senior Superintendent of Police Pathankot had intimated vide letter No. 609-PC dated 08.09.2014 that the complaint was got enquiry into through the DSP (Rural)

Pathankot. He had reported that there is no truth in the allegation alleged to be leveled by Shri Hardev Raj Sandhu in his complaint that vehicle HR-41D-7811 Tata Safari had been used by the Police of the Police Station, Taragarh. The vehicle of the complainant Shri Hardev Raj Sandhu is parking in Taragarh Police Station in same condition. The vehicle was not used for official or Non-official work and the complaint may be filed. In response of Deputy Commissioner Pathankot Office letter No. dated 28.08.2014 the Senior Superintendent of Police Pathankot had intimated vide letter No. 652-PC dated 18.09.2014 that representation received from your office have been filed on the basis of the enquiry report available in this office.”

Learned counsel for the petitioner has submitted that though the Department of Election Commission and the Police are trying to shift their liability upon each other but the fact remains that the vehicle of the petitioner was intercepted by the Video Surveillance Team headed by the XEN, Department of Irrigation on 27.04.2014 and a fine of ₹1 lac was imposed upon him by the Excise and Taxation Department for keeping 10 bottles of whisky without permit. The vehicle was impounded for carrying the flag of a political party without any sanction but as per the instructions of the Chief Electoral Officer, Punjab, any articles/cash seized during elections where no FIR has been lodged was required to be released immediately.

In the present case, admittedly, there is no FIR lodged for the alleged misconduct on the part of the owner of the vehicle in question who had put the flag of a political party on the bonnet of the vehicle and the offence of carrying 10 bottles of whisky was compounded by depositing ₹1 lac in the office of the Excise and Taxation Officer, Punjab, therefore, the petitioner was entitled to have his vehicle immediately released which remained parked or used by the police of Police Station Taragarh for continuously five months,

depriving the petitioner of its use and forcing him to make repeated representations which did not bear any fruit. This has caused not only monetary loss to the petitioner but it is also a matter of mental agony and worry much-less helplessness for which he deserves to be suitably compensated.

In this type of cases where the respondents have though kept the vehicle of the petitioner for five months and are denying to have used it but as they had the possession of the vehicle and could have easily maneuvered the mileage/reading of the meter before returning the vehicle to the petitioner, I am of the considered opinion that the petitioner deserves the amount of compensation, claimed by him in this petition.

In view of the aforesaid facts and circumstances, the present petition is hereby allowed and respondent no.3 is directed to pay compensation of ₹5 lacs to the petitioner within a period of one month from the date of receipt of certified copy of this order.

July 04, 2018
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No