

(1996) 04 PAT CK 0043
In the Patna High Court
Case No : C.W.J.C. No. 644 of 1995 (R)

Tata Engineering and Locomotive Co. Ltd.	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 23-04-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 2, 3, 39, 43, 56

Citation : (1996) 2 BLJR 1187

Hon'ble Judges : Sachchidanand Jha, J;P.K. Sarin, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sachchidanand Jha, J.—The point for consideration in this writ-petition is whether the respondents can legally ask the manufacturers of motor vehicles to obtain "certificate of fitness" with respect to unsold vehicles while being sent to different sales centers for sale.

2. The point involves a pure question of law and, therefore, it is not necessary to notice the factual aspects of the case which are more or less undisputed. It may only be stated that the petitioner, which is a public limited company, is one of the premier manufacturers of commercial vehicles including motor vehicles chassis, dumper etc. and other engineering goods. After the motor vehicles are manufactured, they are sent to various sale centers/regional sale centers situate in various parts of the country. Sometimes only chassis of the motor vehicles and sometime vehicles with body built thereon, as per the demand of the customer, are supplied. Whenever they move out to the sale centres they carry certificate of temporary registration and "road-worthiness certificate" granted under the Motor Vehicles Act, 1988 ("the Act" in short) and the Central Motor Vehicles Rules, 1989 (In short "the Central Rules"). This has been the regular practice which was never objected to by the respondents. Of late, however, the respondents started insisting that the petitioner should carry the "certificate of fitness" as well. They even started seizing the vehicles on the ground that they

did not carry the certificate of fitness on their way to different sale centres. In these circumstances, the present writ petition was filed seeking a declaration and mandamus that the petitioner is not obliged to take and carry the certificate of fitness with respect to unsold vehicles while being sent to different sale centres and, further quashing of the communications dated 7.4.93 and 24.9.94 issued to it in this regard. Copy of the letters are marked Annexures 1 and 3 of the writ petition.

3. From the impugned communications it appears that the petitioner is being asked to obtain the certificate of fitness in view of a notification of the Central Government being S.O. 419(E) dated 8.6.89 issued u/s 66(3)(g) as well as the provisions of Section 56 of the Act.

4. Section 56 so far as relevant reads as hereunder:

Subject to the provisions of Sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purpose of Section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in Sub-section (2), to the effect the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder.

From bare reading of the above provisions it would appear that certificate of fitness is required with respect to "transport vehicles" and "for the purpose of Section 39" Section 39 prohibits driving of motor vehicles without registration. It would be useful to quote the section in extenso as hereunder:

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 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.

In other words, by virtue of the provisions of Section 56 a transport vehicle shall not be deemed to be validly registered for the purpose of Section 39, that is, shall not be eligible to be driven in public places unless it is accompanied by certificate of fitness.

5. "Transport vehicle" is defined in the Act to mean "a public service vehicle, a goods carriage, an educational institution-bus or a private service vehicle.

"Public service vehicle" has been defined in the Act to mean "any motor vehicle used or adopted to be used for the carriage of passengers on hire or reward or includes a maxi cab, a motor cab, contract carriage and stage carriage.

"Goods carriage" is defined to mean "any motor vehicle constructed or adopted for use solely for carriage of goods, or any motor vehicle not so constructed or adopted when used for carriage of goods."

"Educational-institution-bus" has been defined to mean "a mini bus, which is owned by a college, school or other educational-institution and used fully for the purpose of transporting students or staff of the educational institution in connection with any of its activity."

"Private service vehicle" is defined to mean "a motor vehicle constructed or adopted to carry more than six persons including driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons being, or in connection with, his trade or business otherwise that is for hire or reward but does not include a motor vehicle used for public purpose."

From the definitions of the different types of vehicles, to be found in Section 3 of the Act, it would appear that the term "transport vehicle" is a kind of motor vehicle, a specie of the genus called motor vehicle.

6. As noticed above, Section 56 of the Act refers to transport vehicles and not other kinds of motor vehicle. In other words, if the vehicle is a public service vehicle, a goods carriage and educational-institution-bus or a private service vehicle, only then it is required to carry the certificate of, fitness.

7. From perusal of the corresponding rules also, being Rules, 62 to 73 of the Central Rules, it would appear that certificate of fitness is to be obtained only with respect to transport vehicles. To the same effect in Form 38 in which the fitness certificate is to be granted.

8. It is to be examined whether in view of the above-said provisions, the insistence of the respondents upon the petitioner taking and carrying the certificate of fitness is tenable. But before I do that it would be proper to refer to the provisions of Section 66 also to find out whether the petitioner can be legally asked to obtain and carry certificate of fitness in view of the notification dated 8.6.89 (supra) which has been issued u/s 66(3)(g).

9. Section 66, so far as relevant, reads as follows:

(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods have in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used:

(proviso omitted)

(2) xx xx xx

(3) The provisions of Sub-section (1) shall not apply-

(g) to any transport vehicle by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by a notification in the official Gazette, specify in this behalf.

10. From Sub-section (3) of Section 66 it would appear that the main provisions as contained in Sub-section (1) are not to apply to particular kinds of transport vehicles as described in various clauses including Clause (g). The true effect and import of the proviso of Sub-section (3) thus can be gathered only from the main provisions as contained in Sub-section (1). Sub-section (1), it would appear, creates an obligation upon owner of a motor vehicle not to use, or permit the use of, a vehicle as a transport vehicle, whether passengers or goods are being carried in it or not, except in accordance with the conditions of the permit. "Permit" has been defined in the Act to mean "a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under the Act authorizing the use of a motor vehicle as a transport vehicle," To the same effect is Sub-section (1). In other words, a public service vehicle, a goods carriage, an educational-institution bus or a private service vehicle, as defined in the Act, known by the compendious name of "transport vehicle", is not to be used in any public place, with or without passengers/goods, except in accordance with the permit granted by the competent authority, that is, without permit. It is this provision which is made inapplicable to different kinds or categories of transport vehicles as described in Sub-section (3).

In terms of Clause (g) of Section 66(3) it is open to the Central Government to lay down the conditions for use of transport vehicles by manufacturers or dealers in motor vehicles or body builders. In other words, use of transport vehicle by manufacturers/dealers in motor vehicles or body-builders (of motor vehicles) without the "permit" is permissible, but that is subject to such conditions as may be prescribed by the Central Government. Thus, the true import of the provisions of Section 66 read as a whole is that while a vehicle is not to be used as a transport vehicle (within the meaning of the term given in the Act) without the permit granted by the competent authority, with or without passengers/goods, the same can be used without permit by manufacturers or dealers in motor vehicles or body builders. But in such an event the use of the vehicle by them has to be in conformity with the conditions as may be laid down by the Central Government.

11. The question is whether despatch of vehicles to sale Centres despatch of vehicles to sale Centres where they are to be ultimately sold amounts to "use" of the vehicle. The plain dictionary meaning of the words "to use" is "to put to some purpose" or "to employ for some purpose". If the vehicle is to be used as transport vehicle, Section 66 is attracted. But if the transport vehicle is merely sent to sale centres, it will not amount to using the vehicle because the vehicle itself is not being put or employed for any purpose. A transport vehicle can only

be used for carrying passengers or goods. Mere despatch of the (unsold) transport vehicle for the purpose of sale will not amount to using it.

12. At this stage it would be useful to quote the notification dated 8.6.89 (supra) as hereunder:

In exercise of the powers conferred by Clause (g) of Sub-section (3) of Section 66 of the Motor vehicles Act, 1988 (59 of 1988) the Central Government hereby specified that the provisions of Sub-section (1) of the said section shall not apply to any transport vehicle purchased in one State and proceeding to a place situated in that State or any other State, without carrying any passengers or goods, subject to the condition, that the driver of every such vehicle shall carry-

- (a) the certificate of registration, permanent or temporary;
- (b) a certificate of insurance or a cover note; and
- (d) a letter from the seller of such vehicle stating the name and address of the person to whom it has been sold and the place to which it is proceeding.

This notification shall come into force on the 1st day of July 1989.

13. The word "purchased" occurring in the notification is of great significance. It implies that the notification is applicable to only such (transport) vehicles which have been sold. Read in the context of Section 66(1) it means that such transport vehicles which have been sold by the manufacturer/dealer and are proceeding to their destinations without carrying passengers-whether within the same state or outside-are exempt from the requirement of tacking, the "permit" but they have to carry, amongst others, the fitness certificate. The notifications, in terms, therefore, is not applicable. It would not be applicable even by implication. The thrust of Section 66(1) is that transport vehicles cannot be used without permit granted by the Authority. This eventuality would arise only after the vehicle has been sold. Prior to sale, there is no question of its being used in the sense contemplated by Section 66(1) and, therefore, there is no question of its taking permit. That is why Clause (9) of Section 66(3) excludes the applicability of the provisions of Section 66(1) to transport vehicles in the hands of manufacturers, dealers or body-builders and used by them.

14. Adverting to Section 56 of the Act, as noticed above, registration of the transport vehicles is not deemed to be valid for the purpose of Section 39, that is, for the purpose of being driven in public places unless they carry the fitness certificate. It would appear that the Act does not envisage the existence of "unregistered vehicles". Even vehicles which are not in use and kept in garage are supposed to be registered. But when they are driven on public road they must possess necessary fitness. This is what Section 56 ordains with respect to transport vehicles. It provides that the transport vehicles will not be "deemed" to be registered for the purpose of Section 39 unless they carry a certificate of fitness in the prescribed form which, in substance, means that the transport vehicles cannot be driven (or permitted to be driven) if they do not possess the

required fitness certificate. In that sense and event, registration will not be "deemed" to be complete although certificate of registration under Chapter IV of the Act has been granted to them.

15. The words "for the purpose of Section 39" are of great importance. That, if I may say so, is the soul of the section. We have noticed the provisions of Section 39 more than once above. The important thing to be noticed is that the proviso appended to the section makes the main provision inapplicable to a motor vehicle "in possession of a dealer subject to such conditions as may be prescribed by the Central Government." From Rule 33 of the Central Rules it appears that the Central Government has already laid down the condition contemplated by the proviso. That rule runs as follows:

For the purpose of proviso to Section 39, a motor vehicle in possession of a dealer shall be exempted from the necessity of registration subject to the condition that he obtains a trade certificate from the registering authority having jurisdiction in the area in which the dealer has his place of business in accordance with the provisions of this Chapter.

It would appear that the whole of Chapter III of the Central Rules, from Rule 33 to Rule 46, relates to Trade Certificate.

16. It is the specific undisputed case of the petitioner that at the time of their onward movement to different sale centres, the vehicles are not only temporarily registered but they also carry road worthiness certificate" granted by the petitioner being the manufacturers in Form 22, and by the body builder (where body is built on the vehicle) in Form 22-A, as the case may be, as well as the "trade certificate" granted under Rule 35 of the Central Rules in Form 17.

17. According to the respondents, by reason of the provisions of Section 56 read with Section 39, no transport vehicle can be deemed to be registered for the purpose of being driven on public road unless the fitness certificate has been granted to it and, therefore, it cannot move to sale centres without the certificate. According to the respondents further, Section 39 does not make any distinction between temporary registration and permanent registration, and the fact that the vehicle enjoys temporary registration is of no consequence. It is also suggested that the requirement as to fitness certificate is based on considerations of public safety which has to be rigorously enforced.

18. Proviso to Section 39, in my opinion, provides complete answer to the first part of the contentions. It makes inapplicable the main provision as regards motor vehicles which are in "possession of a dealer" subject to fulfilling the conditions prescribed by the Central Government. There is no dispute that the condition would stand satisfied after a trade certificate under Rule 35 of the Central Rules has been granted with respect to the vehicle. Grant of trade certificate", in fact, dispenses with the necessity of registration u/s 39. Registration, however, becomes necessary under Rule 42 of the Central Rules, which provides, "No holder of a trade certificate shall deliver a motor vehicle to a

purchaser without registration, whether temporary or permanent." In other words, before the vehicle is sold to the purchaser, it must be registered. It is because of this provision contained in Rule 42 that the manufacturers/dealers have to obtain temporary registration of the unsold vehicles u/s 43. But it may be noted here that while the proviso to Section 39 refers to the stage of when the vehicle is in possession of the dealer. Rule 42 contemplates the subsequent stage of sale. It refers to "holder" of a trade certificate, which means that the holder may be the manufacturer taking the vehicle to a sale centre for the purpose of sale or it may be the actual dealer at the sale centre to whom the trade certificate has been handed over. It may be mentioned here that u/s 2(8) of the Act the term "dealer" includes manufacturer as well. There should not, therefore, be any dispute that the vehicle will be deemed to be in possession of the manufacturer, i.e. petitioner in this case, at the stage of its onward journey to the sale centres.

19. As regards the considerations of public safety, it was pointed out on behalf of the petitioner that the road worthiness certificate takes adequate care of the safety considerations. Having regard to the particulars which are required to be taken into account vis-a-vis fitness certificates, I find the submission well-founded. The Legislature is supposed to be aware of the need of maintaining public safety while enacting the provisions. In the absence of anything inherently lacking or absurd, it is not possible to add something to the conditions prescribed by the statute. If in any individual case, the manufacturer is found to have granted a wrong road worthiness certificate law will take its course and action can be taken. But in the absence of any provision of law, the authorities cannot insist upon the manufacturers to obtain and carry fitness certificate even with respect to unsold transport vehicles.

20. For the reasons stated above, I have no hesitation in holding that the respondents cannot legally ask the petitioner to obtain certificate of fitness with respect to the unsold vehicles and seize them. The impugned action cannot be sustained on the anvil of either Section 56 or Section 66(3)(g) of the Motor Vehicles Act or any other law. The answer to the question formulated is thus answered in the negative and it is held that the respondents can not ask the manufacturers of motor vehicles to obtain "certificate of fitness" with respect to unsold vehicles while being sent to different sale centres.

21. In the result, this writ-petition is allowed. I will make no order as to cost.

P.K. Sarin, J.

I agree