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**(2015) 03 JH CK 0085**

**In the Jharkhand High Court**

**Case No :** Writ Petition (C) Nos. 3782 of 2013, 2395 of 2012 and 3788 of 2013

Bharat Coking Coal Limited

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 11-03-2015

**Acts Referred:**

Companies Act, 1956 — Section 617

Motor Vehicles Act, 1988 — Section 113, 113(4), 114, 114

**Citation :** (2015) 2 AJR 588 : (2015) 2 JLJR 343

**Hon'ble Judges :** S. Chandrashekhar, J

**Bench :** Single Bench

**Advocate :** Indrajit Sinha, Suchitra Pandey and Amitabh Prasad, for the Appellant; Ajit Kumar, A.A.G., Atanu Banerjee, G.A. and Saket Upadhyay, J.C. to A.A.G, Advocates for the Respondent

**Final Decision :** Allowed

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## **Judgement**

S. Chandrashekhar, J.—Aggrieved by a demand raised by the District Transport Officer, Dhanbad in terms of Section 194 read with Section 199 of the Motor Vehicles Act, 1988, the present writ petitions have been filed. In all the cases, a common question of law is involved and therefore, all three writ petitions have been heard together and are disposed of by this common order. The facts in W.P. (C) No. 3782 of 2013 have been noticed in detail for deciding the issue involved in the cases.

W.P. (C) No. 3782 of 2013

2. Briefly stated, the facts of the case are that, the petitioner-company is a Government company registered under section 617 of the Companies Act. It sales coal to various consumers through e-auction and the successful bidders are provided the delivery orders. The successful bidders in their turn arrange vehicles for transporting the coal purchased by them. The empty trucks are initially weighed at weigh-bridge of the petitioner-company and after the trucks are loaded with coal it is again weighed at the weigh-bridge to ascertain the quantity

of coal dispatched. It is stated that the dispatched quantity of coal is assessed as per RLW weight on the basis of R.C. Book, Tax Token etc. provided by the truck drivers. A letter was issued by the Deputy Commissioner, Dhanbad requiring the petitioner-company to provide details of vehicles engaged in transportation of coal. Subsequently, the demand notices directing the petitioner-company to pay fine for violation of Section 113 and Section 114 of the Motor Vehicles Act were raised. Aggrieved, the petitioner has filed three writ petitions against three different demand notices issued to it. The details of the demand raised are as under:

3. A counter-affidavit has been filed by the District Transport Officer, Dhanbad on behalf of the respondent Nos. 1 and 2 stating that the petitioner being a company is liable to be prosecuted under Section 199 of the Motor Vehicles Act, 1988 for the offence committed by it or its agent or a person in charge or responsible for the conduct of business of the company. The weigh-bridge used for weighment of the coal for internal transportation belongs to the petitioner-company and thus, the petitioner-company has caused or allowed a motor vehicle to be driven in contravention of Sections 113/114/115 of the Motor Vehicles Act, 1988 and thus, it is liable to be proceeded under the provisions of the Act. The petitioner-company has been using the vehicles allegedly belonging to private persons for internal transportation of the coal. The petitioner-company itself has provided details of the weigh-bridge and the dispatch of quantity. It is stated that the power of compounding under Section 200 of the Motor Vehicles Act is vested with the District Transport Officer.

4. Heard the learned counsel for the parties and perused the documents on record.

5. Mr. Indrajit Sinha, the learned counsel for the petitioner submits that the impugned demand contained in letter dated 21.05.2013, 30.09.2010 and 05.06.2013 is liable to be quashed on the ground that there is no determination of the liability under Section 194 of the Motor Vehicles Act, 1988. The impugned demand notice merely states that on comparison of RLW weight with the computed details, it has been found that vehicles were overloaded with coal. In any event, the provision under Section 200 of the Motor Vehicles Act can be resorted to only when the alleged overloader agrees for compounding of the offence and not otherwise. Since, in the present case the petitioner-company has denied its liability, the District Transport Officer, Dhanbad cannot force the petitioner to compound the offence by paying penalty. The learned counsel for the petitioner relies on the decision of the Hon''ble Supreme Court in P. Ratnakar Rao and others Vs. Government of Andhra Pradesh and others,, (1996) 2 ACC 512 : (1996) 5 AD 626 : AIR 1996 SC 2523 : (1996) 6 JT 624 : (1996) 5 SCALE 386 : (1996) 5 SCC 359 : (1996) 2 SCR 866 Supp and Parmajit Bhasin and Others Vs. Union of India (UOI) and Others, AIR 2006 SC 440 : (2005) 10 JT 238 : (2005) 9 SCALE 238 : (2005) 12 SCC 642 : (2006) 1 UJ 27 : (2005) AIRSCW 6097 : (2005) 7 Supreme 518 .

6. As against the above, Mr. Ajit Kumar, the learned Additional Advocate-General appearing for the respondent-State of Jharkhand refers to various communications with the petitioner-company and submits that on the basis of the details provided by the petitioner-company, amount of fine has been calculated and demand was issued for paying fine in terms of Section 194 read with Section 199 of the Motor Vehicles Act, 1988. It is further submitted that since the data pertaining to vehicle and loading of coal was supplied by the petitioner-company itself, in so far as, liability to pay fine for overloading of vehicle is concerned, it cannot be disputed.

7. Before referring to the contentions raised by the counsel for the parties, a brief look at the provisions of the Motor Vehicles Act, 1988 is necessary. Section 113 of the Motor Vehicles Act, 1988 provides that the State Government may prescribe the conditions for issue of permits for transport vehicles. It is further provided that no person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer, the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle or the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration. Section 114 provides that if the State Government has reason to believe that a goods vehicle or trailer is being used in contravention of Section 113, it may require the driver to convey the vehicle to a weighing device. Section 194 of the Motor Vehicles Act, 1988 reads as under,

194. Driving vehicle exceeding permissible weight. -- [(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 113 or section 114 or section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load].

(2) Any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorised in this behalf under section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees.

8. It also appears that under Section 113(4) of the Act where it is found that the person who has been driving the vehicle or was in-charge of a motor vehicle or the trailer, with the knowledge or under the orders of the owners of the motor vehicle or trailer, a presumption is raised as to commission of the offence. In *P. Ratnakar Rao and others Vs. Government of Andhra Pradesh and others*, (1996) 2 ACC 512 : (1996) 5 AD 626 : AIR 1996 SC 2523 : (1996) 6 JT 624 : (1996) 5 SCALE 386 : (1996) 5 SCC 359 : (1996) 2 SCR 866 Supp , the effect and impact of Section 194 and Section 200 have been elaborately considered by the Hon'ble Supreme Court. It has been held that Section 194 is a penal provision which provides penal sanction and conviction for violation of Sections 113 to 115 of the Motor Vehicles Act, 1988. It has been held that Section 194 gives guidelines to the State Government as to delegate under the Act to specify the amount for

compounding the offences enumerated under sub-section (1) of Section 200. It has been held by the Hon''ble Supreme Court that it is not mandatory that the authorised officer alone compound the offence rather, it is conditional upon the willingness of the accused to have the offence compounded. It has further been held that an offence may be compounded even before or after the institution of the prosecution case. The learned counsel for the petitioner has submitted that the petitioner-company has disputed its liability and therefore, by directing the petitioner-company to deposit fine, the District Transport Officer cannot compel the petitioner-company to compound the offence. Per contra, Mr. Ajit Kumar, the learned counsel for the respondent-State of Jharkhand submits that in so far as, the amount of demand contained in the impugned letters is concerned, it is open to the State Government to enforce the demand by launching prosecution against the petitioner-company.

9. From the materials brought on record, I find that the amount calculated by the respondent-State of Jharkhand is on the basis of the details/data provided by the petitioner-company and therefore, in so far as, the quantum of demand is concerned, I am not inclined to interfere in the matter however, it would remain open to the petitioner-company to challenge the quantum of demand by producing materials in support thereof. In so far as, the impugned direction to the petitioner-company for paying fine is concerned, I am of the opinion that the District Transport Officer cannot enforce the demand by forcing the petitioner-company to pay fine for compounding the offence. Consequently, this part of the order is hereby quashed. However, it is open to the State Government to resort to appropriate legal proceeding in terms of the Motor Vehicles Act, realizing fine for contravention of provisions of the Act. It is however, made clear that this Court has not examined the merits of the case in so far as, culpability of the petitioner-company for the alleged violation of the provisions of the Motor Vehicles Act, 1988, is concerned.

10. The writ petition is allowed, in the above terms.