(2004) 08 JH CK 0026

Jharkhand High Court

Case No: CWJC No. 3338 of 1992 (R)

The Tata Iron and Steel Company Ltd.		APPELLANT
	Vs	
District Transport Officer and Others		RESPONDENT

Date of Decision: Aug. 20, 2004

Acts Referred:

- Bihar and Orissa Motor Vehicles Taxation Act, 1930 - Section 6(1A)

Citation: AIR 2005 Jhar 47 : (2004) 3 ACC 913 : (2004) 4 JCR 142

Hon'ble Judges: P.K. Balasubramanyan, C.J; Tapen Sen, J

Bench: Division Bench

Advocate: G.M. Mishra and B.P. Verma, for the Appellant; I. Sen Choudhury and Vandana Singh, for the Respondent

Final Decision: Dismissed

Judgement

P.K. Balasubramanyan, C.J.

The petitioner, a public limited company, challenges the order passed by the District Transport Officer, Hazaribagh holding that the vehicles held and possessed by the West Bokaro Colliery under the captive coal mines owned by the petitioner company are public service vehicles liable to pay additional motor vehicles tax with effect from 1.4.1983 or the date of registration of the vehicle, whichever was earlier. According to the petitioner, the vehicles are not public service vehicles liable to be taxed under the Bihar and Orissa Motor Vehicles Taxation Act, and Section 6 (1-A) of the Act was not attracted to the said vehicles. The claim is based on the plea that a public service motor vehicle as defined in that Act meant a motor vehicle used or adapted for the carriage of passengers or goods for hire or reward. The vehicles owned by the colliery were not used for carriage of passengers and goods for hire or reward. The vehicles were only used for the purpose of the company and were never hired out. No reward was taken from the employees and those connected with the company,

when they used those vehicles. The company was using the vehicles for its own purposes and in that situation, no tax was liable to be paid as per Section 6 (1- A) of the Act inserted by the Bihar Finance Act, 1981 and substituted by the Bihar Finance Act, 1983 as from 1.4.1983 and thereafter the tax need be paid only by the registered owner of a public service motor vehicle and the additional motor vehicles tax at the rate specified in the third Schedule of that Act. According to the petitioner, tax was being paid on these vehicles in terms of the Act, but additional tax was not liable to be recovered in view of the fact that the vehicles could not be called public service vehicles. The petitioner submits that even though there might be a statutory remedy available to the petitioner to challenge the order, Annexure-1 in that behalf, holding that the company is liable to pay additional tax, since it involved the question of Interpretation of the relevant provision in the Act, it was appropriate that the question be decided in this writ petition, especially in view of the fact that the writ petition was admitted for hearing long ago and has been pending in this Court all these years.

2. It is seen that there were other writ petitions filed by the petitioner, possibly in respect of other concerns, which are its subsidiaries. In those writ petitions CWJC No. 2149 of 1989 (R) and connected cases, this Court took the view that since an efficacious alternative remedy was available to the petitioner, it was not necessary to decide the question and this Court relegated the petitioner to approach the appropriate authority under the Act. Therefore, nothing finally was decided in those cases by this Court. It is in that context that learned counsel for the petitioner invited a decision from this Court on the question.

3. On behalf of the respondents, it was contended that the petitioner had an efficacious alternative remedy by way of an appeal and it was not appropriate for this Court to decide the question in this writ petition at this stage. On merits, it was contended that the vehicles were used for reward as found by the authority under the Act in the order Annexure-1. In that context, there was no reason to interfere with the order holding that the company was liable to pay additional tax. It was also contended that the vehicles were, in any event, adapted for use for carriage of passengers and goods for hire or reward and that would be enough to attract the liability. Actual user for hire or reward was not essential. The company was therefore liable to pay additional tax for these vehicles.

4. The authority has stated that the expression ''reward'' occurring in the definition of a public service motor vehicle was wide enough to include the benefit derived by the company by making available the vehicle for its own use or for the use of its employees and hence the definition of public service motor vehicle was satisfied in this case. It is submitted on behalf of the petitioner that the expression ''hire'' or ''reward'' clearly postulated that the vehicle must be run for the benefit of another, either for hire, charge, or for some reward received from the user and this was not a case where the vehicle was being used in such a manner. No reward was received

for use of the vehicles by the company for its own purpose or for carrying its employees to word or the children of the employees to educational institutions and back. It was, therefore, not appropriate to hold that the vehicles satisfied the definition of public service motor vehicles.

5. After referring to a series of decisions, the M/s. Chakkiat Agencies Pvt. Ltd. Vs. State of Kerala, , held that a motor vehicle adapted for use on the road and capable of being used on the road within the State has to be held to be a motor vehicle kept for use in the State and exigible to tax under the Kerala Motor Vehicles Taxation Act. An appeal sought to be taken against the said decision to the Supreme Court was not entertained by that Court. In M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, , while interpreting the relevant provision of the Orissa Motor Vehicles Taxation Act, the Supreme Court held that the very nature of dumpers and rockers which fun on rubber tyres made it clear that they were adapted for use on roads and the significant word was ''adapted'' which had to be read as suitable. Thus, the expression ''adapted'' has to be given its full meaning. Then the question is whether the vehicles owned by the petitioner are adapted to be used for carriage of passengers and goods for hire or reward. Obviously, the vehicles are of such a nature that they can be used for carriage of passengers and goods for hire or for reward. The mere fact that the company might not have been actually hiring out the vehicles for hire or reward may not be significant. This appears to be the ratio of the decision of the Supreme Court referred to and discussed in the above cited Kerala decision.

6. Though the reasoning of the authority based on the meaning of the expression reward may be open to question, in the light of the arguments raised on behalf of the petitioner, we think that the levy of additional tax on these vehicles can be sustained by holding that the vehicles are adapted to be used for carriage of passengers and goods for hire or reward and thereby they satisfy the definition of public service motor vehicle in the Bihar and Orissa Motor Vehicles Taxation Act, 1930. If so, the conclusion in Annexure-1 appears to be sustainable. In that view, we find no reason to interfere with that order or to hold that the petitioner company is not liable to pay additional tax for the period in question u/s 6 (1-A) of the Act.

We dismiss the writ petition.