000087

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

CIVIL ACTION NO. 357 of 1982 & 368/83

BETWEEN : IN THE MATTER OF TRAFFIC ACT. CAP. 152 (1967 Ed. of FiJI Laws — PLAINTIFF

AND : AKBAR BUSES LIMITED — DEFENDANT

Mr A Singh — Counsel for the Plaintiff

Mr Chaudhary for Solicitor General

Mr A A Shah for Transport Control Board

Mr Govind — Counsel for Respondent

JUDGMENT

These two cases arise out of applications to and actions by the Transport Control Board, and involve the same parties, so that it is convenient to deal with them together in the same judgment.

Both are applications by Akbar Buses Ltd by way of Judicial review to quash decisions of the Board. To deal first with C.A. 357/82 this concerns applications for express carriage road service licences to operate express bus services from Rakiraki to Lautoka and return.

The applicant made an application to the Board on 23/7/81 for the said licence, and in accordance with Section 65(1) of the Traffic Act the application was advertised.

Thereafter the second respondent made written representations against the application, and made its own competing application. There were other competing applications and there were numerous written representations for and against the applicant's application, and for and against the other applications.

Quite obviously there is much competition for the best bus routes, with competing claims and counter claims, accusations and counter accusations, and the Board's task in assessing the various merits and

000088

97
88

demerits of the applicants and making fair decisions cannot be an easy one. But fair it must be. It must abide by the powers conferred on it by the Traffic Act, and otherwise must conform to the requirements of natural justice. The Courts cannot and will not interfere with the Boards exercise of its powers and discretions so long as it acts inter vires and in accordance with natural justice. However, where the Board acts ultra vires or in breach of natural justice the Courts can and will interfere, not to substitute their own discretion, not to challenge the merits of the decision itself, but to set aside the decision as null and void, or to require the Board to do something it has refrained from doing and should do.

As I said the Board's task cannot be easy, and it is not at all surprising that the Chairman is a lawyer, who should at least be able to understand and appreciate the law relating to the Board's functions, and the requirements of natural justice, and should be completely impartial and should be concerned to make the proceedings of the Board as fair as they can be made.

In fact they should not only be as fair as they can be made, but they should be seen to be as fair as they can be made.

Now applicants for the Rakiraki to Lautoka Express Bus route were required to disclose their routes and timetables, and there was a clash over the proposals to depart from Lautoka at 2.05pm on the return trip. Both parties had submitted written objections on the basis of this clash of times. But at the hearing the second respondent, through its counsel announced that it was not proceeding with and was withdrawing its 2.05pm return trip, and on this understanding the applicant made no further oral submissions on this point, although it could have done and would have done so without the concession by the second respondent.

Nevertheless, after withdrawing fo r consideration of the various applications the Board announced its decision, awarding the licence to the second r spondent, rejecting the other applications, but then amending the second respondent's timetable to restore the 2.05pm departure time from Lautoka - although no reasons have been given for this amendment.

The applicant not unnaturally now feels aggrieved that this was an issue in their objections, and they would have made oral submissions on this point, besides their written submissions, had they not been led to believe that this was no longer an issue.

The Board claims that it was merely exercising its powers under Section 65(5) of the Act to make such variations to the timetable as seemed desirable.

This section states:-

"(5) The Board may in granting an application under this section make such variations in the route, timetable and fare table applied for as to it seem desirable:-

Provided that -

b) The Board shall not make any substantial alteration in the time table unless the existing licencees on the route applied for have had an opportunity of making representations in respect of the proposed alterations".

This provision certainly appears to give the Board power to amend timetables in granting licences, and the proviso appears only to require the Board to hear representations from existing licencees where there is a substantial alteration in the timetable. The applicant is not an existing licencee, and it is arguable whether the alteration made by the Board is a substantial one. Also, even though the applicant is not an existing licencee, the Board had before it written submissions by the applicant against the 2.05pm departure time from Lautoka, and must be presumed to have taken these submissions into account.

...4/...

000090

What the applicant asks the Court to find is that inspite of the fact that Section 65(5) of the Act does not require the Board to hear representations from the applicant, nevertheless the rules of natural justice do so require it, and by analogy a reading of all the provisions of Section 65(5) shows that such a requirement is necessary. With that argument I cannot agree. In fact, on the contrary it can be argued that since the proviso to Section 65(5) only makes provision for representations from existing licencees where there is a substantial alteration, no representations are necessary in other circumstances or from other parties. It might have been wiser and fairer for the Board to have given an indication of what it was proposing to do and have given the other applicants an opportunity of making oral submissions, but there was no obligation on it to have done so, and its omission to do so is no ground for setting aside its decision, or granting the applicant the order asked for. Thus in respect of Civil Action 357 of 1982 the applications is dismissed with costs to be taxed if not agreed.

With regard to Civil Action 368 of 1983 the decision of the Board complained of relates to a condition attached to the licence granted to the second respondent in Civil Action 357 of 1982, requiring the second respondent not to stop, drop or pick up passengers in the town of Tavua and Ba.

On 23/8/82 and 10/3/83 applications by the second respondent, opposed by the applicant, to lift the restrictions on the licence were rejected by the Board.

Then on 27/4/83 of its own motion, without any application by the second respondent, and without giving the applicant any prior notice or any opportunity to make representations, the Board lifted the restrictions on the second respondent's licence.

The applicant is a competing operator and claims to be seriously affected by the decision of the Board, which it asks the court to declare null and void.

The Board claims that it was acting solely in accordance with the provisions of Section 72 of the Traffic Act, and was acting within its jurisdiction in uplifting the restriction without any application before it, without advertising its intentions and without hearing objections.

Section 72 reads as follows:-

1) during the currency of any road service licence the Board may of its own motion or on the application of the licensee amend the licence by altering or revoking any of the terms or conditions of the licence or by adding any new terms or conditions that in its opinion are necessary in the public interest.

2) In the exercise of its powers under the last preceeding subsection the Board may in particular require the licencee to effect such improvements in the service to which the licence relates whether by way of extension or amendment of the routes authorised, the improvement of the timetable or frequency of service, or in any other manner, as the Board considers desirable in the public interest.

4) where the Board intends of its own motion to amend any licence under this section, the provisions of Section 65 of this Ordinance shall with the necessary modifications apply as if the Board had received an application for the proposed amendment. In any such case a copy of the public notice given under that section shall be given to the licensee not less than seven clear days before the expiry of the time specified in the public notice for the receipt of written representations against the proposed amendment".

000092

92.

Now it must have been obvious that the lifting of the restrictions would upset competing operators, and it would seem an obvious step to take to be fair to these competing operators that the proposed charges be advertised and an opportunity given for objections to be received.

However the Board seems to have taken the view and still takes the view - that it could act entirely on its own motion without notifying anyone, and without hearing objections. And it bases its opinion on its own interpretation of Section 72. Section 72 certainly gives the Board power to seek to amend a licence by its own motion, but I cannot agree that this means anymore than that the Board does not have to await an application by any other party, but may itself initiate proceedings.

It does not have to await an application by any other party but may itself initiate proceedings. It does not mean that the Board may dispense with the provisions of Section 65 (with any necessary modifications). Subsection (4) of Section 72 in my view makes this quite obvious.

In the event the Board acted ultra vires and its decision is set aside as being null and void, with costs to the applicant to be taxed if not agreed.

There is lastly a matter on which I wish to comment. At first the Attorney General appeared on behalf of the Board. But following a case heard in the Supreme Court, Suva the Attorney General sought leave to withdraw as counsel for the Board but lso sought leave to remain on the record to further assist the court in whatever manner possible, leave being granted.

However, after both sides had made written submissions, the Attorney General was invited, as ami-us curia, to offer his own comments or observations. These could have b en of considerable assistance to the Court, and I am somewhat surprised and disappointed that, inspite of his offer to render assistance, the Attorney General declained to make any contributions whatsoever.

LAUTOKA
13 JANUARY 1984

G O L Dyke
JUDGE