

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Case No.: HBC 71 of 2018

BETWEEN : **DALIP CHAND & SONS LIMITED** a limited liability company having its registered office in Labasa

APPLICANT

AND : **LAND TRANSPORT AUTHORITY** a statutory body established pursuant to the Land Transport Act 1998 having its registered office at Valalevu, Nasinu.

FIRST RESPONDENT

AND : **COASTLINE BUSES LIMITED** a limited liability company having its registered office at Savusavu.

SECOND RESPONDENT

AND : **RAJENDRA DEO PRASAD** of Queens Highway, Navua, Businessman and Bus Operator.

THIRD RESPONDENT

Counsel : Mr. A. Pal for the Applicant
Date of Hearing : 19th May, 2018
Date of Judgment : 6th July, 2018

JUDGMENT

INTRODUCTION

1. The Applicant is seeking leave to issue committal proceedings against the Land Transport Authority and two other Respondents. 2nd Respondent is a limited liability company and the 3rd Respondent is a businessman. The alleged ground for seeking committal proceedings against all the Respondents is that '2nd Respondent had allegedly breached the Orders of the Land Transport Appeal Tribunal (LTAT) made on 3rd November, 2017'. The Applicant had made this application ex-parte and at the hearing

the Applicant was heard on the issue whether his can maintain this application against an alleged breach of an order of LTAT by 2nd Respondent, against all Respondents.

ANALYSIS

2. Committal for contempt of court is dealt in Order 52 of the High Court Rules 1988 and states as follow

'1(1) The Power of the High Court to punish for contempt of court may be exercised by an order of committal.

(2) This order applies to contempt of court-

(a) committal in connection with

(i) any proceedings before the Court ; or

(ii) proceedings in an inferior Court;

(b) committal otherwise than in connection with any proceedings.

(3) An order of committal may be made by a single Judge.

(4) Whereby virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that Court, an order of committal may be made by a single Judge.'

3. LTAT was established under Land Transport Act,1998 and no statutory provision or any rules made in terms of the said Act had stated that High Court has power to punish or take steps for the punishment of anything in relation to the LTAT as required by Order 52 rule1(4) of the High Court Rules of 1988.

4. In the Supreme Court Practice (White Book) 1988 at p 780 stats

"Court" for this purpose means a Court of Law; a court dealing with matters of administration, such as local valuation courts, and not within the scope of O.52 ru.1(B.B.C v Att. Gen [1981] A.C.303; [1980] 3 All E.R. 161 H.L.)

5. According to Order 52 rule 1(2)(a)(ii) of the High Court Rules of 1988, power of the High Court to punish for contempt may be extended to committal connected with '*proceedings in an inferior Court*'.

6. Whether the orders of the LTAT is to be considered as an inferior court is the issue before me. LTAT is a creature of statute. Contempt is a serious offence and any person who is in breach of such an order, should also know the consequences of that.
7. Section 40 of the Land Transport Act 1988, establishes LTAT. Accordingly, function of LTAT is to hear and determine appeals against decisions of the Land Transport Authority in relation to 'licensing of drivers under Section 56' and matters requiring a decision 'under Part 6 and any other matter prescribed by the Minister by regulation'.
8. So, LTAT is empowered by the statute to hear appeals regarding licences under Section 56 and also under part 6 of the Land Transport Act, 1988. The jurisdiction is a limited one against certain decisions.
9. The power of LTAT is also specifically defined in terms of Section 46 of the Land Transport Act 1988. According to the said provision LTAT can 'admit any evidence whether written or oral and whether or not such evidence would be admissible in civil or criminal proceedings.' (See Section 46(1)(d) of Land Transport Act, 1988).
10. Since Powers of the Tribunal can admit any evidence that is inadmissible in a court of law in my judgment the intension of the legislature was confer only with appeal power against the decisions of Land Transport Authority in relation to some specific licensing under the said Act, and not to elevate LTAT to a level of court of law.
11. Since transparency and independence is vital for the integrity of the licensing authority an independent LTAT is created and appointment is vested to Judicial Service Commission.
12. The person appointed to LTAT is not restricted to legal practitioners in terms of Section 41(1)(b) of the Land Transport Act, 1988. Since evidence that are inadmissible in civil and criminal courts, can also be admitted in my judgment the character of LTAT cannot

be considered as 'inferior court' for the purpose of instituting committal proceedings in High Court in terms of Order 52 of the High Court Rules of 1988.

CONCLUSION

13. So the Applicant had not established the breach of the said order of LTAT is subject to committal proceedings in the High Court in terms of the Land Transport Act 1988 or its regulation. LTAT is an independent body created by the statute for specific appeals regarding licences issued by Land Transport Authority. It cannot be considered as an 'inferior court' in terms of Order 52 of the High Court Rules of 1988 for the punishment for contempt of court. The character of LTAT is such that evidence inadmissible in a court of law can be admitted and even the appointment of LTAT is not restricted to legal practitioner so that LTAT created by Land Transport Act 1998 cannot be considered as an inferior court for the purpose of contempt. The application for leave for committal proceedings is struck off. No order as to costs.

FINAL ORDERS

- a. The ex-parte Notice of Motion is struck off.
- b. No costs.

Dated at Suva this 6th day of July, 2018



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Justice Deepthi Amaratunga
High Court, Suva