

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBA 17 of 2017

BETWEEN : **ARIANA USED CARS & SPARE PARTS**

APPELLANT

AND : **LAND TRANSPORT AUTHORITY**

RESPONDENT

Counsel : **Mr. S. Fa for the Appellant**
Ms. T. Colati for the Respondent
Date of Hearing : **2nd April, 2018**
Date of Judgment : **27th April, 2018**

JUDGMENT

INTRODUCTION

1. This is an appeal from Land Transport Appeals Tribunal (LTAT) established in terms of Land Transport Act 1998 (LTA). The Appellant was issued with a Licence as a dealer for second hand vehicles (as Authorized Vehicle Dealer Licence) in terms of Regulation 30 of Land Transport (Vehicles Registration and Construction) Regulation 2000(LTR). There were discrepancies of odometer readings of 14 vehicles imported with the documentation submitted for customs and Appellant had paid fine for said violation. These 14 vehicles that were found with lower mileages than, what was declared at the time of importation according to the documentations submitted for customs and some of these vehicles were already sold. The Respondent instigated an inquiry by issuing a show cause letter regarding the violations of the conditions of Licence. After conclusion of the said inquiry the Authorized Motor Vehicle Dealer Licence (AMVDL) was cancelled by the Respondent on 15th December, 2016. The Appellant appealed to Land Transport Appeals Tribunal (LTAT) and it had dismissed the appeal on 16th June, 2017. Being aggrieved by that decision the Appellant had appealed in terms of Section 48 of the LTA on points of law.

ANALYSIS

2. The decision of LTAT can be appealed to this court only on points of law in terms of Section 48 of LTA which states

'48. A decision of the Tribunal shall be subject to an appeal, only on points of law to the High Court.'

So the appeal should be confined to point of law only.

3. The jurisdiction of LTAT is dealt in Section 40(2) of the LTA and states as follows

*(2) The function of the Tribunal is to hear and determine appeals against decisions of the Authority relating to
(a)licensing or drivers under section 56;
(b) any matter requiring a decision of the Authority under Part 6, and any other matter prescribed by the Minister by regulations. (emphasis added)*

4. The decision to cancel the AMVD licence issued to the Appellant is not a decision of the Authority under Part 6 of LTA or Section 56 of LTA. So the jurisdiction of LTAT needs to be prescribed by the Minister by regulation.

5. The jurisdiction of LTAT is in terms of prescribed regulation and in this instance it is I.TR Regulation 34.

6. At the hearing of this Appeal though there are numerous grounds of appeal in the amended grounds of appeal the counsel said they will rely only on three grounds and they are:

- a. Fairness and natural justice was not properly applied by the LTAT - the cancellation of licence was not fair. (Not given an opportunity to defend)
- b. Unreasonable and natural justice
- c. Right to be heard was violated when inquiry was conducted.

7. The decision to terminate AMVDL was communicate to the Appellant by a letter dated 15th December, 2015. According to the said letter the hearing of the complaints against the Appellant was held on 16th October, 2015 and a Resolution of the Respondent was taken

on 4th December, 2015 to cancel AMVDL issued by them in order to operate their business of sale of used vehicles.

8. The above cancellation was in pursuant to Regulation 32 of LTR and it states as follow;

32. (1) If it appears to the Authority that a person operation 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 be notice in writing served personally upon the person , or sent to him or her by registered post at his or her last known or usual place of residence or at his or her place of business, call upon him or her to appear before the Authority at a time and place stated in the notice, and to produce his or her certificate of registration and show cause why it should not be cancelled.

(2) A notice served under sub-regulation (1) must state the grounds of the proposed cancellation.

*(3) The Authority must, when proceeding under sub-regulation (1), take into consideration the matter stated in the notice and any evidence given, and may **cancel the certificate or registration.**' (emphasis added)*

9. Regulation 34 of LTR deals with Appeals and it states as follow

*34(1) Where the Authority had delegated its power to issue a vehicle dealing certificate or trader permit, a person aggrieved by a decision of an officer acting under delegation of the Authority to refuse to issue or reissue or to cancel such certificate or permit **may request that the decision be reconsidered by the Authority which may confirm or vary the decision.***

(2) A person aggrieved by a decision of the Authority under sub regulation (1) may appeal to the Tribunal

*(3) The Authority must, when proceeding under sub-regulation (1), take into consideration the matter stated in the notice and any evidence given and may **cancel the certificate of registration.**'*

10. The decision to terminate the AMVD licence was conveyed to the Appellant by the Chief Executive on 15th December, 2015 which states as follows;

"Cancellation of AMVD Licence –Ariana Used Cars and Spare Parts Limited

Reference is made to the above subject and the complaints received pertaining to the operations of Ariana Used Cars and Spare Parts Limited.

The Authority in its hearing on 16 October 2015 and resolution on 4th December 2015 has cancelled your AMVD Licence 939766 pursuant to Regulation 32 of the Land Transport (Vehicle Registration and Construction) Regulation 2000 and the following justification is provided.

- 1. The non-compliance of the Terms and conditions of the Authorized Motor Vehicle Dealers Licence issued ; and*
- 2. The Habitual Sale of odometer tampered vehicles which has been verified investigated and confirmed by the Land Transport Authority.*

You are to Cease AMVD operations immediately upon receiving this notice and;

Surrender Trade Plate Numbers: 423A, 424A and 425A to Valelevu- Standards & Compliance Unit within 14 days."

11. There was no evidence of that decision to cancel AMVD licence, being reconsidered by the Authority or any such request was ever made by the Appellant in terms of LTR 34(2). When the decision is reconsidered by the 'Authority' and such determination is given it can be appealed to the LTAT.
12. So, there is no direct appeal from a decision to cancel AMVD to LTAT. It can be appealed only after a request for reconsideration was made to the Authority. It is a precondition. The reconsideration by 'Authority' is essential as it can consider, factors such as overall impact on market conditions, deterrent effect, importance of industry being protected by scrupulous players, importance of level playing field, and any factors that 'Authority' considers as reasonable.
13. The word 'Authority' is defined in Section 2 and Section 6 of the LTA. So the jurisdiction to LTAT to determine the matter will only arise after a decision for reconsideration of the cancellation is made, by 'Authority' in terms of LTR 34(1).

14. So this appeal is dismissed in limine for want of jurisdiction. It is trite law that statutory tribunals are creatures of the statute it creates and jurisdiction is limited to specific statutory provisions. In this instance a decision to cancel licence needs to be reconsidered by 'Authority' and that can only happen when such a request is made. The Appellant had not done so, hence no right to appeal to LTAT.
15. Even if I am wrong on the above, in this appeal there is no question of law, other the issue of jurisdiction which was dealt earlier, where LTAT had erred. The appeal ground that non-compliance of natural justice cannot substantiate. The Appellant was given an opportunity to show cause and it had failed to do so.
16. The Appellant was given an opportunity by a show cause letter and they were represented by a legal practitioner, too. Specific details of the alleged infringements were described in the show cause letter and the Appellants failed to present their evidence in defence. In fact an adjournment of the hearing was also granted on medical reason of the counsel, but repeated requests for adjournments were not granted. Not granting repeated adjournments is not a denial of natural justice.
17. The Appellants changed their counsel but again no evidence in defence was presented. There were fourteen instances (vehicles) where odometers of the vehicles were tampered and or lower than what was declared for importation. The investigations revealed that 5 of such vehicles were registered and at the time of selling of such vehicles the owners were not notified of the odometer tampering by the Appellants. These evidence were not challenged or even a reasonable explanation offered.
18. In the circumstances since there were no evidence presented to the Respondent at the inquiry, the Respondent had cancelled the AMVD licence, in terms of Regulation 34(3) of LTR which states that *'take into consideration the matter stated in the notice and any evidence given and may cancel the certificate of registration.'* There was no evidence presented by the Appellant and the decision to cancel was taken in terms of said provision.

19. The Appellant had not made a request to reconsider the decision in terms of the LTR 34(1). So there is no breach of natural justice but Appellant had not exhausted its rights before appealing to the I.TAT.
20. In the absence of any defence or mitigatory circumstances being presented the Appellant cannot now complain that there was no consideration of its financial hardships to them.


CONCLUSION

21. There is no right to appeal directly from the decision conveyed by letter dated 15.12.2015 without a request for reconsideration under Regulation 34(1) of LTR by the 'Authority' in terms of Regulation 34(2) LTR. Apart from that issue of jurisdiction, there is no error on question of law contained in the decision of I.TAT. The three grounds of appeal preferred in the submission are rejected. The appeal is dismissed for the reasons given in this decision and the decision of the I.TAT is affirmed. Considering the circumstances of this case no cost is awarded.

FINAL ORDERS

- a. Appeal is dismissed order of the Tribunal is affirmed for the reasons given in this decision.
- b. No costs.

Dated at Suva this 27th day of April, 2018



.....
Justice Deepthi Amaratunga
High Court, Suva