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State v Transport Control Board, ex parte Dee Cees Bus Service Ltd [2000] FJLawRp 16; [2000] 1 FLR 6 (10 January 2000)

[\[2000\] 1 FLR 6](#)

THE HIGH COURT OF FIJI

STATE

v

TRANSPORT CONTROL BOARD

Ex parte Dee Cees Bus Service Limited,
Central Transport Co. Limited,
Island Buses Limited & George Transport Limited

High Court Judicial Review Jurisdiction
Scott, J
10 January, 2000
HBJ 22/98S

Judicial Review - whether tribunal biased against applicants - whether tribunal failed to have proper regard for facts - purpose of a administrative tribunal giving reasons discussed - High Court Rules O. 53; Traffic Act (Cap 176) s66(2)

The respondent granted a 10 year licence to the interested party to run a route between Waidranu Street and the Suva bus stand. The four applicants serviced various parts of the route and challenged the award to the interested party on the grounds that the respondent was biased against the applicants, failed to have proper regard for the facts and matters included in section 66(2) of the Traffic Act and failed to give proper reasons for its decisions. The Court found that the respondent's reasons were given by letter and minutes of private deliberations following a public meeting. It found that there may have been other failures of the respondent in the past but the present proceedings were conducted in public and well documented.

Held - (1) The need for reasons is, firstly, to reassure the parties, and secondly, to enable a court to examine whether the procedure by which the decision was reached was satisfactory;

(2) applying the test for bias of whether there was a real likelihood of bias, there was no bias where the respondent conducted its proceedings in public, deliberations were minuted and reasons were clear and cogent;

(3) the respondent discharged its statutory duties under the Traffic Act in an exemplary fashion.

All three grounds in the motion for judicial review fail.

Cases referred to in judgment

appl *State v TCB ex parte S. Nair Transport* [1996] HBJ 0020/96S

appl *Akbar Buses v TCB and Fiji Transport Co* [1984] 9/84 judgment of 27 July 1984 (FCA Reps 84/40)

foll *State v TCB ex parte Peni Co Ltd* (HBJ 22/94S)

ref *R v Lancashire C.C. ex parte Huddleston* [1986] 2 All ER 941

foll *Pacific Transport v Mohammed Jalil Khan & Transport Control Board* ABU0021/96S

appl *K.R. Latchan Bros. Ltd & Vatukoula Express Service v Sunbeam: Transport Co Limited, Pacific Transport Limited and Transport Control Board* unrep Civil Appeal Nos. 45, 51, 57 & 61/83 FCA Reps 84/261

ref *Ganga Ram v Reg* FCA Reps 84/193

appl *Minister of Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; 162 CLR 24 at 40

foll *Bellenden v Satterthwaite* [1948] 1 All ER 343, 345

foll *R v Cambridge C.C. ex parte Hagi* (1980) 144 JPR 145

foll *Norbis v Norbis* (1986) 60 ALJR 335

Mehboob Raza for the applicants

Iniasi Vodo Tuberi for the respondent

Ramesh Prakash for the interested party, Nadera Transport Ltd

10 January, 2000.

JUDGMENT

Scott, J

On 9 July 1998 the Respondent (TCB) granted the Interested Party (Nadera) a 10 year licence to operate a new bus service to and from Waidranu Street and the Suva Bus Stand. The 4 Applicants are bus companies which already operated to a greater or lesser degree over parts of the route awarded to Nadera.

These proceedings for Judicial Review were commenced on 23 September 1998 but the papers were not filed until 30 June 1999 shortly before I proceeded on long leave. For these reasons delivery of this judgement has been delayed beyond the Court's normal time frame.

The following affidavits were filed:

- (i) Dewan Chand & Others, for the Applicants, filed 23 September 1998;
- (ii) Ganeshwar Chandra Naidu, for the TCB, in answer, filed 1 December 1998;
- (iii) Subash Ravindra for Nadera, filed 15 December 1998;
- (iv) Ravishwar Chandra, for the Applicants, filed 17 March 1999.

The following written submissions were also filed:

- (i) Mr. Raza for the Applicants, 9 November 1998;

(ii) Mr. Raza, for the Applicants, 26 March 1999;

(iii) Mr. Tuberi for the Respondent, 8 April 1999;

(iv) Mr. Prakash, for Nadera, 30 June 1999.

The grounds of complaint advanced by the Applicants are seven-fold and are set out in paragraphs (b)(i) to (vii) on page 3 of the Order 53 Statement. Taking into account the provisions of Section 66(2) of the Traffic Act (Cap 176) the grounds may conveniently be reformulated as follows:

(i) the TCB was biased against the Applicants;

(ii) it failed to have proper regard for the facts and matters included in Section 66(2); and

(iii) it failed to give proper reasons for its decision.

These grounds will be taken in the order (iii), (i) and (ii).

The reasons for the TCB's decision are to be found in two places. The first is a letter dated 2 September 1998 which is copied as Exhibit 1 to Mr. Naidu's affidavit. The second is a copy of the minutes of the private deliberations of the TCB following the public meeting held at Valelevu on 9 July 1998, a copy of which is to be found on pages 27 to 30 of Exhibit A to Mr. Naidu's affidavit. The same exhibit contains the record of the public proceedings, together with a related application by another bus company, at pages 10 to 23.

The matter of giving reasons for decisions has frequently been considered by the Courts not only overseas but also in Fiji. In *The State v. TCB ex parte S. Nair Transport* (HBJ0020.1996S) I explained that the Fiji Court of Appeal in *Akbar Buses v. TCB* (FCA Reps 84/40) had recommended the TCB to give at least brief reasons for all its decision. In *State v. TCB ex parte Peni Co Ltd.* (HBJ0022.1994S) I cited *R v Lancashire C.C. ex parte Huddleston* [1986] 2 All ER 941 in support of the proposition that where an administrative tribunal had failed even to give brief reasons for its decision it should always furnish an explanation for its decision when filing its affidavit in answer in the Judicial Review proceedings. The decision in *Akbar* has again been re-emphasised by the Fiji Court of Appeal in *Pacific Transport v. Khan* (ABU0021.1996). Obviously, the better course is to deliver reasons at the time that the decision is delivered; this may have the consequence of avoiding Judicial Review proceedings altogether.

The purpose of formulating reasons is to prevent an administrative tribunal from reaching an unreasoned or arbitrary conclusion. The purpose of publishing the reasons is to explain to the parties and if necessary to the Courts how the decision was reached. The need for the explanation to be available is two-fold: first, to reassure the parties and second, to enable the Court to examine whether the procedure by which the decision was reached was satisfactory. In Judicial Review proceedings the Court is not interested in the conclusion reached as such, it is concerned with the way in which it was reached. Where the reasons for the decision are revealed to the Court to such a degree that the Court is generally able to discern the reasoning which led to the decision then it will not interfere on the ground of want of or deficient reasons with that decision unless the reasoning is so defective that the result is that the decision is wholly unreasonable and this is so whether or not the reasons are provided before or after the judicial review proceedings have been commenced. In other words failing to provide proper reasons can only be a ground for Judicial Review if the reasons in fact provided do not enable the Court to discern the general process of reasoning by which the decision was reached.

In my view the two sources of explanation offered by the TCB for its decision together perfectly adequately explain the way in which the TCB approached the matter before it. This ground fails.

The second allegation in one of bias and Mr. Raza's submission under this head may be found on the 4th page of his written submission. He suggested that the TCB conducted the proceedings unfairly and in support of this submission he pointed to paragraph

44 of the Applicant's supporting affidavit filed on 23 September 1998. Paragraph 44 has 9 sub-paragraphs; the first 7 consist of a number of allegations of misconduct, all traversed by Mr. Naidu, which are said to have occurred during 1996, 1997 and April 1998, that is, well before the proceedings and decision of the TCB which is now sought to impugn. There is no evidence to support the 8th while the 9th is a repetition of ground (iii) shortly to be dealt with.

An allegation of bias is serious, amounting at it does to an allegation of dereliction of duty at least and dishonesty at most. In my experience such allegations are far too frequently made in Fiji and only seldom meet with success. The test for bias was explained by the Fiji Court of Appeal in *Latchan Brothers Ltd v. Sunbeam Transport* (FCA Reps 84/261) (and see also *Ganga Ram v. Reg* FCA Reps 84/193) as follows:

"would the circumstances cause a reasonable onlooker to think there was a real likelihood of bias, that is, not proof of same but a reasonable suspicion?"

As pointed out by Mr. Prakash, the TCB as constituted in this matter was quite differently constituted from the board which had earlier made a similar award to Nadera which was successfully challenged on the ground that the TCB then failed to give any reasons. The present proceedings were held in public and both the proceedings and the deliberations were minuted. The reasons for the decision were, as I find, clear and cogent. I am satisfied that the allegation of bias is without any solid foundation. This ground also fails.

The final ground amounts to a general allegation that the TCB failed properly or adequately to discharge the duties imposed on it by Section 66(2) of the Act. In answer to this submission Mr. Prakash suggested that the Court only had a very limited role in reviewing the exercise of an administrative discretion. He cited *Minister of Aboriginal Affairs v. Peko-Wallsend Ltd.* [1986] HCA 40; 162 CLR 24 at 40 where the following words of Mason J are to be found:

"It is not the function of the Court to substitute its own decision for that of the administrator by exercising a discretion which the legislature has vested in the administrator. Its role is to set limits to the exercise of the discretion and a decision made within those limits cannot be impugned."

With respect, I entirely agree. It has been said that the essence of a discretion is that:

"on the same evidence two different minds might reach widely different decisions without either being appealable." (*Bellenden v. Satterthwaite* [1948] 1 All ER 343, 345)

and that though the appellate Court might have acted differently this does not mean that the lower court acted wrongly (see *R v. Cambridge C.C. ex parte Hagi* (1980) 144 JPR 145 and see also *Norbis v. Norbis* (1986) 60 ALJR 335).

In the present case the minutes of the proceedings both public and private clearly reveal the principal facts and matters taken into account by the TCB including, as pointed out by Mr. Tuberi, the addresses of Counsel for each of the present Applicants who were present at the proceedings. As against this, the Applicants' case largely consists of vague and unsupported allegations which I find to be quite unpersuasive.

There have been some notorious failures by the TCB in the past. In my Judgment this is not one of them. On the contrary, I am of the opinion that the TCB discharged its statutory duties in an exemplary fashion. The motion fails and is dismissed.

Application dismissed.
Marie Chan