

The Municipal Council, Raipur and Another

Vs

The State of Madhya Pradesh

Criminal Appeal No. 163 of 1967,

(S. M. Sikri, G.K. Mitter, P. Jagmohan Reddy JJ)

18.08.1969

JUDGMENT

SIKRI, J. -

1. This appeal by special leave arises out of the following facts. Inspector Ahuja inspected the Municipal Council, Raipur, under the Motor Transport Workers Act, 1961 - hereinafter referred to as the Act - and found that 50 transport workers, including drivers, conductors, mechanics, etc., had been employed by the Council but the Council had not been registered as required under Section 3(1) of the Act. He filed a complaint before the Special Magistrate and Presiding Officer, Labour Court, who issued summons to the accused, namely, the Municipal Council and the Chief Municipal Officer, Municipal Council, Raipur. The accused appeared by counsel and filed preliminary objections. Before the Magistrate two points were taken : (1) that the Municipal Council was not a 'motor transport undertaking's within Section 2(g) of the Act, and (2) that the Council was exempt under Section 38 of the Act insofar as it uses the vehicles for transporting sick or injured persons and for maintenance of public order, i.e., for transporting nightsoil and refuse of the town free of charges. The Magistrate accepted these contentions and dismissed the complaint and discharged the accused persons.

2. The State of Madhya Pradesh filed a revision before the Sessions Judge, Raipur, who, agreeing with the findings of the Magistrate, dismissed the revision. The State then filed a revision under Section 439, Cr. P.C. Three points were debated before the High Court : (1) whether a revision lay under Section 439, Cr. P.C. The contention was that the accused had been acquitted and not discharged and, therefore, only an appeal under Section 417, Cr. P.C., lay; (2) that the Municipal Council does not fall within the definition of the expression "motor transport undertaking" in Section 2(g); and (3) that the transport vehicles owned by the Municipal Council are exempt under Section 38(1) of the Act.

3. The High Court overruled the preliminary objection and held that a revision lay under Section 439, Cr. P.C., because the order passed by the Magistrate was an order of discharge and not of acquittal. On the second point the High Court held that the Municipal Council fell within the definition of the expression "motor transport undertaking". On the third point the High Court held that the vehicles of the Municipal Council did not come within the exemption under Section 38 of the Act.

4. The same points have been debated before us by the learned counsel. Coming to the first point, we agree with the High Court that the order of the Magistrate was an order of discharge and not of acquittal. It is true that it is a summons case and no formal charge is necessary to be framed under

Section 242, Cr. P.C., but even so here when the accused appeared, before anything was done the accused filed a preliminary objection and no particulars of the offence of which the accused was charged were even stated to him.

5. Coming to the second point, it seems to us that the High Court was right in holding that the Municipal Council is a motor transport undertaking as defined in the Act. It is necessary to set out the relevant definitions in Section 2 of the Act :

"2(g) "motor transport undertaking" means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier";

(n) all other words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1939, shall have the meanings respectively assigned to them in that Act."

The expression "private carrier" is defined in the Motor Vehicles Act, 1939, to mean "an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of Section 42". A "transport vehicle" is defined in the Motor Vehicles Act, 1939, to mean "a public service vehicle or a goods vehicle", and a "goods vehicle" is defined to mean "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".

"Goods" is defined 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."

6. It seems to us that the accused fell within the definition of a "private carrier" inasmuch as the Council owned transport vehicles and used these vehicles solely for the carriage of goods which are its property. In this case we are not concerned with the second limb of the definition, and the authority cited by the learned counsel for the accused (Mohammed Zafrul Islam v. Birendra Lall) (AIR 1965 Bom 120) which dealt with the second limb, is of no assistance to us.

7. The main argument which the learned counsel urges is that the word "includes" in the definition of the expression "motor transport undertaking" helps him because this shows that it is only an undertaking of a commercial nature which was intended to be included within the definition of "motor transport undertaking". He says that a Municipal Council is not carrying on any business but is carrying on statutory obligations imposed upon it and, therefore, a Municipal Council cannot be called an undertaking.

8. We are unable to accept this contention. First, the Act provides for the welfare of motor transport workers and regulates the conditions of their work. Such beneficial acts are not, as a rule, construed strictly. Secondly the words of the definition are plain and not susceptible of any reasonable limitation. It seems to us that by using the word "includes" the Legislature undoubtedly intended to enlarge the meaning of the expression "motor transport undertaking". The words "private carrier"

have been given a specific meaning in the Motor Vehicles Act, 1939, and it is difficult to limit this specific meaning on any reasonable basis. Further, Section 38 of the Act, which exempts certain transport vehicles, also proceeds on the basis that a private carrier who is carrying on activities which are not commercial would be included within the expression "motor transport undertaking".

9. Relying on the decision of the House of Lords in *Dilworth v. The Commissioner of Stamps* ((1899) AC 99) and the decision of the Madhya Pradesh High Court in *State of Madhya Pradesh v. Mother Superior Convent School*, (AIR (1958) MP 362) the learned counsel contends that sometimes the Legislature uses the word "includes" to mean "means and includes". This is undoubtedly so but we are unable to appreciate how this would help the appellants.

10. The learned counsel also suggests that we should limit the meaning of the words "private carrier" in the same manner as the Madhya Pradesh High Court limited the meaning of the word "church" occurring in Section 2(4) of the Madhya Pradesh Public Trust Act. We are unable to see any analogy between the two definitions. The definition there is quite different and the High Court was of the view that "the scheme of the Act itself shows that what was intended was to regulate, not religious institutions but religious institutions impressed with the character of a public trust".

11. Coming to the last point, we agree with the High Court that the words "public order" in Section 38(1)(ii) do not include the maintenance of public health. Section 38 reads :

"38. Exemptions. - (1) Nothing contained in this Act shall apply to or in relation to any transport vehicle -

(i) used for the transport of sick or injured persons;

(ii) used for any purpose connected with the security of India, or the security of a State, or the maintenance of public order....."

12. The learned counsel relies on the decision of this Court in *Ramesh Thappar v. The State of Madras*. ((1950) SCR 594). In *Ramesh Thappa's* case the question before this Court was "whether the impugned Act (Madras Maintenance of Public Order Act, 1949) in so far as it purports by section 9(1-A) to authorise the Provincial Government "for the purpose of securing the public safety or the maintenance of public order, to prohibit or regulate the entry into or the circulation, sale or distribution in the Province of Madras or any part thereof of any document or class of documents" is a "law relating to any matter which undermines the security of or tends to overthrow the State". Patanjeli Sastri, J., as he then was, observed :

"Now 'Public Order' is an expression of wide connotation and signifies that state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the government which they have established."

Later he observed :

"'Public safety' ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent danger to public health may also be regarded as securing public safety."

13. The learned counsel urges that "public order" includes "public safety" and the latter comprises "public health". We see no force in this contention and *Ramesh Thappar's* case (supra) does not say

so. In our view "Public Order" in this context means public peace and tranquility. We agree with the High Court that the functions of the Municipal Council in carrying night-soil and in distributing water do not fall within "maintenance of public order."

14. In the result the appeal fails and is dismissed.

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