(1996) 06 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 7793/96

R. Pampapathi APPELLANT

Vs

Senior Inspector of Motor Vehicles, RTO RESPONDENT

Date of Decision : 17-06-1996

Acts Referred:

Constitution of India, 1950 — Article 301, 304
Motor Vehicles Act, 1988 — Section 2 (28), 39

Citation : (1996) ILR (Kar) 3480 : (1996) 7 KarLJ 625

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : M.R. Achar, for the Appellant; H.G. Ramesh, Additional G.A., for the Respondent

Final Decision : Allowed

Judgement

G. C. Bharuka, J.—Once again the question that has fallen for consideration is as to whether the vehicles which are designed for and operated primarily in the mining areas are liable for registration under the Motor Vehicles Act, 1988 ("New Act'' for short) and/or are liable to levy of tax under the provisions of the Karnataka Motor Vehicles Taxation Act, 1957 (''Taxation Act'', for short).

2. The petitioner, pursuant to grant of mining lease in his favour under the provisions of the Mines and Mineral (Regulation and Development) Act, 1957 read with the Mineral Concession Rules 1960, is carrying on mining operation to mine iron ore in Jambunathanahalli village of Hospet Taluk, Bellary District. Petitioner had purchased a Wheel Loader on 16.5.1989 with the description set out in the Schedule to the Writ Petition from M/s Bharath Earth Movers Limited. According to the petitioner, this wheel loader is exclusively used for loading the iron ore into the tippers in the mining area. It has been specifically averred that this wheel loader has never been brought on public road. It has accordingly been pleaded that it is only a mining equipment and does, not fall within the ambit of "motor vehicle" or "vehicle" as defined u/s 2(28) of the New Act, so as to

necessitate its registration u/s 39 thereof. Consequently, as submitted, the provisions of the Taxation Act are also not applicable to it.

3. Keeping in view the rival contentions raised at the bar, the following issues fall for consideration in this case:

(i) Whether the Wheel Loader in question is a ''motor vehicle'' under the New Act?

(ii) Whether it is liable for registration under the New Act?

(iii) Whether the State Legislature has the competence to levy tax on motor vehicles which are not intended to be used on public road under Entry 37 of List II (State List) read with Entry 35 of List II! (Concurrent List) of the Seventh schedule to the Constitution of India?

(iv) Whether the loader in question is liable to tax under the Taxation Act?

4. Re. Issue No. (i): From the brochure in respect of the Wheel Loader published by the manufacturers and the photographs of the vehicles placed on record, it transpires that it is a mechanically propelled vehicle having wheels with four pneumatic tires with front bucket meant for dump clearance or digging earth or other materials of different densities with facilities of lifting, turning and tipping to facilitate the handling of the materials for the purpose of loading, unloading and removing the same.

5. Now, to ascertain whether a vehicle of the description set out above is a motor vehicle under the provisions of the New Act, let us look to the definitions of the motor vehicles as it stood under the Motor Vehicles Act, 1939 (in short, ''Old Act'') before and after its amendment by Central Act 100 of 1956. These are-

section 2(18) Before Amendment:

"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 used solely upon the premises of the owner."

Section 2(18) (After Amendment)

"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-"

6. Section 2(28) of the New Act reads as follows;

"Motor vehicle" or "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 or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty-five cubic centimeters." (emphasis supplied)

7. The Supreme Court in the case of Bolani Ores Ltd., , by comparing the pre and post amendment definitions of ''motor vehicle'' under the Old Act, has held that before amendment though the motor vehicle was coming within the meaning of the 1st Part of the definition, nonetheless it was not so because of its specified user i.e. if it was used solely upon the premises of the owner. But after the amendment though a motor vehicle might have been adapted for use upon roads, nonetheless in order to be taken out of the category of the definition, it had to be further adapted, namely, it should have been a vehicle of a special type adapted for use only in a factory or in any other enclosed premises. In other words, a motor vehicle of a special type adapted, as stated in the post amendment definition, ought to have been such as would not have been considered to be adapted for use upon roads.

8. In the aforesaid judgment in paragraph 23 thereof their Lordships have interpreted "adapted for use''" as meaning "suitable for use". It has been held that at any rate the words "adapted for use" cannot be larger in their import by including the vehicles "which are not suitable for use" on roads. In this sense, the words "adapted for use" have the same connotation as "is suitable" or ''is fit'' for use on roads. After so holding, the Court proceeded to examine whether the dumpers, rockers and tractors which are also used in mining operations can be said to be suitable or fit for use on roads. It was found that the vehicles with pneumatic wheels, like the present wheel loader, can be moved about from place to place with mechanical power and accordingly those were held to be motor vehicles as per the post 1956 definition. The post amendment definition of ''motor vehicle'' in the Old Act and that in the New Act being pari materia, "wheel loader'' in question has to be held as a motor vehicle even u/s 2(28) of the New Act.

9. Re. Issue No. (ii): For seeking an answer to this issue, a reference to Section 22 of the Old Act and Section 39 of the New Act may be made. These Sections read as follows:

Section 22 of Old Act:

"Necessity of Registration. - No person shall drive any motor vehicle and not owner of a motor vehicle shall cause of 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."

Section 39 (New Act)

"Necessity for Registration.- 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 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:

Provided that nothing in this Section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government."

10. A comparison of the said two provisions will reflect a marked distinction. In Section 22 of the Old Act, a motor vehicle was required to be registered provided it was used "for the purpose of carrying passengers or goods." But in Section 39 of the New Act, this condition does not any more finds a place.

11. With regard to the requirement of registration of a motor vehicle under the Old Act, in first Bolani''s case (supra), it was held as follows:

"Where a vehicle is adapted for use upon roads and though it is not driven on the public roads or in a public place even then if it carries goods or passengers which may not be for hire or reward or the passengers may be friends or relatives of the owner or the goods may belong to the owner and plying in a place to which the public has, as a matter of right, no access, it nonetheless cannot be driven without its being registered or without the driver holding a licence to drive such a vehicle.''

Accordingly, it was further held that (Para 28)

"In so far as the Act is concerned, having regard to the fact that the dumpers and rockers are motor vehicles which are not taken out of that category, as was the case before the amendment, they have to be registered after the amendment and can only be driven by persons holding a valid license. The tractor, though it may be a motor vehicle within the definition of that term, is neither a goods vehicle nor a vehicle which carries passengers nor is it being driven in a place to which public have as a right access. As it does not perform any of the aforesaid functions or uses it is not a vehicle which has to be registered nor has it to be driven only by a person who holds a license.''''

It may be noticed here that the tractors, as noticed by the Supreme Court (Para 33 last line), are tractors with air compressed attachments.

12. u/s 39 of the New Act, registration of every motor vehicle has been made compulsory irrespective of the fact, unlike under the Old Act, whether it is driven for the purpose of carrying passengers or goods or for any other purpose, since the expression "for the purpose of carrying passengers or goods" has not been any more retained in Section 39 of the New Act. Further, as discussed above, since the Wheel Loader in question is a motor vehicle for the purposes of the New Act, irrespective of the fact whether it is driven in a public place or any

other place, it is required to be registered under the said provision.

13. Re. Issue No. (iii): The State Legislature derives competence to levy tax on motor vehicles from Entry 57 of the State List read with Entry 35 of the Concurrent List. These entries are to the following effect:

Entry 57 (State List):

"Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III."

Entry 35 Concurrent:

"Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."

14. Nothing has been placed on record to show that in terms of Entry 35 of the Concurrent List any competent Legislature has formulated the principles on which taxes on motor vehicles are to be levied. Therefore, the extent of legislative competence on the topic in hand has to be ascertained from the expressions employed in Entry 57 of the State List alone.

15. In the first Bolani case (supra), which was a three-Judge Bench of the Supreme Court, it has been held that-

"The Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movements and regulation of traffic. The validity of the taxing power under Entry 57, List II of the Seventh Schedule read with Article 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of the flow of traffics on the roads which is required to be regulated."

16. After so holding it was further observed by their Lordships that though under Entry 35 of the Concurrent List it is competent for the Legislature to provide for certain regulatory measures like registration of vehicle, licences for driving the same, etc. which are intended to ensure safety of passengers and goods, but as held,-

"Entry 57 of List II is subject to the limitations referred to above, namely, that the power of taxation thereunder cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads, viz. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed."

17. In the case of B.A. Jayaram and Others Vs. Union of India (UOI) and Others, , the present Karnataka Motor Vehicles Taxation Act as also the similar taxation Acts of other States were held to be regulatory and compensatory legislations as having been designed to compensate the State for the services,

benefits and facilities provided by it for vehicles operating within their respective territories. The said enunciations on legislative competence was again reiterated in the case of State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others, , wherein it was held that -

"4. Before the contentions are judged, it is imperative to reiterate that the tax imposed on motor vehicles or a class of motor cycles would not be valid unless it is compensatory or regularity or does not have any nexus with the vehicles using the public roads. In such a case the levy would be violative of Article 301 of the Constitution and would not be protected by Article 304 of the Constitution. In this connection reference may first be made to the observations of this Court in Bolani Ores Ltd., this Court observed that Entry 57 of List II of the Seventh Schedule was subject to the limitations, namely, the power of taxation cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads. If the vehicles do not use the roads, notwithstanding that these are registered under the Act, these cannot be taxed. More or less, the same view was echoed in G.K. Krishnan and Others Vs. State of Tamil Nadu and Others, ."

18. In view of the said pronouncements of the Supreme Court, it has to be held that the word ''roads'' used in Entry 57 of the State List has to be understood as ''public roads'', meaning thereby that the State Legislatures can enact laws for levy of tax on vehicles which are suitable for use on public roads; and , further that such vehicles have in fact been put to use on such public roads. Consequently it has to be held that it will be beyond the competence of the State Legislature to provide for levy of tax on vehicles which are dominantly adapted for use in places other than on public roads, and if the same are not in fact used on public roads.

19. Re. Issue No. (iv): For finding an answer to the question as to whether the wheel loader in question is liable to levy of tax under the Taxation Act or not, one is required to refer to three Sections of the said Act, namely, Section-3 which is a charging section, Section 7 which provides for refund of tax and Section 16 which has empowered the State Government to grant exemptions. Sub-sections of the said Sections which are relevant for the purpose road as under:

Section 3(1):

"A tax at the rates specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on roads."

Section 7(1):

"Where a tax on any motor vehicle has been paid for any period and it is proved to the satisfaction of the prescribed authority that the vehicle has not been used during the whole of that period, or a continuous part thereof, not being less than one calendar month, a refund shall be made of such portion of the tax and subject to such conditions as may be prescribed."

Section 16(1):

"The State Government, if in its opinion it is necessary in public interest so to do, may by notification and subject to such restrictions and conditions as may be specified in the notification

(a) exempt or reduce whether prospectively or retrospectively the tax payable in respect of -

(i) any class of motor vehicles, or

(ii) motor vehicles not used on roads.

(b) reduce the rate of tax payable in respect of any class of motor vehicles plying on any route or routes specified in the notification."

(Emphasis Supplied)

20. Keeping in view the legislative power of the State Legislature under Entry 57 of the State List, as explained and delineated by the Supreme Court in the first Bolani case (supra), the words "suitable for use on roads" used in the above referred three Sections of the Taxation Act, have to be understood as the Vehicle/s used on public roads, or else the provisions of the Taxation Act will be amenable to challenge on the ground of legislative competence which, according to the sound principles of Interpretation of Statutes, has to be avoided. Therefore, under the charging Section of the Taxation Act no tax can be levied if the vehicle is not found suitable for use on public roads. Further as per Section 7 of the said Act, even if the vehicle is suitable for use on public roads and yet if it has not in facts been so used for a given length of period, then it will be entitled for refund of tax paid for the said period. Further, as per Section 16 of the Act, keeping in view the restraint on legislative competence on the topic under consideration, the Legislature has taken care to empower the Government to inter alia grant exemptions in respect of motor vehicles which are not used on public roads. Pursuant to the said power of exemption, the State Government has issued two Notifications - No. HD 128 TMT 74 dated 8th May 1980 and No. HD 95 TMT 77(ii) dated 11.9.1980. By the first notification it has exempted dumpers, rockers and shawls which are used in mining areas from levy of tax subject to the conditions specified therein. Similarly, by the second notification exemption has been granted to motor vehicles which are not intended to be used on roads subject to fulfilment of conditions incorporated therein.

21. It cannot be seriously disputed that the wheel loaders also fall in the category of dumpers, rockers and shawls, because all these vehicles are primarily adapted for use in mining and similar areas and are hardly used on public roads. In the case of Ayurveda Pharmacy and Another Vs. State of Tamil Nadu, ," it has been held that where the commodities belong to the same class or category, there must be a rational basis for discriminating between one commodity and another for the purpose of imposition of tax. In the above case, the Supreme Court, being satisfied that the grant of exemption to one commodity but denial of the said benefit to another commodity of the same class

or category without there being any rational basis for such discrimination, directed that the benefit of exemption be extended to the other commodity as well.

21A. In order to support the acts and actions of the respondent''s Sri. H.G. RAMESH, the learned Additional Government Advocate has sought to seek support from the judgment of the Supreme Court in the case of M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, , and UNION OF INDIA v. GHOWGULE & CO. AIR 1992 SC 1276 In the first case which has been followed with approval in the second case, while concluding, it has been held that-

"Thus on the fact situation, we have no hesitation in holding that the High Court was right in concluding that Dumpers and Rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se, as held in Bolani Ores case, were liable to taxation on the footing of their use or kept for use on public roads: the net work of which, the State spreads, maintains it and keeps available for use of motor vehicles and hence entitled to a, regulatory and compensatory tax. (Exemptions climbable apart). The appellants, therefore, in our view, have no case for grant of any relief in these appeals."

22. A bare reading of the said judgment dearly makes out that the Supreme Court in the said case had proceeded to decide the issue before it not the basis of facts as found and the legislative developments and also the provisions of the Orissa Motor Vehicles Taxation Act and have dearly left open the question of exemption in respect of dumpers and rockers. Moreover, if on a literal reading of the judgment, it reflects any conflict with Bolani case (supra), the latter being of 3-Judges Bench will have a precedent over the former.

23. For the foregoing reasons, it is held that-

(i) the loader in question is liable for registration under the provisions of the New Act; and

(ii) no tax can be levied on the same under the provisions of the Taxation Act if it is not intended to be used on public roads.

Respondents are directed to proceed accordingly.

24. Writ Petition is partly allowed. No costs.

