Neutral Citation [2012] IEHC 592

THE HIGH COURT

[2012 532SS]

BETWEEN:-

MICHAEL ARDIFF

APPLICANT

AND

ROAD SAFETY AUTHORITY

RESPONDENT

JUDGMENT of Mr. Justice Hedigan delivered the 25th day of July 2012

1. This a case stated pursuant to s. 52(1) of the Courts (Supplemental Provisions) Act 1961, which provides as follows:-

> "52 (1) A Justice of the District Court shall, if requested by any person who has been heard in any proceedings whatsoever before him (other than proceedings relating to an indictable offence which is not to be dealt with summarily by the Court), unless he consider the request frivolous, may (without request) refer any question of law arising in such proceedings to the High Court for determination.
>
> (2) An appeal shall lie by leave of the High Court to the Supreme Court from every determination of the High Court on a question oflaw referred to the High Court under subsection (1) of this section".

2. The applicant herein is a person who sat a motor bike driving test and when refused a certificate of competency, lodged a notice of appeal in the Dublin Metropolitan District Court. The respondent is the statutory body with responsibility for carrying out driving tests under the Road Traffic Act, 1961. The applicant's appeal was lodged on the 17th October 2011. The appeal was lodged pursuant to s.33(6)(a) of the 1961 Act, which allows a person aggrieved by a decision to refuse a certificate of competency to appeal to the District Court who can either refuse the appeal or, if satisfied that the test was not properly conducted, direct that the applicant be given a further test. At the hearing of the appeal the applicant stated in evidence that he did not concur with the findings of the tester Mr. McCaffrey, that he carried out a safety glance at all material times and argued that the tester may have lost sight of him at various times during the course of the test. Mr. McCaffrey gave evidence that he never lost sight of the applicant and that the applicant failed to make safety glances, otherwise known as life saving glances, as required by the Rules of the Road. It was submitted on behalf of the Road Safety Authority (RSA) that an appeal under s.33(6)(a) should be limited in scope to occurrences of wrongful conduct on the part of the tester and not be a review of a findings of fact in the course of the test. Following these submissions District Judge Mary Collins indicated her intention to allow the submission of a case stated to the High Court to determine the scope of an appeal pursuant to s. 33(6)(a) of the Road Traffic Act, 1961.

3. The District Judge asked the following eight questions:

> (1) In an appeal pursuant to section 33(6) (a) of the Road Traffic Act 1961, is it an excess of jurisdiction on the part of the District Court to consider "not properly conducted" to include findings of fact on the part of the Road Safety Authority?"
>
> (2) Is the meaning of the words "not properly conducted" in section 33(6) (a) of the 1961 Act limited to manifestly illegal and/or improper acts on the part of the Road Safety Authority"
>
> (3) Do the words "not properly conducted" as set out in section 33(6)(a) of the 1961 Act permit the District Court to review the test based on the testimony of the appellant that the Road Safety Authority failed to adhere to the rules of the road?"
>
> (4) Does the ambit of section 33(6)(a) afford an appellant the right of appeal if merely aggrieved with the result of the test?"
>
> (5) Is it an excess of jurisdiction for the District Court to review the findings of fact by the Road Safety Authority documented on the test report sheet?
>
> (6) Is it within the jurisdiction of the District Court to review the test report sheet?"
>
> (7) Is the testimony of the appellant which merely contradicts the findings of fact by the Road Safety Authority sufficient to vitiate the determination by the Road Safety Authority that the applicant was not competent to drive?
>
> (8) If the District Court determines that the test was not properly conducted and orders that a further test be conducted in accordance with section 33(6)(a) of the 1961 Act:
>
> (a) Does this abrogate the original test?
>
> (b) Does this vitiate the finding that the appellant was not entitled to a certificate of competency or merely that he is entitled to a second test?
>
> (c) If the District Court Orders a further test should the original test result remain on the record of the appellant?

The role of the RSA

4. The Road Safety Authority is a statutory organisation established by the Road Safety Authority Act 2006. One of its functions is to oversee the system of driver licensing and as part of that function it carries out driving tests to enable it to issue certificates of competency as set out in section 33 of the Road Traffic Act 1961.The purpose of the test is to ensure that each applicant has a satisfactory knowledge ofthe Rules of the Road and is competent to drive. To document the findings of fact by the Tester each test is documented on a test report sheet. This report sheet is carried by the Tester and completed during the subject test. The report sheet is colour coded in terms of severity of mistake by the applicant. Grade one is the least severe mistake and coloured green, grade two is a moderate mistake and coloured blue, and grade three is the most severe and is coloured red. If the applicant gets even one red mark then this is considered to be an instant failure mark against the applicant. If there are four blue grade two marks across a single row within a section this is a fail. If there are six or more grade two blue marks in a section that is a fail. If there are nine or more blue marks on the report sheet this too is considered a fail. Grade one green mistakes are not counted for the purpose of a fail.

5. Driving testers with the Road Safety Authority have a level of expertise and knowledge in their field which the Court does not possess. The Court heard evidence from Patrick Travers of the Road Safety Authority. Mr. Travers commenced working as a driving tester in 1990, and has overseen driving testers since 2008. Mr. Travers testified to the extensive training provided to testers. Specific training is given to testers who deal with vehicles other than cars. Testers each administer approximately 150 tests per annum. He also testified to the on-going monitoring of these testers to ensure that standards are maintained and that everyone receives a just assessment in their test. Mr. Travers gave evidence that the RSA tries to exceed the standard specified in the relevant EU Directive dealing with vehicle testing. It is clear from his evidence that driving testers have a high level of expertise.

6. The role of the District Court in an appeal under s. 33(6)(a) of the Road Traffic Act 1961, is specified in the section itself. This reads as follows:-

> "A person aggrieved by a decision under subsection (4) of this section may appeal to a Justice of the District Court having jurisdiction in the place in which such person ordinarily resides, and the Justice may either refuse the appeal or, if satisfied that the test was not properly conducted, direct that the applicant shall be given a further test."

7. The appeal referred to in this section is not an appeal in the sense of an appeal on the facts as occurs when there is an appeal from the District Court to the Circuit Court. It is a special kind of appeal as is clear from the wording of the section. The Court is limited to inquiring into whether the test was properly conducted. It is not given jurisdiction to test whether the appellant should have passed the test or not. The Court's role is to enquire into the manner in which the test was conducted and not into the result. In this way, the role of the District Court in this type of application is somewhat similar to the High Court in judicial review of the Acts of expert administrative tribunals. The approach of the High Court in Judicial Review of the decisions of such expert administrative bodies may be found conveniently summarised in *O'Keeffe v. An Bord Pleanála* [1993] I IR 3 where Finlay C.J., applied the decision in *The State (Keegan) v. The Stardust Victims Compensation Tribunal* [1986] I.R. 642 as follows:-

> "In dealing with the circumstances under which the Court could intervene to quash the decision of an administrative officer or tribunal on the grounds of unreasonableness or irrationality, Henchy J., in that judgment set out a number of such circumstances in different terms. They are: - '1. It is fundamentally at variance with reason and common sense. 2. It is indefensible for being in the teeth of plain reason and common sense. 3. Because the Court is satisfied that the decision maker has breached his obligation whereby he must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision'.... I am satisfied that these three different methods of expressing the circumstances under which a court can intervene are not in any way inconsistent with one another, but rather complement each other and constitute not only a correct but a comprehensive description of the circumstances under which a court may, according to our law, intervene in such a decision on the basis of unreasonableness or irrationality."

Finlay C.J. went on to cite with approval, the following passage from the judgment of Lord Brightman *in R v. The Chief Constable of North Wales XP Evans* [1982] 1 WLR 1155 as follows:

> "Judicial review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the Court is observed, the Court would in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power ... judicial review as the words imply is not an appeal from a decision, but a review of the manner in which the decision was made."

Finlay C.J., went on to observe

> "It is clear from these quotations that the circumstances under which the Court can intervene on the basis of irrationality with the decision maker involved in an administrative function are limited and rare...The Court cannot interfere with the decision of an administrative decision making authority merely on the grounds that (a) it is satisfied on the facts as found it would have raised different inferences and conclusions or (b) it is satisfied that the case against the decision made by the authority was much stronger than the case for it."

It is clear therefore that the Court should be slow to interfere with a decision made with special competence in an area of special knowledge.

8. The Oireachtas in s.33 of the Road Traffic Act 1961, has specified the RSA as the expert body to determine qualification for a full driving licence. It is a vital role and a grave responsibility. It involves an expert assessment by trained testers whose performance is regularly monitored. Safety on our dangerous roads is and must be their guiding principal. The Courts are not given the jurisdiction to make such assessment and have no expertise to do so. It is the exclusive function of the RSA and this function must not be usurped by the court. The only role the Court has is to enquire into whether the test was in some way not properly conducted. It is not its role to interpose its assessment for that of the expert tester.

9. Applying these principles to the eight questions asked I would answer them as follows:-

Question One

Question: In an appeal pursuant to section 33(6) (a) of the Road Traffic Act 1961, is it an excess of jurisdiction on the part of the District Court to consider "not properly conducted" to include findings of fact on the part of the Road Safety Authority?"

Answer: Yes it is in excess of its jurisdiction for the District Court to review findings of fact made by the RSA. The Courts only role is

to investigate whether there was any way in which, taking the test as whole, it was not properly conducted.

Question Two

Question: Is the meaning of the words "not properly conducted" in section 33(6) (a) of the 1961 Act limited to manifestly illegal and/or improper acts on the part of the Road Safety Authority.

Answer: Yes, the words "not properly conducted" should not be interpreted so to allow an appeal to those who are merely dissatisfied with the result of their test. The right of appeal under s.33(6)(a) is limited to where there was improper conduct on the part of the tester in his conduct of the test. It is not sufficient that the District Court would have come to a different decision to that of the tester. The circumstances in which the District Court should intervene are only where a tester has conducted the test in a way that is improper.

Question Three

Question: Do the words "not properly conducted" as set out in section 33(6)(a) of the 1961 Act permit the District Court to review the test based on the testimony of the appellant that the Road Safety Authority failed to adhere to the rules of the road?"

Answer: The respondent complains that during the District Court proceedings Judge Collins requested sight of the test report sheet which details the decisions made by the tester. Judge Collins then heard testimony from both the applicant and the RSA on "how did you determine that blue tick" or "why did the candidate get that red mark". This involves the District Judge possibly interposing her judgment of the appellant's driving ability for that of the tester. The role of the Court is limited to determining, not whether the tester was right in his assessment, but whether he conducted the test properly. Even if the judge on such enquiry disagreed with the assessment of the tester, the judge has no jurisdiction to interpose her judgment for his. The answer to the third question is no.

Question Four

Question: Does the ambit of section 33(6)(a) afford an appellant the right of appeal if merely aggrieved with the result of the test?"

Answer: As noted above, the wording of s. 33(6) of the Act clearly limits appeals to circumstances where the test was not properly conducted. The answer is no.

Question Five

Question: Is it an excess of jurisdiction for the District Court to review the findings of fact by the Road Safety Authority documented on the test report sheet?

Answer: The purpose of each test sheet is to document the findings of fact by the tester. The report sheet is carried by the tester and completed during the test. The test report sheet may be viewed by the District Court to ensure the reasons explaining the decision to fail were given to the applicant. The Court may check for any clear error on its face which may have misled the applicant. It should not however attempt to interpose its view for that of the tester. The Court must not substitute its view for that of the RSA but must ensure that the test was not improperly conducted. The answer to the fifth question therefore is no.

Question Six

Question: Is it within the jurisdiction of the District Court to review the test report sheet?"

Answer: No, save as provided in answer five.

Question Seven

Question: Is the testimony of the appellant which merely contradicts the findings of fact by the Road Safety Authority sufficient to vitiate the determination by the Road Safety Authority that the applicant was not competent to drive?

Answer No, as set out above findings as to competence to drive are matters exclusively for the RSA. Testers alone determine competence to drive.

Question Eight

Question: If the District Court determines that the test was not properly conducted and orders that a further test be conducted in accordance with section 33(6)(a) of the 1961 Act:

(a) Does this abrogate the original test?

(b) Does this vitiate the finding that the appellant was not entitled to a certificate of competency or merely that he is entitled to a second test?

(c) If the District Court Orders a further test should the original test result remain on the record of the appellant?

Answer: (a) The answer is no as the word "further", ins. 33(6) suggests that the original finding is not overturned.

(b) No, it merely entitles him to a retest.

(c) Yes, as the use of the word "further" indicates that there should be a subsequent test. The earlier one should be recorded by the authority because it took place.