

IN THE FIJI COURT OF APPEAL

AT SUVA

CIVIL JURISDICTION

CIVIL APPEAL NO. 61 OF 1992
(Judicial Review No. 15 of 1992)BETWEEN:NOCO DEVELOPMENT COMPANY LIMITEDAPPELLANT

-and-

TEBARA TRANSPORT LIMITED AND
WAINIBOKASI TRANSPORT LIMITED1ST RESPONDENTSTRANSPORT CONTROL BOARD2ND RESPONDENTK.R. LATCHAN BROTHERS LIMITED3RD RESPONDENT

Mr. G. P. Lala for the Appellant/Applicant
 Mr. H. K. Nagin for the 1st Respondent
 Miss G. Philip for the 2nd Respondent
 Mr. S. Sharma for the 3rd Respondent

D E C I S I O N

This is an application that the order made by Justice John Byrne on 7 December 1992 "be stayed and/or set aside pending determination of this appeal or until the Court otherwise orders".

The orders in question were made in the following terms in the course of Judicial Review proceedings No. 15 of 1992 brought by the 1st Respondents against the Transport Control Board:

- "1. THAT the decision of the Respondent on the 4th November, 1992 whereby it purported to grant to NOCO DEVELOPMENT COMPANY LIMITED Road Service Licence 12/7/1 and all proceedings thereunder including the hearing of all competing applications be stayed until the hearing and determination of this action.
2. THAT the NOCO DEVELOPMENT COMPANY LIMITED by itself, its servants or agents be restrained from operating or in any manner whatsoever dealing with Road Service Licence 12/7/1 until the hearing and determination of this action.
3. THAT the within order be stayed until the 11th day of December 1992.
4. THAT the matter be placed in the Chief Registrar's list on 20th January, 1993 so that a date may be fixed for the hearing of the substantive application."

It is clear that the stay applied for is really in respect of orders 1 and 2 hereinafter referred to as 'the interim injunction'. The application is supported by two affidavits. It is also supported by Miss Philip (for the Transport Control Board) Mr. S. Sharma (for K.R Latchan Brothers Limited). The only party opposing the application are the 1st Respondents. A Director of one of the 1st Respondent Companies filed an affidavit opposing the application outlining the prejudice the Respondents are likely to suffer if the application is granted.

There is now an appeal (No. 61 of 1992) pending against Justice Byrne's interim injunction decision. The Transport Control Board granted the Appellant Company a temporary Licence under Section 74 of the Traffic Act for three months to operate

a bus service between Noco in the Rewa Delta area and Suva. There were other competing applicants including the 1st Respondents. I am now informed that the Transport Control Board intends to deal with all the applications in January or February 1993 to make a final decision. The Applicant's current temporary licence expires in any case on 4 February 1993. If a stay is not granted the Transport Control Board will not be able to hear the competing applications as proposed.

Bearing in mind that an appeal is pending which as yet has not even been listed for hearing and that the substantive Judicial Review action is also yet to be heard, the consequences of not staying the interim injunction could have serious implications to public interest. The travelling public in the Noco area could also be adversely affected. Furthermore in the event the Applicant Company succeeds in its appeal the possibility of its success being made nugatory cannot be ruled out. On the other hand grant of an unqualified indefinite stay against the operation of the interim injunction could have the effect of virtually dissolving the interim injunction, as rightly pointed out by Mr. Nagin. However public interest demands that the functioning of a Statutory Public body ought not be lightly impeded now that I have been assured about the action proposed to be taken by the Transport Control Board.

Having regard to the competing interest of the parties and also the public interest involved I grant stay of the interim injunction until determination of the appeal or the adjudication of Judicial Review Action No. 15 of 1992 whichever events occurs first. But I also reserve liberty to all parties to apply should there be change of circumstances. There will be no order as to cost of this application.

At Suva
23rd December 1992



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Sir Moti Tikaram
Vice President
Fiji Court of Appeal