

**THE HIGH COURT
JUDICIAL REVIEW**

[2004 No 616 JR]

BETWEEN

JOHN DONNELLY

APPLICANT

**AND
COMMISSIONER OF AN GARDA SÍOCHÁNA
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

Judgment of Mr. Justice Herbert delivered on the 10th day of November 2006

1. By an Order of this court made 19th July 2004, the Applicant was given leave to seek an Order of *Certiorari* by way of Judicial Review quashing the decision of the first named Respondent made on 17th June 2004, revoking the licence granted to the Applicant on 15th November 2003 to drive small public service vehicles, - in this case taxis.

Facts

2. It was agreed that the Applicant on 11th March 2001, made application at Harcourt Terrace Garda Station, for a licence to drive small public service vehicles.

3. Paragraph 10 of the Application Form, P.S.V. – 15, asked:

“Has Applicant ever been convicted of any Traffic Offence in the past five years? If the answer is yes, give particulars.”

The Applicant answered “No”.

4. Paragraph 11 of the same Form asked:

“Has Applicant ever been convicted of any Crime or Offence in this State or outside this State? If the answer is yes, give particulars. The Applicant answered, “Six years ago I was convicted of an assault. Nothing after that.”

5. The Applicant admits at paras. 2 and 3 of the Replying Affidavit sworn by him on 25th February 2005, that, on that occasion he had spoken to Sergeant John Wall. There is a difference in recollection between the Applicant and Sergeant Wall, as to what was said. At para. 3 of the Replying Affidavit, to which I have just referred, the Applicant states as follows:-

“I say that the completed form clearly stated that six years ago I was convicted of assault. I recollect that Sergeant Wall did mention the other two previous convictions to me but stated that these were not serious enough to prevent me getting a licence. At no stage did I state as, John Wall now contends that I had not offended since 1991. If this had been the case the form would have been clearly (and to my disadvantage) incorrect and would obviously have been amended there and then.”

6. At paras. 2 and 3 of his Affidavit, sworn on 5th November 2004, Sergeant John Wall (now retired) states as follows:-

“2. I say that on 11th March 2002, the Applicant herein John Donnelly of 12 Digges Street, Dublin 2, made application to me at Harcourt Terrace Garda Station for a small P.S.V. licence. I assigned the Application to Garda William Byrne of Harcourt Terrace Garda Station and he carried out enquiries under my guidance and supervision.

3. The Applicant signed a form P.S.V. 15 in my presence. I completed form P.S.V. 15 on 1st April 2002. I sent the completed file to the Superintendent at Pearse Street Garda Station. I say that I spoke to the Applicant prior to the completion of the Application and he stated to me that his previous convictions were correct and that he had not offended since 1991.”

7. An Affidavit of Discovery of Documents was sworn by Superintendent Martin FitzGerald of the Human Resource Management Section at the Headquarters of An Garda Síochána, on 28th April 2005. Scheduled in this Affidavit were the results of a P.U.L.S.E. System Search against the Applicant and, a memorandum dated 1st April 2002, from Garda William Byrne and Sergeant John Wall to the Superintendent at Pearse Street Garda Station. The P.U.L.S.E. System Searches were carried out on 9th March 2005, and 15th March 2005. They disclosed the following convictions recorded against Applicant:-

12th May 1986 – Common Assault – fined IR£50.79

14th November 1991 – Breach of the Peace – fined IR£25.39

29th July 1998 – Assault on two counts – three years imprisonment suspended for three years and compensation of IR£634.87 and IR£500.

2nd September 2002 – Careless Driving and driving through a red light – fined €150 and €50.

8. In the memorandum of 1st April 2002, Garda William Byrne states:-

“John Donnelly has two previous convictions for assault and breach of the peace and I attach a copy of P.U.L.S.E. No. 312401 and 312402. I have spoken to Mr. Donnelly and he has admitted these offences as being true.”

9. The First Schedule, Part 1 of the Affidavit of Discovery, identified P.U.L.S.E. No. 312401 as relating to the conviction of 12th May 1986 – Common Assault, fined IR£50.79 and P.U.L.S.E. No 312402 as relating to the conviction of 14th November 1991, - Breach of the Peace, fined IR£25.39. In the same memorandum Sergeant John Wall states:

“Forward please: I spoke to Mr. Donnelly and he admits the convictions are correct. He states that he has not offended since 1991.”

10. In an Enquiry Report Form, P.S.V. 16, dated 3rd June 2006, Sergeant John Wall in reply to the question, "Are particulars given by the Applicant on attached application correct? Replied "Yes" and, in reply to the question, "is the Applicant suitable in every way for the grant of a Licence?, replied "Yes". On the same Form the Superintendent of "B" District stated that he concurred in the report of Sergeant Wall and that he considered the Applicant suitable for the grant of a small public service vehicle licence.

11. By letter dated 10th June 2002, Chief Superintendent W. Donoghue, Dublin Metropolitan Region, South Central Division, informed the Chief Superintendent, Dublin Metropolitan Region, Regional Traffic Division (Carriage Office) as follows:-

"With reference to above, see attached application submitted by Superintendent, 'B' District from Mr. John Donnelly (Date of Birth 31/12/1968) of 12 Digges Street, Dublin 2, who is seeking a licence to drive a Small Public Service Vehicle in the Dublin Area.

The Applicant has two previous convictions for breach of the peace and common assault dating from 1991 and 1986 respectively, however he has not come to the attention of An Garda Síochána since that time. In addition one of his nominated referees, Mr. Christopher O'Grady, of 5 Bishop Street, Dublin 8 has four previous convictions recorded against him, dating from 1980 to 1982. The Applicant has indicated that he cannot provide an alternative referee.

Given the circumstances, including the length of time since the Applicant's convictions and the fact that he has not come under any adverse attention since, I doubt that we can deprive the Applicant of an opportunity to earn a livelihood; accordingly, I recommend this application."

12. By letter dated 4th November 2002, the Applicant was informed by the Carriage Department Dublin Metropolitan Region, An Garda Síochána, that he was successful in the P.S.V. Driver's Licence Knowledge Test and that the P.S.V. Badge would issue on payment to the Motor Transport Office of a Grant Fee of €3. The Small Public Service Vehicle Licence was issued to the Applicant in 11th November 2002.

13. It as accepted by the parties to this application for Judicial Review, that the Applicant, who had been previously unemployed, started work as a taxi driver in November 2002. No issue was taken nor was any evidence adduced to contradict the following averments by the Applicant at paras. 4 and 5 of his Grounding Affidavit sworn on 20th July [sic] and, filed in the Central Office of the High Court on 20th July 2004:-

"4. I have been working as a taxi driver and have been supporting my partner and our two children from the money which I earned as a taxi driver. My partner does not work outside the home and I have no other source of income. I am now in a position where I cannot earn any money as a taxi driver. My financial commitments at the moment include rent of €80 per week, car repayment of €80 per week (total of €4,500) and supporting my partner and two children. My net income from driving my taxi was approximately €450 to €500 per week. Due to the decision of the first named Respondent to revoke my licence, I am being forced into a situation where I have to contemplate signing on and obtaining unemployment benefit. I fear that even if I do so my net monthly outgoings will exceed my income.

5. I say that I have been working as a taxi driver for nearly two years at this stage and at no time has my behaviour towards customers or my driving abilities ever been called into question."

14. At paras. 11 and 16 of his Affidavit sworn on behalf of the Respondent on 7th October 2004, Inspector Declan Brogan of the Carriage Office states that the first named Respondent became aware in October 2003, that the conviction mentioned by the Applicant in his Application Form did not refer to the minor assault which had occurred in 1986, but to a much more serious assault which had occurred in the Accident and Emergency Department of the Meath Hospital, Dublin, on 8th July 1996. Details of this incident are set out in the Affidavit of Detective Garda Raymond Rogers sworn on 6th October 2004, and were not disputed or contradicted by evidence at the hearing of this application for Judicial Review. At para. 3 of his Affidavit, Detective Garda Rogers avers as follows:-

"Mr. Bulant Ozcan, a Turkish national was involved in a family dispute. That dispute resulted in Mr. Bulant receiving stab wounds and being admitted to the Meath Hospital for Treatment. I attended at the Meath Hospital on that occasion for the purposes of interviewing Mr. Bulant when a group of males including John Donnelly came into the A & E Department. Several members of that group proceeded to assault Mr. Bulant. When I tried to intervene I was pushed from behind. I turned around quickly and saw another man who I know to be John Donnelly of 6H Bishop Street Flats, Dublin 8, pushed me down to the end of the room. He was very aggressive. I saw others coming in the door and gathering around Mr. Bulant, and kicking him repeatedly. There seemed to be four kicking Mr. Bulant while he was on the ground. I could see this over Mr. Donnelly's shoulders. I tried to push Mr. Donnelly out my way and called for urgent assistance. I managed to get a message out. The people who were in the waiting room panicked, and some of them went out the windows in fear for their safety. I tried again to get by Mr. Donnelly in order to prevent any serious injury happening to Mr. Bulant but could not succeed. Mr. Donnelly shouted at me 'stay the fuck out of this it's none of your business'. I tried to get by him again and again he shouted 'stay the fuck away from this we will deal with it, you shouldn't be here'. He pushed me a few more times until I was at the end of the waiting room. He had a firm grip on my left arm. As I feared for the life of Mr. Bulant due to the amount of kicks he was getting to the head and body, I tried to give another call out on the radio for help. Mr. Donnelly punched me twice in the face and shouted 'don't fucking talk to the radio, turn it off'. He repeated this two or three times. Mr. Donnelly then said after hitting me 'that was nothing was it, I'll fucking get you if you interfere, I'll remember you'. He pushed me a few more times against the wall at the end. I could not get free from his grip. I tried to take out my baton but I could not as Mr. Donnelly got a grip of my hand. I also had the radios in my hand. Mr. Donnelly also shouted at me saying 'if you get by me the same could happen to you' Mr. Donnelly was shaking with temper. All I could hear from behind was 'you scum, you bastard' then the men at the back seemed to stop and head towards the door. Mr. Donnelly let me go and ran towards the door and along the way he kicked Mr. Bulant in the chest area. I say that Mr. Donnelly pleaded guilty to assault upon Mr. Ozean occasioning him actual bodily harm."

15. The first named Respondent decided to review the granting of the Small Public Service Vehicle Licence to the Applicant. The Applicant was invited to attend and did attend a meeting in Dublin Castle with Superintendent W. A. Collins and Inspector Declan Brogan. A contemporaneous minute of the meeting was taken by Mr. John Cahalin, a clerical officer. This Minute which was accepted as an accurate record of the proceedings was exhibited at "J. D. 4" of the Affidavit of the Applicant sworn on 19th July 2004 and, states as follows:-

"Inspector Brogan informed Mr. Donnelly, The Commissioner of An Garda Síochána 'has to be satisfied whether you are a fit and proper person to hold a P.S.V. Licence and to judge you general Character.

Inspector Brogan said, 'We have to perform a background check on all P.S.V. Holders and incidents have come up with you, we will ask you now about the circumstances of them. If we revoke your licence you have the right to appeal to the District Court.'

Inspector Brogan informed Mr. Donnelly that this is not a criminal investigation and anything that is said will go no further than this room.

The Superintendent said, "you know why you are here. It's in relation to an incident in 1996. In the recent Circuit Court Case involving Mr. Prendergast whom you know, the subject of your P.S.V. Licence came up. Mr. Prendergast was refused a licence by the Commissioner, i.e. the authorised Officer and me. The District Court then refused the application and when Mr. Prendergast brought it to the Circuit Court the Judge said 'due to the serious nature of the Assault Mr. Prendergast would be deemed unfit to hold the P.S.V. Licence'. The Superintendent then said, "I was not aware of the 1996 assault charge. I am now in the process of reviewing your suitability."

Superintendent Collins said, "Up to now appeals have only been in the District Court but now they have gone to the Circuit Court, a court of precedence. With reference to your assault of 1996 a Circuit court has found this to be not suitable for you to hold a P.S.V. Licence. The Authorised Officer was unaware at the time of your application to the serious nature of this assault." He added, "it is my intention to review your licence now and I am putting you under notice of this now. I am not going to make a decision today. I am reviewing the full file. I will have to take legal advice on the matter."

Mr. Donnelly said, "I do understand".

Superintendent Collins said, "It was a mistake by An Garda Síochána, not yours." Mr. Donnelly said, "I did state the conviction in my application." Superintendent Collins said. "We understand."

Mr. Donnelly said, "So you are saying I am losing my licence?" Superintendent Collins said, "No, we are not saying that."

Mr. Donnelly said, "I was asked to attend court to tell I was there. I told the truth."

Superintendent Collins said, "I intend to study your file very carefully and I will take into consideration the monetary damage of revoking your Licence into account. We have to put you on notice."

16. By Notice dated 17th June 2004, Superintendent W.A. Collins informed the Applicant as follows:-

"Please take notice that I W.A. Collins, an officer of An Garda Síochána authorised by the Commissioner in that behalf by the powers vested in me by the provisions of the Road Traffic (Public Service Vehicle) Regulations, 1963 – 1998 not being satisfied that you are a fit and proper person within the meaning of the said Regulations to hold the Licence and hereby notify you that the licence granted to you to drive a Small Public Service Vehicle is revoked from 17th June 2004.

You may appeal this decision to the District Court.

You may contact this office if you have any queries."

17. By Order of this Court (Mr. Justice de Valera) made 11th August 2004, the operation of this decision of the first named Respondent made on 17th June 2004, was suspended pending the determination of the application for Judicial Review. At the hearing of this application for Judicial Review, Sergeant John Wall (now retired), was cross examined on his Affidavit sworn on 5th November 2004.

The Law

18. Articles 34 and 36 of the Road Traffic (Public Service Vehicles) Regulations as substituted by Articles 8 and 10 of the Road Traffic (Public Service Vehicles) (Amendment) (No. 2) Regulations 1970, (Statutory Instrument No. 200 of 1970) provide as follows:-

"34 (1) The Commissioner may grant to any person a licence to drive small public service vehicles.

(2) An application for the grant of a licence to drive small public service vehicles shall be made in such form and manner and contain such particulars as the Commissioner shall direct and shall be accompanied by [various documents set out at (a), (b), (c), (d), and (e), none of which are relevant to the matters at issue in this application for Judicial Review]

(3) 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) and (c) [are not relevant to the matters at issue in this application for Judicial Review]

(d) 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;

(e) (this is not relevant to the matters at issue in this application for Judicial Review.)

36 (1) The Commissioner may at any time revoke a licence to drive public service vehicles if he considers that the holder of the licence is no longer a fit and proper person to hold such a licence or if at any time during its currency the holder is convicted of an offence under section 53 of the Road Traffic Act, 1961 or of an offence which in the opinion of the Commissioner renders him unsuitable to hold such a licence.

(2) On the revocation by the Commissioner of a licence to drive small public service vehicles, the Commissioner shall send notice in writing of the revocation to the person whose licence is revoked, but failure to send such notice or any error or inaccuracy in the notice shall not invalidate the revocation.

(3) Where the holder of a licence to drive small public service vehicles is convicted of an offence which in the opinion of the court renders him unsuitable to hold such a licence, the court may revoke the licence and shall notify the Commissioner of any such revocation.

(4) An application for a licence to drive small public service vehicles by the former holder of a licence revoked under this article shall not be considered by the Commissioner until at least one year has elapsed from the date on which the former licence was revoked."

Issues

19. It was claimed by the Applicant and denied by the Respondents that the decision of the first named Respondent of 17th June 2004, revoking the Small Public Service Vehicles Licence granted to the Applicant on 11th November 2002, was on the facts *ultra vires* the powers conferred upon him by Article 36(1) of the Road Traffic (Public Service Vehicles) Regulations 1963 – 1970 (hereinafter referred to as "Article 36(1) of the Regulations"). Without prejudice to the foregoing it was contended by the Applicant that even if the decision to revoke was made *intra vires*, the first named Respondent in reaching that decision had regard, in breach of the rules of natural and constitutional justice, to irrelevant considerations by referring to and relying upon the proceedings in the District Court and in the Circuit Court involving Mr. Prendergast. It was further submitted on behalf of the Applicant that the first named Respondent could not rely upon a unilateral mistake, made within jurisdiction and without fraud or misrepresentation on the part of the Applicant, to revoke the licence granted and fully and unreservedly intended to be granted to the Applicant. The Applicant further submitted, relying upon the principles stated in *Webb v. Ireland* [1988] I.R. 353 and *Abrahamson and Others v. The Law Society of Ireland and the Attorney General* [1996] 1 I.R. 403, that he had a legitimate expectation that subject only to the provisions of Article 36(1) of the Regulations he was entitled to retain the benefit of the Small Public Service Vehicles Licence granted to him on 11th November, 2002, for the full statutory period of five years.

20. It was submitted by the Respondents that Article 36(1) of the Regulations should not be construed in the strictly literal manner urged by the Applicant because to do so would produce an absurd result in the relevant circumstances. Citing the decision in *Director of Public Prosecutions (Ivers) v. Murphy* [1999] 1 I.R. 98, it was submitted by the Respondents that the clear purpose of the Road Traffic (Public Service Vehicles) Regulations, 1963 to 1970, was to protect the members of the public who had occasion to use small public service vehicles and to remedy the mischief of unfit and unsuitable persons holding a small public service vehicles licence. Accordingly, it was submitted that this court should adopt a purposive interpretation of Article 36(1) of the Regulations in order to give effect to the clear intention of the Minister and to avoid the absurd result of a literal interpretation which would wholly defeat that intention. The Respondent submitted that Article 36(1) of the Regulations could be read in this manner without rewriting it which they accepted would be to infringe the constitutional doctrine of separation of powers. For the Respondents it was contended that Article 36(1) of the Regulations must be interpreted not merely by reference to the particular offence disclosed by the Applicant, but due to a mistake overlooked in the instant case, but in the much more general light of other various and some far more serious offences which though duly disclosed by the Applicant might, due to a similar or some other mistake, also come to be overlooked: by way of example Counsel instanced sexual offences.

Conclusions

21. I found Sergeant John Wall (retired) to be a careful and truthful witness. I believe that I may correctly summarise his evidence, when cross examined as to his Affidavit sworn on 5th November, 2004, in the following terms. He recalled having spoken to the Applicant on 11th March, 2002, after Garda Byrne had first spoken to the Applicant, because the Applicant was anxious to speak to a more senior member of An Garda Síochána. He had read the Application Form, P.S.V. 15 which had been completed by the Applicant. The Applicant then signed this form in his presence. He had submitted the Enquiry and Report Form, P.S.V. 16 dated 3rd June, 2002, to the Superintendent of "B" District stating, amongst other things that the particulars given by the Applicant on that Form were correct.

22. He was hazy he said about the whole matter after the lapse of almost four years. He personally had not carried out a P.U.L.S.E. system search in relation to the Applicant. This had been done by Garda William Byrne. He recalled that the convictions of 1986 and 1991 were raised with the Applicant. That might have been on a second visit by the Applicant to the Garda Station after a problem had arisen in relation to a referee named in the Form. It was put to the witness that at para. 3 of his Affidavit he had stated that he spoke to the Applicant about previous convictions before the Applicant signed the Form on 11th March, 2002. The witness offered that perhaps his Affidavit contained omissions but he could not be definite as it was all more than four years ago. It was put to the witness that the Applicant did not inform him that his last conviction was in 1991. The witness replied that his recollection was that the Applicant informed him that he had not offended since 1991.

23. I find that the answer made by the Applicant at Question 11 of Form P.S.V. 15 which was completed by him on 11th March, 2002, was substantially correct and accurate. I find that by the words, "nothing after that", the Applicant was referring to the statement that six years previously he was convicted of an assault. I find that the Applicant was referring to the events of 8th June, 1996, at the Accident and Emergency Department of the Meath Hospital which had occurred five years and nine months previously and in respect of which he had pleaded guilty and had been convicted on 29th July, 1998. In the fourth paragraph of the exhibited letter dated 1st April, 2002, from Garda William Byrne to the Superintendent at Pearse Street Garda Station, he states:-

"John Donnelly has two previous convictions for assault and Breach of the Peace and I attach copy of P.U.L.S.E. No. 312401 and 312402. I have spoken to Mr. Donnelly and he has admitted these offences were true."

24. I think that it is very significant that it is in an addendum to this letter that Sergeant John Wall adds:-

"...I spoke to Mr. Donnelly and he admits that the convictions are correct, He states that he has not offended since 1991."

25. P.U.L.S.E. Record No. 312401 relates to the conviction of 12th May, 1986, and P.U.L.S.E. Record No. 312402 relates to the conviction of 14th November, 1991. Neither relates to a conviction six years prior to 11th March, 2002.

26. Given what was disclosed by Garda Byrne's examination of the P.U.L.S.E. records, I am satisfied, on the whole of the oral and Affidavit evidence, that Sergeant John Wall assumed, and it would have been a very natural and understandable assumption on his part in the particular circumstances, that in his reply to Question 11, the Applicant was in fact referring to the conviction of 14th November, 1991 and had simply underestimated the passage of time, a not uncommon occurrence, in stating that the conviction for assault had been six years prior to the date of his application on 11th March, 2002. It seems utterly illogical and altogether unlikely that the Applicant, having confirmed to Sergeant Wall that the convictions were correct, - that is the P.U.L.S.E. recorded convictions

of 1986 and 1991, - would then orally contradict what he had recorded in writing under warning of penalty at Question 11 of the Application Form, - P.S.V. 15. I find that Sergeant Wall, mistakenly believing that the Applicant was referring to the last P.U.L.S.E. recorded conviction of 14th November, 1991, reported to the Superintendent at Pearse Street Garda Station, intending to be accurate, that the Applicant had stated that he had not offended since 1991.

27. I find that the Garda Síochána Authorities very carefully and conscientiously considered and assessed this Applicant's request for a small public service vehicle licence. However, I find that the decision of the first named Respondent to grant the licence sought by the Applicant was based upon a unilateral mistake of fact, he having been misled by the report and recommendations made to him by his officers, as to the Applicant's previous convictions. I find that the Applicant said and wrote nothing to mislead or to confuse the Garda Síochána Authorities, in particular Garda William Byrne and Sergeant John Wall. In my judgment the source of the problem lay with the incomplete state of the P.U.L.S.E. system records in March, 2002.

28. It may be open to argument that in exercising his discretion to grant the small public service vehicles licence to the Applicant, the first named Respondent acted outside the powers vested in him by the Regulations as basing his decision to grant the licence upon a mistake of fact as to the previous convictions of the Applicant, so that his decision is therefore susceptible to challenge by way of certiorari on judicial review. If the decision of the first named Respondent should be thus quashed as void and nullity it is difficult to see how the Applicant could have acquired a legitimate expectation or a property right to a continuation of the particular purported licence. However, in my judgment these issues, interesting and challenging though they be, do not arise for consideration on this application for judicial review. In the instant case the challenge is as to whether the provisions of Article 36(1) of the Regulations empowered the first named Respondent to revoke the small public service vehicles licence granted to the Applicant, by reason of the mistake of fact made by the first named Respondent at the time of that grant, as to the previous convictions of the Applicant.

29. On the plain and unambiguous language of Article 36(1) of the Regulations, the power of the first named Respondent to revoke such a licence may be exercised by him at anytime (the emphasis is mine) after the licence has been granted. However, this power may be exercised in one of only three clearly defined circumstances. These are as follows:-

- (a) If he considers that the holder is no longer a fit and proper person to hold such a licence, or
- (b) If at anytime during the currency of the licence the holder is convicted of an offence under s. 53 of the Road Traffic Act, 1961, or
- (c) If at anytime during the currency of the licence the holder is convicted of an offence which in the opinion of the first named Respondent renders him unsuitable to hold such a licence.

30. Neither the second nor the third ground applies in the instant case. I find on the Affidavit evidence that the basis of the decision of the first named Respondent to revoke the licence granted to the Applicant was the assault which took place on 8th June, 1996 and the Applicant's subsequent conviction, on a plea of guilty to that assault, on 29th July, 1998. These events occurred prior to the granting and therefore the currency of the licence. I find, on the Affidavit evidence, and particularly by reference to the Notice of 17th June, 2004, exhibited on Affidavit and admitted into evidence, that for the purpose of the revocation the first named Respondent was relying solely upon the first ground, that is, that he considered the Applicant was no longer a fit and proper person to hold the small public service vehicles licence granted to him.

31. I find that a literal interpretation of the first ground is entirely in accord with the obvious intention of the Minister in making these Regulations and does not, as contended by the Applicant, produce a wholly unreasonable result. I find that a literal reading of the provisions of Article 36(1) of the Regulation results in neither ambiguity nor absurdity, but complements and is in accord with the remaining provisions of the Article. There is no occasion therefore for this court to have recourse to a purposive interpretation of the provision in order to give effect to the intention of the Minister which I am satisfied is clearly discernable from the provisions of Article 36(1) of the Regulations considered in the context of the 1963 - 1970 Regulations read as a whole.

32. The clear and obvious intention of the Minister was to provide an essential power to regulate, in the public interest, persons to whom a public service vehicles licence has been granted. Ground two gives the first named Respondent a discretion to revoke a licence to drive a public service vehicle where the holder has, during the currency of the licence been convicted of a specified road traffic offence. Ground three gives the first named Respondent a similar power during the currency of the licence in relation to a conviction of the holder of the licence of a non-specified offence which in the opinion of the first named Respondent renders the holder unsuitable to continue to hold that licence. The first ground is not restricted to situations where the holder of the licence has been convicted of an offence during its currency. I find that it was clearly intended by the Minister to cover any other acts or omissions by the holder of the licence which in the opinion of the first named Respondent would render him no longer a fit and proper person to hold such a licence. I am satisfied that this ground was intended by the Minister to cover such matters as physical and mental impairment, serious complaints by customers, unwarranted refusal to carry persons, use of a disreputable vehicle, persistent rank jumping and disputes with other taxi drivers, over-driving and other similar matters. The three grounds are clearly complimentary and intended to provide a comprehensive code to regulate all current public service vehicles licence holders.

33. 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 a 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 named 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. The fact that in Article 36(1) of the Regulations, which consists of a single sentence, the specified and non-specified convictions are expressly confined to convictions during the currency of the licence lends strong support to the validity of this construction. To endeavour to extend or enlarge the meaning of the actual words used in Article 36(1) of the Regulations to cover events occurring prior to the date of grant of the current public services vehicle licence would be to do wholly unjustified violence to the plain and unambiguous language of the article and involved 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".

34. I therefore find that the decision of the first named Respondent of 17th June was *ultra vires* the powers conferred on him by Article 36(1) of the Regulations. It is unnecessary for the court to consider the other issues raised by the Applicant, (insofar as they have not already been considered in the course of this judgment), in particular, those relating to the manner in which the first named Respondent exercised the purported power under Article 36(1) of the Regulations. The court will therefore make an order directing

that the decision of the first named Respondent made 17th June, 2004, be delivered up for the purpose of being quashed.