

# ORISSA HIGH COURT

Bolani Ores Ltd

Vs

State of Orissa

First Appeals Nos. 44 and 45 of 1963

(R.K. Das and G.K. Misra, JJ.)

30.03.1967

## JUDGMENT

**R.K. Das, J.**

1. These two appeals arise out of two suits filed by the plaintiffs for declaration that the machineries in their possession, and as described in Schedule A of the plaint, are not liable for registration under Section 22 of the Indian Motor Vehicles Act (hereinafter described as the Act') and as such cannot be taxed under Section 6 of the Bihar and Orissa Motor Vehicles Taxation Act (hereinafter referred to as the 'Taxation Act') as they do not come within the ambit of the definition of 'Motor Vehicles' given in Section 2(18) of the said Act. As both the appeals raise common questions of law they were heard together and are disposed of by this common judgment. First Appeal No. 44 of 1963.

The machineries in respect of which the plaintiff seeks a declaration as aforesaid are :

1	2. 1/2 Cu Yd. Lorain Shovels
2	Ingersoll-Rand Drill Master
3	Caterpillar D-8 Bull-dozers
4	Le Tourneau Rockers
5	Euclid Dumpers
6	Motor Grader
7	Fordson Major Tractors
8	Fargo Truck fitted with serving tank for diesel oil, greasing and lubrication unit, oxyg welding set

2. The plaintiff is a holder of mining leases carrying mining operations within his leasehold areas covering several square miles in the district of Keonjhar. The plaintiff's case is that he is using these machineries in connection with his mining operations in the lease-hold areas. Lorain

Shovels (item No. 1) are used to dig up the ore after blasting and to load the same into either the Le Tourneau Rockers (item No. 4) or the Euclid Dumpers (item No. 5) from the mining faces to the crushing and screening plant or from the hand-mine stock-pile to the railway siding nearby. Ingersoll Rand Drill Masters (item No. 2) are used to dig holes through the ore body so that the explosives can be placed in the hole and the ore blasted. The Caterpillar D-8 Bull-dozers (item No. 3) are machines used to cut and push earth above the ore-bed and the Motor Grader (item No. 6) is used to level the roads and to maintain a clear surface. The Fordson Major Tractors (item No. 7) are used to supply compressed air to the Jack hammer Drills which are used to drill holes in the ore so that charges of explosives may be inserted to break the ore into manageable sizes. Fargo Truck (item No. 8) is meant to be a servicing unit.

3. The Superintendent of Police, Keonjhar, within whose jurisdiction the plaintiff operates as a mining lessee and uses the aforesaid machineries called upon the plaintiff to get them registered under Section 22 of the Act on payment of taxes as provided under Section 6 of the Taxation Act, as he was of the view that these machineries are 'Motor Vehicles' within the meaning of the Act. As the plaintiff was threatened to be prosecuted in case he failed to get them registered, he did so, and filed the present suit for a declaration that the machineries are not liable to registration under Section 22 of the Act.

4. The case of the State is that the various types of the machineries used by the plaintiff and as enumerated above are 'motor vehicles' within the meaning of the Act and as such are liable to taxation under the Taxation Act.

5. The learned trial Court held that all the items of the machineries as mentioned in the plaintiff's schedule, except item No. 6, that is, a Motor Grader, come within the definition of 'Motor Vehicles' and as such, are liable to registration under Section 22 of the Act, and payment of taxes as provided under the Taxation Act. Against this decision of the learned Subordinate Judge, the plaintiff has filed the present appeal. There was no cross-appeal by the State in respect of item No. 6. The appeal was decided in favour of the plaintiff.

6. In course of hearing of the appeals, learned counsel for the plaintiff conceded that a Fargo Truck (item No. 8) clearly comes within the purview of the definition of 'motor vehicle' as given in the Act. Similarly the learned Advocate-General conceded that the Ingersoll-Rand-Drill Master (Item No. 2) cannot be held to be 'Motor Vehicles' within the meaning of the Act. The controversy is therefore confined to the other five items of the machineries, that is, items 1, 3, 4, 5 and 7.

7. The main question for consideration is whether these items come within the meaning of 'Motor Vehicle' as given in the Act and are thus liable to taxation under the Taxation Act. Section 6 is the charging section in the said Taxation Act. It specifies that tax shall be paid on every motor vehicle at a rate specified in the second schedule to the said Act. Under Section 2(c) of the Taxation Act, a 'Motor Vehicle' carries the same meaning as in the Motor Vehicles Act, 1939. Section 2(18) of the Act defines a 'Motor Vehicle' as follows :

"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 special type adapted for use only in a factory or in any other enclosed premises."

The word 'vehicle' has not been defined in the Act, but in the absence of such definition in the Statute, we may take recourse to the dictionary or ordinary meaning of the said word which means "some wheeled conveyance used for carrying men and materials; a means of conveyance or transmission." Taking into consideration the nature of work the machineries are employed to perform, we may have no difficulty in treating them as 'vehicles' for the purpose of definition as the evidence discloses that they are engaged in the movement of ores in the mining areas. It is admitted that machineries in question are mechanically propelled and there is no dispute that they do not run on fixed rails. The case of the plaintiff, however, is that though the machineries are mechanically propelled and may be taken as vehicle, they are not adapted for use upon roads, but they are only a special type of vehicles adapted for use in a factory or in an enclosed premises, such as the well-demarcated mining areas of the plaintiff, and as such, are excluded from the purview of the aforesaid definition.

8. On the basis of the evidence, the trial Court held that the extensive mining areas covering several miles cannot be said to be an 'enclosed premises' nor can the said machineries be said to be of such a special type as are adapted for use only in a factory or any other enclosed premises and nowhere else. It is not the contention of the plaintiff that the mining area is a factory. It is admitted by the plaintiff that there is no boundary wall or any barbed wire to enclose his leasehold areas. His case, however, is that some boundary pillars have been posted at intervals to demarcate his mining area and that is sufficient to make it an 'enclosed premises' within the meaning of the Act.

9. 'Enclosed premises' has not been defined in the Act. In the absence of such definition, we may adopt the dictionary meaning of the said expression. In the Oxford English Dictionary. Vol. III, the meaning of the word 'enclose' has been given as "To surround (with walls, fences, or other barriers) so as to prevent free ingress or egress" Thus, the mere posting of pillars at intervals in an extensive area covering several square miles would not amount to an 'enclosure' as that would not be sufficient to prevent free ingress or egress. Assuming however, that the entire mining area is an 'enclosed premises' it is further necessary to be established, before the said vehicles could claim exclusion from the category of 'motor vehicles' that they are of such a special type that they are adapted for use only in a factory or in any other enclosed premises and nowhere else There is however no such evidence in this case. Thus, the said vehicles cannot be excluded from the category of 'motor vehicles' on that ground.

The question is, whether they come within the ambit of the first part of the definition, that is, whether they are adapted for use on the road. The expression 'adapted for use' as appearing in the Motor Vehicles Act was the subject-matter of construction by the Supreme Court in the unreported case of *State of Mysore v. Syed Ibrahim*<sup>1</sup>, That was a case where the owner of a private motor car was prosecuted for having carried passengers for hire or reward, without taking necessary permit as required under Section 42 of the Act. He was prosecuted under Section 123 read with Section 42(1) for using a vehicle without permit. The contention raised was that it was a motor car and not adapted to be used for carriage of passengers as is in the case of police

service vehicles and therefore, no permit is necessary and as such no offence was committed. It was held that it is the use of the vehicle that determines the category of the motor vehicle and not whether it is adapted for that purpose or not. It was observed that even if a motor vehicle is occasionally used for carrying passengers for hire or reward. It must be regarded, when so used, as a public service vehicle and therefore a transport vehicle and if it is so used without the necessary permit, it would amount to breach of Section 42(1) and the owner would be liable to be punished under Section 123.

Their Lordships approved the legal position as laid down in *Payne v. All'cock*<sup>2</sup>, That was a case where the owner of a private motor car paid duty thereon at the horse-power rate under the Finance Act of 1920. The car was neither constructed nor adapted for use for the conveyance of goods. But the owner-appellant while the licence was in force used. It occasionally for conveyance of goods in the course of his trade. He was prosecuted on the ground that the user of the car was for a purpose which brought it within a class to which a higher rate of duty is chargeable under the said Finance Act. He was convicted by the Magistrate. On appeal it was contended on behalf of the appellant that to render a motor car subject to higher rate of duty as is prescribed under the Finance Act, it was necessary that it should not only be used for the conveyance of goods but also be constructed or adapted for such use, and that as the car had not been so, constructed or adapted, he is not liable to pay a duty at a higher rate. This contention was negated and it was held by the Court consisting of Lord Hewart, C.J. Avory, J. (and Macnaghten, J. dissenting) that it is user of the car that determines the question irrespective of the fact whether it was constructed or adapted for the conveyance of good? and that was not an essential ingredient for the offence. The same principle of law was also laid down in AIR 1945 Madras 440, In re. Manager Indian Express and *Public Prosecutor v. Rajagopalan*<sup>3</sup>. The Supreme Court also referred to these two decisions of the Madras High Court as laying down the correct law Thus the legal position is clear that it is the user of a particular vehicle that determines the category and not the mere fact of its adaptation or construction. Thus, if a particular vehicle is capable of being used in a particular way it must be taken to have been adapted for such use.

10. It is contended on behalf of the appellant that even assuming the machineries could causally be used upon the roads, they are not 'adapted for use upon roads' as contemplated under Section 2(18) of the Act. Reliance was placed by learned counsel for the appellant on a decision reported in *Daley v. Hargreaves*<sup>4</sup>. There the appellant Daley was prosecuted by the Superintendent of Police on the ground that he used an unregistered motor vehicle, a Huir Hill Dumper, on the road in contravention of Regulation 19 of the Motor Vehicles (Construction and Use Regulations, 1955), made In pursuance to the Road Traffic Act, 1930, as the vehicle was not fitted with certain instrument, capable of giving sufficient warning of approach contrary to the provisions of Section 3 of the said Road Traffic Act. It was contended on behalf of the appellant Daley that these Dumpers were not 'motor vehicles' within the meaning of Section 1 of the said Road Traffic Act of 1930, and Section 36(1) of the Road and Rail Traffic Act. 1933, as they were neither intended nor adapted for use on the roads Section 36(1) of the Road and Rail Traffic Act of 1933. defined 'Motor Vehicle' as a mechanically propelled vehicle intended or adapted for use upon roads. It is pointed out that the material part in the definition in the English Act is similar to the definition given in Section 2(18) of the Indian Motor Vehicles Act in so far as the expression 'adapted for use upon roads' is concerned. In that case, evidence was led by the prosecution to show that on one occasion the dumpers were used on the road and there was no evidence to show how the dumpers laden with rubbles reached the site of a house which was in

course of construction by the appellant. The appellant was convicted. On appeal, he took the ground that the Dumpers were not intended or adapted for use on the roads. In that case, reliance was placed upon a Scottish decision reported in *Mac Donald v. Carmichael*<sup>5</sup>. where the dumpers were held not to be 'motor vehicles' as it was found that there was no evidence that the dumpers were used on the roads by the appellant, for any general purpose. Salmon, J. relied upon the aforesaid Scottish case. 1941 SC 27 and held that the limited use of dumpers on the roads as in the above-mentioned Scottish case, did not establish that they were intended or adapted for use on the road within the meaning of the words in Section 1 of the Road Traffic Act, 1930, or Section 36(1) of the Road and Rail Traffic Act, 1933. He held that there was nothing to distinguish the case before him from the Scottish case in any material particulars. He said : "There is nothing here which could Justify a finding that the dumpers were used or might practically be used on roads otherwise than in the limited fashion in which they were used in 1941 SC 27. Had there been any such evidence before the Justices, I, for my part, would have thought it proper to remit the case to them for further finding on the point". The learned Judge, however, observed that :

"The view that I have reached is based strictly on the particular facts of this case and is not intended to apply to dumpers generally. My conclusion might, and probably would have been different if the findings had shown that the dumpers were reasonably suitable for being driven along the public roads in transit or for the purpose of carrying materials from one site to another. Nor must it be thought that I am acceding to the appellants' submission that the intention referred to in the relevant sections is the manufacturer's intention alone. It may be that the legislature had no particular person's intention in view, whether manufacturer's 'wholesaler's, retailer's, owner's, or user's."

"Intended for use on roads" may mean no more than suitable or apt for use. I prefer, however, to express no concluded view on this point but to base my decision following 1941 SC (J) 27 on the ground that in no event does the evidence of very limited user in this case establish that the vehicles were intended for use on roads within the meaning of the Statutes concerned. Lord Parker, C.J. while agreeing with Salmon, J. said :

"I would only like to emphasize that it must not be taken as the result of this decision that dumpers of the type used In this case are not motor vehicles intended or adapted for use on the road. For my part, I have come to the same conclusion as Salmon, J merely because that was not proved in this case."

This decision, however, does not lend any unequivocal support to the contention of the appellant that 'Dumpers' as a category of vehicles are not adapted for use on the road. On the other hand the decision is confined to the facts of that particular case. It is also clear that the decision would have been otherwise if the dumpers in question would have been reasonably suitable for being used on the roads. Thus it has to be determined on facts of each case if the vehicles are suitable for being used on roads.

The learned counsel for the appellant relied upon another case reported in *Maddox v. Storer*<sup>6</sup> to show how the word 'adapted' has been understood in the English Road Traffic Act of 1960. It was observed by Lord Parker, C.J. that the word 'adapted' standing on its own, is susceptible of meaning only 'fit and apt for the purpose'. Ashworth, J. while agreeing with Lord Parker C.J. said

that the phrase "is adapted" plainly indicates that the meaning involved is that "is suitable". Here again 'adapted' means nothing more than 'suitability' of its use on the road. In view of the aforesaid authoritative decision of the Supreme Court, however, it is not open to us to apply the English decision to the case. In the matter of construction of the words in the Indian Statutes (See *I.T. Commissioner v. Gajapathy Naidu*<sup>7</sup>) That apart the English decisions referred to above do not appear to lay down any contrary proposition of law. The test in all these cases would be if the vehicles are reasonably suitable for being used along with the public roads. The fact that the manufacturers have made or intended a particular vehicle for one purpose or the other or the dealers have sold it for a particular purpose or that a particular vehicle is described by a particular name or description, is no criterion to decide whether the vehicle is adapted for use upon the roads within the meaning of the definition given in Section 2(18) of the Act.

11. I shall next proceed to examine if any of the items mentioned in the plaint schedule are suitable for being used on the roads. Some illustrated brochures were placed before us to give us an idea that they are, by reason of the nature of their construction, are unsuitable for use on the roads. In the present appeal, as already said, we are concerned only with items 1, 3, 4, 5 and 7.

12. The evidence of P.W. 1 discloses that Shovel (Item No. 1) is a mechanically propelled equipment meant for the purpose of digging ores. Bulldozers (item No. 3) are used to remove the surface earth over the rock-bed. There is no evidence to show that any of these vehicles are fit and suitable for use on the roads, nor have they any purpose to ply on the roads.

13. With respect to a tractor the position is that the Act itself brings it within the category of a Motor vehicle. A tractor has been defined in Section 2(33) as follows :

"'Tractor' means a motor vehicle which is not itself constructed to carry any load other than equipment used for the purpose of propulsion but excludes a road roller."

The language is very clear and leaves no room for any speculation. The meaning of the words used in the Act must take its colour from the context in which they appear. In this context, it is clear that the legislature intended to include a Tractor in the category of motor vehicles for the purpose of the Act. There is also evidence to show that a trailer could be fitted to a tractor and thus could be used for the purpose of carrying loads. P.W. 1 (in F. A. No. 44 of 1963) has admitted in his evidence that a tractor could be used to carry loads if a trailer is fitted to the same. Similarly P.W. 1 (in F. A. No. 45 of 1963) has stated that the tractors could be used for various other purposes including transporting of goods. He admitted that these vehicles could be modified for pulling trailers if attached to them. Thus a tractor could be adapted for being used as a 'goods vehicle' when fitted with a trailer. A trailer as defined in Section 2(32) means a vehicle which is intended to be drawn by a motor vehicle. Thus a 'tractor' which is the drawing vehicle of a trailer when so fitted with a tractor is being adapted for use for the carriage of goods and thus clearly comes within the ambit of a 'goods vehicles' as defined in the Act. A 'good vehicle' as has been defined under Section 2(8) means 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.

14. The Orissa Motor Vehicles Rules of 1940 made in pursuance of the Act, treat a tractor as a

motor vehicle, for the purpose of the said rules. Chapter III of the said Rules makes provisions regarding the registration of Motor Vehicles. Rule 44 exempts certain class of road plants from registration, but while exempting road-rollers. Motor Graders and other road-making and cleaning plants from registration it makes it clear that tractors capable of other use shall be liable to registration and shall also require a certificate of fitness as is required for a transport vehicle under Section 38(1) of the Act. Chapter V of the Rules makes specific provision for construction of equipments and materials of motor vehicles. Rule 120 controls and regulates the over-all length of an articulated vehicle such as a tractor to which a trailer is attached. Under the Rules, a trailer is required to be registered and has to exhibit the same registration mark as the drawing vehicles, That is to say that tractor and the trailer attached to it shall bear the same registration mark.

15. Section 6 as the charging section of the Taxation Act provides that motor vehicle tax shall be paid on every motor vehicle a tax at the rate specified in the Schedule II to the said Act. Clause 5 of the said schedules has prescribed the annual rate of tax payable on motor vehicles which are not themselves constructed to carry any load (other than water, fuel accumulations and other equipments used for the purpose of propulsion, loose tools, loose equipments) used for haulage solely and weighing together with the largest number of trailer proposed to be drawn and the rate has been fixed according to the laden weight as in the case of vehicles constructed or adapted for use and used solely for the transport of goods in course of trade (Sec. Clause 2 of Schedule II of the Taxation Act). Thus, the scheme of taxation clearly covers the case of a tractor which is not itself constructed to carry any load. It is also clear from Section 40(2) of the Act that a drawing vehicle like a tractor and the trailer has to carry the same registration mark. Section 40(2) says that no person shall drive a motor vehicle to which trailers are attached unless the registration mark of the motor vehicle so driven is displayed in the prescribed manner in the tractor. The rule thus postulates that the drawing vehicle like a tractor also is required to be registered under Section 22 of the Act. Thus, the Fordson Tractor (item No. 7) cannot claim exemption from registration and taxation.

16. The case of the other two items, the Rockers (item No. 4) and dumpers (item No. 5) may now be seen. It is admitted by P.W. 1 that they are used to transport ore from the mining area to the plant. Thus, it is a vehicle fit and suitable for being used to carry goods from one place to another. The map (ext. 1) filed by the plaintiff shows that there are extensive roads in the mining area of the plaintiff. There is nothing to show that these Rockers and Dumpers are of such a special type that they are adapted for use only in a factory or in any other enclosed premises. We have already seen from the evidence that the mining area of the plaintiff is not an enclosed premises within the meaning of Section 2(18) of the Act. The word 'road' has not been defined. In the Act for the purpose of Section 2(18). If a vehicle is fit and suitable for being used on a road, it is immaterial whether it runs on a private road or on a public road unless it is shown that it is of a special type adapted for use only in factories or enclosed premises and incapable of running on any other type of roads or public roads. The Rockers and Dumpers (items 5 and 7) must therefore be held to be Motor Vehicles within the meaning of the Act and are liable for registration under Section 22 of the Act and for payment of appropriate tax as provided under the Taxation Act.

17. The order of the learned trial Court is accordingly modified to the extent that item Nos. 1 Lorain Shovels, (2) Ingersoll-Rand Drill Master. (3) Caterpillar D-8 Bulldozers and (6) Motor

Graders shall not be liable to register under Section 22 of the Motor Vehicles Act, nor they would be subject to payment of the tax under Taxation Act. It must be made clear the view we have taken is confined to the particular facts in this case and are not intended to apply to all such vehicles generally. The claim in respect of the other items is disallowed. The appeal is allowed in part. But in view of the nature of success, each party to bear his own costs throughout. First Appeal No. 48 of 1963. The plaintiff-appellant seeks the same declaration as stated earlier in First Appeal No. 44/63, in respect of the following machineries, on the very same grounds as in the connected appeal. The machineries are :-

1	Mercedes Benz Dumpers	... 7 Nos.
2	Leyland Dumpers	... 7 Nos.
3	Fordson Tractors	... 4 Nos.
	Tractors	... 5 Nos.
4	Caterpillar 955 Trax Cavetror	... 4 Nos.
5	Caterpillar D/7 Tractor Bull-dozers.	... 3 Nos.
6	Caterpillar D/6 Bulldozers	... 1 No.
7	Caterpillar 619 Scrapers	... 1 No.
8	Euclid 8/7 Scraper	... 2 Nos.
9	Unikop one Cubic Meter Shovel	... 1 No.

The contentions raised by the plaintiff-appellant are identical as in first appeal No. 44/63 in so far as the legal questions are concerned. I have already dealt with these questions at great length in paras 7 to 12 preceding and it is unnecessary to repeat them here. The question is whether any of the vehicles stated above are fit and suitable for use upon the roads. The learned Subordinate Judge found that the vehicles are not adapted for regular use on the roads. It is the evidence of P.W. 1 that items 4 to 9 have a sort of a crawler mechanism for their movement on the roads. This fact is also admitted by the defense witness (P.W. 1). These vehicles seem to have no purpose for any use on the roads. From the evidence it appears that Trax Cavetror (item No. 4) are used for loading dumpers and bull-dozers (items Nos. 5 and! 6). The scrapers are engaged to remove the over-burdened earth and are pushed by bulldozers. Shovels (item No. 9) as already said are used to dig the ore. Thus, none of these machineries are adapted or suitable for any use on the roads, nor have they any purpose to serve on the roads. These items Nos. 4 to 9, that is (4) Caterpillar 955 Trax Cavetror, (5) Caterpillar D/7 Tractor Bull-dozers, (6) Caterpillar D/6 Bulldozers, (7) Caterpillar 619 Scrapers. (8) Euclid 8/7 scraper and (9) Unikop one cubic Meter shovel do not therefore come within the ambit of the definition of motor vehicle and are not liable for registration under Section 22 of the Act.

18. The case of Dumpers and Tractors (item 1 to 3 and 3a) however, stands on a different footing. P.W. 1 admits in his evidence that these Dumpers carry ores from the place of excavation to the railway wagon that are within the mining area. Thus, these vehicles are adapted for being

used on roads for transporting the goods of the plaintiff though it may be within its own field of operation. The reasons for bringing such vehicles and the tractors within the purview of Section 2(18), I have already discussed in the other appeal at some length. Those four vehicles for (require ?) registration under 5. 22 of the Act on payment of the requisite tax under the Taxation Act. It must, however, be made clear that whether a particular vehicle is a 'motor vehicle' within the meaning of the Act has to be decided on the facts of each case bearing in mind its use and suitability for use on the roads. Neither the description of the vehicle nor the purposes for which it was manufactured or sold are decisive factors. In the result, the appeal is allowed in part. In view of the divided success the parties to bear their own costs throughout.

**Misra, J.**

19. I agree.

Appeals allowed in part.

Cases Referred.

<sup>1</sup> Cri. Appeal No. 10 of 1965) (See 1967 SC (Notes) No. 103-C

<sup>2</sup>1932-2 K. B. 413

<sup>3</sup> AIR 1938 Mad 233

<sup>4</sup>1961-1 All ER 552

<sup>5</sup>1941 SC (J) 27

<sup>6</sup>1962-1 All ER 831

<sup>7</sup> AIR 1964 SC 1653