

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Judicial Review No. HBJ 11 of 2019

IN THE MATTER of an application by DALIP CHAND AND SON PTE LIMITED and PARMOD ENTERPRISES PTE LIMITED for a Judicial Review under Order 53 of the High Court Rules 1988

-And-

IN THE MATTER of Fiji Gazette Supplement No. 16 of 2019 LAND TRANSPORT (PUBLIC SERVICE VEHICLES) (AMENDMENT) REGULATIONS 2019 Legal Notice No. 30 of 2019 published on the 5th June 2019 by the Minister for Infrastructure and Transport amending in Regulation 2 thereof Regulation 4 of the LAND (PUBLIC SERVICE VEHICLES) REGULATIONS 2000.

STATE v MINISTER FOR INFRASTRUCTURE AND TRANSPORT.
FIRST RESPONDENT

LAND TRANSPORT AUTHORITY.
SECOND RESPONDENT

EX-PARTE DALIP CHAND AND SONS PTE LIMITED
PARMOD ENTERPRISES PTE LIMITED.
APPLICANTS

BEFORE: Hon. Justice Vishwa Datt Sharma

COUNSEL : Mr. Kapadia V. for the Applicants
Mr. Solovalu D. with Mr Chand S. for the First Respondent
Mr. Chand V. for the second Respondent

DATE OF DECISION: 21st July, 2023

DECISION

[Leave to Issue Judicial Review pursuant to Order 53, Rule 3 (2) of the High Court Rules, 1988]

Introduction

1. The Applicant's filed the current application seeking for Leave to apply for Judicial Review. A further Order was sought that the grant of Leave to apply for Judicial Review shall operate as a stay.
2. The Grounds upon which the Applicants are seeking reliefs against the **Minister for Infrastructure and Transport** and the **Land Transport Authority** are as follows:-
 - (a) **The Minister** and/or the Authority have exceeded their jurisdiction and/or powers and acted *ultra vires* Section 113 (4) of the Act by amending Regulation 4 of the Principal Regulations by Regulations 2 of the Amending Regulation prohibiting the Applicants from objecting to applications filed for other permits types and/or licences within a permit type save for the same type of licence in a permit;
 - (b) **The Minister and the Authority** have acted in breach of the rules of natural justice in that they acted unreasonable and irrationally and/or arbitrarily in unilaterally and unlawfully in amending Regulation 4 of the Principal Regulation 2 of the Amending Regulations and have also acted in breach of the legitimate expectations of the Applicants resulting in Regulation 2 of the Amending Regulation is being unlawful, unreasonable, irrational, unfair and arbitrary.
 - (c) That Regulation 2 of the Amending Regulation issued by **The Minister** is unlawful and disproportionate within the meaning of the Section 16 (1) (a) of the Constitution of Fiji.
3. The reliefs sought in the Application are the following:-
 - (a) An Order of Certiorari to remove and/or quash the decision of the Minister to amend Regulation 4 of the Principal Regulation in gazetting Regulation 2 in the Amending Regulation and publishing the same on the 5th June 2019.

- (b) A Declaration (in any event) that Regulation 2 of the Amending Regulation is ultra-vires Section 113 (4) of the Land Transport Act.
- (c) A Declaration (in any event) that the Minister and the Authority have abused their discretion and/or power and/or acted arbitrarily and/or unreasonably and/or acted in breach of the rules of natural justice and/or acted in breach of the Applicant's legitimate expectations and/or exceeded their jurisdiction when amending Regulation 4 of the Principal Regulations by Regulation 2 of the Amending Regulations.
- (d) A Declaration (in any event) that Regulation 2 of the Amending Regulation is unlawful, invalid, void and of no effect.
- (e) A prohibition order restraining The Minister and the Authority from implementing and/or enforcing Regulation 2 of the Amending Regulation.
- (f) Further declaration or other relief as this Honourable Court may deem fit.
- (g) Costs of this Action to be paid by the Respondents on an indemnity basis.

4. The First and Second Respondents have opposed the Leave Application and filed their respective Affidavits in Opposition.
5. The mandatory Statutory requirements to seek for Leave to Apply for Judicial Review are accordingly clearly set out at *Order 53 rule 3 (2) and (5) of the High Court Rules 1988*.
6. The Court should not grant Leave unless it considers that the Applicants have **sufficient interest** in the Matter to which the Application relates.
7. Upon perusal of the Court file, there is no doubt that the Applicants have complied with *Order 53 Rule 3 (2) and (5) of the High Court Rules 1988*. In that regard, they have complied with Form 32 and also filed an Affidavit in Support to the Application [O.52, R3 (2)] refers and the Applicants have **sufficient interest** in this matter [O.52, R3 (5)] refers.

8. The First Respondent admitted that the Applicants have
 - i. **Sufficient Interest** in this matter, and
 - ii. That there is no **undue delay**.
9. The **Second Respondent's Contention** is that the Application or Judicial Review is frivolous and vexatious as it does not show any arguable case against the Second Respondent.
10. The **Applicants Contention** is that:
 - (i) They have shown **arguable and sufficient grounds for Leave to review the amendment of the Principal Regulation;** and
 - (ii) There is a **strong case in favour of granting Leave for Judicial Review to the Applicants.**
11. Reference is made to the Case of *Deo; Re [2019] FJHC 586; HBJ 5.2019*, the High Court stated at paragraph 26:

26 The question at this leave stage - with its low threshold - is for Court to decide whether the Applicant has an arguable case, and not embark on a full review of the facts. The Applicant was obliged to have raised an arguable case involving an error of or in law; a serious error in fact; a violation of natural justice or procedural fairness; or an excess of jurisdiction by the decision maker.

27. The factors to be considered by the Supreme Court were laid down in Matalulu and another V DPP. These factors include: whether the application is frivolous or vexatious or an abuse of the process of the Court; whether the application discloses arguable grounds for review; whether the application would serve any useful purpose; and, whether there is an obvious alternative remedy which has not been exhausted.

12. Upon perusal of the cases stated hereinabove, it is clear that at the leave stage this Honourable court is not required to fully review the facts of this matter. However, the Court must consider whether the applicants raised an error of law, serious error of fact or a violation of natural justice or procedural fairness and/or an excess of jurisdiction by the First Respondent.
13. The applicants submitted that when assessing permit applications, the Land Transport Authority is required to take into account the effect of such application on other public service operators pursuant to regulation 5(1) (b) of the Principal Regulations and to impose conditions

or restrictions if it thinks fit to avoid wasteful competition with alternative forms of transportation. However, the Applicants in their written submissions furnished to court allege at paragraphs 2.7 and 2.8 that the removal of what they contend is their right to object is *ultra vires*.

14. It is clear that section 113 (1) and (4) (c) of the LTA Act confers a discretionary power on the Minister for Infrastructure and Transport to make regulations in respect of the manner in which public service vehicle permit applications may be lodged and determined after consultation with the Second Respondent.
15. It is respectfully submitted that the principle of *ultra vires* is not applied horizontally in the hierarchical structure of laws. Regulations 5 and 7 of the Principal Regulations are not greater in authority than the amendment to regulation 4 of the Principal Regulations made by the Amending Regulations. Regulation 5(6) of the Principal Regulations makes it clear that the only binding requirement for the granting of a permit application is that such action be "*likely to be in the interest of public service vehicle users*".
16. An application for judicial review on the basis that a decision is *ultra vires* must look to the source of the authority for the decision and the procedure taken to arrive at such decision.
17. At this juncture, it is relevant to note that the Minister's power to make regulations under section 113(1) and (4) (c) of the LTA Act with respect to the determination of permit applications is broad, as such the contention by the Applicants that the Minister does not have the power to restrict objections to the same permit class type is incorrect and erroneous.
18. The requirement that permit applications be open to objections is not provided on the LTA Act. However, The Applicants' alleged right to object to applications is not a creature of Principal Legislation as it is not in the LTA Act.
19. The Minister exercised his authority to create a framework allowing for the objections process in the year 2000 based on the generality of section 113. The Minister's decision to then alter a framework he has established using the same such authority cannot thus be *ultra vires*.

20. The Applicants' claim herein that the Minister's decision is *ultra vires*, despite the fact that such decision essentially alters the Minister's own earlier decision, is completely illogical, frivolous, vexatious and thus an abuse of the process of the court.
21. Regulation 4 of the Principal Regulations have previously been amended as hereunder:
 - a. By the Land Transport (Public Service Vehicles) (Amendment) Regulations 2003 as per legal notice no. 50 of 2003, which exempted applications for the issue of permits from the objections process and
 - b. By the Land Transport (Public Service Vehicles) (Amendment) Regulations 2017 as per legal notice no. 68 of 2017, which exempted taxi permits from the objections process.
22. It can ascertained now, that the Applicants have not challenged the authority of these other amendments despite the fact that clearly the amendment made by Legal Notice 68 of 2017 prevents the Applicants from objecting to the taxi permit issuance process.
23. Pursuant to section 113 of the LTA Act, the Minister is only required to consult the Land Transport Authority is making regulations and such a consultation was done prior to amending regulation 4 of the Principal Regulations.
24. Bearing above in mind, it is submitted that the Minister has acted lawfully in accordance with section 113 (4) of the Act and has not exceeded his jurisdiction nor acted *ultra vires*.
25. For the reasons provided above, it is clear that the Minister acted lawfully pursuant to section 113 (1) and (4) of the LTA Act and accordingly did not exceed the jurisdiction under the said Act, did not abuse the discretion and did not act *ultra vires* in prohibiting the Applicants from objecting to applications filed for other permit types and/or licences within a permit type save for the same type of licence.
26. The Applicants Leave application for Judicial Review does not present an arguable case for Judicial Review and is refused and accordingly dismissed.

27. Therefore, the Applicants Leave application to issue Judicial proceedings for the aforesaid rational is hereby refused and dismissed.

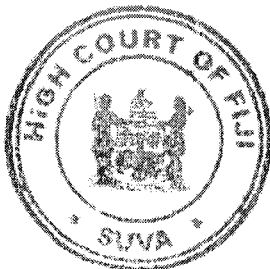
Costs


28. Application proceeded to Hearing. It is only just and fair that I order a sum of \$500 summarily assessed costs to each of the Respondents totally to \$1,000.

ORDER

- A. Applicants' application seeking Leave for Judicial Review is refused and accordingly dismissed.
- B. The Applicants to pay each of the two (2) Respondents a sum of \$500 summarily assessed cost each, a total of \$1,000 within 14 days timeframe.

Dated at Suva this 21st day of July, 2023.




Vishwa Datt Sharma
JUDGE

CC: KAPADIA LAWYERS, SUVA
LAND TRANSPORT AUTHORITY, VALELEVU
ATTORNEY GENERALS CHAMBERS, SUVA