

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 138 OF 2019

BETWEEN : **PARADISE TRANSPORT LIMITED** a limited liability Company
having its registered office at Nayawa, Sigatoka, Fiji.

PLAINTIFF

AND : **LAND TRANSPORT AUTHORITY** a body corporate registered
and established under Section 6 of the Land Transport Act 1998.

DEFENDANT

Appearances : Mr R. Singh for the plaintiff
Mr N. Kumar for the defendant

Date of Hearing : 27 January 2020

Date of Judgment : 19 May 2020

J U D G M E N T

Introduction

[01] By its amended originating summons filed 23 October 2019, the plaintiff seeks the following orders among other things:

- a) *That the defendant in accordance with Regulation 18.(1) of the Land Transport (Service Vehicle) Regulations 2000 reconsider its decision made on 13 November 2013 cancelling the Road Route Licence 12/18/44.*

- b) *AND/OR IN THE ALTERNATIVE: That there be an order the defendant process the application for a Road Rout Licence in accordance with Regulation 3(1) of the Land Transport (Services Vehicle) Regulation 2000 lodged by the plaintiff with the defendant for a Road Route Licence along the same road Route as Road Route Licence 12/18/44.*

[02] The grounds for seeking such order or orders include:

1. That the plaintiff is a duly incorporated limited liability company engaged in the business of providing public service and at all material times was the holder of Road Route Licence Number 12/18/44. (*"RRL 12/18/44"*).
2. That the defendant is a statutory entity established by virtue of Section 6 of the Land Transport Act.
3. That on 1 October 2013, the defendant cancelled the RRL 12/18/44 without holding the required show cause hearing and or affording the plaintiff any opportunity to make any representation to the defendant before any such decision.
4. That the decision to cancel RRL 12/18/44 was re-confirmed sometime in December 2017, after a show cause hearing for the cancellation of RRL 12/14/44[sic] (*"the decision"*).
5. That the plaintiff pursuant to Regulation 18 (1) of the Land Transport (Public Service Vehicles) Regulation 2000 lodged an application for reconsideration of the decision.
6. That the defendant pursuant to regulations 18 (2) of the Land Transport (Public Service Vehicles) Regulations is required and compelled to reconsider its decision in cancelling the RRL 12/18/44.
7. That in breach of the Regulations 18 (1) and (2) of the Land Transport (Public Service Vehicles) Regulations has failed and or refused to reconsider its decision.
8. That the defendant as for the reasons as aforesaid has acted in breach of Regulation 18 (1) and (2) of the Land Transport (Public Service Vehicles) Regulations and the plaintiff is entitled to a proper decision on its application for reconsideration.

The background facts

- [03] The following are background facts, as stated by the plaintiff.
- [04] Paradise Transport Limited ('PTL'), the plaintiff was at all material times engaged in the business of providing public service and was the holder of Road Route Licence Number 12/18/44 ("RR12/18/44").
- [05] On 1 October 2013, Land Transport Authority ('LTA' or 'the Authority'), the defendant had cancelled the RRL 12/18/44 without holding the required show cause hearing and or affording the plaintiff any opportunity to make any representation to the defendant before any such decision was made. By the letter dated 1 October 2013 (*Exhibit L*), LTA informed the plaintiff that the Board had decided on cancellation in its meeting held on 27 November 2013.
- [06] The plaintiff attempted to get a clarification from LTA in respect of its decision and/or seeking for it to reconsider its decision of 1 October 2013. However, LTA did not provide any clarification for its decision.
- [07] Eventually, on 16 November 2017, LTA responded and stated that the plaintiff was to come by way of appeal and challenge its decision.
- [08] The plaintiff's solicitors then wrote to LTA seeking clarification concerning the decision and explaining that there being no service provider for RRL 12/18/44. However, LTA did not respond.
- [09] Subsequently, the plaintiff again made an application for renewal of its licence over RRL 12/18/44. Again there was no response by LTA despite the plaintiff's solicitors writing to it for its decision.
- [10] On 24 August 2018, LTA finally informed the plaintiff that as per the resolution of its Board the RRL 12/18/44 has been cancelled.
- [11] Thereafter, on 12 February 2019 the plaintiff wrote to LTA seeking justification for its decision and for it to reconsider its decision pursuant to Regulation 18(1) of the Land Transport (Public Service Vehicles) Regulations 2000. LTA did not respond to this request. Instead, it reconfirmed its decision to cancel RRL 12/18/44 in December 2017, after a show cause hearing for cancelling of RR 12/18/44.

- [12] As there was no response from LTA to its correspondences, the plaintiff had, pursuant to Regulation 18(1) of the Land Transport (Public Service Vehicles) Regulations 2000, lodged an application for reconsideration of the decision.
- [13] The plaintiff states that LTA in breach of the Regulation 18 (1) and (2) of the Land Transport (Public Service Vehicles) Regulations had failed and or refused to reconsider.
- [14] The plaintiff files its originating summons dated 5 June 2019 seeking an order that LTA to reconsider its decision of cancelling RRL 12/18/44.

The evidence

- [15] The following affidavit evidence was filed by the parties:

- 15.1 Affidavit in support sworn by Rohit Vijay Singh on 3 June 2019.
- 16.2 Affidavit in opposition sworn by Susau Hazelman on 30 August 2019.
- 16.3 Affidavit in reply sworn by Rohit Vijay Singh on 13 September 2019.

The legal framework

- [16] Regulation 18(1) of the Land Transport (Public Service Vehicles) Regulation 2000 ('*Regulation*') which states that:

"Appeals against the decisions of the Authority

18 (1) A person aggrieved by a decision of an officer acting under delegation of the Authority to refuse to issue or renew or to vary, suspend or cancel a permit under this Part may request that the decision be reconsidered by the Authority and on receipt of the request the Authority must reconsider the matter at the next convenient meeting.

(2) A person who is aggrieved by a decision of the Authority under sub regulation (1) may appeal to the Tribunal." [Emphasis provided]

[17] Regulation 12 provides:

“Authority may cancel, vary or suspend

12 (1) The Authority may cancel, vary or suspend a permit if a condition subject to which the permit was granted has not been complied with and the Authority is satisfied that the breach is serious, frequent or causes inconvenience or danger to the public.

(2) The Authority must, before cancelling, varying or suspending a permit, give the holder of the permit an opportunity of be heard.

(3) If the Authority varies or suspends a permits, it must give notice in writing to the holder that the permit has been varied or suspended as from the date on which the notice is delivered to the holder.

(4) If the Authority cancels a permit, it must give notice in writing to the holder of the permit and the permit is deemed to be cancelled on the date on which the notice is delivered to holder.”

[18] Regulation 10 (3) states:

“10 (3) If a holder of a road permit fails to lodge an application under regulation 3 (6) or if the permit is cancelled or suspended by the Authority, the Authority may advertise for expressions of interest to operate the services authorised by the permit.”

The parties’ submissions

[19] On behalf of the plaintiff it is argued that Regulation 18 (1) anticipates that a decision made by the Authority must be reconsidered if applied for by a person. The defendant had drawn distinction on the issue that Regulation 18 (1) refers to only a decision by an officer. However under the Regulation an officer is not able to revoke, cancel or suspend an RRL, only the Authority can. The purpose of Regulation 18 is to allow the Authority to reconsider its decision an appeal is an option under Regulation (2) however there also is an option for reconsideration.

[20] The plaintiff further submits that given the circumstances of the case it is only just and reasonable to direct that the defendant ought to reconsider its decision of 1 October 2013. It is the right of the plaintiff to make an application for

reconsideration of the decision pursuant to Reg. 18 (1). It will not be a decision that will open the flood gates as each case will depend on its own merits and will have to be reviewed separately.

[21] The defendant contends that the permit RRL 12/18/44 expired on 23 September 2012. The permit was not operated by the plaintiff as there was no fleet and garage. The Authority held a board meeting on 27 November 2013, where the plaintiff's lawyer and its company secretary were present, and as per the Regulation 12 (2) the plaintiff had an opportunity to be heard and the Board resolved that RRL 12/18/44 to be cancelled and expressions of interest to be advertised. The decision was communicated to the plaintiff (Exhibit B in the affidavit in support).

[22] It is further argued on behalf of the defendant that basically the plaintiff is seeking that the Authority processes its application for re-issue. Regulation 3 (6) states that an application to re-issue a permit must be made at least 28 days before the permit expires. Here the permit had expired on 23 September 2012. There was no application for renewal of the permit hence the permit has become void.

Discussion

[23] The first issue to consider is whether the plaintiff had a right to request the Authority's decision of 27 November 2013 made refusing to renew RRL 12/18/44 (*'the permit'*) which had expired on 23 September 2012.

[24] The plaintiff's complaint was that the Authority refused to reconsider its decision despite several request to do so and failed to perform its duty under the regulation.

[25] By its letter of 1 October 2013 (*'Exhibit B'*), the Authority confirmed that as per its Board resolution on 27/11/13 it has resolved that RRL 12/18/44 is now cancelled pursuant to Reg. 12 (1) of Land Transport (PSV) Reg. 2000. The resolution of the Board was taken on 27 November 2013, but the letter sent to the plaintiff

confirming the resolution is dated 1 October 2013, a date which was before the date of the resolution (27 November 2013). Perhaps the letter may have been dated incorrectly.

[26] The Authority's Minutes of the PSV Meeting of 27 November 2013 (the Board Meeting)-item 7.0 (a) reads:

"...
RRL 12/18/44 : Sigatoka/Lautoka Express Service [Route 240A:
Naduri/Sigatoka/Lautoka-Route 350: Nadi/Lautoka – Lautoka/Nadi] Route
has expired on 23 September 2012.

Reason for show cause: Non Operation of RRLs

Background: *The Managing Director [Ramend] had passed away and the two RRLs listed above were not operating as there was no fleet or garage and the Executor/Trustees wanted to reactivate the two permits...*

Applicant's Comments: *Mr Wazupeel (Lawyer) and Sultan Ali, the Company Secretary were present at the hearing.*

Members' noted that Nadi General Transport, also had in the above mentioned routes but had not provided service after expiry of temporary approval. Nadi General Transport was servicing the route when the Managing Director, Ramend passed away.

...

The LTA then wanted relodging of application, with Stat Declaration on the loss of the application. Also missing RRL lodged by Mr Lakshman and the documents then received on 14 September 2012.

When application was lodged, the LTA processed the application on 20/2/13 and issued EOI for that particular route which was advertised in the local dailies. Members also noted that on the issue of Probate it caused further delay on the application for renewal.

That there are no buses at the moment but there would be new buses purchased which would be subject to renewal of RRL and to start operations if granted a further period of 6 months.

Resolution: Members resolved that RRL 12/18/44 to be cancelled and Expression of interest to be advertised.”

- [27] The above minute clearly demonstrates that RRL 12/18/44 had been cancelled by the Authority on the ground that the application for renewal was not duly made and not by an officer acting under delegation of the Authority.
- [28] The plaintiff’s lawyer and its company secretary were also present at the Board Meeting. It means that the plaintiff had been accorded an opportunity to put its case before the Board. Therefore, the allegation that the plaintiff was not accorded an opportunity to be heard before cancellation of RRL 12/18/44 fails.
- [29] According to Regulation 3 (6), an application for a permit must be made at least 28 day before the permit expires.
- [30] The plaintiff did not make its application for renewal of RRL 12/18/44 at least 28 days before the expiry of that permit. The plaintiff was late in making such an application. It did not make its application within the time prescribed in Regulation 3 (6).
- [31] The Authority had processed the plaintiff’s application for renewal of the permit and had decided to cancel the same.
- [32] Once a permit is cancelled it is no more valid.
- [33] The plaintiff did not appeal the decision of the Authority to the Land Transport Appeals Tribunal (*the tribunal*). Instead, the plaintiff was writing to the Authority to reconsider its decision to cancel the permit.
- [34] It is clear that the decision to cancel the permit had been taken by the Authority not by an officer acting under delegation of the Authority to refuse to issue or renew or to vary, suspend or cancel a permit.
- [35] In terms of Regulation 18 (1), the Authority may reconsider a decision of an officer acting under the delegation of the Authority to refuse to issue or renew or

to vary, suspend or cancel a permit. The wording of Regulation 18 (1) is clear and unambiguous. Therefore, the question of interpretation does not arise.

[36] A decision of the Authority may be appealed to the tribunal under Regulation 18 (2). It states: *"A person who is aggrieved by a decision of the Authority under sub regulation (1) may appeal to the Tribunal."*

[37] As the decision was taken by the Authority to cancel the permit, the plaintiff was not entitled to make an application to reconsider its decision of 27 November 2013. The Authority may reconsider only a decision of an officer acting under delegation of the Authority to refuse to issue or renew or to vary, suspend or cancel a permit.

[38] The proper course of action for the plaintiff was to appeal the decision of the Authority to cancel the permit to the tribunal under Regulation 18 (2), and not to apply for reconsideration of its decision under Regulation 18 (1). It follows that the plaintiff's claim that the defendant refused to reconsider its decision made on 13 November 2013 cancelling RRL 12/18/44 fails.

[39] Regulation 10 (3) states: *"10 (3) If a holder of a road permit fails to lodge an application under regulation 3 (6) or if the permit is cancelled or suspended by the Authority, the Authority may advertise for expressions of interest to operate the services authorised by the permit."*

[40] Since the plaintiff failed to renew the permit under Reg. 3 (6), the Authority cancelled it. Once the permit is cancelled the Authority may advertise for expressions of interest to operate the services authorised by the permit.

[41] The plaintiff is not entitled to an order that the defendant process the application lodged by the plaintiff with the defendant for a Road Route Licence along with same road route as RRL 12/18/44 in accordance with Reg. 3 (1). Therefore, plaintiff's alternative claim also fails.

Conclusion

[42] For all the reasons I have set out above, I conclude that the decision to cancel RRL 12/18/44 was taken by the Authority itself not by an officer acting under the delegation of the Authority to refuse to issue or renew or to vary, suspend or cancel a permit. Reg. 18 (1) permits the Authority only to reconsider a decision of an officer acting under its delegation. Since the decision to cancel RRL 12/18/44 had been taken by the Authority, the plaintiff should have appealed that decision to the tribunal under Reg. 18 (2). Having failed to appeal the decision, the plaintiff cannot now seek to reconsider that decision. I would therefore dismiss the plaintiff's claim with costs of \$650.00, which is summarily assessed.

The result

1. Plaintiff's claim dismissed.
2. Plaintiff shall pay summarily assessed costs of \$650.00 to the defendant.



M.H. Mohamed Ajmeer
19/5/20

.....
M.H. Mohamed Ajmeer
JUDGE

At Lautoka
19 May 2020

Solicitors:

Patel & Sharma, Barristers & Solicitors for the plaintiff
Krishna & Co, Barristers & Solicitors for the defendant