(1973) 07 PAT CK 0007

In the Patna High Court

Case No : Civil Revision No. 161 of 1973

Hindustan Steel Works Construction Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 17-07-1973

Acts Referred:
Motor Vehicles Act, 1988 — Section 2(18), 22

Citation : AIR 1974 Patna 151

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : K.D. Chatterjee and Debeshwar Pd. Jha, for the Appellant; Lakshman Saran Sinha, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Agrawal, J.—This application in revision is by the plaintiff who has failed to secure an order of iniunction from the Courts below till the disposal of the title suit instituted by it for permanently restraining the defendants from seizing its eight vehicles (dumpers) u/s 129-A of the Motor Vehicles Act, 1939, hereinafter referred to simply as ''the Act.''

2. In order to appreciate the question raised in this application, it is necessary to state the relevant facts,. The petitioner company is a public sector undertaking of the Government of India and is engaged in the construction works of the Bokaro Steel Plant In course of the construction work, the petitioner has to engage heavy earth-moving machineries like dumpers, cranes, etc. to carry out the construction works and the petitioner has been using eight dumpers in course of the same. According to the petitioner, the area of operation of these dumpers was strictly confined within the premises of the Bokaro Steel Limited. These were vehicles of special type adapted for use in a factory or other enclosed premises and were not driven on the public road. Accordingly, it is contended that these vehicles did cot come within the definition of "motor vehicle" as defined u/s 2 (18) of the Act.

3. "Motor Vehicle'''' has been defined in clause (18) of Section 2 of the Act as follows:

" "motor vehicle" means any mechanically propelled vehicle adaoted 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."

The case of the petitioner is that the dumpers in question were not liable for registration under the Act and this fact was intimated by it to the authorities concerned, but the Superintendent of Police. Dhanbad (defendant No. 2) and the Deputy Superintendent of Police. Dhanbad (Registering authority under the Motor Vehicles Act (defendant No. 3) were threatening the petitioner that unless the said vehicles were registered u/s 22 of the Act and taxes were paid u/s 6 of the Bihar and Orissa Motor Vehicles Taxation Act, the same will be seized. According to the plaintiff, the threat was unauthorised by law as It was not liable either to get the vehicles registered or to pay any tax under the aforesaid provisions. Accordingly, it has instituted Title Suit No. 54 of 1972 in the Court of the Subordinate Judga, First Court, Dhanbad, for a declaration that the vehicles in question were not liable for registration and as such could not be taxed under the aforesaid provision. A petition for interim injunction was filed by the plaintiff restraining the defendants and their agents from illegally and wrongfully seizing the said vehicles. Ad interim injunction was granted by the trial Court, but on final hearing. It was vacated. An appeal was taken by the petitioner before the District Judge, where also it failed, and. therefore, this application.

4. The petitioner''s stand has been challenged by the opposite party and in the written statement it has been asserted that the vehicles in question were not exempted either from registration or from payment of the road tax and, therefore, defendants Nos. 2 and 3 were fully entitled to seize the vehicles in question on default of the plaintiff either to get the vehicles registered or to pay the taxes.

5. Mr. K.D. Chatterjee appearing for the petitioner in support of this application submitted that the dumpers in question were not "Motor Vehicles" according to the definition given in Section 2 (18) of the Act which has been quoted above. He further submitted that Section 22 of the Act had no application to the case of the petitioner. Section 22 of the Act reads as follows:

"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."

6. The main Question for determination is, whether the vehicles in question,

namely, the dumpers come within the meaning of "motor vehicle", according to the definition referred to above and thus liable for registration u/s 22 of the Act and also for payment of taxes u/s 6 of the Bihar Act, in which the expression "motor vehicle" carries the same meaning as in the Central Act.

7. Learned counsel submitted that the necessity for registration arises only when a vehicle is driven in any public place. In support of his contention he placed various paragraphs of the plaint, according to which the vehicles in question were plying exclusively within the factory premises of Bokaro Steel Limited ha execution of the contract work. It is difficult to accept the contention of Mr. Chatterjee. It would appear that there is an express provision for registration also of a motor vehicle in Section 22 of the Act which is driven "in any public place or in any other page for the purpose of carrying goods." The word "vehicle" has not been defined in the Act, but in the absence of such a definition in the statute, it has to be seen as to whether the definition of "motor vehicle"'' given in Section 2 (18) of the Act will apply to the vehicles of the petitioner. In my opinion, the definition of "motor vehicle" is comprehensive enough to cover the case of the petitioner. The word "only" occurring in the said definition is of great significance, which confines the exemption to only those kinds of vehicles which are exclusively designed for use in any factory or in any enclosed premises. The vehicles in question, namely, the dumpers can certainly be used for carrying loads even outside the factory premises or any other enclosed premises just like any other vehicle which is commonly used for the transport of goods when it is used for a similar purpose outside the factory or an enclosed premises. The true test in such cases would be as to whether a vehicle is reasonably fit and suitable for being used along with a public road. It is immaterial whether it runs on a private road or a public road. The use of the vehicle for a particular purpose is no criterion to decide the question. If the vehicle is suitable for being used as such, then it will certainly come within the definition of "motor vehicle". The words "any other place" in the above provision are, in my opinion, intended to cover cases of user of a vehicle even in a private place. Therefore, the vehicles in question are certainly liable for registration u/s 22 of the Act and also for payment of the appropriate tax u/s 6 of the Bihar Act.

8. The contention of the learned counsel for the petitioner that the particular use pr purpose of the vehicle should be the guiding factor cannot, be accepted. The exemption contemplated in the definition of "motor vehicle" is made only subject to this condition that the vehicles must be such which are of a special type adapted for use only in a factory or In any other enclosed premises, and not otherwise. Necessarily it follows therefrom that the vehicle intended to be exempted must be of a type which is incapable of use in any other place for the purpose of transport of goods or passengers, and not such vehicles which are not merely put to use elsewhere or used for such purpose, although they are capable for an use otherwise also.

9. My above view is fully supported by two well-considered decisions. The first

decision is in the case of Bolani Ores Ltd. and Another Vs. State of Orissa, and the other decision is in the case of Dalmia Cements (Bharatt Ltd. v. Regional Transport Officer. Bellary, AIR 1970 Mvs 49. In the Orissa case, the Court was dealing with the case of a tractor and also of dumpers. There also similar argument was advanced that the aforesaid vehicles were being used by the appellants exclusively for carrying the mining operations within the leasehold area of the appellants and were not driven in any public place. A Bench of the Orissa High Court repelled the contention and held that if a particular vehicle is capable of being used in a particular way, it must be deemed to have been adapted for such use "and that it was not the actual user of a particular vehicle to determine its category." Although their Lordships had also taken assistance from the definition of the word "tractor" as occurring in clause (30) of Section 2 of the Act (wrongly mentioned as Clause 33 in the report) they took pains to construe and interpret the word "motor vehicle" also in refuting the submission made before them, and if I may say so with respect have given convincing reasons to apply the definition of "motor vehicle" to the case of a tractor and dumper. The Mysore case was considering the case of a dumper itself, where also exemption was sought for on almost the same and similar grounds. Clause (18) of Section 2 of the Act fell for consideration in that case also and it was held that if a vehicle was found suitable for being used on a road, it was immaterial whether it runs on a private road or on a public road, unless it was shown that it was of a special type adapted for use only in a factory or enclosed premises or incapable of running on any other type of roads or public roads. In this view of the matter, the vehicle in question, namely the dumoer, was held to be a motor vehicle within the meaning of the Act and as such liable for registration u/s 22 of the Act and also liable for payment of appropriate road tax. I am in respectful agreement with the views taken in the above decisions. Therefore, in my opinion, the vehicles in question are liable for registration u/s 22 of the Act. The contention raised by Mr. Chatteriee is devoid of any substance and must be rejected. The moment it is held that the provisions of Section 22 of the Act apply to the case of the petitioner, it is manliest that it is also bound to pay road tax u/s 6 of the Bihar Act

10. There is also a angle Judge decision of the Kerala High Court in Harrisons and Crosfield Ltd. Vs. Kerala State, . where with respect to a tractor a similar argument was advanced, as in the Orissa case, and the Kerala High Court took a similar view.

11. The Courts below, on the question of balance of convenience and irreparable loss and injury have decided against the petitioner, and learned counsel for the petitioner did not and rightly challenge those findings, and a pure question of jurisdiction was raised.

12. The question raised having no substance, this application must fail and it is, accordingly dismissed. The petitioner must pay costs to the opposite party. I would assess the hearing fee Rs. 100/-.

