

Municipal Council Raipur & Anr vs State Of Madhya Pradesh on 18 August, 1969

Equivalent citations: 1970 AIR 1923, 1970 SCR (1) 915, AIR 1970 SUPREME COURT 1923, 1970 ALL. L. J. 753, 1970 (1) SCR 915, 1970 SC CRI R 271, 1970 MADLW (CRI) 118, 1970 MPLJ 191, 1970 2 LABLJ 40, 1970 JABLJ 1, 1970 2 SCJ 213, 1970 BLJR 828, 1970 MADLJ(CRI) 511

Author: S.M. Sikri

Bench: S.M. Sikri, G.K. Mitter, P. Jaganmohan Reddy

PETITIONER:
MUNICIPAL COUNCIL RAIPUR & ANR.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT:
18/08/1969

BENCH:
SIKRI, S.M.
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SIKRI, S.M.
MITTER, G.K.
REDDY, P. JAGANMOHAN

CITATION:
1970 AIR 1923 1970 SCR (1) 915
1969 SCC (2) 582

ACT:

Motor Transport Workers Act, 1961 (27 of 1961), ss. 2(g) and 38--Motor Transport Undertaking', if includes municipality owning transport vehicles used for carriage of goods--'Public order' in s. 38--if includes 'public health'.

Code of Criminal Procedure (Act 5 of 1898), ss. 243, 244 and 245--Summons case--Complaint dismissed without stating particulars of offence to accused--Order, if amounts to discharge or acquittal.

HEADNOTE:

The appellant (Municipal Council) owned transport

vehicles and used those vehicles for the maintenance of public health in the Municipality by transporting the night soil and refuse of the town, and by distributing water. It employed 50 transport workers. As it had not been registered as 'required under s. 3(1) of the Motor Transport Workers Act, 1961, a complaint was filed against it. On receiving the summons, the Chief Municipal Officer appeared, and even before the particulars of the offence were stated to him, filed preliminary objections that the Municipal Council was not a 'motor transport undertaking' and that the transport vehicles owned by the Council were exempt under s. 38 of the Act. The trial court dismissed the complaint and a revision to the Sessions Court was also dismissed. A further revision to the High Court under s. 439 Criminal Procedure Code, was allowed.

In appeal to this Court, it was contended that: (1) the case being a summons case the dismissal of the complaint was an order of acquittal and not one of discharge and hence, only an appeal lay under s. 417, Cr. P.C., and not a revision under s. 439; (2) the appellant did not fall within the definition of the expression 'motor transport undertaking' in s. 2(g) of the Act; and (3) the transport vehicles owned by the appellant were exempt under s. 38 of the Act, because, the transport vehicles were used for a purpose connected with the maintenance of 'public order'.

HELD: (i) Since the complaint was dismissed before anything was done it amounted to. an order of discharge and not an acquittal, and so the revision was competent. [917 C]

(2) The expression 'motor transport undertaking' in s. 2(g) includes a 'private carrier' as defined in the Motor Vehicles Act, 1939. The: appellant fell within the definition of 'private carrier' inasmuch as the appellant owned transport vehicles and used them solely for the carriage of goods. It cannot be said that only an undertaking of a commercial nature was intended to be included within the definition of motor transport undertaking, because, (a) the Motor Transport Workers Act is a beneficial Act and the Legislature intended to enlarge the meaning of the expression 'motor transport undertaking' and so, the enactment should not be construed strictly; (b) the words of the definition are plain and are not susceptible of any limitation: and (c) s. 38, which exempts certain transport vehicles proceeds on the basis that a private carrier carrying on activities which are not of a commercial character would also be included in the expression 'motor transport undertaking'. [918 C-F]

916

(3) The words 'public order' in s. 38 mean 'public peace and tranquility' and do. not include 'public health'. Therefore, the exemption under s. 38 is not attracted. [920 A-B]

Ramesh Thappar v. State of Madras, [1950] S..C.R. 594, explained.

JUDGMENT :

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 163 of 1967.

Appeal by special leave from the judgment and order dated March 6, 1967 of the Madhya Pradesh High Court in Criminal Revision No. 159 of 1966.

G.L. Sanghi and P.C. Bhartari, for the appellants. I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by Sikri, J. 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 s. 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' within s. 2(g) of the Act, and (2) that the Council was exempt under s. 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 night soil and refuse of the town free of charges. The Magistrate accepted these contentions and dismissed the complaint and discharged the accused persons.

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 s. 439, Cr. P.C. Three points were debated before the High Court: (1) whether a revision lay under s. 439, Cr. P.C. The contention was that the accused had been acquitted and not discharged and, therefore, only an appeal under s. 417, Cr. P.C., lay; (2) that the Municipal Council does not fall within the definition of the expression "motor transport undertaking" in s. 2(g); and (3) that the transport vehicles owned by the Municipal Council are exempt under s. 38(1) of the Act.

The High Court overruled the preliminary objection and held that a revision lay under s. 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 s. 38 of the Act.

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 s. 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. 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 definition in s. 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, of 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) car-

ried 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."

It seems to us that the accused fell within the definition of a "private cartier" 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 (Mohamed Zarful Islam v. Birendra Lall(1) which dealt with the second limb, is of no assistance to. us.

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. 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, s. 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". Relying on the decision of the House of Lords in *Dilworth v. The Commissioner of Stamps*(2) and the decision of the Madhya Pradesh High Court in *State of Madhya Pradesh v. Mother Superior Convent School*(3), 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.

(1) A.I.R. 1965 Bom. 120. (2) [1899] A.C. 99. (3) A.I.R. 1958 M.P, 362.

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 s. 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."

Coming to the last point, we agree with the High Court that the words "public order" in S. 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 ".

The learned counsel relies on the decision of this Court *Ramesh Thappar v. The State of Madras* (1). In *Ratnesh Thappar'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 tie 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." *Patanjali Sastri, J.*, as he then was, observed:

"Now 'Public Order' is an expression of wide connotation and signifies that state of tranquillity 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."

(1) [1950] S.C.R. 594.

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⁽¹⁾ does not say so. In our view "Public Order" in this context means public peace and tranquillity. We agree with the High Court that the functions of the Municipal Council in carrying night soil and in distributing water do not fail within "maintenance of public order." In the result the appeal fails and is dismissed.

V.P.S.

Appeal dismissed.

(1) [1950] S.C.R. 594.