

## IN THE SUPREME COURT OF FIJI

## Civil Jurisdiction

Action No. 86 of 1961

Between:

BUS TRANSPORT UNION

Plaintiff

v.

SUVA CITY COUNCIL

Defendant

Local Government (Towns) Ordinance (Cap. 78)—Section 6—Suva (Bus Station) By-Laws 1901—whether *ultra vires*.

The Suva City Council built a bus station on council property. Under the Suva (Bus Station) By-Laws 1961 made by the Council any omnibus operator using the bus station was required to take out a licence and pay certain fees. In this action an association of omnibus operators claimed a declaration that these By-Laws were *ultra vires* the powers of the Suva City Council as prescribed in the Local Government (Towns) Ordinance (Cap. 78).

*Held.*—Since under s. 6 of Cap. 68 the Suva City Council was empowered to do all such acts as bodies corporate “may by law do and suffer”, the Council was entitled to charge and to prescribe the conditions for the use by others of its property. The By-Laws were not therefore *ultra vires*.

Cases cited:

*Liverpool Corporation v. Arthur Maiden Ltd.* (1938) 4 All E.R. 200.

*Attorney-General v. Wilts United Dairies* 127 L.T. 822.

*K. C. Ramrakha* for the Plaintiff.

*D. M. N. McFarlane* for the Defendant.

HAMMETT, Ag. C.J. (22nd November, 1961).

In this action the plaintiff's claim is for a declaration that the Suva (Bus Station) By-Laws 1961 made by the defendant in purported exercise of its powers under section 132 of the Local Government (Towns) Ordinance (Cap. 78) be declared unconstitutional and *ultra vires* the powers of the defendant under the said section 132 of the Local Government (Towns) Ordinance.

The plaintiff is an association of motor omnibus service operators which the defendant admits is registered under the Industrial Association Ordinance. One of its objects is contained in clause 4 (b) of its constitution which reads as follows—

“To promote, support, or oppose legislations, regulations by-laws orders, rules of amendment thereof, governing the control of Bus Transport Services within the Colony or other measures affecting the rights or interests of the members.”

At the outset, counsel for the defendant raised certain objections to these proceedings. He submitted that since the Union was not affected by these by-laws and was not itself a bus operator it had no *locus Standi* and was not entitled to bring this action. He also submitted that clause 4 (b) of the constitution of the plaintiff Union did not empower the Union to bring an action such as this but only to oppose laws politically and administratively.

The powers of an association registered under the Industrial Association, Cap. 94 are contained in section 6 of the Ordinance of which the material part reads—

“6. Every association shall upon registration under this Ordinance become a body corporate and shall be capable in law of suing and being sued etc.”

It is clear, therefore, that the plaintiff Union has the power to sue.

Order 25 Rule 5 of the Rules of the Supreme Court reads as follows—

“5. No action or proceedings shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed, or not.”

In my opinion it would be open to anyone affected by the Suva (Bus Station) By-Laws 1961 to bring an action claiming a declaration that they are *ultra vires*. The imposition of a charge on all buses using the Suva Bus Station appears to me to be a matter which directly or indirectly affects not only all bus operators but all users of these buses and many others since such charges must clearly affect the cost of running the buses and therefore be one factor which will affect the fares charged to the users of this form of transport. I see no reason of principle why the Bus Transport Union should not bring this action.

One point of interest has however arisen out of the evidence in the case which throws considerable doubt as to whether the Bus Transport Union did properly authorise this action to be brought in its name.

The constitution of the Union provides for its business to be conducted and transacted at either Ordinary General Meetings or Extraordinary General Meetings of the Union. Ordinary General Meetings are held on 2 weeks' notice and Extraordinary Meetings are only held under particular circumstances which are set out in the constitution. There is no provision in its constitution for the holding of “Special General Meetings”.

Mr. N. Singh, the Secretary of the Union, in the course of his evidence in chief said that on 18th December, 1960, a “special” general meeting of the Union was held at which it was decided that power should be given to the President and the Secretary to take legal advice about the proposed Suva (Bus Station) By-Laws and to take whatever action that they thought necessary.

Mr. Singh went on to say that he took legal advice and that on the strength of that advice he instructed that these proceedings be instituted in the name of the Union.

There is no evidence that the President of the Union agreed with the action taken by the Secretary or that both the President and the Secretary thought that this action was necessary. Again this “authority” was given at what was called a “special general meeting”, which is a meeting not known to or authorised under the constitution of the Union.

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Whilst this association undoubtedly has the power to bring an action, any action brought in its name should be properly authorised by it. Counsel for the defence submitted that in these circumstances the action was not properly before the Court. Counsel for the plaintiff in reply submitted that since this objection was not specifically pleaded, it was a point that it was not open to the defendant to take.

On the evidence before me it is extremely doubtful whether the plaintiff Union did properly authorise the institution of these proceedings in its name. This point was not however raised by the defence on the pleadings. I doubt therefore whether it can properly be taken at the trial and a decision given upon it unless the pleadings are first amended. For reasons which will become apparent, however, I do not consider it necessary for me to determine the case on this point, or to adjourn the proceedings and give leave for the pleadings to be amended.

The provisions of the Local Government (Towns) Ordinance, Cap. 78, apply to the Suva City Council, by virtue of section 3 of the Ordinance, which reads as follows—

“3. The provisions of this Ordinance shall apply to the city of Suva as constituted by law, and to any place declared to be a town for the purposes of this Ordinance under the provision of section 4 hereof.

Section 132 of the Ordinance gives the power to make by-laws and of this section the material parts appear to be sub-sections (1), (2), (3), (7) and (11) which read as follows—

“132. (1) Every town council may make by-laws for the peace, good order and government of the town, and for the purposes of enabling them properly to carry out the duties and exercise the powers imposed or conferred upon them by law.

(2) A by-law shall not be repugnant to any other law;

(3) All by-laws shall be subject to the approval of the Governor in Council.

(7) By-laws relating to the control, management and use of Public libraries, museums, baths, parks and public institutions of any kind under the control of the council may make provision for—

(a) fees for admission;

(b) the conditions under which the public may be admitted free;

(c) the use of any such place for special purposes;

(d) the removal from such place of persons acting in contravention of any by-law.

(11) By-laws may make provision for the charging and recovery of fees for . . . the issue of any licence permit or other document.”

The Suva (Bus Station) By-Laws 1961 were made by the Suva City Council on 28th February, 1961, and approved by the Governor in Council on 26th April, 1961, and published in the Supplement to the *Fiji Royal Gazette* on 5th May, 1961.

These by-laws, *inter alia*, require any bus operator who wishes to use the Suva Bus Station to apply for a licence for his buses to do so and no bus may enter or use the Bus Station without a valid licence to do so. A fee of 3d. is payable for this licence in respect of each visit of a motor omnibus to the

Bus Station. There are other provisions in these by-laws but the objection of the plaintiff appears to be limited to those which provide for (a) the issue of licences and (b) the charging of fees for the use by bus operators of the Bus Station.

It is agreed that the Suva Bus Station consists of a building some 100 yards long, with a concrete base and a corrugated iron roof along each side of which are spaces for buses to park for the purpose of picking up or setting down passengers. The Bus Station has been built by the defendants, the Suva City Council, on leasehold property owned by the Council and the entire Bus Station is owned, controlled and maintained by the Council.

It is the contention of the plaintiff Union that the Council may not charge fees or issue licences save under by-laws expressly authorised by the Local Government (Towns) Ordinance and that such powers have not been given the Council expressly in respect of the Suva Bus Station. It is contended that section 132 (7) does not cover the making of by-laws in respect of the Suva Bus Station because a Bus Station does not fall within the meaning of the expression "public libraries, museums, baths, parks and public institutions of any kind" in that subsection.

In support of this contention the plaintiff relies on the decision of Croom-Johnson, J. in *Liverpool Corporation v. Arthur Maiden Ltd.* (1938) 4 All E.R. 200. In that case the Liverpool Corporation (General Powers) Act, 1930 provided that—

"It shall not be lawful to exhibit . . . any advertisement . . . upon any building . . . except on such . . . buildings . . . as the Corporation may in writing licence and such licence may be granted . . . subject to such terms and conditions to be therein prescribed as the Corporation may deem proper."

No specific powers were given to the Liverpool Corporation to charge a fee for the issue of such licences, and their right to do so was challenged. It was held that the right to charge a fee for a licence could not be implied by the general power given them to issue such licences "subject to such terms and conditions prescribed therein as the Corporation may deem proper". In the course of his judgment Croom-Johnson, J. cited the following words of Scrutton, L.J. in the *Attorney-General v. Wilts United Dairies* 127 L.T. 822—

"It is conceivable that Parliament, which may pass legislation requiring the subject to pay money to the Crown, may also delegate its powers of imposing such payments to the executive, but in my view the clearest words should be required before the courts hold that such an unusual delegation has taken place. As Wilde, C.J., said in *Gosling v. Veley*, at p. 407: 'The rule of law that no pecuniary burden can be imposed upon the subjects of this country, by whatever name it may be called, whether tax, due, rate or toll, except upon clear and distinct legal authority, established by those who seek to impose the burthen, has been so often the subject of legal decision that it may be deemed a legal axiom, and requires no authority to be cited in support of it. Particularly where the sums to be paid to the Crown are to be paid as a condition of obtaining a licence to exercise the ordinary rights of a subject should the clearest words be required. In practice, legislation protecting certain acts except on licence usually state the pecuniary terms on which licences can be obtained.'"

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It is clear that the fee the Liverpool Corporation sought to impose in that case was for the issue of a licence to the defendant to exercise the ordinary rights of the subject, and not for the actual use of property owned by the Corporation.

In the present case the licence the Suva City Council is to issue and the fee it is to charge under the Suva Bus Station By-Laws is not in respect of the exercise of the ordinary rights of the subject but in respect of the use by motor omnibuses of property owned and maintained by the Suva City Council. The Liverpool Corporation case does not therefore appear to me to be of very much assistance in determining the issue in this case as it deals with an entirely different principle.

Counsel for the Suva City Council maintains that these by-laws are not *ultra vires* on two main grounds—

Firstly—

That they are specifically authorised by the provisions of section 132 (7) of the Local Government (Towns) Ordinance, Cap. 78. He contends that the "Suva Bus Station" falls within the wide and general meaning that should be given to the term "public institutions of any kind" mentioned therein.

I find it difficult to hold that a "Bus Station" is "a public institution of any kind" within the meaning of that expression used in section 132 (7).

I appreciate all that has been urged upon me that general words should be given a general construction. I also appreciate that by-laws made by elected representative local authorities should be benevolently interpreted and upheld if possible. It is not, however, the construction of the by-laws which is in issue in this case but the construction of an Ordinance. The first issue simply is whether or not the term used by the legislature "public institution of any kind" does or not include within its meaning "a Bus Station". In my view a Bus Station is not a "public institution" of any kind. It is, in my opinion, no more a public institution than a public lavatory is a public institution. It is an area of land on which a building has been erected for the use of the public and in which a space and facilities have been provided for the parking of buses and for the assembly of passengers for the purely functional purpose of facilitating the operation of buses in an urban area. I do not think it is an institution of any kind. To hold otherwise would, in my view, necessitate the straining of the meaning of the word institution far beyond its normally accepted meaning.

The second ground relied upon by the defence is that the Suva City Council has general powers under section 132 of Local Government (Towns) Ordinance and also inherent powers to regulate and make provision for the use of its own property by various sections of the community.

Counsel for the plaintiff contends that the Suva City Council cannot charge anyone a rent or a fee for occupying premises or land owned by the Council unless it has specific statutory authority to do so. He could cite no authority in support of this proposition.

Section 132 (1) gives the Council general powers to make by-laws on the following terms—

"Every town council may make by-laws for the peace, good order and government of the town, and for the purposes of enabling them properly to carry out the duties and exercise the powers imposed or conferred upon them by law."

It was conceded, I think, by counsel for the plaintiff during the course of his address that the establishment of a Bus Station in an urban area such as Suva was in the interests of good order and government of the town. I think he said that without it traffic would be chaotic. I have no hesitation in holding that the setting up of a bus station and the making of by-laws to regulate its use would be by-laws for the peace, good order and government of the city. The Suva (Bus Station) By-Laws 1961 would therefore, apart from the question of the imposition of fees for the issue of licences to buses to use the Bus Station, appear to be *intra vires* and properly authorised by section 132 (1).

On the authority of the *Liverpool Corporation v. Arthur Maiden Ltd.* I am of the opinion that, taken by themselves, the general powers to make by-laws given by section 132 (1) whilst they would authorise the issue of licences to persons using the Suva Bus Station would not themselves confer any right to charge fees. The right to charge fees for licences is however expressly granted by section 132 (11), the material part of which reads as follows—

“By-laws may make provision for the charging and recovery of fees for . . . the issue of any licence permit or other document.”

It would therefore appear that this subsection gives the Council express power to charge fees for the issue of any licence to use the Bus Station if licences to use it may be properly provided for under the general powers given by section 132 (1) to make by-laws.

But quite apart from these considerations, the provisions of section 6 of the Ordinance must also be taken into account. The material provisions of section 6 read as follows—

“For the government of every town there shall be a council to be constituted as hereinafter provided which shall be known by the name of the town followed by the words ‘Town Council’ and which shall under that name be a body corporate with perpetual succession and a common seal, and shall for the purposes and subject to the provisions of this Ordinance be capable of purchasing, holding, disposing of and alienating real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.”

The question now arises, “What is it that bodies corporate may by law do and suffer?”

A body corporate may own land, both freehold and leasehold, may alienate it and lease it and charge others for using it and may enter into contracts in just the same way as an individual, subject to it's not exceeding the powers given it by the authority which constitutes it.

The Suva City Council, being a body corporate, may therefore certainly charge its tenants rent and make charges for the use by others of its own property. It owns the “Suva Bus Station” and it may, in my view, prescribe the conditions under which other persons, whether they be bus operators or other members of the public may use it and whether they may use it on the payment of a fee or gratuitously.

I am therefore of the opinion that the Suva (Bus Station) By-Laws are not *ultra vires* the powers of the Suva City Council and the plaintiff is not entitled to the declaration sought.

For these reasons there will be judgment for the defendant.

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