

In the High Court of Fiji at Suva  
Civil Jurisdiction  
Civil Appeal No. 20 of 2014

Between  
Nativa Holdings Limited trading as Navita Motors  
Appellant  
And  
Land Transport Authority of Fiji Limited  
Respondent

COUNSEL: Ms S. Dewan for the appellant  
Ms E. Radrole for the respondent  
Date of Argument : 16<sup>th</sup> May, 2016  
Date of Judgment : 17<sup>th</sup> November, 2016

### Judgment

1. The appellant appeals against a decision of the Land Transport Appeals Tribunal cancelling the appellant's Authorised Motor Vehicle Dealers (AMVD) license on the following grounds:

1) *That the Learned Tribunal erred in law in not holding that the Respondent had failed to apply the statutory test and/or criteria established in Regulation 32 of the Land Transport (Vehicles Registration and Construction) Regulations 2000 in cancelling the Appellant's licence when:*

*There was no evidence of 'impropriety' or 'incompetence' or any other reason to justify that the Appellant was unfit to operate a vehicle dealing business.*

*The alleged complaints received by the Authority did not establish any 'improper' or 'incompetent conduct' on part of the Appellant.*

2) *That the Learned Tribunal erred in law in holding that Regulation 21 of the Land Transport (Vehicle Registration and Construction) Regulations 2000 in its entirety gave the Respondent wide powers to serve car dealers with show cause notice when:*

*The Respondent has failed to issue the Appellant with a relevant Code of Practice or Code of Conduct as required under Regulation 31(8) of the Land Transport (Vehicles Registration and Construction) Regulations 2000.*

*The Respondent has failed to specify to the Appellant what were the "terms and conditions" of its Authorised Motor Vehicle Dealing Business licence.*

*The Respondent has failed to specify to the Appellant what were the acceptable standards of conduct required for motor vehicle dealing business.*

- 3) *That the Learned Tribunal erred in law in holding that the Respondent had investigated the complaints that the Respondent received against the Appellant and that proper assessments of the complaints were made by the Respondent.*
- 4) *That the Learned Tribunal erred in law in holding that the complaints received against the Appellant had merit and were in relation to numerous issues and from different complaints which warranted the cancellation of the Appellant's Authorised Motor Vehicle Dealing Business licence.*
- 5) *The Learned Tribunal erred in law in not holding that the Respondent had issued a deficient 'show cause' notice to the Appellant as set out in its letter dated 24<sup>th</sup> January 2014 when the purported show cause notice failed to state with particularity the grounds of the proposed cancellation in breach of Regulation 32(2) of the Land Transport (Vehicles Registration and Construction) Regulations 2000.*
- 6) *The Learned Tribunal erred in law in holding that the show cause notice dated 24<sup>th</sup> January 2014 was adequate for the Appellant in that it provided it with ample details of the complaints that the Respondent was intending to deal with at the Show Cause proceedings.*
- 7) *The Learned Tribunal erred in law in not holding that the Respondent had failed to provide the Appellant with copies of complaints and/or investigation reports to enable the Appellant to respond and/or to 'show cause' as to why its licence ought not to be cancelled by the Respondent.*
- 8) *The Learned Tribunal erred in law in holding that the investigation and technical reports prepared by the Respondent were internal records of the Respondent and were not required to be disclosed to the Appellant for purposes of the 'Show Cause' proceedings.*
- 9) *The Learned Tribunal erred in law in not holding that the Appellant was denied natural justice.*
- 10) *The Learned Tribunal erred in law in holding that the Respondent's records and materials did not reflect any breaches of natural justice by the Respondent when the findings of the Learned Tribunal were incapable of supporting the inference of inferences from which they were drawn.*
- 11) *That the Learned Tribunal erred in law in failing to take into consideration that the Respondent failed to consider the matters contained in the Appellant's letter of response dated 13<sup>th</sup> February 2014 before cancellation the Appellant's Authorised Motor Vehicle Dealing Business licence.*
- 12) *That the Learned Tribunal erred in law in not holding that the Appellant suffered grave prejudice and business losses by the wrongful cancellation of its Authorised Motor Vehicle Dealing Business licence.*

- 13) *That the Learned Tribunal erred in law in holding that the Respondent took into consideration the consumers, stake holders and Appellant's interest in cancellation the Appellant's Authorised Motor Vehicle Dealing Business licence.*
  - 14) *The Learned Tribunal erred in law in holding that the Appellant was dealt with fairly by the Respondent.*
  - 15) *The Learned Tribunal erred in law in failing to follow, distinguish or give reasons for departing from the case authorities submitted by the Appellant.*
  - 16) *The Learned Tribunal erred in law in failing to consider the submissions of the Appellant as such Learned Tribunal's decision is wrong and erroneous and tantamounts to a wrongful exercise of discretion having regard to all the facts and circumstances of the case and evidence on the whole.*
2. The first ground contends that the Learned Tribunal erred in law in not holding that the respondent had failed to apply the statutory test laid down in Regulation 32 of the Land Transport(Vehicles Registration and Construction) Regulations,2000, in cancelling the appellant's licence as there was no evidence of "*impropriety*" or "*incompetence*" or "*any other reason*" to justify that the appellant was unfit to operate a vehicle dealing business.
  3. Ms Devan, counsel for the appellant argued that the terms "*impropriety*" or "*incompetence*" are not defined in the Land Transport (Vehicles Registration and Construction) Regulations.
  4. Regulation 32 reads:

*If it appears to the Authority that a person operating a vehicle dealing business is or has become, either by reason of impropriety or incompetence or for any other reason, unfit to operate a vehicle dealing business, the Authority may, by notice in writing served personally upon the person, or sent to.. call upon him or her to appear before the Authority ..to produce his.. certificate of registration and show cause why it should not be cancelled.*
  5. In my view, the words "*impropriety*", "*incompetence*", and "*for any other reason*" have wide connotations.
  6. The respondent, in the show cause letter of 24<sup>th</sup> January,2014, sent to the appellant had itemized the complaints it had received against the appellant.

7. I am satisfied that the investigations on the complaints established that the appellant was unfit to operate a vehicle dealing business.
8. The second ground of appeal contends that the respondent has failed to issue the appellant with a Code of Practice or Conduct, as required by Regulation 31(8) of the Land Transport (Vehicles Registration and Construction) Regulations, 2000 and specify the terms and conditions of its AMVD licence and the acceptable standards of conduct required.
9. I do not accept the appellant's contention that the Code was not provided. As Ms Radrole, counsel for the respondent points out in her written submissions, the appellant should have asked for the Code of Practice when it obtained its license in 2004, if it was not given then, as contended.
10. The third to eighth grounds of appeal overlap and relate to findings of the Tribunal that:
  - the respondent had investigated and made proper assessments of the complaints.
  - the complaints had merit and warranted the cancellation of the appellant's licence.
  - the "show cause" notice issued was deficient, as it failed to state with particularity the grounds of the proposed cancellation.
  - the investigation and technical reports prepared by the respondent were internal records not required to be disclosed to the appellant.And that the Learned Tribunal erred in not holding that the respondent failed to provide copies of complaints and/or investigation reports .
11. In my judgment, the respondent had investigated and made proper assessments of the complaints of the sale of defective vehicles, as evidenced in the inquiry notes. The appellant had accepted the complaints regarding rust on a vehicle sold and payment by a customer of more than the actual value of a vehicle, as was determined by the Small Claims Tribunal. The complaints had merit and warranted the cancellation of the appellant's licence, as found by the Tribunal.

12. I am satisfied that the show cause letter sets out with particularity the grounds for the proposed cancellation of the license. The appellant's reply of 13<sup>th</sup> February, 2014, provided its response in detail to the six complaints made.
13. The inquiry notes reveal that the respondent had provided provide copies of complaints to the appellant. I agree with the Tribunal that the investigation and technical reports were not required to be provided to the appellant.
14. The fourth to eighth grounds of appeal fail.
15. The ninth, tenth and fourteenth grounds of appeal contends that the Learned Tribunal erred in not holding that the appellant was denied natural justice.
16. The appellant had been given several opportunities to attend meetings before the LTA to explain as to why his AMVD licence should not be cancelled, which were followed by warnings, as quite correctly held by the Tribunal.
17. At the argument before me, Ms Devan contended that the Board had resolved to cancel the appellant's license on 5<sup>th</sup> February, 2014, before the hearing on 14<sup>th</sup> February, 2014.
18. The minutes of 5<sup>th</sup> February, 2014, provide that the Managing Director of the appellant company had informed the CEO of the LTA that he would not be available for the hearing on that day. In that context, the members had resolved to cancel its license, but importantly, no letter of cancellation was sent to the appellant. But rather the appellant was given an opportunity to make representations and allowed to say what he wished to say, as evident in the extract of the show cause proceedings which I reproduce below. The second paragraph provides that the appellant was given a "*chance to appear again*" due "*to natural justice*".

19. Next, it was argued that on 14<sup>th</sup> February, 2014, no adequate opportunity was given to the appellant to present its case. The appellant was told to “cut it short”.

20. The show cause proceedings of 14<sup>th</sup> February, 2014, provides:

**SHOW CAUSE PROCEEDINGS FOR NATIVA HOLDINGS**

**Background:** Mr Rizwan Ali, Managing Director of Nativa Holdings Limited was first informed to attend the Show Cause hearing on 5<sup>th</sup> February but did not turn up due to busy work schedule. There were many complaints received from members of the public including Consumer Council and Commerce Commission on the selling of defective vehicle which is stipulated under Section 32(1) of Vehicle Registration and Construction Regulation of 2000.

Due to natural justice, Mr Ali was granted chance to appear again before the Authority, hence the hearing today, 14<sup>th</sup> February 2014 and the proceeding was noted as follows:-

Rizwan Ali, in answer to the “allegations of incompetence received from your customers for selling defective vehicles..(and) complaints from the Consumer Council and Commerce Commission” said:

**I have written back to the Board on each complaint...**

PS WTPU You are here to explain as to why we cannot suspend so cut it short.

Mr Rizwan Ali: These complaints were placed against us. **The five year regulation is affecting us and we are now importing Euro 4 cars and there is no check on these cars. JEVIC system would be good as it is a security for us to show that the vehicles are good before it leaves Japan. Now that JEVIC is cancelled, it is not helping us and this system to be set up again to avoid rust problems, odometer and others**

PSWTPU: So the onus is on you and not us – after shipment, if you have a bad vehicle why are you selling it? This is telling us that you cannot be trusted.

Mr Rizwan Ali: I am requesting that this system should be set up again and it would be good for everyone.

PSWTPU: But we cannot trust you.

Chairman: We don't see other AMVDs coming up like you.

Mr R. Ali: **My answer that some of the complaints are lame..and all vehicle with problems are fixed and given back to customers.**

Mr Rizwan Ali **I have nothing further on this.** (emphasis added)

21. The proceedings reveal that Rizwan Ali of the appellant company was given an opportunity to show cause. When he was asked to explain, he blamed the five year regulation system in place for his conduct and suggested the “*JEVIC system...to avoid rust problems, odometer and others.*” Next, he said that the “*problems are fixed and given back to customers.*”
22. The inquiry concluded with Rizwan Ali stating that he has “*nothing further on this.*” (emphasis added)
23. In my opinion, the appellant was given a fair hearing.
24. I find that the respondent has considered the appellant’s letter of response of 13<sup>th</sup> February, 2014, and submissions before cancelling its licence. That disposes of the eleventh, fifteenth and sixteenth grounds of appeal.
25. The twelfth and thirteenth grounds of appeal contends that the Tribunal erred in law in not holding that the appellant suffered grave prejudice and business losses by the wrongful cancellation of its licence and took into consideration the interests of consumers and stake holders.
26. As pointed out the LTA, as regulator of licenses under the Land Transport Act, 1988, and the Land Transport (Vehicles Registration and Construction) Regulations 2000, acts in the public interest.
27. The appellant’s appeal fails.

28. *Orders*

- (i) The appeal fails.
- (ii) The appellant shall pay the respondent costs in a sum of \$ 1000 summarily assessed.



*A.L.B. Brito-Mutunayagam*

**A.L.B. Brito-Mutunayagam**

**JUDGE**

**17<sup>th</sup> November, 2017**