

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 558 of 2018**

1. State of Chhattisgarh through the Collector, Surguja, Ambikapur, District Surguja (CG)
2. Collector (Food Cell), Surguja, Ambikapur, District Surguja (CG)

---- Appellant-defendants**Versus**

Ramakant Gupta S/o Jeetan Prasad Gupta, aged about 55 years, R/o Namnakala, Ambikapur, P.S. and Tahsil Ambikapur, district Surguja (CG)

----Respondent-plaintiff

For Appellants	:-	Mr. Lalit Jangde, Dy. Govt. Advocate.
For Respondent	:-	Mr. Ajay Kumar Pandey, Advocate

Hon'ble Shri Justice P. Sam Koshy**Hon'ble Smt. Justice Rajani Dubey****Judgement On Board****(08. 11. 2021)****Per P. Sam Koshy, Judge**

1. Present is a defendants' first appeal under section 96 of CPC. The challenge is to the judgment and decree dated 03.10.2017 passed in Civil Suit No. 14-B/2015 by the 5th Additional District Judge, Ambikapur, Sarguja. Vide the impugned judgment and decree the Court below has allowed the suit for recovery instituted by the respondent-plaintiff and ordered the appellants to pay damages to the respondent-plaintiff and ordered the appellants to pay damages to the respondent-plaintiff to the tune of rupees ten lakhs with interest @ 6% per annum from the date of judgment till the date of payment.
2. Brief facts for adjudication of the present appeal are that the

respondent-plaintiff is a businessman engaged in transport business. He has been operating buses on different routes in the name and style of Vijay Travels. He, apart from other vehicles, also had a bus bearing Registration No. CG 15 ZA 0174. The said bus was being plied on the route Ambikapur to Ramanujnagar. On 11.09.2008 when the said bus was plying on the aforesaid route, it was intercepted by the Police authorities as well as the Tahsildar at Sargava forest barrier. It was alleged that the driver of the said vehicle was found in possession of certain bottles of blue kerosene which is otherwise sold through PDS. It was further alleged by the officials who had stopped the passenger bus that the driver of the vehicle namely Ramlal had accepted the fact that the bus was being operated by mixing kerosene with diesel. State authorities thereafter initiated proceedings under the provisions of the Essential Commodities Act, 1955 and the Kerosene (Restriction On Use And Fixation Of Ceiling Price) Order, 1993 (in short "the Order of 1993") and the vehicle was seized by them.

3. That in spite of the request being made by respondent-plaintiff the vehicle could not be released and finally at the instance of the Sessions Court, Ambikapur in Criminal Appeal No. 28/2014 decided on 16.09.2014 the vehicle was ultimately ordered to be released to the respondent-plaintiff and the vehicle was thereafter released to the plaintiff on 28.02.2015 on Supurdnama.
4. Thereafter the respondent-plaintiff instituted a suit seeking for recovery of damages to the tune of rupees 10 lakhs with interest for the period the respondent-plaintiff was deprived of the use of the said vehicle.
5. The Court below, after framing issues and recording evidences,

decided the suit vide impugned judgment and decree dated 03.10.2017, in favour of the plaintiff awarding damages to the tune of rupees ten lakhs. The Court below had reached to the conclusion that because of the illegal seizure of the vehicle by the appellants the plaintiff was deprived of using of the bus between 11.09.2008 to 28.02.2015 i.e. for a period of around 77 months. The Court below made an assessment of the loss incurred to the respondent-plaintiff to be Rs.500/- a day which makes it Rs.15,000/- a month and for 77 months, the loss incurred by the respondent-plaintiff comes to around rupees 11.5 lakhs. Since the plaintiff himself had claimed damages only up till ten lakhs and had paid court fees for that, the relief granted to the respondent-plaintiff was of Rs.10,00,000/- with interest @ 6% per annum from the date of judgment till the actual payment is made.

6. Learned State counsel assailing the impugned judgment and decree submitted that the Court below has failed to appreciate the facts of the case properly and has mechanically awarded damages to the respondent-plaintiff. According to the appellants' counsel, it is a case where admittedly in the course of inspection of the vehicle certain quantity of blue kerosene was found which is otherwise sold only through PDS which could not have come in possession of the respondent-plaintiff or with the driver in the course of plying of the bus. The further contention of the state counsel is that it cannot be said to be an illegal seizure of the vehicle when from the pleadings itself it is evident that the respondent-plaintiff had been issued with a notice under the provisions of the Essential Commodities Act as also under the Order of 1993. That the proceedings under the said Act and the Order are judicial proceedings and therefore the respondent-plaintiff could not have claimed damages for the seizure of his vehicle for the

alleged offence under the aforementioned Act and the Order. According to the state counsel, this fact has not been properly appreciated by the Court below while deciding the suit. Learned state counsel also canvassed the aspect that there was no material produced by the respondent-plaintiff before the Court below for the initiation of prosecution of the respondent-plaintiff under the Essential Commodities Act and the Control Order of 1993 to be in any manner illegal, arbitrary or with malafides. Neither was there any order produced by the respondent-plaintiff holding the proceedings under the Essential Commodities Act and the Control Order of 1993 being quashed/set aside or being held to be vitiated under the laws governing the field. In the absence of any such order, the suit should not have been firstly entertained and secondly could not have been decided in favour of the respondent-plaintiff. State counsel lastly contended that even otherwise the calculation made by the Court below in awarding damages for a period of 77 months is also erroneous and warrants interference. According to the State counsel, nothing prevented the respondent-plaintiff in getting the vehicle released on Supurdnama when there was already an order by the District Collector in this regard as early as on 14.05.2010. If the respondent-plaintiff himself has not availed the order of the district Collector dated 14.05.2010, the awarding of damages for all subsequent period is totally uncalled for and the impugned judgment to that extent is bad in law. Thus, counsel for the State-appellants prayed for setting aside of the impugned judgment and decree and for allowing the present first appeal.

7. Learned counsel appearing for the respondent-plaintiff opposing the appeal submits that undoubtedly the respondent-plaintiff was deprived

of the use of the said vehicle for commercial purposes for a period between 11.09.2008 to 28.02.2015. It was the further contention of the respondent that for the entire aforementioned period the vehicle was seized and was in custody of the appellants. It was also contended that the entire proceedings drawn under the essential commodities Act and the Order of 1993 was totally baseless reasons and therefore the impugned judgment does not warrant interference as the Court below has rightly awarded the damages for the entire period during which the vehicle could not be operated by the respondent-plaintiff commercially. It was the further contention of respondent-plaintiff that for the intervening period however the respondent-plaintiff had to pay all the requisite taxes and insurance for the vehicle without being able to firstly earn anything from the bus or at least use the bus. Thus, according to the respondent-plaintiff, in addition to the fact that the plaintiff could not earn any money from the said vehicle for the intervening period, he was additionally burdened by the payment of taxes and keeping the vehicle under insurance coverage etc and therefore, the award for damages for the period the vehicle was out of use and under illegal seizure was justified and does not warrant interference.

8. Having heard the contentions put forth on either side and on perusal of the record, some of the undisputed rather admitted factual position as it stands from the pleadings available on record is that the respondent-plaintiff being a bus operator by profession had a vehicle bearing registration No. CG 15 ZA 0174. The vehicle was being operated from Ambikapur to Ramanujnagar route. On 11.09.2008 the vehicle was seized in the course of inspection wherein it was alleged to have been operated by adding blue kerosene with diesel. In

addition, certain quantity of blue kerosene was also found in the custody of the driver of said vehicle and the driver is said to have been accepted of adding kerosene with diesel for the purpose of operating the vehicle. Admittedly, there was a proceeding drawn against the respondent-plaintiff under the provisions of the Essential Commodities Act as also under the Control Order of 1993.

9. The fact which needs to be appreciated at this juncture is that the vehicle was seized by the State authorities on 11.09.2008. The respondent-plaintiff moved an application for releasing the said vehicle on Supurdnama and the matter was placed before the Collector who initially vide order dated 14.05.2010 ordered that subject to the respondent-plaintiff furnishing a demand draft/bond of Rs.50,000/-, the vehicle can be released to the respondent-plaintiff with conditions mentioned in the said order.
10. The respondent thereafter did not take any step either to comply with the order dated 14.05.2010 or to challenge the said order immediately before the higher authorities. After about 4 years time, the respondent-plaintiff for the first time approached the same Collector in a public meeting (Jan Darshan) held on 07.01.2014 and made a request for diluting the order dated 14.05.2010 which would enable him to get the vehicle released on Supurdnama. It is thereafter that the Collector again revised his earlier order dated 14.05.2010 on 23.05.2014 reducing the requirement of depositing the demand draft of Rs.50,000/- to Rs.25,000/-, rest of the conditions remained the same.
11. This order of the district Collector dated 23.05.2014 received by the plaintiff on 20.06.2014 was subjected to challenge in an appeal

before the Sessions Court under Section 6 of the Essential Commodities Act, 1955. The appellate Court allowed the appeal vide its order dated 16.09.2014 and ordered for releasing the vehicle unconditionally.

12. Another aspect which needs further consideration at this juncture is that though the Sessions Court allowed the appeal on 16.09.2014 whereby the respondent-plaintiff could have immediately got his vehicle released but for reasons best known, the respondent-plaintiff obtained possession of the vehicle only on 28.02.2015.

13. In the aforegiven admitted factual matrix of the case, now what needs to be considered is, "Would the respondent-plaintiff be entitled for damages for the period beyond 14.05.2010 when his application for releasing the vehicle on Supurdnama was allowed by the district Collector?" From 14.05.2010 to 07.01.2014, there is no explanation, justification or any cogent material on record to show that the respondent-plaintiff had either complied with the order dated 14.05.2010 and tried to obtain the possession of the vehicle or had challenged the same before the appellate Court by way of an appeal. Thus, it appears that the respondent-plaintiff in fact was neither aggrieved of the order of the Collector at the first instance nor was he too keen to get the possession of the vehicle. If under the said circumstances the vehicle was under the custody of the state authorities, it was the respondent-plaintiff alone who was to be blamed. Similarly, after the appeal was decided by the Sessions Court, Ambikapur on 16.09.2014, the respondent-plaintiff again took almost 6 months time for getting his vehicle released and for this intervening period there is no explanation or justification provided by

the respondent-plaintiff. Thus, for this 6 months period also, the State cannot be held responsible for the respondent-plaintiff not obtaining the possession of the said vehicle.

14. For all the aforesaid reasons we are of the considered opinion that awarding of damages by the Court below for the period beyond 14.05.2010 is apparently bad in law and without any basis and the same deserves to be interfered with. It is ordered accordingly.

15. However, now what needs to be considered is that would the respondent-plaintiff be entitled for the damages between 11.09.2008 to 14.05.2010 for a period of roughly 20 months.

16. From the pleadings available on record, nothing has been produced by the State authorities to show that the seizure made by them or the initiation of confiscation proceedings by them was bonafide and also in accordance with the provisions of the Essential Commodities Act and the Order of 1993 governing the field. There is no evidence even to show that either the fuel of the said vehicle being subjected to quality test ascertaining whether there is kerosene mixed by the respondent-plaintiff or his driver nor is there any material to ascertain whether the material seized in the course of inspection was in fact blue kerosene meant to be distributed through PDS. To that extent the act on the part of the State in seizing the vehicle and initiating the confiscation proceedings seems to be arbitrary and therefore, the respondent-plaintiff would be entitled for damages only for the period between 11.09.2008 to 14.05.2010.

17. The quantification of loss calculated by the Court below seems to be proper, legal and justified. Therefore, as per the calculation made by the Court below, taking the average loss being Rs.500/- a

day it comes to Rs.15,000/- a month. Thus, the damages payable to the respondent-plaintiff for 20 months i.e. from 11.09.2008 to 14.05.2010 would come to Rs.3,00,000/- (15,000X20=3,00,000/-).

18. The appeal accordingly stands partly allowed. The impugned judgment and decree stands set aside/quashed to the aforesaid extent and it is ordered that the respondent-plaintiff would be entitled for the damages for an amount of Rs.3,00,000/- for the period between 11.09.2008 to 14.05.2010. The respondent-plaintiff would also be entitled for interest on the said amount from the date of judgment of the Court below dated 03.10.2017 till the actual payment is made.

19. A decree be drawn up accordingly.

Sd/-

**(P. Sam Koshy)
JUDGE**

Sd/-

**(Rajani Dubey)
JUDGE**