

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO.: ABU 148 of 2016
(High Court HBA No. 20 of 2014)

BETWEEN : **NATIVA HOLDINGS LIMITED T/AS NATIVA MOTORS**

APPELLANT

AND : **LAND TRANSPORT AUTHORITY FIJI LIMITED**

RESPONDENT

Coram : Calanchini P
Chandra JA
Amaratunga JA

Counsel : Ms. S. Devan for the Appellant
Ms. T. Colati for the Respondent

Date of Hearing : 27 June, 2018.

Date of Judgment : 5 December, 2018.

JUDGMENT

Calanchini P

[1] I agree that the appeal should be allowed.

Chandra JA

[2] I agree that the appeal should be allowed.

Amaratunga JA

INTRODUCTION

[3] This is an appeal from the decision of the High Court refusing an appeal from the Land Transport Appeals Tribunal (LTAT). An appeal from LTAT to that court is made in terms of Section 48 of the Land Transport Act, 1998 'only on points of law'.

[4] The grounds of appeal to the Court of Appeal from the said judgment of the High Court are confined to questions of law in terms of Section 3(4) of the Court of Appeal Act 1949 (the Act) which reads as follows:

'(4) Subject to section 99(4) of the Constitution of the Republic of Fiji, appeals lie to the court on a question of law only from final judgments of the High Court given in the exercise of the appellate jurisdiction of the High Court'

[5] Since the decision of the High Court is an appeal from the LTAT, it is an exercise of its appellate jurisdiction in terms of Section 48 of Land Transport Act 1998, and the appeal to the Court of Appeal is only on an error of law in the judgment of the court below.

[6] Appeal Grounds are as follows

"1. That the Learned Tribunal erred in law in not holding that the Respondent had failed to apply the statutory test and/or criteria established in Regulation 32 of the Land Transport (Vehicles Registration and Construction) Regulations 2000 in cancelling the Appellant's licence when:

(i) There was no evidence of 'impropriety' or 'incompetence' or any other reason to justify that the Appellant was unfit to operate a vehicle dealing business.

(ii) The alleged complaints received by the Authority did not establish any 'improper' or 'incompetent conduct on part of the Appellant.

2. That the Learned Judge erred in law in failing to give judicial reasons for holding that the words "impropriety", "incompetence" and "for any other reason" found in Regulation 32 of the Land Transport (Vehicles Registration and Construction) Regulations 2000 had wide connotations.

3. *That the Learned Judge erred in law in holding that the Code of Practice or Code of Conduct was provided to the Appellant by the Respondent when there was no evidence before the Court establishing this as a fact.*
4. *That the Learned Judge erred in law in holding that it was incumbent on the Appellant to obtain a Code of Conduct from the Respondent when:*
 - (i) *The Respondent as the regulator of the land transport industry is entrusted with the responsibility and function of developing and implementing traffic management strategies and practices including any code of practice under Part 5 of the Land Transport (Vehicles Registration and Construction) Regulations 2000.*
 - (ii) *The Respondent had failed to issue the Appellant with a relevant Code of Practice or Code of Conduct as required under Regulation 31(8) of the Land Transport (Vehicles Registration and Construction) Regulations 2000.*
 - (iii) *The Respondent had failed to specify to the Appellant what were the 'terms and conditions' of its Authorised Motor Vehicle Dealing Business licence.*
 - (iv) *The Respondent had failed to specify to the Appellant what were the acceptable standards of conduct required for motor vehicle dealing business.*
5. *That the Learned Judge erred in law in failing to holding that the Respondent had investigated the complaints that the Respondent received against the Appellant and that proper assessments of the complaints were made by the Respondent.*
6. *That the Learned Judge erred in law in failing to hold that the Respondent had issued a deficient 'show cause' notice to the Appellant as set out in its letter dated 24 January 2014 when the purported show cause notice failed to state with particularity the grounds of the proposed cancellation in breach of Regulation 32(2) of the Land Transport (Vehicles Registration and Construction) Regulations 2000.*
7. *The Learned Judge erred in law in holding that the show cause notice dated 24 January 2014 was adequate for the Appellant in that it provided it with ample details of the complaints that the Respondent was intending to deal with at the Show Cause proceedings.*
8. *The Learned Judge erred in law in failing to give judicial reasons for holding that investigation and technical reports prepared by the Respondent were not required to be provided to the Appellant for purposes of the 'Show Cause' proceedings.*
9. *The Learned Judge erred in holding that the Appellant was not denied natural justice and was given a fair hearing.*

10. *The Learned Judge erred in law in failing to hold that the Respondent had pre-determined its decision to cancel the Appellant's license on 5 February 2014 prior to giving the Appellant an opportunity to be heard on the show cause notice.*
11. *That the Learned Judge erred in law in failing to take into consideration that the Respondent failed to consider the matters contained in the Appellant's letter of response dated 13 February 2014 before cancelling the Appellant's Authorised Motor Vehicle Dealing Business licence.*
12. *That the Learned Judge erred in law in not holding that the Appellant suffered grave prejudice and business losses by the wrongful cancellation of its Authorised Motor Vehicle Dealing Business licence.*
13. *That the Learned Judge erred in law in holding that the Respondent took into consideration the consumers, stake holders and Appellant's interest in cancelling the Appellant's Authorised Motor Vehicle Dealing Business Licence.*
14. *The Learned Judge erred in law in failing to consider the submissions of the Appellant as such Learned Judge's decision is wrong and erroneous and tantamount to a wrongful exercise of discretion having regard to all the facts and circumstances of the case and evidence on the whole."*

[7] At the outset the Appellant had abandoned certain appeal grounds and only relied on appeal grounds 1, 2, 4, 6, 7-11 in their grounds of appeal filed and stated that they are all questions of law.

[8] A question of law was discussed by the House of Lords in R v H [2007] 3 All ER 269 at 302-303

'The proper construction of a statute is a question of law. But a ruling as to the application of a statute to particular facts belongs to a complex category. It has been said (in a case where the issue was whether a person was an employee) that 'once the primary facts are found, then it is a pure question of law what is the reasonable inference based on the legal interpretation of the contract' (Morren v Swinton and Pendlebury BC [1965] 2 All ER 349 at 352, [1965] 1 WLR 576 at 583; and see Benmax v Austin Motor Co Ltd [1955] 1 All ER 326, [1955] AC 370). But in other authorities such as Edwards (Inspector of Taxes) v Birstow [1955] 3 All ER 48, [1956] AC 14, O'Kelly v Trusthouse Forte plc [1983] 3 All ER 456, [1984] QB 90 and Brutus v Cozens [1972] 2 All ER 1297, [1973] AC 854, courts, in each case appellate courts with jurisdiction only in respect of questions of law, have stated that the

question whether facts fall one side or the other of some notional conceptual line drawn by the law is a question of fact. In Moyna v Secretary of State for Work and Pensions [2003] UKHL 44 at [22]–[28], [2003] 4 All ER 162 at [22]–[28], [2003] 1 WLR 1929, Lord Hoffmann said that this usage might seem 'rather odd', and rationalised it on the basis that 'there are questions of law as to which lawyers have decided that it would be inexpedient for an appellate tribunal to have to form an independent judgment', and that this 'causes no difficulty as long as it is understood that the degree to which an appellate court will be willing to substitute its own judgment for that of the tribunal will vary with the nature of the question' (see [26], [27]).

- [9] Whether a ground of appeal is a question of law only is an issue that cannot be answered in abstract and there were several attempts by the courts to give examples of "a question of law" and no comprehensive definition can fit all the situations.
- [10] Appeal Grounds 3 and 5 were abandoned at the hearing and appeal grounds from 12-14 were also abandoned. There is some obvious overlapping of the grounds of appeal and I will discuss them after grouping them, in this judgment.
- [11] The Appellant was issued with an Authorized Motor Vehicle Dealing (AMVD) licence to conduct its business as a dealer of second hand vehicles in Fiji.
- [12] The said licence was cancelled by the letter of 9 April, 2014. This letter is annexed to the Record of the High Court (the Record) at page 220. This decision to cancel was appealed to LTAT in terms of Section 44 of Land Transport Act 1998.
- [13] The letter of 9 April, 2014 stated as follows:
'This Notice serves to advise that pursuant to the Board Hearing dated 14th February, 2014 and further deliberations on the 24th April, 2014, the Board had resolved that AMVD licence 102 issued to Nativa Holding Ltd T/A Nativa Motors is hereby cancelled'
- [14] Before cancellation of the licence a show cause letter was sent on 24 January, 2014 and in that letter 4 specific incidents were stated. It also contained specific dates and remarks relating to those incidents and requested the Appellant to show cause on 5 February, 2014, in terms of Regulation 32(1) of Land Transport (Vehicle Registration and Construction) Regulations 2000 (the Regulations 2000). So the Appellant could

respond through written reply and or oral representation in regard to specific incidents stated in the show cause letter.

[15] There were 4 specific complaints or incidents supporting the allegation of '*impropriety*' or '*incompetence*' of the conduct of the Appellant, that were required to be explained or show cause on the date of hearing scheduled for 5 February, 2014. The determination of '*impropriety*' and or '*incompetence*' or '*any other reason*' can be a ground for cancellation in terms of Regulation 32(1) of the Regulation 2000.

[16] Each and every such conduct should be investigated and considered in the circumstances of the case. The cumulative effect of such acts, where consumers have been taken for a ride, can also be considered as unfit for the issuance of AMVD licence. Consumer protection, unethical conduct in industry affecting other players in the market as well as impact on overall image of the dealers in the second hand vehicle market due to misconduct, are some of the considerations of a regulator such as the Respondent.

[17] Code of Conduct or business ethics may address such improper conduct and be of some relief to the unsuspecting customers who invest a substantial amount of money to purchase a used vehicle and also for other stakeholders.

[18] Though there are inherent risks in purchase of a second hand vehicle, odometer tampering is an act that can be easily be detected by AMVD licence holder by comparing the import documentation with the meter readings before clearance of the vehicle from port, or sale of such vehicle.

[19] In the tabulated part of the said show cause letter, the last matter was dated as "15.10.2013" and against this date the only reference is a Remark - '*Investigation done on above*'. The above reference in the table was an odometer tampering regarding vehicle HC 218, but no details of the investigation were given in the said letter, but reports were available before LTAT and if there was any requirement for additional materials the Appellant should have requested for such documents before the hearing at LTAT. Even at

the hearing before the Respondent's Board, Appellant had not raised this issue of not providing reports prepared in relation to the complaints. In the detailed decision, LTAT had perused these investigation reports. If the Appellant desired to adduce fresh evidence he could do so, in terms of Section 46(1) of Land Transport Act 1998.

[20] In the text Administrative Law by Wade H.W.R and Forsyth C.F. (11th Edition) under Chapter 23, on Statutory Tribunals at page 763 it is stated:

*'Tribunals are conspicuous in administrative law because they have limited jurisdictions ...
...Tribunals exist in order to provide simpler, speedier, cheaper, and more accessible justice than do the ordinary courts.'*

At p780 stated,

The High Court will sometimes use its own inherent powers in order to aid and protect inferior court which do not themselves possess the power to punish for contempt of court. The High Court's powers at common law, however, did not extend to the protection of tribunals.¹

[21] LTAT is one such tribunal among numerous specialized tribunals that are functioning in Fiji. The procedures in such tribunals are simple and speedier and also cheaper. While it needs to be fair it needs to be adequately efficient and decisions just and reasonable. The decision of LTAT can be appealed to the High Court on an error involving on question of law only. The hearing before LTAT is a rehearing of the decision of the Respondent to cancel AMVD of the Appellant and all documentations relating to that decision can be requested, and can be considered, before taking a decision in terms of Section 46(2) of Land Transport Act 1998.

[22] The powers of the LTAT are defined in Section 46 of the Land Transport Act, 1998. The Tribunal can call for oral and documentary evidence and even admit evidence that is inadmissible in a court of law. (See Section 46(1)(d) Land Transport Act, 1998). Such powers are granted for LTAT to function as an independent body for determination

¹ There is likewise no protection for commission or committees of inquiry: *Badry v Director of Public Prosecution* [1983] 2 AC 297.

without being hindered by strict legal technicalities as to decisions and it can also make orders that are 'just and reasonable' considering the circumstances.

[23] The Appellant explained its position in regard to the allegations against it in a letter dated 13 February, 2014. If it required any clarification or information about the contents of the show cause letter, it could have requested that from the Respondent but did not do so.

[24] The Board of the Respondent despite the request of the Appellant for the vacation of the hearing on 5 February, 2014, had deliberated the show cause letter and had decided to cancel AMVD licence issued. (See page 430 of Record)

[25] According to the minutes of the Policy Meeting the Board of the Respondent stated as follows:

The Managing Director for Nativa Holding had emailed the CEO this morning, to say that he would not be available for the Show Cause Hearing, even though he had received the notice of hearing, which was noted.

Members deliberated and resolved to 'CANCEL' the AMVD licence for Nativa Holdings due to many complaints received from vehicle buyers who had bought defective vehicles which were not complying to the vehicle standards.

[26] Although there was no evidence of implementation of the same or even informing the decision of the cancellation of AMVD to the Appellant, the Respondent allowed the Appellant to reply to the show cause letter and this reply was through a letter dated 13 February, 2014, together with oral submission before its Board on 14 February, 2014.

[27] In the minutes of the board meeting, on 14 February, 2014 there is no reference to the Appellant's reply to the show cause letter having been received by the Respondent. Though the Respondent had granted the Appellant a second opportunity of a hearing before them, but more importantly what happened to the earlier decision taken in his absence was not stated. One would imagine that it was set aside or quashed since there was a fresh hearing on 14 February, 2014. Though this was the preferred procedure to be adopted, absence of that would not itself vitiate proceedings before the Board, which I discuss later in detail.

- [28] On the 14th February, 2014 the Managing Director of the Appellant was given an opportunity to appear before the Board and he had submitted a detailed written reply to the show cause letter. The show cause letter does not state the mode of reply hence the Appellant could reply in writing and, or through oral submissions.
- [29] In the said response, the Appellant had replied in detail, to each and every complaint contained in the show cause letter of 24 January, 2014.
- [30] In *De Verteuil Vs Knaggs and another* [1918] A.C 557 the Privy Counsel held that a decision taken *ex parte* by an authority in breach of rules of natural justice, can be cured by the subsequent grant of a fair opportunity of hearing. When the *ex parte* determination is yet to be executed the same can still be reviewable by the same authority that took the decision.
- [31] After granting an opportunity of hearing, the earlier decision can be varied or rescinded. In *De Verteuil Vs Knaggs and another* [1918] A.C 557 an *ex parte* decision was not reversed after the hearing where both parties were heard, but was held valid in law as to the compliance with the rules of natural justice.
- [32] In another case in Canada², in *Registrar of Motor Vehicles v Canadian American Transfer Ltd* (1972) 26 DLR(3d)112 the opportunity for hearing of the holder of vehicle permit was allowed only after it was revoked. The holder was given an opportunity to persuade the Registrar to revoke the cancellation, but it was held that there was a compliance of rules of natural justice.
- [33] Also in the case of *Pagliara V AG* [1974] 1NZLR 86 it was held that additional procedure for a fair hearing would not frustrate an earlier decision that was made without hearing both parties. It was held, that after compliance with the rules of natural justice, if

² Wade H.W.R and Forsyth C.F, Administrative Law, (11th Edi)(oxford) p.450 foot note 365

the facts are such the decision should not be reversed, such a decision can be taken and it was not quashed for initial error.

[34] In all these cases the party who was deprived of a hearing was later granted a hearing. When a fresh hearing is conducted it should not be pre-determined at the outset. So, the response needs to be considered, and in this case the response was ignored by Respondent.

[35] Though a decision was taken in the absence of the Appellant no steps were taken to implement the same. The Appellant was given an opportunity to appear before the Board of Respondent again and he did so. He had also submitted a written reply to the show cause letter. There is no evidence that this detailed letter of 13 February, 2014 was considered by the Board of Respondent or LTAT. Even the minutes of Board Meeting on 14 February, 2014 indicate that the Appellant was interrupted from making his submissions, before affirmation of cancellation of AMVD licence.

[36] An issue was raised as to the manner of conduct of the second hearing on 14 February, 2014. After the oral hearing on 14 February, 2014, it is recorded in the minutes of the Board as

'Members deliberated and resolved that the Manager Legal to discuss the matter further with CEO and report back to the Board. The Board had indicated to cancel the AMVD licence and MLS to provide legal repercussion in the event that Nativa seeks a judicial review'

[37] So the 'Board had indicated to cancel the AMVD...' but took further precautions to safeguard them from possible litigation and had sought legal opinion from the Manager Legal Services. The decision to cancel was already made by the Board on 14 February, 2014 or they have affirmed their earlier decision but due to abundance of caution sought legal opinion before implementation, of that. There is no evidence that before cancellation of AMVD the letter of Appellant dated 13 February, 2014 was considered, and this error of law was not discovered by the Respondent.

[38] In the minutes of the Board Meeting held on 14 April, 2014(p 452 of Record) it was recorded that the Board at its meeting on 14 February and 11 March 2014 had proposed

cancellation of AMVD licence based on breaches of vehicle standards and compliance required by AMVD permit holders. There is no material that the Appellant's letter of 13 February, 2014 was considered, in any of these subsequent Board Meetings of the Respondent. LTAT also failed to consider this letter in its decision and that is a denial of natural justice to Appellant.

[39] I now consider the grounds of appeal that were relied by the Appellant and where appropriate had clustered them in order to prevent repetition.

Appeal Ground 1

[40] A discretion is granted to the Board of the Respondent to ascertain what is improper conduct of a dealer of second hand vehicles. There were 4 specific complaints and the Appellant was given an opportunity to be heard orally and also through written reply. The decision was taken to cancel AMVD on the same day and there was no evidence that Appellant's reply dated 13 February, 2014 was considered. Since the Appellant was given an opportunity to reply, his reply dated 13 February, 2014 must be considered by the Respondent. (See Regulation 32(3) of Regulation 2000).

Appeal Ground 2

[41] The words 'impropriety' and 'incompetence' and 'for any other reason' are contained in Regulation 32(1) of Regulation 2000, which states,

'32(1) if it appears to the Authority that a person operating a vehicle dealing business is or has become, either by reason of impropriety or incompetence or for any other reason, unfit to operate a vehicle dealing business, the Authority may m-by notice in writing served personally upon the person, or sent to him or her by registered post at his or her last known or usual place of residence or at his or her place of business, call upon him or her to appear before the Authority at a time and place stated in the notice, and to produce his or her certificate of registration and show cause why it should not be cancelled.

(2) A notice served under sub-regulation (1) must state the grounds of the proposed cancellation.

(3) The authority must, when proceeding under sub-regulation (1), take into consideration the matter stated in the notice and any evidence given, and may cancel the certificate or registration.' (emphasis added)

[42] There was no requirement to give a precise definition to the words 'impropriety' or 'incompetence', the scope of the provision is wide and may encapsulate any conduct of a dealer that can be considered unsuitable as it states 'any other reason'. In such a situation there is no need to attempt to define 'impropriety' or 'incompetence' since the cancellation can also be due to 'any other reason'. In order to deprive the legitimate expectation of a licence holder, the alleged misconduct should be such as, to make such dealer unfit to hold AMVD licence.

[43] The emphasis on Regulation 32(1) of Regulation 2000 was on the provision that the vehicle dealer is *unfit to operate a vehicle dealing business*. This has a wide meaning but in the application it should be relevant to the alleged conduct as the cancellation of a licence is the last resort and it can have very serious financial consequences. So the reason for cancellation of AMVD licence can be the cumulative effect of many incidents, that makes a dealer unfit to hold AMVD licence.

[44] Regulation 32(3) of Regulation 2000 makes it imperative for the Respondent to consider the show cause letter and 'any evidence given' in regard to allegations contained in the show cause letter. The Respondent failed to consider the letter of 13 February, 2014 that replied to the show cause letter.

[45] So, I agree with the finding of the court below that the said regulation can be interpreted reasonably widely, in the interests of consumers as well as other stakeholders and the impact on the industry as a whole, to cover any undesirable practice of a vehicle dealer that the Respondent considers 'unfit to operate a vehicle dealing business', as the regulator.

Appeal Ground 4

[46] Code of Practice

The Respondent as the Regulator, in the field of used vehicles sales should formulate a Code of Conduct or guidelines for best practices in this important area of business. In

terms of Regulation 31(8) of Regulation 2000 the Appellant is obliged to comply with the Code of Practice. The Respondent is a specialized authority where all matters relating to the Land Transport are vested. They are an 'integrated' regulator or 'one stop shop' and is entrusted with, inter alia, the authority to issue licences for dealers of the used motor vehicles (AMVD), as well as licensing of drivers, registration of vehicles, collection of road tax and third party insurance, etc. It is the responsibility of LTA to formulate a Code of Best Practices for vehicle dealers with consultation, consensus and concurrence with all stake holders, and to make it available to all stakeholders.

- [47] The prime responsibility of making it available to all the stakeholders including general public is vital and it rests with Respondent. The purchase of a used vehicle may perhaps be the only way to own a vehicle for a considerable portion of the population in Fiji, due to economic reasons and a Code of Conduct of dealers is a way to regulate the conduct through self-regulation and or through 'soft law'.
- [48] The date on which the Code of Conduct of second hand vehicle dealers was made and published was not available at the hearing. Appellant was issued with AMVD licence in 2004 and as a company engaged in such industry for over a decade in Fiji cannot be expected to state that they were unaware of such a Code of Conduct, specially when they were accused of breach of the Code of Conduct earlier through a strong warning letter of 18 December, 2012 (page 367 of Record of High Court).
- [49] In any event, when the Code of Conduct was made, and when it was available to the Appellant and other stakeholders, are questions of facts that should have been raised in LTAT or hearing before the Respondent and no such issue was raised before LTAT and it cannot raise such an issue in the court below as it was confined to errors of question of law of the decision of LTAT, and appeal to the Court of Appeal is again confined to errors of law in court below.
- [50] The Appellant was issued with a Stern Warning on 18 December, 2012 with regard to the vehicle FZ.671 and stated

The Authority is most concerned that a vehicle in such appalling condition was sold contrary to the conditions of Authorized Motor Vehicle Dealer [AMVD] licence.

In view of the above you are hereby issued with a stern warning to abide by the terms of the AMVD licence and COP [Code of Practice]

- [51] So, even as early as in 2012 the Appellant was given a stern warning for not abiding with the terms of the Code of Conduct and terms of AMVD licence. These allegations again appear in the letter of cancellation of AMVD but, importantly there was no evidence of the Appellant seeking any explanation as to such breaches, from the Respondent, indicating his knowledge about the existence of the Code of Conduct/Code of Practice. The Appellant is legally obliged in terms of Regulation 31(8) of Regulation 2000 to comply with the "Code of Practice."

Appeal Ground 6 and 7

- [52] The grounds for cancellation are the specific complaints stated in the show cause letter. LTAT as well as court below had sufficiently dealt with the issue whether the show cause letter had complied with Regulation 32(2) of Regulation 2000. I cannot see that there was an error of law by the court below.

Ground 8

- [53] Both the court below and the LTAT had held that technical reports of the Respondent were not required to be disclosed to the Appellant. No reason was given for such non-disclosure. In my judgment such reports were not prohibited from disclosure and cannot be considered confidential unless there are good reasons. They may be technical, but should be released on request as they were the basis of allegations contained in the show cause letter. Why such a technical report relating to allegations contained in the show cause letter should not be disclosed needs to be explained by the party refusing to disclose and there is no such reason given by Respondent. So I do not agree with the said finding of the court below as well as the LTAT.

[54] When the show cause letter had referred to a report at least it should have been made available for the Appellant to reply on request, irrespective of such reports being technical in nature.

[55] If the entire investigation report cannot be released due to revelation of some confidential information e.g in order to protect some informants, or whistleblowers or some commercially sensitive information such parts of the report can be withheld, with reasons for such non-disclosure. In the four specific complaints there was no evidence of confidentiality of the informants or sensitive information that needed protection from disclosure. So, investigation reports should be disclosed upon request subject to any legitimate restrictions of some parts of that if that needs protection from disclosure, with reasons for such non-disclosure.

[56] Though the Respondent had not given investigation reports to the Appellant with the show cause letter, such reports were not requested by the Appellant, in his letter of 13 February, 2014 or in his oral submissions before the Respondent's Board. There were reports of the Respondent available at LTAT, and the Appellant had access to them at the hearing before LTAT.

[57] In the text Administrative Law by Wade H. W. E. Forsyth C. F. (11th Edi) p 470 stated,
Preliminary and Advisory Acts, Investigations and Reports

Natural justice is concerned with the exercise of power, that is to say with acts or orders which produce legal results and in some way alter someone's legal position to his disadvantage. But preliminary steps, which in themselves may not involve immediate legal consequences, may lead to acts or orders which do so. In this case the protection of fair procedure may be needed throughout, and the successive steps must be considered not only separately but also as a whole. The question must always be whether, looking at the statutory procedure as a whole, each separate step is fair to persons affected.'

[58] In Wiseman v Borneman [1971] AC 297 the House of Lords held that a refusal to examine evidence submitted to a tribunal initially when there was an opportunity for the

same party later to examine the same was lawful. (See also Balen v Inland Revenue Comrs [1978 2 All ER 1033] and Moran v Lloyds [1981] 1 LIR 423³).

[59] The Appellants had an opportunity to examine the reports of the Respondent in the LTAT and, call evidence to counter them through oral or documentary evidence before the LTAT.

Ground 9 and 10 and 11

[60] Rules of natural justice were not complied with by the Respondent as well as the LTAT and this issue I have dealt with earlier in this judgment and that is an error of law in the finding of the court below. The decision of court below at paragraph 24 stated that the Appellant's letter of 13 February, 2014 was considered by the Respondent. However this is not supported by any evidence. As I stated earlier an ex parte decision taken can be reversed or affirmed after hearing from the Appellant. The reason for taking ex parte decision was also not unreasonable in the circumstances of the case, but when the Respondent decided to offer an opportunity to the Appellant, his written reply must be considered before cancellation of AMVD licence.

[61] There is evidence that the Appellant's oral submission was curtailed and or interrupted and written reply were not considered before taking the decision for cancellation. There is a right of Appeal to the Respondent's Board against cancellation of AMVD licence in terms of Regulation 34 of Regulation 2000, before appealing to the LTAT. Though the Appellant had appealed to the board of Respondent there is no evidence of that appeal being considered.

[62] There was no evidence of the Board of the Respondent considering the Appeal against cancellation of AMVD licence as required by Regulation 34(1) Regulations 2000.

[63] Though the Appellant was granted an opportunity to show cause, the Respondent had failed to consider the reply to the show the cause letter and or oral submissions made before the decision for cancellation of the AMVD licence. After the decision for

³ Wade H. W. R., Forsyth C. F. Administrative Law (11th Edi) p 471 footnote 514

cancellation was taken the right of appeal to Respondent's Board in terms of Regulation 34(1) of Regulation 2000, was also not considered. These acts individually and collectively constitute denial of natural justice.

Ground 12 and 13

[64] The gravity of the cancellation of AMVD was considered in the court below and held that the Respondent had taken the interest of the consumers in the cancellation. (See paragraphs 24 and 25 of the decision of the court below). This is a legitimate concern of the court below.

CONCLUSION

[65] The appeal is allowed as the appellant was denied natural justice by the Respondent as well as the LTAT. There is an error on a questions of law alone in the decision of court the below that can justify the setting aside of the judgment of the court below. The Respondent must consider the Appellant's reply to the show cause letter in terms of Regulation 32(3) of Regulation 2000. Non-compliance of that mandatory provision is an error of law. The court below in paragraph 24 held that the Respondent had considered the Appellant's response but there is no evidence to support that. So the decision of the court below is set aside. The decision of the LTAT is also set aside.

The Orders of the Court are:

1. *The appeal is allowed and the orders of the High Court are set aside.*
2. *The decision of the Land Transport Appeals Tribunal dated 12 December 2014 is set aside.*
3. *The decision of the Board of the Land Transport Authority dated 24 April 2014 is set aside.*
4. *The issue of the Appellant's Authorised Motor Vehicle Dealer's licence and the show cause letter is remitted to the Land Transport Authority to be determined according to law.*
5. *Each party to pay its own costs in this appeal and in the proceedings before the Tribunal and the court below.*

W. Calanchini

Hon. Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL



S. Chandra

Hon. Justice S. Chandra
JUSTICE OF APPEAL

D. Amaratunga

Hon. Justice D. Amaratunga
JUSTICE OF APPEAL