

**(1992) 04 PAT CK 0021**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 1636 of 1987 (R)

Tata Engineering and Locomotive Co. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 21-04-1992

**Acts Referred:**

**Citation :** (1992) 04 PAT CK 0021

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## **Judgement**

S.B. Sinha, J.—In this application, the petitioner has prayed for issuance of an appropriate writ for quashing of an order dated 8-3-1979 passed by the respondent No. 3 in Certificate Case No. 10 (R. T.) of 1973-74 as contained in Annexure-1 to the writ application; the order dated 19-2-1985 passed by the respondent No. 4 in Certificate Appeal No, 73 of 1979-80 as contained in Annexure-2 thereto and an order dated 7-3-1987 passed by the respondent No. 5 in Singhbhum Certificate Revision No. 107 of 1985 as contained in Annexure-3 to the writ application as also for issuance of a writ of or in the nature of mandamus directing the respondents to refund forthwith with interest thereon a sum of Rs. 9,08,740.38 which has been collected from the petitioner. The petitioner has further prayed for a writ of or in the nature of mandamus directing the respondents to refund a sum of Rs. 6,72,631.20 which the petitioner has allegedly paid on receipt of a notice on account of road tax for the period January, 1975 to January, 1979.

2. The fact of the matter giving rise to filing of this writ application is as follows:

3. The petitioner is a public limited company having its factory at Jamshedpur in the State of Bihar and at Poona in the State of Maharashtra and is engaged in production of commercial vehicles, earth moving machines and other engineering goods including motor vehicles, chassis, dumpers, and tipper etc.

4. On or about 3-4-1974, the petitioner sent some of its chassis for temporary registration but the respondent No. 2 refused to issue temporary registration certificates on the ground that no road tax in terms of the provisions of Section 6 of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (hereinafter referred as

"the Act") had been paid by it.

5. The petitioner, thereafter by a letter dated 26-4-1974 asserted that Section 6 of the Act has no application in relation to chassis, dumpers and tippers etc. and thus no road tax in terms of the aforementioned provision was payable.

6. The respondents No. 2, however, informed the petitioner that the said tax in terms of Section 6 thereof at the rate of Rs. 174.60 paise in respect of 3222 vehicles is due for the period March, 1967 to September, 1974 amounting to Rs. 5,80,021.21 paise.

In relation to the said purported dues a certificate proceeding being Certificate Case No. 10 (R. T.) of 1973-7,4 was initiated.

On 9-8-1974, the petitioner received a notice u/s 7 of the Bihar and Orissa Public Demands Recovery Act, 1914, whereby it was asked to pay a sum of Rs. 5,80,021.21 or to file its objection denying liability as envisaged u/s 9 of the said Act,

7. The petitioner filed an objection denying its liability. It also moved this Court in its writ jurisdiction by filing a writ petition which was registered as CWJC No. 1947 of 1974 (R).

By an order dated 19-8-1978, the said application was dismissed with the following observations:

Therefore, the expression "vehicle" or "motor Vehicle" wherever used in the amendments introduced by the Ordinance shall have to be given a limited meaning as motor vehicles using the roads, viz. public roads. If such an interpretation is given to the amendment it cannot be held that the State Legislature has exceeded its power of taxation as given in Entry 57 of List II of Seventh Schedule to the Constitution and the amendments are ultra vires. I accordingly hold that the amendments introduced to Sections 6 and 8 of the Act by Sections 3 (b), 3 (c) and 5 of the Ordinance need not be declared ultra vires as prayed for by the petitioner company but they should be given a limited meaning as stated above in the light of the observations made by the Supreme Court in Bolani Ores's case. The Certificate Officer will now examine the liability of the petitioner company to pay tax after examining the objections already raised or to be raised u/s 9 of the Bihar and Orissa Public Demands Recovery Act in the light of the observations made above and dispose of the certificate case in accordance with law.

8. The petitioner filed a supplementary objection and also moved the Supreme Court of India against the order passed by this Court in the aforementioned case which was registered as Civil Appeal No. 587 of 1977. The said Civil Appeal has since been dismissed.

9. On 8-3-1979, the Certificate Officer rejected the said objection filed by the petitioner holding that Dumpers, Tippers etc. are motor vehicles in terms of the

provisions of Section 2(18) of the Motor Vehicles Act, 1939 and as the petitioner was in possession and control thereof, it has liability to pay the said amount.

10. On 20th September, 1979, the respondent No. 2 issued a notice demanding a sum of Rs. 9,08,740.38 paise for the principal sum of Rs. 5,80,021.21 paise with interest a sum of Rs. 3,28,678.68 paise as also a sum of Rs. 4.50 by way of costs. The petitioner paid the entire amount by cheque on 18.10.1979. On 19-10-1979, the respondent No. 3 further demanded a sum of Rs. 6,72,931.20 paise as tax on chassis, dumpers and tippers for the period January, 1975 to January, 1979.

The aforementioned sum was also paid by the petitioner under protest.

11. The petitioner moved this Court in CWJC No. 133 of 1980 (R) questioning the order of the Certificate Officer but the said application was allowed to be withdrawn by an order dated 16-3-1980 in order to enable the petitioner to exhaust the remedies available under Bihar and Orissa Public Demands Recovery Act.

The petitioner thereafter preferred an appeal being Certificate Appeal No. 73 of 1990 but the same was dismissed by the respondent No. 4 (Annexure-2). Thereafter, the petitioner filed a revision before the respondent No. 5 which was also dismissed by an order dated 7-3-1987(Annexure-3).

12. No counter affidavit has been filed in this case.

13. Mr. Chunni Lal, the learned Counsel appearing on behalf of the petitioner submitted that the imposition of tax in terras of Section 6 of the said Act is illegal inasmuch as the same is beyond the scope and purview of the Second Schedule thereof.

14. It was further submitted that Section 6 of the said Act implies commercial use of the vehicles and, therefore, mere transportation of dumpers, tippers and chassis from the manufacturing centre to its various sales centres and more so when those vehicles had neither been constructed nor adapted and for use solely for transport of goods in the course of trade, the imposition of tax must be held to be wholly illegal and without jurisdiction.

15. It was further submitted that the respondent Nos. 3, 4 and 5 misdirected themselves in law, in so far as they failed to take into consideration the words "keeps the motor vehicles" in its proper perspective inasmuch as the said words connote an element of permanency and continuity and thus, mere transportation of the said vehicles from the manufacturing centre to various sales centres of the petitioner does not fulfil the requirements laid down u/s 6 of the Act read with the Second Schedule thereof empowering the respondents to levy road tax upon the petitioner.

16. It was further submitted that in any event, as the said dumpers, tippers and chassis were registered temporarily; in terms of Section 25 of the Motor Vehicles

Act, only 1/12th of the amount of tax could have been recovered from the petitioner in terms of the proviso appended to Section 6 thereof.

17. The sole question which, therefore, arises for consideration is as to whether the provisions of Sub-section (1) of Section 6 of the Act read with item No. 3 of Second Schedule appended thereto are applicable in the facts and circumstances of the case.

18. In this case the facts of the matter is not disputed.

19. Section 2(18) of the said Act is not an interpretation clause as such, but thereby the interpretation clauses of various terms referred to thereunder as interpreted in the Motor Vehicles Act, 1939, have been adopted.

Section 6 (1) of the said Act reads as follows:

Imposition of tax.-(1) As from the first day of January, 1931, and after that date there shall be paid on every motor vehicle a tax at the rate specified in the Second Schedule to this Act.

From a perusal of the said provision, it is evident that a tax is to be paid at the rate specified in the Second Schedule appended thereto.

20. It is accepted by the learned Advocate General appearing on behalf of the State that in this case, tax has been imposed on the petitioner in terms of item No. 3 of the Second Schedule of the said Motor Vehicles Act which reads as follows:

3. Motor Vehicles constructed or adapted for use and used solely for the transport of goods in the course of trade-

(a) upto 500 Kgs. registered laden 192.50 weight

(b) exceeding 500 Kgs. but not 192.50 plus Rs. 22.00 for every exceeding 2,000 Kgs. registered additional 250 Kgs. or part laden weight. thereof above 500 Kgs.

(c) exceeding 2,000 Kgs. but not 324.50 plus Rs. 27.00 for every exceeding 4,000 Kgs. registered- additional 250 Kgs. or part laden weight. thereof above 2,000 Kgs.

(d) exceeding 4,000 Kgs. but not 544.50 plus Rs. 33.00 for every exceeding 8,000 Kgs. registered- additional 250 Kgs. or part laden weight. thereof above 4,000 Kgs.

(e) exceeding 8,000 Kgs. registered- 1,072.50 plus Rs. 88.00 for laden weight. every additional 250 Kgs. or part thereof above 8,000 Kgs.

Explanation.-A vehicle shall not be deemed to be used otherwise than solely for transport of good in the course of trade because it used to convey employees of the traders in the course of their employment.

21. The moot question which arises for consideration in this application is as to whether road tax could be levied upon the petitioner in terms of item No. 3 of the Second Schedule of the Act in respect of chassis, dumpers and tippers.

22. Mr. Chunni Lal, submitted that the word "and " used in the aforementioned item mandates that before road tax can be imposed on a vehicle, it should fulfil the requirement of both the conditions prescribed thereunder whereas, according to the learned Advocate General, the word "and" should be read "or".

23. Article 265 of the Constitution of India prohibits not only levy of any tax but also collection thereof except by the authority of law.

24. There cannot be any doubt that in terms of Sub-section (1) of Section 6 of the said Act, all motor vehicles are liable to be taxed but the rate thereof has to be fixed in terms of the provisions contained in the Second Schedule thereof.

25. It is also not disputed that the vehicles manufactured by the petitioner-company came within the purview of the definition of "Motor Vehicles" as contained in Section 2(18) of the Motor Vehicles Act, 1939 and. Section 2(28) of the Motor Vehicles Act, 1988.

26. In Bolani Ores Ltd., , it has been held that dumpers, rockers and tractors etc. are "motor vehicles" within the meaning of the provisions of Section 2(18) of the Motor Vehicles Act, 1939. The Supreme Court in that decision further held:

The regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons who have no driving licence, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. etc. and for that purpose it is enacted to keep control and check on the vehicles. Legislative power under Entry 35 of List III (concurrent List) does not bar such a provision. But 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. This very concept is embodied in the provisions of Section 7 of the Taxation Act as also the relevant sections in the Taxation Acts of other States, namely, that where a motor vehicles is not using the roads and it is declared that it will not use the roads for any quarter or quarters of a year or for any particular year or years, no tax is leviable thereon and if any tax has been paid for any quarter during which it is not proposed to use the motor vehicle on the road, the tax for that quarter is refundable.

27. While considering a taxing statute, strict construction thereof is required where a language is plain and unambiguous. A liberal construction to give effect to object of the provision may be resorted to only in case of genuine doubt or possibility of forming two alternative opinions.

28. A person, therefore, has to pay tax in terms of item No. 3 of Second

Schedule of the said Act only when the motor vehicles in question come within the purview thereof. A chassis which may be constructed or adopted for use in future as a transport vehicle but the same when sent by the manufacturer to its various sales centre, does not fulfil the second condition for levying tax namely, "used solely for the transport of goods in the course of trade". Further such adaptation or manufacture of motor vehicles also must be for use thereof as a vehicle for carrying goods. A chassis as such cannot be said to have been manufactured or adapted for use as a vehicle for transport of goods.

A chassis is thus neither meant for use nor solely used for the transport of goods in the course of trade. The trade of the petitioner is to manufacture chassis and other vehicles and sell the same to its consumers. It does not carry on business in transport of goods.

29. Further from a reading of the various items contained in the Second Schedule appended thereto, it would appear that various vehicles, although, may come within the purview of the definition of a "Motor Vehicles" but no tax can be levied in respect thereof, as for example, earth mover or bulldozer etc. In order to levy and collect taxes so as to fulfil the requirements of Article 265 of the Constitution of India, the tax has to be levied in accordance with law. The Act does not authorise collection of tax in respect of chassis, earth mover etc. as they do not fall within the purview of any of the items mentioned in the Second Schedule of the said Act.

30. The learned Advocate General, however, placed strong reliance upon a division Bench of this Court in *Mukundilal Bansidhar v. The State of Bihar* reported in 1977 BBCJ 429. In that decision, this Court was considering the machinery provisions for collection of tax under Bihar Agriculture Produce Markets Act, 1960. The Second Schedule of the said Act is not a machinery provision for the purpose of collection of tax.

31. The Second Schedule, as noticed hereinbefore, is a provision in the Act dealing with machinery for assessment of tax. If a vehicle does not fulfil the criteria for levy of tax in terms of the Second Schedule, no tax can be levied at all.

32. In this view of the matter, in my opinion, the said decision has no application in the facts and circumstances of the case.

33. In *Mohan Kumar Singhania v. Union of India* reported in : AIR1992SC1 , the Supreme Court upon taking into consideration various authorities, held as follows:

We think, it is not necessary to proliferate this judgment by citing all the judgments and extracting the textual passages from the various Text Books on the Principles of Interpretation of Statutes. However, it is suffice to say that while interpreting a statute the consideration of inconvenience" and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary

sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/Rules/ Regulations relating to the subject-matter. Added to this, in construing a statute, the Court has to ascertain the intention of law making authority in the back drop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation.

34. In *Union of India and another Vs. Deoki Nandan Aggarwal*, , it has been held:

The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.

35. Taking thus all facts and circumstances into consideration, I am of the view that it was not the object of the said Act to levy tax upon all types of motor vehicles, but to levy tax only on those motor vehicles which come within the purview of the Second Schedule thereof.

36. The concept of the requirement of the motor vehicles to obtain registration and permits etc, has got nothing to do so far as levy and collection of tax is concerned,

In this view of the matter, it must be held that the impugned order as contained in Annexures-1, 2 and 3 to the writ application cannot be sustained.

37. However, the second contention raised on behalf of the petitioner has no force. The proviso appended to Sub-section (2) of Section 6 of the said Act was inserted in the year 1982, as the period for which the tax has been levied and collected from the petitioner is prior to the insertion of the said Proviso, the petitioner cannot take any benefit thereof.

38. For the reasons aforementioned, this application is allowed and the impugned orders as contained in Annexures-1, 2 and 3 are quashed. Let a writ of certiorari be issued accordingly. The respondents are further directed to refund the entire amount namely, 9,08,740.38 paise which was recovered from the petitioner and a sum of Rs. 6,72,931.20 which was also recovered from the petitioner on account of road tax, to the petitioner at an early date and preferably within a period of three months from the date of receipt of a copy of this order. Let a writ of mandamus be also issued.

However, in the facts and circumstances of the case, there will be no order as to costs.