

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

CIVIL APPEAL NO. ABU0058 OF 1999S
(High Court Civil Action No. HBJ0014 of 1998)

BETWEEN:

MAHARAJ BUSES LIMITED

Appellant

AND:

TRANSPORT CONTROL BOARD

First Respondent

SHANKAR SINGH TRANSPORT LIMITED

Second Respondent

Coram:

Reddy J R, President
Eichelbaum, JA
Gallen, JA

Hearing:

Thursday, 9 May 2002, Suva

Counsel:

Mr H. Nagin for the Appellant
Mr I.V. Tuberi for the 1st Respondent
Mr G.P. Lala for the 2nd Respondent

Date of Judgment: Friday, 31st May 2002

JUDGMENT OF THE COURT

The appellant is a limited liability company which operates bus services under a Road Services licence on 6 routes. On the 3rd of April 1998 the appellant applied to the Transport Control Board for an amendment to its existing road service licence seeking additional trips departing Suva daily for Navua Town at 11:30 a.m.

The appellant subsequently learned that the second respondent had also applied for the amendment of a Road Service licence held by the second respondent which would have resulted in a direct conflict with the application which it had made.

Section 74 of the Traffic Act allows the first respondent, where it considers the public interest necessitates the immediate establishment of a new service, to issue a new Road Service licence for such service or to amend an existing road service licence without complying with the provisions of section 65 (which involves notice).

The appellant learned that the first respondent had granted an amendment to the licence of the second respondent allowing the service contemplated by the second respondent's application. The appellant applied to the High Court for leave to seek judicial review of the action of the first respondent in granting the amendment and sought ex-parte an interim injunction to prevent the second respondent operating the service. It was successful in obtaining such an injunction.

When the matter came before the High Court on a substantive basis however the second respondent succeeded in convincing the Judge that there were no grounds upon which a permanent injunction could be sustained or Judicial Review be granted. The injunction was accordingly discharged.

The appellant has appealed against that decision.

By the time the proceedings reached this Court the second respondent was said to be in receivership and counsel who had been instructed to represent the second respondent sought the leave of the Court to retire since he was unable to obtain instructions. He was granted leave and withdrew. The first respondent was represented but indicated through counsel that it abided the decision of this Court. It was first thought that might be enough to dispose of the matters in issue but we were informed that the second respondent was continuing to operate the service the subject of the application. The appellant therefore proceeded to present its case seeking judicial review of the decision of the first respondent in granting the amendment of which the appellant complained.

The argument before us proceeded on a different basis from that which was emphasised before the Judge in the High Court. It was and is maintained by the appellant, supported by documentary evidence before the Court, that initially the services now operated separately by the appellant and the second respondent were operated by one company, the Taunovo Bus Company Limited, under one licence. That company had transferred shares and assets which included the operation of the licence to 2 separate companies, the appellant and the second respondent. The appellant maintained, and supported its contention by affidavit, that the first respondent had not been prepared to grant any amendment to the operating rights under the licence to either the appellant or the second respondent until such time as separate and new licences had been awarded.

Nevertheless a public notice dated 21 June 1998 appeared in a newspaper stating that the application of the second respondent to which exception had been taken by the appellant had been granted by way of amendment to licence 12/10/102 a licence in the name of the second respondent.

The documents filed establish that that licence was not granted until the 10 June 1998, that is 8 days after the purported amendment of it.

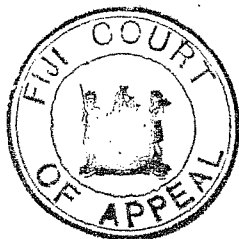
The first respondent in its approval referred to a resolution passed on the 9 October 1997 but this could have not applied to the second respondent's licence (which had not then been issued) and referred we were told to the licence then operated by Taunovo Transport Limited.

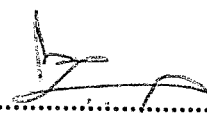
In those circumstances and in the absence of any submissions to the contrary we think that the appellant is entitled to the order which it originally sought in the substantive proceedings, that is that the decision of the Transport Control Board purporting to approve the application of the second respondent made on the 2 June 1998, (that is the amendment), be quashed. It was simply impossible for a licence not then granted to be amended on that day. It is unnecessary for us to consider the other grounds raised by the appellant. We note that the particular ground for relief was No. 11 of those placed before the Judge in the High Court.

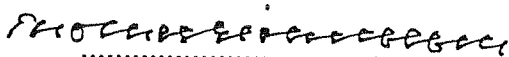
Result

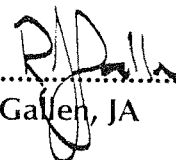
We therefore direct that the decision of the Transport Control Board purporting to approve the application of Shankar Transport Limited made on the 2 day of June 1998 for an amendment to its Road Service licence be quashed and there will be a declaration to the effect that the purported amendment is of no effect.

The appellant is entitled to costs against the 1st and 2nd respondents which we fix at \$500 together with the costs of preparation and other disbursements to be fixed by the Registrar.




.....
Reddy J R, President


.....
Eichelbaum, JA


.....
Gallen, JA

Solicitors:

Messrs. Sherani and Company, Suva for the Appellant
Tuberi Chambers, Suva for the 1st Respondent
Messrs. G P Lala and Associates, Suva for the 2nd Respondent