A CENTRAL COAL FIELDS LTD.

v.

STATE OF ORISSA AND ORS.

APRIL 29, 1992

B [MADAN MOHAN PUNCHHI AND K. RAMASWAMY, JJ.]

Bihar and Orissa Motor Vehicles Taxation Act, 1930/Orissa Motor Vehicles Tax Act, 1975:

C *Sections 2(c) and 6/2(b)—'Motor Vehicle'—Amendment to the definition—Retrospective application—Whether valid—Dumpers Rockers etc.—Whether motor vehicles are liable to taxation.*

The appellant companies were engaged in mining activities and for D **this purpose put to use a variety of machinery including Dumpers and Rockers, within their leasehold areas. The appellants were asked by the State Government to register the said machines as vehicles under the Motor Vehicles Act, 1939 and to pay tax under section 6 of the Bihar and Orissa Motor Vehicles Taxation Act, 1930, as also under the Madras Vehicles (Taxation) Act, 1931. In section 2(c) of the Taxation Act and in** E **the charging section 6, the definition of 'Motor Vehicle' referred to the definition of 'Motor Vehicle' under the Motor Vehicles Act.**

In *Bolani Ores Ltd. Etc.* v. *State of Orissa,* [1975] 2 SCR 138, this Court held that the definition of 'Motor Vehicle' as existing prior to the F **1956 amendment would be applicable as that was the one which stood incorporated in the Taxation Act. With this, the Dumpers and Rockers went out of the tax net though they were registrable under the Act, and the Tractairs were neither registrable under the Motor Vehicles Act nor taxable under the Taxation Act.**

G **Anticipating a spate of refund applications as a result of the abovesaid decision, the Governor of the respondent State promulgated the Orrissa Motor Vehicles Taxation Laws (Amendment) Ordinance, 1975. The purpose of the Ordinance was not only to kill the demand for refund of tax but also to keep exigible tax under the Taxation Act, with retrospec-** H **tive effect.**

The claims of refund got wiped out by the Ordinance. Fresh demands of tax were made from the appellants and claims for refund of tax involved in the earlier litigation were rejected. Appellants moved the High Court challenging the Ordinance and the consequent action. Meanwhile the Orissa Motor Vehicles Taxation Act, 1975 was passed replacing the Ordinance. the challenge to the 1975 Act and the retrospectivity thereof was turned down by the High Court. Aggrieved against the High Court's judgment, the appellants have preferred the present appeals by special leave.

On behalf of the appellants, it was contended that the Dumpers and Rockers were vehicles not adapted for use upon roads and therefore outside the scope of section 2(b) of the 1975 Act and hence not within the ambit of the charging section.

Dismissing the appeals, this Court,

HELD : 1. 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, 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 entitled to a regulatory and compensatory tax. [991A, B]

2. On the basis of materials available on record, it is seen that Dumpers in some States are granted permission to run on public roads at a speed not exceeding 16 kms. per hour and on bridges and culverts at a speed not exceeding 8 kms. per hour. Thus they have a minimum weight and safe laden weight fixed on some principles. Pictures of various types of Dumpers also indicate prominently one factor that these Dumpers run on tyres, in marked contrast to chain plates like cater pillers or military tanks. 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. 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 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

A **was read as 'suitable' in *Bolani Ores* case by interpretation on the strength of the language in Entry 57, List II of the Constitution. Thus it cannot be said that Dumpers and Rockers were neither adaptable nor suitable for use on public roads. [990 D-H]**

B *Bolani Ores Ltd. etc.* v. *State of Orissa etc.*, **[1975] 2 SCR 138, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 868 of 1977.

C From the Judgment and Order dated 30.8.1976 of the Orissa High Court in O.J.C. No. 1222 of 1975.

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Civil Appeal Nos. 385, 2169 & 2170 of 1977.

D V.R. Reddy, Addl. Solicitor General, Ashok K. Sen, Narasimha P.S., Anip Sachthey, H.K. Puri, Ms. Sunita Chatterjee, G.S. Chaterjee (NP), C.L. Kalia for S.R. Grover (NP), R.K. Mehta and R.K. Maheshwari for the appearing Parties.

E The Judgment of the Court was delivered by

PUNCHHI, J. These four appeals by special leave have roots in *Bolani Ores Ltd. etc.* v. *State of Orissa etc.*, [1975] 2 SCR 138. These are directed against the common judgment of the High Court of Orissa dated 30th August, 1976 passed in Original Jurisdiction Cases Nos. 1266, 1267, F 1222 and 1166 of 1975. Since the appellants have a common cause, these appeals can conveniently be disposed of by a common judgment without resorting to individual facts of each case.

The appellants are limited companies engaged in mining activities in the State of Orissa. They hold large tracts of land in that State for the G purpose. They have earmarked or enclosed these areas by various means, such as putting up of boundary pillars, erection of check-gates, digging of trenches, etc. They have also constructed approach roads in those areas to facilitate their mining operations. No member of the public is allowed to enter those lease-hold premises without prior permission. In order to carry H out their activities the appellants put to use machinery within their lease-

hold areas, of a variety. But instantly we are concerned directly with two of them, i.e., Dumpers of various denominations, and Rockers, which seemingly are similar to Dumpers but are heavier than those. Dumpers and Rockers, are known to carry bulk goods, building materials, mining products, agricultural and forestry products, earth, stones, bricks, concrete, mortar, etc., their structure being of a simple design and easy to handle. Tripping is performed by releasing the locking device retaining tipping body. The Dumper requires no more than a few seconds for the emptying of its tipping body and gives no trouble to the driver when being operated on uphill or downhill roads, with its load unbalanced or when the load refuses to slide out easily. The description of the aforesaid machines have been taken from *Bolani Ores* case.

Somewhere in the year 1961, the appellants, in one form or the other, were asked by the State of Orissa through its officers to register their aforesaid machines as vehicles under the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') and to pay tax under Section 6 of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (hereinafter referred to as 'the Taxation Act'), as amended up-to-date. Similar demands were made in areas which stood transferred to the State of Orissa from the Presidency of Madras, where a sister enactment, known as the Madras Vehicles (Taxation) Act, 1931, as amended up-to-date was applicable, on the same lines, and at par with the Taxation Act. (Henceforth reference to the Taxation Act shall mean reference to both the statutes). Not only for the afore-mentioned types of vehicles were the appellants asked to seek registration under the Act and to pay tax under the Taxation Act, similar demands were made for other vehicles in their possession and use, with which we are presently not concerned. Suffice it to mention that at some stage or the other uptill the stage of the High Court, there were some vehicles to which the State of Orissa conceded that the provisions of one or the other Act did not apply and to others it was judiciously held not to apply. It is the remaining types of vehicles which gave cause to this Court to pronounce upon their nature in *Bolani Ores* case in the context of the statutes. This Court ruled that Dumpers and Rockers though registrable under the Act were not taxable under the Taxation Act as long as they are working solely within the premises of the respective owners. So far as Tractairs were concerned, this Court ruled that they are neither registrable under the Act nor taxable under the Taxation Act. The question about the constitutional validity of the Taxation Act, then raised by Bolani Ores Ltd.

(one of the appellants herein) was not dealt with because it was considered academic.

As has been the legislative history, the Act and the Taxation Act have always been complementary or interconnected. The Taxation Act has from time to time by amendments been incorporating by reference the provisions of the Act. In Section 2(c) of the Taxation Act and sequally to the charging Section 6, the definition of 'Motor Vehicle' referred to the definition of 'Motor Vehicle' under the Act. The point which arose in *Bolani Ores* case was; whether the legislature had intended to incorporate the definition of the expression 'Motor Vehicle' under the Act, as it then existed, or as it may exist from time to time? It would facilitate understanding to juxtapose the pre-amendment provision and the post-amendment provision:-

Section 2(18) before amendment.	Section 2(18) after amendment by Act 100 of 1956
"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 *used solely upon the premises of the owner.*	"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 a special type adapted for use only in a factory or in any other enclosed premises.

Since the debate before this Court was as to which of the two definitions was part of the Taxation Act, which might govern the demands created, this Court clearly held that the definition of 'Motor Vehicle' as existing prior to the 1956 amendment would be applicable, as that was the one which stood incorporated in the Taxation Act. On the basis of that view the decision was thus made applying the pre-amendment definition. This Court held:–

> "From the very nature of the area operated by these three companies it is obvious that the machines which are the subject-matter of these appeals must be working in their respective

> mining areas. The mere fact that there is no fence or the barbed wire around, the lease-hold premises is not conclusive. There is evidence to show that the public are not allowed to go inside without prior permission, there are gates and a check on ingress and egress is kept by guards who also ensure that no unauthorised persons have access to the mining area, all of which indicate that the respective mining areas are enclosed premises within the meaning of the exceptions under Section 2(c) of the Taxation Act."

This took out Dumpers and Rockers from the taxation net though they were held registrable under the Act. The Tractairs were held neither registrable under the Act nor taxable under the Taxation Act because those were also not adapted to use for the carriage of goods solely or in addition to passengers, or put as a public service vehicle within the meaning of Section 2(25) of the Act. This Court went on to observe as follows:–

> "In so far as the Act is concerned, having regard to the fact that the dumpers and rockers are motor vehicles which are not taken out of that category, as was the case before the amendment, they have to be registered after the amendment and can only be driven by persons holding a valid licence. The tractair though it may be a motor vehicle within the definition of that term is neither a goods Vehicle nor a vehicle which carries passengers nor is it being driven in a place to which public have as a right access. As it does not perform any of the aforesaid functions or uses it is not a vehicle which has to be registered nor has it to be driven only by a person who holds a licence."

Anticipating a spate of refund applications as a result of *Bolani Ores* case the Governor of the State of Orissa promulgated an Ordinance on 11.2.1975 known as the Orissa Motor Vehicles Taxation Laws (Amendment) Ordinance, 1975. The purpose of the same was not only to kill the demand for refund of tax but also to keep exigible tax under the Taxation Act and that too with retrospective effect. Section 2(c) of the Taxation Act defining 'motor vehicle' was, therefore, substituted by making the following provision:–

> "Notwithstanding anything in any judgment or order of any Court, 'Motor Vehicle' means any mechanically propelled

A vehicle adapted for use upon roads whether the power is of propulsion 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."

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It is plain and clear that the object of the afore-amendment was to legislate retrospectively on the subject directly instead of by incorporation as done earlier in Section 2(c) so as to bring uniformally the post-amendment effect of Section 2(18) of the Act. Undeniably the claims of refund C due as a result of *Bolani Ores* case and under other decisions of the High Court following *Bolani Ores* case got wiped out by the amending Ordinance. On the resurrection of the tax liability, fresh demands of tax were made from the appellants and prayer for refund of the tax involved in the earlier litigation were rejected. This gave cause to the appellants to move the High Court challenging the action and the Ordinance. In the meantime D the Orissa Motor Vehicle Taxation Act 39 of 1975 was passed replacing the Ordinance, becoming an Act on 3.10.1975. This was an Act to consolidate and amend the law relating to the taxation of motor vehicles. Section 2(b) of this Act contained the definition of 'Motor Vehicle' as above noticed, which is identical with the post-amendment definition of E 'Motor Vehicle' in Section 2(18) of the Act.

The claims of the appellants before the High Court were:–

(a) For declaring that the amending Taxation Act is *ultra vires,* inoperative and invalid;

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(b) For injuncting the opposite parties from imposing any tax on the petitioners' Dumpers, Rockers, etc. and from realising the same in purported exercise of their powers under the impugned Amending Taxation Act; and

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(c) For refund of tax paid under protest for the period from 1.10.1974 to 31.3.1975.

All the asked for reliefs were declined by the High Court. The High Court relied on the penultimate paragraph of the judgment in *Bolani Ores* H case to conclude that this Court had indirectly decided that Dumpers and

Rockers, if brough upon public roads would be liable to be taxed even under the pre-amended provisions. In other words, what the High Court meant was that as long as Dumpers and Rockers kept working solely within the premises of the respective owners they did not come within the grip of the Taxation Act. But if and when they would get to public roads, they would be taxable under the Taxation Act; since registrable they otherwise were. The High Court took the view that the onus lay on the appellants to establish that Dumpers and Rockers in question were not suitable for use on the public roads. The High Court also viewed that since no material had been placed before them to establish this particular, and no claim had even been laid that these vehicles could not operate on public roads, the contention of the appellants that the vehicles were not liable for taxation being not adapted or fit or suitable for use on the roads was devoid of merit. The High Court also held that the amending Taxation Act was within the legislative competence of the State legislature, which was empowered to impose taxes, regulatory and compensatory in nature, no vehicles which are suitable for use on public roads. The challenge to retrospectivity of the impugned Act was also turned down.

Learned counsel for the appellants in these appeals have not challenged the view of the High Court regarding vires of the impugned Act before us or to its retrospectivity but have addressed us only on the fact situation to contend that the Dumpers (which includes Rockers) are vehicles not adapted for use upon roads and, therefore, they are outside the scope of Section 2(b) of the impugned Taxation Act, 1975 and hence not within the ambit of the charging Section. Section 3(1) provides that subject to the other provisions of the Act, on and from the date of commencement of the Act, there shall be levied on motor vehicles, used or kept for use within the State, a tax at the rate specified under the Schedule. It is evident that the tax is chargeable on using or keeping for use a motor vehicle; a motor vehicle adapted for use on roads. Now it has to be seen whether Dumpers and Rockers are motor vehicles adapted for use on roads.

Reverting back to *Bolani Ores* case, it would be found that the pre-amendment definition of Section 2(18) conveyed that though they were motor vehicles as such, within the meaning of the first part of the definition, but nonetheless were not so because of their specified user, i.e., if they were used solely upon the premises of the owner. It would also be found that

A under the post-amendment definition, though a motor vehicle may be adapted for use upon roads, nonetheless in order to be taken out of the category it had further to be adapted for use only in a factory or in any other premises. But here no new facts have been pleaded by the appellants before the High Court as to how the Dumper/Rocker was a vehicle of a B special type, adapted for use only in a factory or in any other premises. When Dumpers and Rockers were held registrable by this Court under the Act, it commended to this Court to hold that Dumpers and Rockers were definedly motor vehicles adapted for use upon roads, as otherwise they would have been held not so within the meaning of 'motor vehicle'. Rather the case of *Bolani Ores* (one of the appellants before us) then pointedly C pleaded was that Dumpers were used for transporting ore from the mining faces to the crushing and screening plant or from head mine stock pile to near railway siding. Dumpers were thus shown to be vehicle engaged in the transport of goods.

D It would be appropriate now to mention that some documentary material was sent to us by the appellants by means of an affidavit after we had reserved judgment. That material is suggestive of the fact that Dumpers in some States are granted permission to run on public roads at a speed not exceeding 16 kms. per hour and on bridges and culverts at a speed not exceeding 8 kms. per hour. From this it is suggested that they E have a minimum weight and safe laden weight fixed on some principles. Pictures of various types of Dumpers have also been sent to us which indicate prominently one factor that these Dumpers run on tyres, in marked contrast to chain plates like cater pillers or military tanks. By the use of rubber tyres it is evident that they have been adapted for use on F roads, which means they are suitable for being used on public roads. 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 G 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 by interpretation on the strength of the language in Entry 57, List-II of the Constitution. Thus on that basis it was idle to contend on behalf of the appellants that Dumpers H and Rockers were neither adaptable nor suitable for use on public roads.

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 vehicle *per se,* as held in *Bolani Ores* case, 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 entitled to a regulatory and compensatory tax. (Exemptions claimable apart). The appellants, therefore, in our view, have no case for grant of any relief in these appeals. A B

For the foregoing reasons, these appeals fail and are hereby dismissed with costs.

G.N. Appeals dismissed.