

**IN THE HIGH COURT OF FIJI AT LABASA**

**CIVIL JURISDICTION**

**CASE NUMBER:** HBC 229 of 2009

**BETWEEN** : **PARMOD ENTERPRISE LTD**

**APPELLANT**

**AND** : **SATISH CHAND**

**FIRST RESPONDENT**

**AND** : **LAND TRANSPORT**

**SECOND RESPONDENT**

**Appearances:** Mr. V. Kapadia for Appellant

Mr. P.R. Lomaloma for 1<sup>st</sup> Respondent

Mr. A. Ram for 2<sup>nd</sup> Respondent

**Date of Hearing:** 5<sup>th</sup> March 2014

**Date of Judgment:** 6<sup>th</sup> March 2014

**JUDGMENT**

Introduction

1. This is an appeal from the judgment of the Land Transport Appeal Tribunal. The said tribunal allowed the appeal and ordered the Land Transport Authority to issue a new mini bus permit to the appellant. The grounds of appeal as per the said judgment relates to a 'taxi permit' when in fact mini bus permit was ordered to be issued in final determination of the tribunal. When the said appeal before the tribunal was heard ,the mandatory statutory provision contained in the Section 45(3)(b) of Land Transport Act was not

complied with . The said provision required the tribunal to cause notice of the hearing to ‘objectors’ which was admittedly not followed by the tribunal . The Appellant in the High Court (The Appellant) was one of an initial “objectors” to the mini bus permit to the 1<sup>st</sup> Respondent . The 2<sup>nd</sup> Respondent is the issuing authority Land Transport Authority.

2. At the outset all the parties agreed that the errors on the face of the record are sufficient to allow the appeal and quash the judgment of the Land Transport Appeal Tribunal dated 18<sup>th</sup> November,2011. Since it was an procedural irregularity the matter should be remitted to Land Transport Appeal Tribunal for a fresh hearing and to comply with all the provisions of the Land Transport Act, and more specifically Section 45(3)(b) . It should be borne in mind it is not only the Appellant , but there were two additional parties who objected to the issue of the permit for a mini bus to the 1<sup>st</sup> Respondent and they should also be notified in terms of the said provision of law, by the tribunal.
3. The counsel for the 1<sup>st</sup> Respondent raised an issue regarding the permit already issued in pursuant to the decision of the Land Transport Appeal Tribunal and requested the court to make an order to 2<sup>nd</sup> Respondent to issue a temporary permit till the determination of the issue in the rehearing at the tribunal. For this they rely on Section 46(2) of the Land Transport Act , which states  
  
*‘(2) On an appeal under this Part the Tribunal may dismiss the appeal or make such order as it thinks just and reasonable in the circumstances directing the Authority to issue, transfer, or cancel any licence, certificate ropermit , or to impose, vary , or remove and condition or restriction in respect of a licence, certificate or permit, and the Authority shall comply with that order.’*
4. The counsel for the 1<sup>st</sup> Respondent contends that in terms of Order 55 rule 7(5) of the High Court Rules of 1988 this court is empowered to make any decision ought to have been given by the tribunal , hence an order for temporary permit should be made at this appeal.

5. The counsel for the Appellant Mr V. Kapadia only stated that presence of such provision will not warrant the court to use it. The counsel for the 2<sup>nd</sup> Respondent said he will leave the issue to the court, and did not make any submissions.
6. I reject the contention of the Appellant that I should consider the legitimate expectation of the 1<sup>st</sup> Respondent in this Appeal. I do not think this is a suitable case to deviate from the orders sought by the Appellant, in the absence of any formal application other than the said appeal of the Appellants.
7. *A fortiori*, this court cannot quash the said decision of the tribunal, on the error on the face of the record, and also order the permit issued in pursuant to said decision to be validated through a temporary permit on the ground of legitimate expectation, in this appeal. What are the materials before me for such an order? I cannot rely on the materials before the Tribunal for any order, as it had failed to follow mandatory statutory provision contained in Section 45(3)(b) of Land Transport Act. I cannot rely on any of the matters before Tribunal since there was an error of law. There was no representation of the Appellant as well as other objectors to the permit in the tribunal. The tribunal had failed to observe rules of natural justice, and had also failed to comply with the mandatory statutory provision. So, this court cannot give teeth to such judgment of the tribunal on legitimate expectation.
8. So, this request for temporary permit is misconceived. The application of Section 46 (2) of the Land Transport Act, cannot be applied to the present scenario at all. When the tribunal had failed a mandatory statutory provision, no effect will emanate from the proceedings before the tribunal including the final determination of the tribunal. In the circumstances I refuse the request of the 1<sup>st</sup> Respondent.
9. Even when at the application for stay of tribunal decision was considered by justice Hettiarachi, the 1<sup>st</sup> Respondent objected to the stay knowing the blatant violation of mandatory provision, and the stay application was thus refused. The conduct of 1<sup>st</sup>

Respondent in this appeal had partly resulted the use of permit issued in violation of mandatory provision. Such a party can't claim for legitimate expectation.

**Final Orders**

- a. The Appeal is allowed.
- b. Decision of the Land Transport Appeal Tribunal dated 18<sup>th</sup> November,2011 is quashed.
- c. The matter is remitted to Land Transport Appeal Tribunal, and further directed to re hear the matter in accordance with the provisions contained in Land Transport Act, more specifically to comply with Section 45 (3) (b) of the said Act.
- d. No costs ordered

**Deepthi Amaratunga**

**Judge**

**High Court Labasa**

**06.03.2014**