

(2002) 12 GAU CK 0007

Gauhati High Court (Itanagar Bench)

Case No: Criminal Revision No. 26 (AP) of 2001

Satyendra Singh Chauhan

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision: Dec. 11, 2002

Acts Referred:

- Representation of the People Act, 1951 - Section 160, 167

Citation: (2003) 1 GLR 374 : (2005) GLT 790 Supp

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: C. Barua, for the Appellant; B.L. Singh, Sr. G.A., for the Respondent

Judgement

Iqbal Ahmed Ansari, J.

This revision is directed against the order, dated 8.7.1996, passed by Sri B. Basar, learned Judicial Magistrate, first class, Roing, in Case No. ELN/4/96 u/s 167 of the Representation of Peoples Act, 1951, arising out of contravention of the order dated 11.4.1996 (Annexure "A" to the revision petition) passed by the Addl. Deputy Commissioner, Dibang Valley district, Roing, u/s 160 of the said Act.

2. The facts giving rise to the present revision petition may, in brief, be stated as follows : By order, dated 11.4.1996 (Annexure A to the revision petition) made u/s 160 of the said Act; the Addl. Deputy Commissioner, Dibang Valley district, Roing, as District Election Officer, passed an order requisitioning the residential quarter No. ENGG/IV/241 belonging to Public Works Department, Roing, stating therein to the effect that the said quarter, which was lying vacant, had been requisitioned for utilization thereof for election purposes by the Extra Assistant Commissioner (J). This requisition order was addressed to the Executive Engineer, Public Works Department, Roing. The Executive Engineer, PWD, Roing, acting upon this requisition order, passed an order on the same day, i.e., on 11.4.1996, canceling allotment of the said quarter and directing the petitioner to hand over the same to

the Addl. Deputy Commissioner and District Election Officer, Roing, on 12.4.1996 (A/N). The petitioner did not hand over the quarter to the authority concerned and approached the High Court under Article 226 of the Constitution of India, whereupon this Court passed an order, on 15.5.1996, in Civil Rule No. 2242, issuing rule and suspending the operation of the order, dated 11.4.1996, aforementioned. Upon being reported by the Executive Engineer, PWD, Roing, that the petitioner had refused to accept the said requisition order, the Addl. Deputy Commissioner, Roing, sent the said report to the Court of the Judicial Magistrate, 1st Class, Roing, for registering a case and for taking action in accordance with law. Acting upon this order, Case No. ELN/4/96 aforementioned was registered. In course of time upon appearance of the petitioner as accused in the said case, learned Court below passed the impugned order, dated 8.7.1996, aforementioned explaining to the petitioner particulars of offence u/s 167 of the said Act for contravention of provision of Section 160 thereof. The petitioner pleaded not guilty thereto and the case was fixed for evidence on 5.8.1996. It is this order, which stands impugned in this revision.

3. By the present application made u/s 482 Cr.PC, the petitioner has approached this Court with a prayer to set aside and quash the impugned order, his case being, briefly stated, thus : The quarter, in question, was not vacant; rather, the same was already in his occupation and he was, suddenly, not in a position to vacate the same. This order was passed on a wrong presumption that the quarter was lying vacant. The petitioner was never served with the requisition order, dated 11.4.1996, aforementioned. In view of the fact that the petitioner had already challenged the validity and legality of the said requisition order in the Civil Rule No. 2242/96 aforementioned, the criminal proceeding launched against him was without jurisdiction. The order of requisition, dated 11.4.1996, aforementioned is patently beyond the scope of the provisions of Section 167 of the said Act and non-compliance thereof, even if true, could not have legally led to initiation of criminal proceedings against the petitioner u/s 167 of the said Act and, hence, not only the initiation, but even the continuation of the proceedings is in abuse of the process of the Court. There was no willful contravention by the petitioner of any valid order made u/s 167 of the said Act.

4. Resisting the prayer for setting aside and quashing the impugned order and the criminal proceeding, the State respondents have filed their affidavit-in-opposition stating to the effect, inter alia, that the said order of requisition was within the ambit of Section 160, that the quarter, in question, was vacant and the same was occupied hurriedly by the petitioner after coming to know of the requisition order, the refusal by the petitioner to vacate the said quarter was in contravention of a legally made order u/s 160 and the same having been willfully contravened by the petitioner, the petitioner was liable for prosecution u/s 167 and, hence, the launching of the criminal proceeding against the petitioner as well as the impugned order are in accordance with the law contained in that behalf and may not be interfered with in

revision.

5. I have carefully perused the materials on record including the impugned order. I have heard Mr. C. Baruah, learned Sr. Counsel for the petitioner, and Mr. B. L. Singh, learned Sr. Govt. Advocate, appearing on behalf of the respondents.

6. It has been submitted by Mr. Baruah that the said order of requisition was not addressed to the petitioner and, hence, the said order was not binding on the petitioner. It is also submitted by Mr. Baruah that the said requisition order was passed on the assumption that the said quarter was vacant, whereas the same was in the occupation of the petitioner and that on receiving the said requisition order, the order of allotment of the said quarter already made by the Executive Engineer (Civil), Roing, was cancelled, on 11.4.1996, by the latter without realizing that the petitioner could not have, suddenly, vacated the said quarter, which was highly arbitrary and illegal.

7. It is contended by Mr. Baruah that an order u/s 160 can be made in respect of any premises either for the purpose of using the same as a polling station or for storage of ballot boxes after the poll has been held, but the said requisition order was made for utilization of the said quarter by the Extra Assistant Commissioner for the purpose of election, which was beyond the scope of Section 160. Thus, the impugned order was, submits Mr. Baruah, beyond jurisdiction of the authority concerned.

8. It is also contended by Mr. Baruah that since Civil Rule No. 2242/ 96 aforementioned was pending, wherein legality and validity of the said requisition was already under challenge, a criminal proceeding ought not to have been started and/or continued without determination of the question of validity of the said requisition order in the said Civil Rule.

9. It is pointed out by Mr. Baruah that an order u/s 160 can be passed by the Government, but the said requisition order was passed by the Addl. Deputy Commissioner, Roing, who had no authority to pass any such order. Viewed from this angle too, contends Mr. Baruah, the impugned order is without jurisdiction and had no valid foundation.

10. Controverting the above submissions made on behalf of the petitioner, learned Sr. Govt. Advocate has submitted that though the State respondents have not been able to produce any notification and/or authority, the Addl. Deputy Commissioner, Roing, as an Election Officer for Dibang Valley district, was the competent authority to pass the said requisition order u/s 160 of the said Act. It is also submitted by Mr. Singh that the petitioner had received the said requisition order along with the order of cancellation of allotment of the said quarter, but the petitioner deliberately refused to carry out the directions contained in both the orders and he cannot, now, plead innocence.

11. It is contended by Mr. Singh that said requisition order was made for the utilization of the said quarter by the Extra Assistant Commissioner (Judicial) for the purpose of election and such an order included utilization of the said quarter for the purpose of polling station or for the purpose of storing the ballot boxes and, thus, the order was, submits Mr. Singh, within the ambit of Section 160, but the same was willfully contravened by the petitioner and, hence, the petitioner is liable for punishment u/s 167 of the said Act.

12. It is also contended by Mr. Singh that as far as Civil Rule No. 2242/96 aforementioned is concerned, the same has already been disposed of by order, dated 28.5.1998, without determination of the question whether the criminal proceeding was validly launched against the petitioner and, hence, the pendency of the said Civil Rule could not have been a ground for non-initiation of a proceeding against the petitioner, when the petitioner had willfully contravened the said requisition order.

13. Before proceeding any further, it is pertinent to note that by order dated 28.5.1998, the said Civil Rule has been disposed of on the ground that since the election is over, the said Civil Rule has become infructuous. Hence, the mere fact that a Civil Rule was instituted by the petitioner could not have been really a ground for non-initiation and/or continuation of the said criminal proceeding.

14. Be that as it may, upon perusal of the materials on record and upon hearing learned counsel for the parties, what appears to be admitted case of both the parties is that the said requisition order, dated 11.4.1996, was passed purportedly in exercise of powers u/s 160 and in pursuance of the said requisition order, the allotment of the said quarter made in favour of the petitioner was cancelled by the Executive Engineer, PW Department, Roing Division aforementioned, on 11.4.1996, itself. There is also no dispute before me that this order of cancellation was served on the petitioner but the petitioner refused to vacate the said quarter.

15. Though it has been contended by the petitioner that he was not served with the requisition order as is required under Rule 98 of the Conduct of Election Rules, 1961, the fact remains that the said order of cancellation of allotment of the quarter clearly mentioned, I find, that the said cancellation order had been made in pursuance of the requisition order aforementioned. Thus, though the requisition order was not served on the petitioner as hereinabove mentioned, it is clear from a bare reading of the order passed, on 11.4.1996, by the Executive Engineer, Roing Division, that the petitioner was informed that the said quarter stood requisitioned by the District Election Officer, Roing.

16. Strictly speaking, therefore, the mere fact that the petitioner was not served with the said requisition order is not very material. This apart, since it is a disputed question of fact as to whether the said quarter was vacant or stood occupied by the petitioner, this Court, sitting as a Revisional Court, will not embark upon the

determination of the question as to whether the quarter, in question, was really vacant at the relevant time, more so, when a bare reading of Section 160 shows that it is not material for the purpose of making requisition order u/s 160 as to whether the premises requisitioned is occupied or not. Viewed from this angle, whether the said quarter had or had not been occupied by the petitioner before the order of requisition had been passed is not material at all.

17. Turning to the question raised by Mr. Baruah that the Addl. Deputy Commissioner, Roing, In his capacity as a District Election Officer, could not have passed the order u/s 160 inasmuch as the said order can be passed only by the State Government, suffice it to mention here that except for making a bald assertion that the Addl. Deputy Commissioner in his capacity as a District Election Officer was competent to pass such an order, the respondents have not cited any authority to show that the Addl. Deputy Commissioner could have validly passed such an order.

18. Coupled with the above, it is of utmost importance to note that the relevant portions of Section 160 read as follows :

"(1) If it appears to the State Government that in connection with an election, held within the State

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

(b) . . .

that Government may by order in writing requisition such premises and make such further orders as may appear to it to be necessary to expedient in connection with the requisitioning:

(2) . . .

(3). . .

(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." (Emphasis is supplied by me).

19. From a bare reading of the above provisions of Section 160, it becomes abundantly clear, as rightly contended by Mr. Baruah, that the said premises can be requisitioned either for the purpose of being used for polling station or for the purpose of storage of ballot boxes. Since by Section 160(a), premises even if occupied for residential or commercial purposes can be requisitioned, Section 160(1)(a) has to be construed very strictly. When so construed, it becomes clear that Section 160 empowers the competent authority to requisition the premises in connection with an election for no purposes other than purpose of using such

premises either as polling station or for storage of ballot boxes.

20. In the case at hand, a bare reading of the said requisition order shows that the said quarter was requisitioned for "the purpose of utilization of Election purpose by Extra Assistant Commissioner (Judicial)". This shows that said quarter was requisitioned for election purpose.

21. In contexts of the said requisition order, it is clear that the said quarter could have been used not only for the purpose of polling station or for the purpose of storage of ballot boxes but also for other ancillary purposes of the election. Thus, the said requisition was not confined to the two purposes for which Section 160 exists. Hence, the impugned order was *ex-facie* beyond the ambit of Section 160 and contravention of such an order, even if willful, could not have validly given rise to penalty u/s 167. Looked at from this angle, violation of the said requisition order could not have legally made foundation for initiating a criminal proceeding u/s 167.

22. In the above view of the matter, it is transparent that not only the initiation of the criminal proceeding, but also the continuation thereof including the impugned order, dated 11.4.1996, aforementioned is without jurisdiction and void and that any further continuation of the criminal proceeding, in question, will, if permitted, be abuse of the process of the Court.

23. In the result and for the reasons discussed above, this revision-succeeds and the impugned order, dated 11.4.1996, is hereby set aside and quashed.

24. Send a copy of this judgment and order along with relevant case record to the learned Court below.

25. With the above observations and directions, this revision petition shall stand disposed of.

26. No order as to costs.