(1969) 03 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 226 of 1966

Dalmia Cements (Bharat) Ltd. APPELLANT

Vs

Regional Transport Officer, Bellary RESPONDENT

Date of Decision : 28-03-1969

Acts Referred:

Motor Vehicles Act, 1939 — Section 2 (18), 22
Road and Rail Traffic Act, 1933 — Section 36

Citation : AIR 1970 Kar 49 : (1969) 2 MysLJ 587

Hon'ble Judges : T.K. Tukol, J;B. Venkataswami, J

Bench : Division Bench

Advocate : Rangavittalachar, for N.S. Narayana Rao, for the Appellant; K.S. Puttaswamy, for High Court Spl. Govt. Pleader, for the Respondent

Judgement

Venkataswami, J.—This Petition, under Article 226 of the Constitution, is directed against a communication made by the Regional Transport Officer, Bellary, on 29/31-1-1966, calling upon the petitioner to produce vehicles commercially known as ''Diesel Mogurt Dumpers -- DR SO Model'' for registration under the Motor vehicles Act, 1939, to be hereinafter referred to as the "Act". The communication has further cautioned the petitioner that it would be an offence to use the vehicles without proper registration under the Act.

2. The prayer of the petitioner is for the Issue of a writ in the nature of Certiorari quashing the said communication with a further direction to the R. T. O. (respondent) to forbear from insisting upon the registration of the Dumpers belonging to the petitioner, under the provisions of the Act, and from visiting the consequences of non-legist ration on the petitioner.

3. The few facts relevant for the disposal of this petition are as follows: The Petitioner-company is a holder of a lease in regard to 819 acres of land under the Mines Act and Regulations. The petitioner, during his mining operations, has been using 4 Dumpers which will be more fully described hereafter. According to him, the vehicles are used to carry loads of earth and ore from one place to another

within the mining area. It is stated that this operation is essential for carrying on its mining operations effectively and economically. On 2-6-1965 the Company appears to have addressed a letter to the Commissioner for Transport, Bangalore, making an enquiry in regard to the registration of these Dumpers. A reply was received by the petitioner on 26-6-1965 (Annexure A) to the effect that even though the vehicles were proposed to be used within the Mining Area, they were required to be registered under Chapter III of the Act. Further correspondence seems to have ensued culminating in the issue of an endorsement (Annexure C), whereunder the Company was called upon to produce the vehicles for registration with a note of caution that it would amount to an offence to use such vehicles without registration. Aggrieved by this communication, the petitioner has approached this Court for the issue of a Writ or direction as detailed earlier.

4. The petitioner has filed a reply affidavit producing a ''Brochure'' relating to Dumper DR 50, with which we are concerned in the present petition. It is also stated that the Mining Area was a well defined area and enclosed by trench measuring 4''x4''x 2'' all round. It may, however, at this stage be stated that this fact relating to the enclosing of the Area, has been denied in the counter affidavit produced by the respondent.

5. A few details regarding the dumper may conveniently be mentioned, with reference to some photographs which have been made available in addition to the ''Brochure'' referred to: The vehicle is a four-wheeled one. It has a 60 HP Diesel Engine. It has a robust frame-work and a front axle with full-floating axle Shafts, with wheels of large dimensions suitable for the performance of work under heaviest road conditions. It has a dual steering with six forward speeds and two reverse. It has also a hydraulic four wheeled brake and a device for easy and quick release of the tipping body, so as to ensure speedy work and good exploitation of the working time. The tipping today which is intended to carry loads is provided with a locking device, which if released would easily tilt It by its own weight. It is also capable of turning round the axis of its centre of gravity. After the contents are tin-loaded it regains its original position once again under the effect of its own weight. This tipping body is capable of carrying loads upto six tons at a time. It is further seen from the ''Brochure'' that the Dumper is a single purpose machine for it performs in the best possible way the transport of load on cross-country terrain and its discharge. The maximum speed of a Dumper under full load is stated to be 34 KM per hour.

6. Sri H. Bangavittalachar, the learned Counsel appearing on behalf of the petitioner, submits that by the mere fact that a motor vehicle of this nature is capable of moving on roads would not be a sufficient ground to attract the provisions relating to registration under the Act. According to him, almost every vehicle which is adapted for use for a special purpose will have to be transported to the site on which it is intended to be operated, only by road. Such a user would not bring it within the scope of the provisions of Section 22 of the Act. It is

further his contention that the purpose for which the vehicle is used is also a relevant circumstance, meaning that so long as it is not used like any other public carrier or goods vehicle, it would not be a motor vehicle within the meaning of die provisions of the Act, which require registration of such vehicles. He submits that the Mining Area is a well defined and demarcated area and as such it must bo deemed to be an enclosed area u/s 2 (18) of the Act. He, however, does not seriously dispute the stand taken on behalf of the respondent that it was not enclosed by a fence or trench.

The learned Counsel further argues that the vehicle is not at all adapted for use like other motor vehicles requiring registration under the Act, as for instance, a stage carriage, goods truck, cab or omnibus. The ''dumper is specially adapted for use only in mining operations or works which involve digging and transport of earth on a large scale. Such works are always done on well defined and demarcated areas which are not open to the public at large. It is, there-fore, his contention that such a vehicle falls clearly within the exemption contained in Section 2 (18) of the Act. In support of these submissions he relied on a decision reported in Daley v. Hargreaves 1961I All ER 552.

7. In order to appreciate the above contentions, it would be necessary to set out some of the relevant provisions of the Act. Section 22 of the Act, which refers to the requirement of registration of a motor vehicle, as defined under the Act, runs thus:

"No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle Is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed In the prescribed manner."

8. It is clear from the above provisions that a motor vehicle as defined under the Act, cannot be driven or caused to be used in any public place or any other place for any of the purposes indicated therein. It is also clear that the words "any other place" in that provision are intended to cover cases of user of a vehicle even in a private place.

9. Section 2 (7) defines ''goods'' which may be carried in a. motor vehicle designed for such purpose, as follows:

" ''Goods'' includes live-stock and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;" Section 2 (8) defines "goods vehicle" thus:

" "Goods vehicle'' means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;"

10. Section 2 (18) defines "motor vehicle", with which we are primarily concerned herein, thus:

" ''Motor vehicle'' means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises:'' " (underlining there-into " ") is ours).

11. It will be seen from the definition of a "motor vehicle" that an exemption is incorporated therein relating to vehicles of a special type adapted for use only in a factory or in any other enclosed premises." The word "only is not without significance. It confines the operation of the exemption to vehicles which are incapable of being used in any other manner and in any other place, as a goods vehicle, omnibus, stage carriage or cab (sic) such other vehicle as defined in the Act. In other words, a vehicle which is designed for use only in a factory or in any other enclosed premises is excluded from the definition of "motor vehicle".

12. In the instant case, it is clear from what has been stated earlier, the "dumper" in question can be used for carrying loads even outside the Mining Area or any other enclosed premises, like any other ''goods vehicle'' which is required to be registered under the Act. It may be that it is not as convenient or advantageous as any other public carrier or goods vehicle, which is commonly used for the transport of goods, when it is used for a similar purpose outside a factory or an enclosed premises. This circumstance in itself is not sufficient to bring the vehicle within the scope of the exemption mentioned in the definition of a "motor vehicle",

13. But Sri Rangavittalachar submits that the purpose for which it is used or the intention of the manufacturers as regards its use would be a material circumstance to be taken into account. In elaborating on this aspect he submits that its adaptability for use for a special purpose is a critical fact to be taken into account It is in this con- text that he refers to the decision mentioned earlier. . We are unable to accede to this argument. Firstly, the decision in question is easy on a specific statutory provision in force in the United Kingdom, particularly the provision of Sections 1, 3 (1) of the Road Traffic Act, 1930 and Section 36 of the Road and Rail Traffic Act, 1933. It is clear from the provisions which have been extracted in the said decision that the intention as manifested by the use of the words "mechanically propelled vehicle intended or adapted for use on roads" is an element to be taken into consideration. The position is not the same with the provisions of the Act with which we are concerned, particularly the exemption referred to in the definition of "motor vehicle" in Section 2 (18) of the Act.

Secondly, it is also clear from the said decision that their Lordships have made ample reservations indicating that the decision ought not to be treated as a precedent. This is clear from the following passages in the opinions expressed by their Lordships. Salmon, J., observes at page 556 thus:

"The view that I have reached is based strictly on the particular facts of this case and is not intended to apply to dumpers generally. My conclusion might, and probably would, have been different if the findings had shown that the dumpers were reasonably suitable for being driven along the public roads in transit or for the purpose of carrying material from one site to another. Nor must it be thought that I am acceding to the appellants'' submission that the intention referred to in the relevant sections is the manufacturers* intention alone. It may be that the legislature had no particular person''s intention in view, whether manufacturer''s wholesaler''s, retailer''s, owner''s or user''s, "Intended .... for use on roads" may mean no more than suitable or apt for use."

Lord Parker, C. J., in agreeing makes the following observations:

"I would only like to emphasise that it must not be taken as the result of this decision that dumpers of the type used in this case are not motor vehicles intended or adapted for use on the road. For my part, I have come to the same conclusion as Salmon, J., merely because that was not proved in this case. It may well be that in another case on fuller evidence the Court will be able to say that dumpers of this kind were clearly motor vehicles intended or adapted for use on the road."

14. It is clear from the above observations that their Lordships rested the decision on the facts of that case.

15. Further, we are concerned with the statutory provisions of the Act relating to exemption or exclusion of certain types of machines from the category of motor vehicles as defined therein. Such exclusion is made subject to the condition that vehicles must ba such which are of special types ad- apted for use only in a factory or in any other enclosed premises. As explained earlier, they must be such as are incapable of use in any other place for the purpose of transport of goods or passengers. Only in this limited sense will be the test of purpose became relevant. This is not the same thing as saying that if the vehicle is not put to use elsewhere, or used for a special purpose, it must be exempted from registration u/s 22 of the Act. The test of purpose, as argued by the learned Counsel, does not also, in our view, fall clearly within the purview of the statutory exemption in Section 2 (18) of the Act. On the other hand, what is enjoined is that its very design and manufacture must be such as would confine its capability for use only in a factory or enclosed premises.

16. In this connection, our attention has been invited by the learned Counsel for the respondent to a decision reported in Bolani Ores Ltd. and Another Vs. State of Orissa, . Their Lordships were dealing with two appeals arising from two suits filed by the plaintiffs for a declaration that the machineries in their possession and as described in the Schedule to the plaint thereto, were not liable for registration u/s 22 of the Act and as such not liable to be taxed u/s 6 of the Bihar

and Orissa Motor vehicles Taxation Act, 1930. Among the items mentioned in the Schedule were ''Euclid Dumpers''. After referring to the decision of the Supreme Court reported in State of Mysore Vs. Syed Ibrahim, , in regard to the words "adapted for use" their Lordships observe thus: (at para 9 of the judgment):

"..... Thus the legal position is clear that it is the user of a particular vehicle that determines the category and not the mere fact of its adaptation or construction. Thus if a particular vehicle is capable of being used in a particular way, it must be taken to have been adapted for such use."

17. But, it may also be noted that in the decision of the Supreme Court, above referred to, what was in question was whether the owner of a Motor Car, which was used for transporting passengers for hire was liable for prosecution u/s 42 (1) of the Act. The exemption u/s 2 (18) did not fall for consideration in the said decision. It was in this context that the Supreme Court laid down that if a Motor Vehicle is used as a transport vehicle, the owner who so uses it or permits it to be so used is required to obtain the necessary permit. It is the use of the vehicle for carrying passengers for hire or reward which determines the application of Section 42 (1) of the Act.

18. Their Lordships of the Orissa High Court further laid down the true test in such matters with particular reference to Section 2 (18) of the Act thus in para 10 of the Judgment:

"The test in all these cases would bo if the vehicle are reasonably suitable for being used along with the public roads, the fact that the manufacturers have made or intended a particular vehicle for one purpose or the other or the dealers have sold it for a particular purpose or that a particular vehicle is described by a particular name or description, is no criterion to decide whether the vehicle is adapted for use upon the roads within the meaning of the definition given in Section 2 (18) of the Act."

19. Further in the same decision with regard to "dumpers" employed by the plaintiffs therein, their Lordships observe thus at para 16 of the judgment:

".... The word ''road'' has not been de fined in the Act for the purpose of Section 2 (18). If a vehicle is fit and suitable for being used on a road, it is immaterial whe ther it runs on a private road or on a public road unless it is shown that it is for a special type adapted for use only in factories or enclosed premises and incapable of running on any other type of roads or public roads. The Rockers and Dumpers (items 5 and 7) must therefore be held to be Motor Vehi cles within the meaning of the Act and are liable for registration u/s 22 of the Act and for payment of appropriate tax as provided under the Taxation Act." We are in respectful agreement with the above enunciations of their Lordships of the Orissa High Court. In this view, it is un necessary to discuss fully whether the premi ses in question is an "enclosed premises''" within the meaning of Section 2 (18) of the Act, although it may be relevant to note that on the material placed before us, we are not in a position to hold that the "mining areas" in this case is an "enclosed premises. We are therefore clearly of the opinion that the "dumpers" in question are not such as would come within the purview of the ex emption contained in Section 2 (18) of the Act.

20. In this view of the matter, the petitioner is clearly disentitled to relief.

21. In the result, this petition deserves to fail and is dismissed with costs. Advocate''s fee Rs. 100/-.

22. Petition dismissed.