Neutral Citation [2013] IEHC 320

THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 1026 JR]

BETWEEN

JOSEPH FATUS

APPLICANT

AND

CHIEF SUPERINTENDENT PATRICK V. MURPHY AND THE COMMISSIONER OF AN GARDA SÍOCHÁNA

RESPONDENTS

JUDGMENT of Kearns P. delivered on the 4th day of July, 2013

The applicant herein is seeking various reliefs arising from the decision of the first respondent made on the 19th November, 2012 to refuse to grant the applicant a small public service vehicle licence. In addition to seeking to have that decision quashed, the applicant also seeks an order of *mandamus* from this Court directing the first respondent to hold that the applicant is a fit and proper person to hold such a licence and to issue same to him. The proceedings were commenced by leave of the High Court (Peart J.) granted on the 17th December, 2012 and the grounds upon which the applicant is seeking relief are set out at paragraph E of the statement of grounds, the most salient grounds being:

> a) that the decision of the 19th November, 2012, was made *ultra vires* the powers of the first respondent under the Road Traffic (Public Service Vehicle) Regulations 1963 (S.I. 191/1963) (as amended).
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> b) that the decision of the 19th November, 2012, was unreasonable and/or disproportionate in its effect on the applicant;
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> c) that the decision of the 19th November, 2012, was made in breach of the rules of fair procedures and in breach of the rules of natural and constitutional justice.

The applicant is a 41-year old man, originally from Nigeria and has been domiciled in Ireland since the 9th September, 2000. He became a naturalised Irish citizen in October, 2012. He is married with three dependant children but has been separated from his wife since October, 2011.

On the 14th May, 2007, the applicant obtained a small public service vehicle licence (hereinafter referred to as a "small PSV licence") under the Road Traffic (Public Service Vehicle) Regulations 1963 (S.I. 191 /1963) (as amended), which permitted him to operate as a taxi driver within the Waterford/Kilkenny area.

Such licences remain in force for a period of five years from the date when granted, pursuant to art. 35(2) of the Road Traffic (Public Service Vehicle) Regulations 1963 (S.I. 191 /1963) (as amended).

On the 7th August, 2011, a member of the public made a complaint to An Garda Síochána regarding a road traffic driving incident involving the applicant. This complaint resulted in the issuing of two District Court summonses charging the applicant with two offences for dangerous driving under s. 53(1) of the Road Traffic Act 1961. These charges were later dismissed in the District Court in July, 2012.

At approximately 3.17am on the 24th March, 2012, another incident involving the applicant occurred at or near a taxi rank located near the Wacky Apple public house in John Street, Waterford. The applicant was there approached by one Garda Leandra Pollard who accused the applicant of not complying with her direction to move his taxi; of holding a mobile phone in his hand while driving; of not having sufficient paper in his taxi meter to issue receipts to customers; and of behaving aggressively towards her. Garda Pollard did not accept the applicant's explanation for the above and issued him with an on-the-spot fixed charged notice for holding a mobile phone while driving, which carried with it a fine of €60.00 and two penalty points.

As the applicant's small PSV licence was due to expire on the 14th May, 2012, the applicant applied to the respondents for the grant of a new PSV licence, under article 34 of the Road Traffic (Public Service Vehicle) Regulations 1963 (S.I. 191 /1963) (as amended), in April 2012.

On 30th April, 2012, the first respondent wrote to the applicant by letter in response to his application for the said licence. The letter referred to the incident on the 24th March, 2012, at John Street, Waterford, outlined above, and invited the applicant to make written or oral submissions in respect of same to the first respondent.

On 2nd May, 2012, the applicant met with the first respondent at Waterford Garda Station and was questioned about the incident on the 24th March, 2012. The two District Court summonses pending against the applicant and details of the alleged incident that occurred on the 7th August, 2011, were also raised by the respondent. The applicant disputed many aspects of the allegations but had a full opportunity of presenting his version of those events at the meeting.

On 4th May, 2012, the applicant received a letter from the first respondent informing him that his small PSV Licence would be renewed for a period of 6 months pending the outcome of the two District Court summonses which were listed for hearing on the 23rd July, 2012 and his case would then be further reviewed by the first respondent. The letter also informed the applicant that the first respondent was satisfied that Garda Pollard's version of events concerning the incident on 24th March, 2012, was correct. In referring to the matters constituting that incident the first respondent characterised them as "minor infringements" but the applicant was advised to:

"a) Improve your courtesy and respect for other persons when acting professionally as a licensed driver of a Small Public Service Vehicle.

b) Comply fully to the rules of the road and the provisions of the Road Traffic Acts when driving your small public service vehicle for hire. This includes compliance with the lawful instructions of gardaí on traffic point duty. Do not stop or park your small public service vehicle in a manner that is in breach of the road traffic laws or obstructs traffic.

c) Comply fully with the provisions of the PSV Regulations including having paper in your taxi meter which is available for use when required. The use of cheaper paper which does not fit your PSV taxi meter is unacceptable."

On the 23rd July, 2012, the two District Court summonses were heard by the District Court and were dismissed on their merits.

On the 24th July, 2012, the applicant received a letter from Údarás Náisiúnta Iompair, the national transport authority, advising him that his licence was due to expire on the 14th November, 2012, and informing him of a new advance application process that had been introduced to facilitate early 'renewal' of such licences. The letter also stated that applications had to be received no later than 12 weeks prior to the expiry date of the licence, as applications received after this time could not be guaranteed to be processed prior to the expiry date and it was an offence to operate on an expired driver licence under s.43 of the Taxi Regulation Act 2003 (No. 25 of 2003).

On the 4th November, 2012, a further incident occurred at Plunkett Train Station, Waterford, between the applicant and a female motorist following which the female motorist made a complaint to the gardaí. She alleged that the applicant had parked his vehicle in a manner that obstructed her movement and then refused to move his vehicle when requested to do so by the female motorist. She also alleged that the applicant had behaved aggressively towards her, causing her to become nervous and upset. On request being made, the applicant had refused to produce his PSV identity badge to her. Her statement was taken by Garda Kyra Collins, who, in a report she prepared in relation to the alleged incident, expressed the view that she "was unsure if this man is suitable to hold a psv licence". The first respondent acknowledged that, while the detail and substance of the complaint were explained to the applicant, neither the written statement of complaint nor Garda Collins's report were shown to him at their meeting of 14th November, 2012.

On the 5th November, 2012, the applicant telephoned the PSV inspector for the area of Waterford, Garda Joe Robinson, and subsequently met with him later that day to fill out the application forms essential to his application for the grant of his small PSV licence. The applicant was informed by Garda Robinson that a female motorist had made a complaint about him pertaining to the incident on the 4th November, 2012.

On the 8th November, 2012, Garda Robinson prepared a report for the first respondent in relation to the applicant's application for a small PSV licence. In his report, which the first respondent acknowledged was not shown to the applicant at their meeting on 14th November, 2012, Garda Robinson stated that:

"Mr. Fatus has come under adverse attention with the Gardaí and in my opinion has a serious anger management problem. As stated before I do not think that Mr. Fatus is a fit and proper person to hold a small public service vehicle driver's licence. Mr. Fatus has had numerous chances from this office including a personal meeting with Chief Superintendent in May 2012."

The applicant received a letter from the first respondent, dated 8th November, 2012, in relation to the applicant's small PSV Licence application, which stated that in considering his application the following matters of concern had been brought to the first respondent's attention:

"1. That on the 4th November, 2012 at the Train Station, Waterford you parked your small public service vehicle in a manner that obstructed the movement of a female motorist and you refused to move your vehicle from its obstructing position when required to do by the female motorist.

2. That on the 4th November, 2012 at the Train Station, Waterford while driving your small public service vehicle you engaged in aggressive behaviour towards a female motorist thereby causing her to become upset and nervous."

The first respondent requested that the applicant make oral or written submissions addressing each of the allegations made against him within 7 days of this letter dated 8th November, 2012, to assist him in reaching a decision.

On the 14th November, 2012, the applicant met with the first respondent.

By letter dated 19th November, 2012, the first respondent wrote to the applicant notifying him that in accordance with the provisions of Article 34 of the Road Traffic (Public Service Vehicles) Regulations 1963 (S.I. 191/1963) (as amended), he was not satisfied that the applicant was "a fit and proper person to hold a licence to drive Small Public Service Vehicles" and was consequently refusing to grant his application for a small PSV Licence. The first respondent stated that "on the balance of probability" he was satisfied:

1) That on the 4th November, 2012 at the Train Station, Waterford, the applicant parked his small public service vehicle in a manner that obstructed the movement of a female motorist and that the applicant refused to move his small public service motor vehicle from its obstructing position when required to do so by the female motorist.

2) That on the 4th November, 2012 at the Train Station, Waterford, the applicant while driving his small public service motor vehicle engaged in aggressive behaviour towards a female motorist, thereby causing her to become upset and nervous.

3) That the applicant failed or refused to provide details of his small public service vehicle badge number when requested by a female motorist who was dissatisfied with the manner in which he was using his Small Public Service Vehicle.

The first respondent also reiterated what he had said in his letter dated 24th May, 2012 to the applicant when renewing his licence in which he expressed his concerns in respect of the applicant's behaviour while driving his taxi and recorded his disappointed that the applicant had failed to heed the advices given to him in that regard. The first respondent notified the applicant that he had, "the right to appeal his decision to a judge of the District Court in Waterford", pursuant to art. 37 of the Road Traffic (Public Service Vehicle) Regulations, 1963 (as amended).

On the 23rd November, 2012, the applicant's solicitors wrote to the first respondent contending that the first respondent's decision

was disproportionate, null and void, and notified him that the applicant intended to appeal the first respondent's decision to the District Court without prejudice to his position that the first respondent's decision was disproportionate, null and void and calling upon the first respondent to reconsider his decision. On this same date the applicant lodged a notice of appeal to the District Court pursuant to the Regulations, stating that the same was without prejudice to his contention that the first respondent's decision was disproportionate, null and void.

On the 4th December, 2012, the applicant was issued with fixed charge notices in relation to the alleged incident on 4th November, 2012. These were paid and discharged by the applicant.

The applicant obtained leave to apply for the reliefs set out in the notice of motion and statement of grounds herein on 17th December, 2012.

THE REGULATIONS
Although the National Transport Authority is the licensing authority for small public service vehicles, all licences to drive small public service vehicles are granted by An Garda Síochána in accordance with the provisions of the Road Traffic (Public Service Vehicles) Regulations, 1963 (S.I. 191/1963) (as amended), (hereinafter referred to as "the 1963 Regulations").

Art. 34(3) of the 1963 Regulations states that where an application for the grant of a licence to drive small public service vehicles is duly made, "the Commissioner shall grant the licence if he is satisfied that the applicant:

> (a) is a fit and proper person to hold a licence to drive small public service vehicles;
>
> (b) has an adequate knowledge of
>
> > (i) general traffic regulations,
> >
> > (ii) the area in which he proposes normally to make his services available as a driver of small public service vehicles and of local traffic and parking regulations applying to that area,
> >
> > (iii) the regulations relating to small public service vehicles;
>
> (c) has not been convicted of an offence which, in the opinion of the Commissioner, would render him unsuitable to hold a licence to drive small public service vehicles;
>
> (d) in the case of an applicant who is not the holder of a valid subsisting licence to drive small public service vehicles, holds at the time of the application a driving licence without endorsement.

Art. 35(2) of the 1963 Regulations provides the following:-

> "A licence to drive small public service vehicles shall remain in force for a period of five years from the date of its grant or until the sooner surrender or revocation of the licence."

Notably, there is no provision in the 1963 Regulations to renew an existing small PSV licence. Such a licence expires by the lapse of time unless it is revoked. Once it has expired a previously licensed driver must apply in the normal way for a new licence. Therefore, although the applicant had previously held a small PSV licence, his application was for the grant of a new licence.

Art. 37 of the 1963 Regulations states the following:-

> "(1) Whenever the Commissioner or authorised officer refuses an application for the grant of a licence to drive small public service vehicles or whenever the Commissioner revokes such a licence, the applicant or person whose licence is revoked may appeal against such refusal or revocation to the Justice of the District Court having jurisdiction in the place in which such applicant or person ordinarily resides.
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> (2) On the hearing of an appeal under this article, the Justice may either confirm the refusal or revocation or direct the Commissioner or authorised officer to grant the licence or to annul the revocation.
>
> (3) The Justice shall cause notice of his decision on an appeal under this article to be given to the Commissioner or authorised officer, who shall comply with any direction given under this article.

DECISION
At the outset it is important to identify precisely the nature of the issue which the Court has been called upon to determine. This is not a case where the propriety or otherwise of the applicant's behaviour led to the *revocation* of a valid small PSV licence. Nor can this case be characterised as one in which the "*renewal*" of a small PSV licence was refused, given that the Regulations do not speak to renewals. Nor is this a case in which the applicant has pleaded or contended for the further grant of a licence based on considerations of legitimate expectation.

Both parties accepted during the hearing before this Court that the grant for a six month period of a small PSV licence to the applicant made on 4th May, 2012 was for a period of time not provided for by the Regulations. The Regulations provide only for a five year licence so the 'temporary licence' granted pending the outcome of District Court proceedings was arguably invalid, albeit that the applicant was the beneficiary of it. However, the validity of that particular decision has not been challenged in these judicial review proceedings. The only decision under attack is that made by the first named respondent on 19th November, 2012 when he decided not to grant a small PSV licence to the applicant. It is not open to the applicant in these proceedings to mount some sort of collateral challenge to the validity of the 'temporary' licence granted on the 4th May, 2012 which, had it been brought in timely fashion, might have proved successful for that reason. However, that topic is now moot, the licence in question having expired by effluxion of time in early November, 2012.

Rather oddly, the applicant in challenging the decision of 19th November, 2012, argues that the first named respondent was not

entitled to take into account any incidents of suggested misbehaviour on the part of the applicant prior to the issue of the temporary licence in May 2012. This argument is premised primarily on a decision of Herbert J. in *Donnelly v. Commissioner of An Garda Síochána* [2008] 1 I.R. 153. It was argued on behalf of the applicant that the words "a fit and proper person to hold a licence to drive small public service vehicles" in art.34(3) of the 1963 Regulations should be interpreted in the same way as the words "no longer a fit and proper person to hold such a licence" in art. 36 of the 1963 Regulations as the same were interpreted by Herbert J. in the *Donnelly* case.

That case, however, was a revocation case and not one in which an application was being made for a licence. It therefore made perfect sense for Herbert J. to say as he did at pp. 166-167:-

> "In my judgment the words, 'is no longer' in the phrase, 'is no longer a fit and proper person to hold such a licence', can only mean, if English is to have any plain meaning at all, that the person concerned was once but has since then ceased to be a fit and proper person to hold such a public service vehicles licence. If the Regulations are to have any rational and consistent meaning, and it must be inferred that it was the intention of the Minister that they should have such a meaning, the obvious relevant time when the holder had to have been accepted as such a fit and proper person to hold a public service vehicles licence, was when that licence was last granted to him by the first respondent. In my judgment the words, 'is no longer a fit and proper person to hold such a licence' are referring and, clearly and unambiguously referring, only to events which have occurred since the particular public service vehicles licence holder was last granted his or her current public service vehicles licence. … To endeavour to extend or enlarge the meaning of the actual words used in art. 36(1) of the Regulations of 1963 to cover events occurring prior to the date of grant of the current public service vehicle licence would be to do wholly unjustified violence to the plain and unambiguous language of the article and involve the court in legislating rather than in interpreting by, in effect, introducing the non existent words, 'and never was' after the words, 'is no longer' in the phrase, 'is no longer a fit and proper person to hold such a licence'."

I would entirely agree with the views expressed by Herbert J. if it were to be contended on behalf of the respondents that events prior to 14th May, 2007 could be taken into account by the respondent in view of the fact that he was considered a fit and proper person when he first obtained a small psv licence and commenced work as a self-employed taxi driver. That licence expired in May 2012. When the applicant sought a further licence at that time, the first respondent had been made aware of a driving incident in which the applicant was involved on 7th August, 2011 which had led to a number of charges being brought against the applicant in the District Court. In May 2012 the respondent was also aware of an incident which had occurred in John Street, Waterford on 24th March, 2012 involving, *inter alia*, the use by the applicant of a mobile phone while driving in respect of which a fixed charge notice was issued to the applicant.

When the applicant submitted a new application for the grant of a licence in April 2012, the first respondent wrote back to him referring to the incidents in August 2011 and March 2012 and requesting the applicant to address each of these matters by written or oral submissions. The applicant elected to have these matters addressed at a meeting which took place between the applicant and the first respondent at Waterford Garda Station on 2nd May, 2012. In the aftermath of that meeting the first respondent wrote to the applicant to inform him that his small PSV licence would be renewed for a period of six months pending the outcome of the District Court summonses in respect of the August 2011 incident. Whether valid or invalid, the granting by the first respondent of a temporary licence pending the outcome of the proceedings in the District Court cannot, in my view, be construed as establishing that the applicant was thereby deemed to be "a fit and proper person" to receive a PSV licence for the statutory five year period. Still less could it operate to shut out from consideration the two incidents reported to the first respondent when considering the applicant's application for a further PSV licence in November 2012. The facts and context are utterly different from those considered by Herbert J. in the context of a revocation application. I am satisfied therefore that this particular limb of the applicant's submissions is misconceived.

When the application for a small PSV licence came to be considered in November, 2012, a further 'incident' involving discourtesy to a female road user at Waterford train station had occurred and had been brought to the attention of the first respondent. Again, the applicant was given an opportunity to respond to the claims of the complainant and further was given the substance and detail of the complaint at the meeting which took place on the 14th November, 2012. While he was not furnished with the statement of the complainant in the railway station incident or provided with an opportunity to cross-examine her, he had a full opportunity to present his version of the incident. I am satisfied for the reasons set out later that there was no legal requirement for any "trial type hearing" in the simple context of the application being made. Nor do I believe that it was necessary that a criminal conviction arising out of this incident was necessary before it could be taken into consideration by the first respondent. I am satisfied he was entitled to have regard to both that incident and the cumulative significance of the various incidents in which the applicant was involved in 2011 and 2012 when arriving at his decision to refuse to grant a licence. However, in fairness to the first respondent he did not take that course or go so far because in his second affidavit, dated 15th May 2013, he confirms that he did not take into account the incident on 7th August 2011 (which was the subject of the charges dismissed on the merits by the District Court in July 2012) and so informed the applicant.

However, the applicant asserts, perhaps for this reason, that the decision arrived at to refuse the grant of a licence offended the concept of proportionality as outlined by the majority decision of the Supreme Court in Meadows v Minister for Justice, Equality and Law Reform [2010] IESC 3. However, that test – if new test it be – must be applied in the context of the statutory scheme and powers under review. The Regulations afford a wide discretion in relation to the granting of PSV licences and there is a right of appeal to the District Court from a decision to refuse the grant of a licence. The discretion available is arguably wider in the case of an application for a licence than its revocation. Further, the first respondent is under a positive obligation to satisfy himself that the applicant is a "fit and proper person to hold a licence" and there are no statutory restrictions imposed upon this discretionary power. It is not the function of this Court to make that assessment (although it was asked to do so by counsel on behalf of the applicant) and it would be quite undesirable that every negative decision on an application for a licence would be the subject matter of a judicial review application to the High Court, particularly when an appeal from a negative decision lies to the District Court. Indeed such an appeal was brought in this case and was only put "on hold" at the last moment for the purpose of bringing this application.

In the context of any proportionality test, it must be recognised that the public who avail of taxi services - and taxi drivers also - have a very real interest in ensuring that procedures to protect the integrity and standards of those providing such services are effective. It is a legitimate concern for the respondents to ensure that taxi drivers treat both their passengers and other road users with basic courtesy. Thus the first respondent can have regard to a variety of considerations when making his decision. Some of those were adverted to by Herbert J. when he included as factors:- "*physical and mental impairment, serious complaints by customers, unwarranted refusal to carry persons, use of a disreputable (sic) vehicle, persistent rank jumping and disputes with other taxi drivers, over-driving and other similar matters*". Further, in the context of any proportionality test, is it correct to say that a negative decision in this case took away the applicant's capacity to earn his livelihood? His ability to work as a taxi driver is presently impaired but his driving licence is not taken away nor is there any interference with his ability to work in any other area

(which might also include driving). I use the word "impaired" because it remains open to a person in the applicant's situation to re-apply for a small PSV licence at a later stage if he wishes. He is not shut out for any specified or indefinite period.

Having regard to the number of incidents drawn to the respondent's attention from diverse sources in the case of this applicant, I am satisfied that his decision to refuse the applicant's request could not be considered disproportionate or irrational in the sense that it would require this Court's intervention to set it aside. That is particularly so when a readily available right of appeal to the District Court was available, and remains available, to this applicant.

Nor do I believe that the applicant's submissions about lack of fair procedures are well founded. This assertion is based on the proposition that the first respondent's letter dated 8th November, 2012 gave the applicant advance notice of only two matters of concern which the first respondent wished to discuss with the applicant prior to making his decision. These were the incidents at the railway station and the driving offences of August 2011. As events transpired the incident from 2011 was not in fact relied upon by the first respondent. However, it is clear from the first respondent's letter of 19th November, 2012 that he also took into account the incident outside the night club on 24th March, 2012. For the reasons already indicated, the applicant seems to believe this was in some way unfair, but he had already given his own account of this particular incident to the first respondent. There is a further allegation that the first respondent did not put to the applicant a particular detail of the complaint about the incident at the railway station in early November 2012 which was to the effect that the applicant failed to produce his PSV badge number when requested so to do by the complainant. However, given that the applicant in his affidavit admits that he did in fact decline to produce his badge number, it is difficult to see how he was in any way disadvantaged by the non specific reference to this peripheral matter.

It is further alleged that the first respondent did not provide the applicant with any opportunity to cross-examine the female motorist involved in the incident of 4th November, 2012 during the course of the interview. It is submitted that fair procedures require that the first respondent should have afforded the applicant an opportunity to "confront the female motorist involved" so that he could challenge her version of events before the first respondent made his decision.

Again I believe this is a mistaken basis upon which to advance this argument. The applicant seems to be suggesting that an application for a PSV licence ought to bring with it a hearing with the same procedures and protections which are afforded to an accused person in a criminal trial. However, the subject matter of these proceedings is not a criminal trial but rather is an application process – not different, in many ways, to an application for any public sector position. In *Mooney v. An Post* [1998] 4 I.R. 288 it was held, *inter alia*, that dismissal proceedings (which would in any event require a heightened degree of fairness in the procedures) were not criminal proceedings and that to "attempt to introduce procedures of a criminal trial in to an essentially civil proceeding served only to create confusion".

I am satisfied that in the instant case the first respondent not only furnished the applicant with details of the nature of the issues in respect of which he had concerns, but also that he waived reliance on the 2011 incident and afforded the applicant a full opportunity to address all the remaining concerns outstanding at the arranged meeting in November. The applicant therefore had a full opportunity of making whatever representations he saw fit to the first respondent.

Counsel for the respondents referred the Court to the decision of Costello J. in *Doupe v. Limerick County Council* [1981] I.L.R.M. 456 in which the plaintiff had been refused a licence to operate an abattoir by the defendant local authority. In the course of his judgment, Costello J. indicated the nature and kind of hearing appropriate to such a decision- making process and stated as follows at pp. 463-464:-

> "(Natural justice) does not require that every administrative order which may adversely affect rights must be preceded by a judicial-type hearing involving the examination and cross-examination of witnesses. It requires that adequate notice of the case which an applicant has to meet be given to him and that an adequate opportunity be afforded to answer any objections which may be taken to his application. And it is clear that the requirements of the rule may be fully satisfied by the adoption of quite informal procedures. In some cases an applicant may be entitled to make his submissions orally, in others a written submission will meet the requirements of the rule.
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> In the present instance there was in fact disclosure of the objections being raised against the plaintiff's application and it seems to me that the nub of this case is (a) whether the disclosure was adequate and (b) whether the opportunity to answer it and put his own case given to the plaintiff was adequate … But there is no doubt that he was told the substance of the case against his application and it seems to me that he had ample opportunity before any final decision was reached to approach the council with an expert view, if one could be obtained which challenged the conclusion that in the interest of public health weekly killings should be limited as the Chief Medical Officer required. But he did not avail of this opportunity, and he maintained his refusal to accept the recommended limitation. There was, of course, no formal 'hearing' of his application – but none was needed. He was, albeit informally, given notice of the advice the Council had obtained and he was afforded an adequate opportunity to answer the objection raised."

I respectfully agree with the views of Costello J. and conclude there was no want of fair procedures in the application process for a licence in this case.

Even if I am wrong in so concluding, I am in any event satisfied that this Court should not on discretionary grounds intervene by way of judicial review having regard to the fact that the applicant first elected to bring a challenge to the decision in this case by means of an appeal to the District Court. This is provided for by art. 37 of the 1963 Regulations which provides:-

> "Whenever the Commissioner or authorised officer refuses an application for the grant of a licence to drive small public service vehicles or whenever the Commissioner revokes such a licence, the applicant or person whose licence is revoked may appeal against such refusal or revocation to the justice of the District Court having jurisdiction in a place in which such applicant or person ordinarily resides."

Such a statutory appeal constitutes a complete *de novo* hearing at which the applicant can address all of the grievances he seeks to raise in these judicial review proceedings. I am quite satisfied, for reasons already indicated, that the appeal route in a case of this nature is, except in extreme cases, to be preferred to that of judicial review. In *Cremin v. Smithwick* [2001] I.E.H.C. 101, the applicant sought judicial review prior to his appeal to the Circuit Court having been determined. In the course of his judgment Kelly J. noted as follows at p.5:-

> "It is clear therefore that where a sufficient alternative and more appropriate remedy exists and is availed of, relief by way of *certiorari* does not normally lie. Here the applicant has availed himself of such an alternative appropriate remedy. Even were the applicant to persuade me that he had a case to make on the substance of this matter, I would on this

ground alone be inclined to refuse the relief sought."

In *Buckley v. Kirby* [2000] 3 I.R. 431, the applicant contended there had been insufficient evidence to warrant his conviction for larceny offences in the District Court. He served a notice of appeal and applied for leave for judicial review. The Supreme Court distinguished four situations:-

(a) when an appeal to the Circuit Court has been fully or partly heard;

(b) when an appeal is pending in circumstances where both remedies are appropriate;

(c) simultaneously with an appeal, in circumstances where an appeal is the more appropriate remedy; and

(d) circumstances where there is no appeal, notwithstanding that an appeal is the more appropriate remedy.

In the second situation, the test to be applied is dependent on the relative merits of the remedies. As Barron J. noted in *McGoldrick v. An Bord Pleanála* [1997] 1 I.R. 497 at p.509:-

> "The real question to be determined where an appeal lies is the relative merits of an appeal as against granting relief by way of judicial review. It is not just a question whether an alternative remedy exists or whether the applicant has taken steps to pursue such a remedy. The true question is which is the more appropriate remedy considered in the context of common sense, the ability to deal with the questions raised and principles of fairness; provided of course, that the applicant has not gone too far down one road to be estopped from changing his or her mind. Analysis of the authorities referred to shows that this is in effect the real consideration."

In *Buckley v. Kirby*, the Supreme Court held that the case fell within the third category, since the issue turned on the adequacy of the evidence in the District Court, an appeal was the appropriate remedy and the refusal of leave to grant judicial review was upheld.

Views to similar effect were expressed by Denham J. in *O'Donnell v. Tipperary (South Riding) County Council* [2005] 2 I.R.483 in a case where the applicant had been dismissed from his post as a fire station officer. He commenced both judicial review proceedings and an appeal to the Employment Appeals Tribunal. The judicial review was dismissed by the High Court on the basis *inter alia* of the availability of an alternative remedy. Upholding this decision, Denham J. held as follows at p.489:-

> "In assessing the nature of the alternative right of appeal and judicial review, there are a number of relevant factors. Included in these factors are the following. First, the fact that the applicant has already commenced this alternative remedy and that there has been a hearing of the matter over two days. This appeal now stands adjourned pending this judicial review. While these appeal steps are not a determinative factor, in the circumstances they are a weighty factor. Secondly, the issues which the applicant raises relate to natural justice and to fairness, which relate to the merits of the case also, which issues may be addressed and determined by the Employment Appeals Tribunal. Thirdly, the matters raised do not relate to net issues such as points of law or jurisdiction. Fourthly, the essence of the issue raised relates to evidence as to the allegedly fraudulent actions of the applicant and this may be dealt with fully by an appeal before the Employment Appeals Tribunal, rather than as a review of procedure. It is manifestly a matter for an appeal process rather than a review of procedure. Fifthly, the applicant seeks reinstatement of his post and he referred to the low statistical figures for reinstatement by the Employment Appeals Tribunal. I have considered this as a factor but I do not give it a heavy weighting given that the Tribunal has the jurisdiction to hear an appeal and to reinstate, and the applicant may present his full case on the appeal. Sixthly, there is a right of appeal from the Employment Appeals Tribunal to the Circuit Court, then to the High Court and on a point of law to this court."

I am satisfied that this is not a case where the statutory remedy is an insufficient alternative to judicial review. The applicant ultimately believes the first respondent reached the wrong decision on the evidence and materials before him. He is now seeking, in essence, a positive decision on his application for the grant of a small PSV licence. The statutory appeal can lead to precisely such a positive decision, whereas if he succeeds in these judicial review proceedings, the appropriate remedy, in addition to *certiorari*, would necessarily be confined to a remittal of the matter to the respondents for reconsideration.

The applicant's advisors were aware of these matters when seeking an adjournment of the appeal in the District Court at a time when the various witnesses for the respondents were ready and available to give evidence before that court. The applicant had by then progressed far down the avenue of the appeal route before drawing stumps in favour of the present judicial review application. For that reason, and because in my view the alternative remedy is in any event a more appropriate remedy, I would on discretionary grounds alone decline to grant the relief sought in this case.