

Chief General Manager, Jagannath Area and Others

Vs

State of Orissa and Another

SLP (C) No. 16476 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

20.09.1996

JUDGMENT

PATTANAİK, J. –

1. This special leave petition is directed against the judgment of the Division Bench of the Orissa High Court dated 10-4-1996 passed in Original Jurisdiction Case No. 811 of 1996. The question for consideration before the Orissa High Court was whether the dumpers belonging to the petitioner which are used within the mining areas are taxable as motor vehicle under the provisions of Orissa Motor Vehicles Taxation Act (referred to as "the Taxation Act"). The Orissa High Court relying upon the decision of this Court in the case of Central Coal Fields Ltd. v. State of Orissa [1992 Supp (3) SCC 133] dismissed the writ petition. When the present application was listed for admission, the same was dismissed by us. But since Mr Shanti Bhushan, learned Senior Counsel appearing for the petitioners had re-argued the matter at length for a considerable period and contended that the decision of this Court in Central Coal Fields case [1992 Supp (3) SCC 133] has no application we had indicated that a reasoned order will follow and hence the reasons are being given for dismissing the special leave petition.

2. Under Section 3 of the Taxation Act, tax shall be levied on every motor vehicle used or kept for use within the State at the rate specified in the Schedule.

3. The expression "motor vehicle" means any wheeled conveyance which is propelled mechanically if it is adapted for use upon the road irrespective of whether the power of propulsion is transmitted thereto from an internal or external 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. Because of the latter part of the definition of motor vehicles, the petitioner had made out the case before the Orissa High Court that the dumpers in question are so heavy that they cannot move on public road and, therefore, are not taxable under the Taxation Act but the High Court had negated the said contention.

4. Mr Shanti Bhushan, learned Senior Counsel, reiterated the same arguments in this Court and essentially raised two contentions;

(1) The dumpers which have been taxed under the Taxation Act are used only within the mining areas and are not capable of being used on the public roads and, therefore, cannot be held to be motor vehicles and consequently are not taxable under the Taxation Act.

(2) Secondly, the learned Senior Counsel argued that the tax on vehicles being compensatory in nature, levy of such tax can be sustained only on the ground that the vehicles used the roads for which tax is levied. If the vehicle in question did not use the roads and yet tax is levied on the same, the said levy is liable to be struck down.

5. In elaborating the first argument Mr Shanti Bhushan took us through some of the provisions of the Motor Vehicles Rules which prescribe the dimension of such vehicle in the matter of width, length or height and which prohibits the vehicles beyond such dimensions to be used on public roads. In this connection the learned Senior Counsel brought to our notice Rules 92 and 93 of the Motor Vehicles Rules (hereinafter referred to as "the Rules") which are quoted hereinbelow in extenso :

"92. General. - (1) No person shall use or allow to be used in any public place any motor vehicle which does not comply with the provisions of this Chapter :

Provided that nothing contained in this rule shall apply to vehicles manufactured prior to the coming into force of the Central Motor Vehicles (Amendment) Rules, 1993.

(2) Nothing in this Rule shall apply to a motor vehicle -

(a) which has been damaged in an accident or to a vehicle stopped or impeded owing to shortage of fuel or other temporary defects while at the place at which the accident or defect occurred;

(b) which is defective or damaged and is being removed to the nearest place of repair of disposal; or

(c) which is more than fifty years' old from the date of its registration and is being driven for taking part in a vintage car rally :

Provided that where a motor vehicle can no longer remain under the effective control of the person driving, the same shall not be used in a public place except by towing.

93. Overall dimension of motor vehicles. - (1) The overall width of a motor vehicle, measured at right angles to the axis of the motor vehicle between perpendicular planes enclosing the extreme points, shall not exceed, -

(i) in the case of a motor vehicle, other than a transport vehicle, 2.5 metres;

(ii) in the case of a transport vehicle, 2.7 metres.

Explanation. - For purposes of this rule, a rear-view mirror, or guard-rail or a direction-indicator (when in operation) shall not be taken into consideration in measuring the overall width of motor vehicle.

(2) The overall length of a motor vehicle, other than a trailer, shall not exceed, -

(i) in the case of motor vehicle other than a transport vehicle having not more than two axles, 9.5 metres;

(ii) in the case of a transport vehicle with rigid frame having two or more axles, 11.25 metres;

(iii) in the case of an articulated vehicle having more than two axles, 16 metres;

(iv) in the case of truck-trailer or tractor-trailer combinations, 18 metres.

(3) In the case of an articulated vehicle or a tractor-trailer combination specially constructed and used for the conveyance of indivisible load of exceptional length, -

(i) if all the wheels of the vehicle are fitted with pneumatic tyres, or

(ii) if all the wheels of the vehicle are not fitted with pneumatic tyres, so long as the vehicle is not driven at a speed exceeding twenty-five kilometres per hour,

the overall length shall not exceed 18 metres.

Explanation. - For the purposes of this rule 'overall length' means the length of the vehicle measured between parallel planes passing through the extreme projection points of the vehicle exclusive of -

(i) a starting handle;

(ii) any hood when down;

(iii) any fire-escape fixed to a vehicle;

(iv) any post office letter-box, the length of which measured parallel to the axis of the vehicle, does not exceed 30 centimetres;

(v) any ladder used for loading or unloading from the roof of the vehicle or any tail or indicator lamp or number-plate fixed to a vehicle;

(vi) any spare wheel or spare wheel bracket or bumper fitted to a vehicle;

(vii) any towing hook or other fitment which does not project beyond any fitment covered by clauses (iii) to (vi).

(4) The overall height of a motor vehicle measured from the surface on which the vehicle rests, -

(i) in the case of a vehicle other than a double-decked motor vehicle, shall not exceed 3.8 metres;

(ii) in the case of a double-decked motor vehicle, shall not exceed 4.75 metres;

(iii) in the case of a laden trailer carrying ISO series 1 Freight Container, shall not exceed 4.2 metres :

Provided that the provisions of clauses (i) to (iii) shall not apply to fire-escape tower wagons and other special purpose vehicles exempted by general or special order of

the registering authority.

(5) The overhang of a tractor shall not exceed 1.85 metres.

(6) The overhang of the motor vehicle other than a tractor shall not exceed 60% of the wheel base.

Explanation I. - For the purpose of this rule 'wheel base' means, -

(a) in the case of vehicles with only two axles, the distance measured horizontally and parallel to the longitudinal axis of the vehicle, between the centre points of the front axle and rear axle;

(b) in case of a vehicle having only three axles, and the front axle is only the steered axle, the distance measured horizontally and parallel to longitudinal axis of the vehicle between the centre of the front axle and centre point between the two rear axles.

Explanation II. - For the purpose of this rule, 'overhang' means the distance measured horizontally and parallel to the longitudinal axis of the vehicles between two vertical planes at right angles to such axis passing through the two points specified hereunder :

A. The rearmost point of the vehicle exclusive of -

(i) any hood when down;

(ii) any post office letter-box, the length of which measured parallel to the longitudinal axis of the vehicle, does not exceed thirty centimetres;

(iii) any ladder forming part of a turn-table fire-escape fixed to a vehicle;

(iv) any ladder used when the vehicle is at rest for loading or unloading from the roof of the vehicle, or any tail-lamp or number-plate fixed to a vehicle;

(v) any spare wheel or spare wheel bracket fitted to a vehicle;

(vi) any luggage-carrier fitted to a motor vehicle constructed solely for carriage of passengers and their effects and adopted to carry not more than seven passengers exclusive of the driver;

(vii) any towing-hook or other fitment which does not project beyond any fitment mentioned in clauses (ii) to (iv);

(viii) any mounted implement on a 3-point linkage of a tractor :

Provided that in the case of a stage carriage -

(a) the projection of any bumper or advertisement panel fitted at the rear of the vehicle shall not exceed fifteen centimetres;

(b) the projection in respect of an advertisement panel shall not be such as to obstruct either the vision from the rear-view mirror or project through the emergency exit at the rear or both;

B. (i) in the case of a vehicle only two axles, one of which is not a steering axle, the centre point of that axle; or

(ii) in the case of a vehicle having only three axles and the front axle is the only steering axle; the centre point of the rearmost axle;

(iii) in the case of any vehicle registered in India before the commencement of these rules it shall suffice if the overhang does not exceed $\frac{7}{24}$ ths of the overall length of the vehicle;

(iv) in the case of a motor vehicle having only three axles where two front axles are steering axles, the centre point of the rearmost axle;

(v) in the case of a motor vehicle having four axles, where two front axles are steering axles, a point 102 millimetres in rear of the centre of a straight line joining the centre points of the rearmost two axles;

(vi) in any other case, a point situated on the longitudinal axis of the vehicle such that a line drawn from it at right angle to that axis will pass through the centre of the minimum turning circle of the vehicle.

(7) No part of the vehicle other than a direction-indicator, when in operation, or a driving mirror, shall project laterally more than 355 millimetres beyond the centre line of the rear wheel, in the case of single rear wheels or more than 152 millimetres beyond the extreme outer edge of the outer tyres, in the case of dual rear wheels :

Provided that in case of agricultural tractors lateral projection up to 700 millimetres beyond the central line of the rear wheel shall be permitted :

Provided that the State Government or any authority authorised in this behalf by the State Government, if it is satisfied that it is necessary because of the nature of any road or bridge or in the interests of public safety, may prohibit or restrict the operation of a motor vehicle in a specified route or area unless such vehicle complies with the requirements specified by the State Government for such route or area.

(8) No motor vehicle shall be loaded in such a manner that the load or any part thereof extends, -

(i) laterally beyond the side of the body;

(ii) to the front beyond the foremost part of load body of the vehicle;

(iii) to the rear beyond the rearmost part of the vehicle;

(iv) to a height beyond the limits specified in sub-rule (4) :

Provided that clause (iii) shall not apply to a goods carriage when loaded with any pole or rod or indivisible load so long as the projecting part or parts do not exceed the distance of one metre beyond the rearmost point of the motor vehicle."

6. According to Mr Shanti Bhushan, learned Senior Counsel, since the dimension of the dumpers in question exceed the permissible dimensions under the aforesaid Rules, there is an embargo for the dumpers to be used on public roads and as such, the vehicle cannot be taxed under the Taxation Act. We are unable to persuade ourselves to agree with the submission of the learned Senior Counsel for the petitioner. The crux of the question is whether the dumpers is a motor vehicle and whether the vehicle attracts the liability of tax under Section 3 of the Taxation Act ? The very question came up for consideration before this Court in the case of Central Coal Fields Ltd. v. State of Orissa [1992 Supp (3) SCC 133] wherein the various provisions of the Orissa Motor Vehicle Taxation Act was under consideration and the vehicles which had been taxed under the Taxation Act in the said case were dumpers and rockers. This Court after tracing the legislative history and the decisions of this Court commencing from Bolani Ores Ltd. v. State of Orissa [(1974) 2 SCC 777] repelled argument of the mineowners who used dumpers within their mining premises to the effect that the dumpers are vehicles not adapted for use upon roads and, therefore, are outside the scope of the Taxation Act and held that these dumpers run on tyres, in marked contrast to chain plates like caterpillars or military tanks. It was also held that by the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads and on the mere fact that they are required at places to run at a particular speed is not to detract from the position otherwise clear that they are adapted for use on roads. The very nature of these vehicles make it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the dumpers or rockers as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word 'adapted' in the provision was read as 'suitable' in Bolani Ores case [(1974) 2 SCC 777] by interpretation on the strength of the language in Entry 57 List II of the Constitution. On the fact-situation, therefore, it must be held that dumpers and rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se, were liable to taxation on the footing of their use or kept for use on public roads.

7. The various restrictions contained in Rules 92 and 93 referred to by Mr Shanti Bhushan, learned Senior Counsel, are intended to lay down the outer limits for the vehicles to be plied on the public road. But that does not mean that the vehicles which are otherwise motor vehicles within the definition clause go out of the definition the moment they exceed the limit as provided in Rules 92 or 93 of the Rules. The taxability of dumpers again came up before this Court in the case of Union of India v. Chowgule & Co. (P) Ltd. [1992 Supp (3) SCC 141]. In this case an argument had been advanced that the dumpers are used only in mining operation within the mining area and are not actually used on roads nor are suitable for use on roads and, therefore, are not taxable. The Judicial Commissioner of Goa, Daman and Diu accepted the contention and allowed the appeal. Union of India had come up in appeal to this Court. This Court reversed the decision of the Judicial Commissioner of Goa, Daman and Diu and relying upon the earlier decision of this Court in Central Coal Fields Ltd. v. State of Orissa [1992 Supp (3) SCC 133] held the mere fact that dumpers were used solely on the premises of the owner, or that they were in closed premises, or permission of the authorities was needed to move them from one place to another, or that they are not intended to be used or are incapable of being used for general purposes, or that they have an unladen and laden capacity depending on their weight and size, is of no consequence for, dumpers are vehicles used for transport of goods and thus liable to pay a compensatory tax for the availability of roads for them to run upon commission.

8. The dumpers in question which have been levied under the Taxation Act run on tyres as is apparent from the letter to the Automotive Research Association of India dated 25-1-1993, which has been annexed as Annexure 'C' to this special leave petition but the tyres are of higher load-carrying capacity from the certificate given by Hindustan Motors which has been annexed as Annexure 'D' to this special leave petition. It appears that the reasons which impelled the manufacturer to give the certificate that the vehicles are not meant for plying on highways are -

(i) Culverts and bridges on highways are generally not designed to take care of such axle loads continuously;

(ii) The vehicles cannot run at reasonable speed on highway and hence obstruct the flow of normal traffic;

(iii) Width and height of the equipment will adversely affect the traffic and minimum preferable width of the road required for plying these vehicles is 50 ft.

(iv) The vehicles are fitted with specially designed heavy duty tyres and the heat generation is much more and generally cannot be run for more than about 5 kms at one stretch which is not so in case of normal conventional hauling units which ply on highways.

9. On these facts it is difficult for us to hold that the vehicles are not adapted or suitable or capable of being used on public roads, even though for most of the time they might actually be used within the mining areas on the roads prepared by the mining owners. Following the two earlier judgments of this Court in *Central Coal Fields Ltd.* [1992 Supp (3) SCC 133] and *Union of India v. Chowgule & Co.* [1992 Supp (3) SCC 141] we hold that the dumpers in question are motor vehicles and are taxable within the ambit of the Taxation Act.

10. Coming now to the second argument of Mr Shanti Bhushan, learned Senior Counsel which is on the question of compensatory nature of the Act it is to be seen that in the very decision in *Central Coal Fields Ltd. v. State of Orissa* [1992 Supp (3) SCC 133] it was held : (SCC p. 140, para 9)

"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* [(1974) 2 SCC 777] were liable to taxation on the footing of their use or kept for use on public roads; the network of which, the State spreads, maintains it and keeps available for use of motor vehicles and hence is entitled to a regulatory and compensatory tax."

11. The tax imposed on the motor vehicles is basically a tax for the use of the roads within the State. It is no doubt a compensatory tax which facilitates trade, commerce and intercourse within the State by providing roads and maintaining roads in a good state of repair. As has been held by this Court in *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan* [(1963) 1 SCR 491 : AIR 1962 SC 1406], it would not be right to say that the tax is not compensatory because the precise or specific amount collected is not actually used in providing any facilities. If a statute fixes a charge for a convenience or service provided by the State or an agency of the State, and imposes it upon those who choose to avail themselves of the service or convenience, or who can use the services provided for, the imposition assumes the character of remuneration or consideration charged in respect of an advantage sought or received or advantage which can be received. The mere fact that any particular

individual though can take advantage of the convenience of the services provided by the State but for some reason or the other chooses not to enjoy the services provided cannot escape the taxing liability on that score nor can the provision imposing the tax become invalid on that score. Such levy of tax for keeping a motor vehicle for use on the public roads or which is capable of being used on the public roads are no doubt compensatory taxes but does not violate provisions of Article 301 of the Constitution of India.

12. Mr Shanti Bhushan, learned Senior Counsel appearing for the petitioners, strongly relied upon the decision of the Division Bench of the Orissa High Court in the case of Steel Authority of India Ltd. v. State of Orissa in Original Jurisdiction Case No. 847 of 1991 disposed of by a judgment dated 18-6-1992, wherein the Orissa High Court had held that the vehicles kept by the Steel Authority of India for being used within its premises are not liable to pay tax under the Orissa Motor Vehicles Taxation Act. But the very decision has been reversed by this Court in Regional Transport Officer-cum-Taxing Authority v. Steel Authority of India Ltd. [1995 Supp (4) SCC 165] wherein it was held that the vehicle in question kept by the Steel Authority of India are taxable under the Motor Vehicles Taxation Act but the matter was remitted on an enquiry on which item of the Schedule the levy in question will remain.

13. In the premises, as aforesaid, the dumpers belonging to the petitioners are taxable as held by the Orissa High Court and we see no infirmity in the said judgment.