

in the application form that she had given Rs. 1,50,000/- as the Bond amount and on the other hand, the petitioner is herself asking for extension of time to pay the Bond amount, *vide* her communications dated 3-7-2012 and 24-7-2012, in addition to the communication dated 27-5-2014 by the father of the petitioner. The submission of the learned Advocate for the petitioner, upon instructions, that the officers of the respondent-College asked the petitioner to fill up the form in the manner as has been done, is unconvincing.

28. Be that as it may, the cumulative effect of the above discussion is that the submissions advanced on behalf of the petitioner have failed to persuade the Court regarding the veracity or merit of the case put up by the petitioner. The demand of the respondent authorities for the payment of the Bond penalty is perfectly justified and legitimate.

29. In view of the above discussion and for the reasons stated hereinabove, the petition fails and is rejected.

30. Rule is discharged. There shall be no orders as to costs.

(HSS)

Petition rejected.

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SPECIAL CRIMINAL APPLICATION

Before the Hon'ble Mr. Justice R. D. Kothari

RAHULKUMAR SRIVASTAVA, MANAGING DIRECTOR OF THE
KAIRA DISTRICT CO-OP. MILK PRODUCERS' SOCIETY v.
ASHOKKUMAR MANSUKHLAL PARMAR, DY. MAMLATDAR
(ELECTION) & ANR.*

(A) Constitution of India, 1950 — Art. 226 — Gujarat Panchayats Act, 1993 (18 of 1993) — Secs. 44 & 50 — Motor Vehicles Act, 1988 (59 of 1988) — Sec. 2(47) — Requisitioning of vehicle for election purposes — Held, authorities can requisition only 'transport vehicle' and not other type of vehicle — Considering that vehicle of Chairman of Amul Dairy not a transport vehicle, non-compliance of requisition by Collector does not attract penal provisions of Sec. 50 — Complaint quashed.

(એ) ભારતનું બંધારણ, ૧૯૫૦ — આર્ટિ. ૨૨૬ — ગુજરાત પંચાયત અધિનિયમ, ૧૯૯૩ — કલમ ૪૪ અને ૫૦ — મોટર વાહન અધિનિયમ, ૧૯૮૮ — કલમ ૨(૪૭) — ચૂંટણીના હેતુ માટે વાહનની માંગણી — ઠરાવવામાં આવ્યું કે, સત્તાધિકારીઓ “હેરફેર માટેના વાહન”ની માંગણી કરી શકે અને અન્ય પ્રકારના વાહનની નહિ — અમૂલ ડેરીના ચેરમેનનું વાહન હેરફેર માટેનું વાહન નથી તે બાબત ધ્યાનમાં લેતાં, કલેક્ટરની માંગણીનું પાલન ન થયું હોય તેનાથી કલમ ૫૦ની જોગવાઈઓ લાગુ પડે નહિ — ફરિયાદ રદ કરવામાં આવી.

For requisition not limited to actual owner/actual possessor of vehicle but it could be issued to deemed owner/deemed possessor also. (*See* Para 5)

*Decided on 31-7-2015. Special Criminal Application (Quashing) No. 2407 of 2010.

Referring to provisions of Sec. 44 of Gujarat Panchayats Act, 1993 the Court observed as under :

Bare reading of this provision would show that the Legislature has taken care to place check and control, while conferring power on the authorities to requisition vehicle etc. The authorities can requisition the vehicle etc., only “...for the performance of any duty in connection with election...” Further, the authority is not supposed to exercise power under this provision for all and every kind of vehicle. The nature of vehicle is specified. Powers are conferred to requisition transport vehicle. The transport vehicle is defined in Sec. 2(47) of the Motor Vehicles Act, 1988. It says : “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle”. The vehicle in question in the present case would not fall within meaning of “transport vehicle” - even if one goes by dictionary meaning and not rely on meaning stated in Motor Vehicles Act. (Para 10.1)

From the material record, it can certainly be said that exercise of power is improper and it was uncalled for. (Para 11)

The vehicle for which the order of requisition passed by the authority is apparently quite mismatch with the vehicle for which powers to requisition are conferred upon the authority. (Para 12)

(B) Criminal Procedure Code, 1973 (2 of 1974) — Secs. 154 & 155 — Gujarat Panchayats Act, 1993 (18 of 1993) — Secs. 44 & 50 — Registering non-cognizable complaint in a crime register meant for cognizable offences/I-CR., held, highly improper — The Court drawing attention of Home Ministry to correct defect/practice.

(બી) ક્રિમિનલ પ્રોસીજર કોડ, ૧૯૭૩ — કલમ ૧૫૪ અને ૧૫૫ — ગુજરાત પંચાયત અધિનિયમ, ૧૯૯૩ — કલમ ૪૪ અને ૫૦ — ઠરાવવામાં આવ્યું કે, બિન નોંધપાત્ર ફરિયાદ નોંધપાત્ર આઈ.સી.આર. નોંધવા માટેના ગુના રજિસ્ટ્રમાં નોંધવી તે અયોગ્ય છે — અદાલતે ગૃહ મંત્રાલયનું ક્ષતિ/પ્રથા સુધારવા ધ્યાન દોર્યું.

Registering a complaint as II-C.R., by using the form of I-C.R., is highly improper. In any case, there must be separate form and/or register for registering non-cognizable offence. In a given case, use of form *i.e.* registering it as cognizable offence may give room to the Police to abuse or misuse the power. Going by general reputation of Police, it is highly unlikely that the Police armed with complaint which is registered in dubious manner would not abuse their powers. The Court does not agree with the submission that it is only irregularity and it is formal defect. The defect that has clear potential to disguise non-cognizable offence as cognizable offence cannot be dismissed as formal defect. Issue needs immediate attention of higher authority in Home Ministry if this position prevails through out the State. (Par 5.1)

Registering the complaint under Sec. 154 of Code of Criminal Procedure for the offence for which complaint under Sec. 155 of Cr.P.C., is to be recorded is also highly improper. (Para 12)

Cases Relied on :

- (1) *Anirban Ghosh v. Dist. Election Officer*, 2006 (4) CHN 207
- (2) *Pratap Singh v. State of Punjab*, AIR 1964 SC 72

Cases Referred to :

- (1) *Express Newspapers Pvt. Ltd. v. Union of India*, AIR 1986 SC 872
K. S. Nanavati, Sr. Advocate for Nanavati Associates, for the Appellant.
Rule Served for Respondent No. 1.
H. L. Jani, A.P.P., for Respondent No. 2.

KOTHARI, J. The case is some what interesting – although the facts are not unique or unusual. In later part of 2010, General elections of Taluka Panchayats in the District of Anand was scheduled. The Collector, Anand had sent a letter to the petitioner for requisitioning his vehicle for election purpose. The petitioner herein is the Managing Director of Amul Dairy. The Collector had passed an order on 11-10-2012 for requisitioning the vehicle of the Chairman, Amul Dairy, Anand. The said order was forwarded to the present petitioner. The order directs the petitioner to produce the vehicle with driver on the same day *i.e.* on 11-10-2010 at 5-00 p.m. It also states that if the vehicle is not in working condition, the same shall be produced after getting it repaired. The petitioner replied to the Collector on the same day expressing inability to submit the vehicle as the vehicle is provided to the Chairman for attending the office. On 14-10-2010, the Collector had addressed a letter wherein the petitioner's attention was drawn to consequence of non-compliance of requisition namely - it would attract Sec. 50 of the Gujarat Panchayats Act (hereinafter referred to as "the Act"). It was also pointed out that Sec. 50 of the Act provides for one year imprisonment and/or fine. The said letter also directs the petitioner to submit the vehicle forthwith. The vehicle was not supplied despite the reminder. Non-compliance of the requisition made has led the Deputy Mamlatdar to file the present complaint. The complaint was registered as II-C.R. No. 3323 of 2010 at Anand Station Chowky Police Station. The petitioner prays to quash the said complaint.

2. Heard the learned Advocates for the respective parties.

3. Learned Senior Advocate Shri K. S. Nanavati for the petitioner after briefly referring to the facts of the case has mainly raised three points :

- (1) The authority cannot requisition the vehicle of a person who is neither the owner nor in possession of the vehicle. Therefore, requisition made herein is not legal, as petitioner neither owns nor possess the vehicle.
- (2) Offence under Sec. 50 of the Act is non-cognizable offence, therefore, filing of complaint under Sec. 154 of the Code of Criminal Procedure is not legal and proper. The complaint is to be filed under

Sec. 155 of the Code of Criminal Procedure. That the police can proceed only after obtaining the order from the Magistrate since it is complaint for commission of non-cognizable offence.

- (3) That the exercise of discretion by the Collector is unreasonable and improper. Therefore, alleged non-compliance of requisition does not attract Sec. 50 of the Act.

4. Opposing this submission, learned A.P.P. Mr. Jani has submitted that the submissions of the learned Advocate for the petitioner gives an impression that in non-cognizable offence, the Police cannot register the complaint. Drawing attention to Sec. 155(1) of the Code of Criminal Procedure, it was pointed out that it very much provides for recording information of commission of non-cognizable offence. After recording such information, the police would take steps to obtain the order of Magistrate. In the present case, immediately on lodging of the complaint, the petitioner has approached this Court and thereafter has obtained interim relief, because of which the Police could not proceed to obtain the order from the Magistrate. It was also pointed out that the complaint is registered as II-C.R., and therefore, also, it cannot be said that the complaint is registered as if it is cognizable offence. It was submitted that the plea raised by the petitioner in this regard is only exaggeration. It was also submitted that other pleas raised also does not call for interference of this Court.

4.1. I may consider the rival submissions.

5. Section 44 of the Act deals with “Requisitioning of premises, vehicles etc., for the election purpose. Sub-section (2) of Sec. 44 of the Act says that the person who is deemed to be owner or in possession of the property, shall be served with requisition. The submission of the petitioner in this regard is based on the fact that the petitioner is Managing Director and the vehicle in question is in possession of the Chairman, and therefore, the petitioner is not in possession of the said vehicle. As to the ownership of this vehicle, relying on R.C. Book, it was submitted that the vehicle is registered in the name of Kaira District Co-operative Milk Producers’ Society. Thus, the petitioner is neither the owner nor in possession of the vehicle, and therefore, initiation of proceedings is bad. This submission in the circumstances of the case is too broad submission to accept. It may be borne in mind that exercise of power under Sec. 44 of the Act by the authority to requisition the premises, vehicle etc., is not limited to actual owner or to the person who is in actual possession. It may happen that the authority may not be aware about the actual ownership of the vehicle or actual ownership may be in dispute – the dispute may be sham or genuine. Similarly, by accident or otherwise the vehicle may be at the relevant time possessed by some other person or third party. The authority may issue requisition – who is – deemed to

be owner or to even one who is deemed to be in possession. Such deeming provisions confers fairly wide power on the authority to secure the vehicle etc. Such technical plea, without more, by itself cannot frustrate the powers conferred upon the authority.

5.1. As to the defect in registering the complaint, learned A.P.P. Shri Jani has rightly submitted that the Police are not precluded from registering the information received by it about non-cognizable offence. This cannot be disputed. But the submission that before the Police can obtain orders from the Chief Judicial Magistrate Court, the petitioner in the present case has approached this Court and the proceedings are stayed, and therefore, there is non-compliance of Sec. 155(1) of Code of Criminal Procedure is difficult to accept. The complaint is lodged on 28-10-2010. Then the present petition appears to have been filed on 30-11-2010. Interim relief was granted by this Court by order dated 9-2-2011. That being so, it cannot be said that because of the interim relief granted by this Court, the police could not proceed in this regard. As to the defect or irregularity in lodging the complaint, bare perusal of the compliant filed herein (Annexure-"I") would show that the compliant is filed in printed form. The form clearly shows that it is meant for registering the complaint under Sec. 154 of Code of Criminal Procedure *i.e.* for registering cognizable offence. In fact, the form says so. It may be stated that at the time of hearing, learned A.P.P. Shri Jani on instructions from the responsible Police Official from the concerned Police Station present in the Court has submitted that the said Police Station has no other form or register – to register the information of the non-cognizable offence. In other words, for all and every kind of the information and complaint, this common form/register is used. Such specific reply is more than surprising. The submission of learned A.P.P. Shri Jani that the offence is registered as II-C.R., as distinct from offence registered as I-C.R., for cases of cognizable offences, and therefore, no serious irregularity is to say the least is not way of complying statutory requirement. Registering a complaint as II-C.R., by using the form of I-C.R., is highly improper. In any case, there must be separate form and/or register for registering non-cognizable offence. In a given case, use of form *i.e.* registering it as cognizable offence may give room to the Police to abuse or misuse the power. Going by general reputation of Police, it is highly unlikely that the Police armed with complaint which is registered in dubious manner would not abuse their powers. I do not agree with the submission that it is only irregularity and it is formal defect. The defect that has clear potential to disguise non-cognizable offence as cognizable offence cannot be dismissed as formal defect. Issue needs immediate attention of higher authority in Home Ministry if this position prevails through out the State. It may also be noted that, registering complaint in the registered kept for

registration of non-cognizable offence would also be in the interest of department as it would work as a check on exercise of powers of Police. Registering of complaint in the present case, is highly irregular and not proper. The submission of learned A.P.P. Shri Jani, in this regard is difficult to accept.

6. Now, the last submission namely exercise of power by the Collector is bad and unreasonable.

6.1. In oft quoted case of *Express Newspapers Pvt. Ltd. v. Union of India*, AIR 1986 SC 872, it was held :

“118. Fraud on power voids the order if it is not exercised *bona fide* for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account *bona fide*, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order *ultra vires*. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh v. State of Punjab*, 1964 (4) SCR 733 : AIR 1964 SC 733. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an ‘alien’ purpose other than the one for which the power is conferred is *mala fide* use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown*, 1904 AC 515, ‘that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used *bona fide* for the purpose for which they are conferred. It was said by Warrington, C. J. in *Short v. Poole Corporation*, 1926 (1) Ch. 66 that :

“No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.” (Para 18).

6.1.1. The Court therein had referred other English cases and had observed that all these cases were cited with approval in *Pratap Singh’s case* (supra).

7. The following principles emerges from the above :

- (1) Exercise of power by the authority may be in good faith or in bad faith.
- (2) If powers are not exercised with *bona fide*, it comes very close to fraud on power.

- (3) What is fraud on power? If powers are exercised by taking into account the extraneous matters or by ignoring the relevant matters or such exercise of powers are in breach of law, then in all these instances exercise of power may be with good intention – such exercise is fraud on power
- (4) One of the modes to measure nature of exercise of power is to consider the intention of authority. Intention may be very good, but its exercise may be in breach of law. It is also fraud on power.
- (5) Exercise of powers for improper motive *i.e.* to satisfy private or personal grudge or for showing vengeance, then it is fraud on power.
- (6) If the authority that has power is motivated by personal animosity *qua* those who are directly affected by such exercise, then such exercise of power can be considered as exercised for improper motive.
- (7) Use of power for foreign purpose *i.e.* the use of power for the purpose other than the one for which the powers are conferred, such exercise of power would be *mala fide* use of power.

8. In the case of *Express Newspapers* (supra), the petitioner had challenged the validity of notice issued by Central Government. It was “.....notice of re-entry upon forfeiture of lease granted by the Central Government.....” Pursuant to the notice, the petitioner were also threatened for demolition of Express buildings situated at Bahadur Shah Zafar Marg, New Delhi. One of the main contention of the petitioner was, notice issued is *mala fide*. The Court had allowed the petition and the notice issued by the authority was quashed and set aside.

9. *Pratap Singh v. State of Punjab*, AIR 1964 SC 72, which was relied on in *Express Newspapers case* (supra), the Apex Court has observed, “.....if the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court. In such an event, the fact that the authority concerned denies the charge of *mala fides* or asserts the absence of oblique motives or of its having taken into consideration, improper or irrelevant matter does not preclude the Court from enquiring into the truth of the allegations made against the authority and affording appropriate reliefs to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out.....”.

(Emphasis supplied)

10. In the present case, purported exercise of power is under Sec. 44 of the Gujarat Panchayats Act, 1961. It reads as thus :

“Sec. 44. *Requisitioning of premises, vehicles etc., for election purposes :-*

- (1) If it appears to an official authorized by the State Government in this behalf (for conduct of elections under this Act) (hereinafter referred to as “the requisitioning authority”) that in connection with an election under this Act,-

(a) any premises are needed or are likely to be needed for being used as polling station or for the storage of ballot boxes after a poll has been taken, or

(b) any vehicle, vessel or animal is needed or likely to be needed for the purpose 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.

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

Provided that no vehicle, vessel or animal which is being lawfully used by a candidate or his agent for any purpose connected with the election of such candidate shall be requisitioned under this sub-section, until, the completion of the poll at such election.

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

(3) Wherever any property is requisitioned under sub-sec. (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

(4) In this section -

- (a) “*premises*” means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;
- (b) “*vehicle*” means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise.”

10.1. Bare reading of this provision would show that the Legislature has taken care to place check and control, while conferring power on the authorities to requisition vehicle etc. The authorities can requisitioned the vehicle etc., only “...*for the performance of any duty in connection with election...*” Further, the authority is not supposed to exercise power under this provision for all and every kind of vehicle. The nature of vehicle is specified. Powers are conferred to requisition transport vehicle. The transport vehicle is defined in *Sec. 2(47) of the Motor Vehicles Act, 1988*. It says : “*transport vehicle*” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle”. The vehicle in question in the present case would not fall within meaning of “*transport vehicle*” - even if one goes by dictionary meaning and not rely on meaning stated in *Motor Vehicles Act*.

10.2. In this regard, the learned Advocate for the petitioner has rightly drawn attention to the case of *Anirban Ghosh v. Dist. Election Officer*, reported in 2006 (4) CHN 207. In the identical situation, the question arose in that case under *Representation of People Act, 1951. Section 160 of the Representation of People Act*, authorized the authority to requisitioned the vehicle. One of the questions in that case was – *Does the Representation of the People Act, 1951 authorise indiscriminate requisitioning of vehicles?* In the course of discussion, observing that the matter can be looked at in another way it has observed :

“24. Anyone contemplating to hire a car would naturally look for 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 Art. 14 of the Constitution of India. The issue is answered accordingly.”

11. The petitioner herein has sought draft amendment and the same was allowed. Therein, the petitioner has prayed to quash the notice issued in this case also on the ground that it is - “*suffering from colourable exercise of power, suffering from legal mala fide...*” No reply to this by the State Government. The material in the present case is insufficient record of finding about the *mala fide* and whether there is colourable exercise of power or not. Even then, from the material record, it can certainly be said that exercise of power is improper and it was uncalled for. It can also be said that if this point would have been agitated by the parties by filing detailed affidavits, what appears in the circumstances of the case is it would have been difficult for the State Government to defend the allegations of oblique motive and *mala fide*.

12. The petition is allowed. The vehicle for which the order of requisition passed by the authority is apparently quite mismatch with the vehicle for which powers to requisition are conferred upon the authority. Further, registering the complaint under Sec. 154 of Code of Criminal Procedure for the offence for which complaint under Sec. 155 of Cr.P.C. is to be recorded is also highly improper and submission in this regard of the learned Senior Counsel Shri K. S. Nanavati is to be accepted. The notice issued by the authority dated 11-10-2010 and the order passed on 14-10-2010 and registering of criminal complaint pursuant to that *i.e.* II-C.R. No. 3323 of 2010 before Anand Police Station are hereby quashed and set aside. Rule is made absolute to the above extent.

(NRP)

Petition allowed.

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