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K. R. LATCHAN BROTHERS LIMITED & ANOTHER

v.

TRANSPORT CONTROL BOARD

B

[SUPREME COURT Mishra, J.—18 June 1980]

Civil Jurisdiction

C

Traffic Act 1974 S. 67 S. 72 S. 74—increase in bus fares pursuant to Act—public interest—is S. 74 power exerciseable only in an emergency—Board to decide if "Public interest necessitates"—no irreparable damage.

G. P. Shankar for Applicant

Q. Bale for Respondent

D

A. M. L. Ramritu—Intervenor

Application for interim injunction until the final determination of the action to restrain the respondent Board from amending the plaintiffs' road service licence.

E

A declaration was sought that a certain increase in bus fares ordered by the Board was contrary to the provisions of the Traffic Act whereby the order was not binding on the plaintiffs' who had not sought such increase.

The Board was a statutory body established under the Traffic Act empowered amongst other things to attach to road service licence permitting a public service bus to run conditions including fares to be charged.

F

Where a bus operator failed to comply with the conditions of his licence it may be revoked.

It appeared the Bus Operators Association has made representations to the Board seeking a general rise in fares because of rising costs.

G

At the public hearing the applicants appeared and objected to any increase. The Board considered an increase was justified and granted increase of 22.28%.

H

The applicants contended that the powers given under the Traffic Act S. 72 and S. 74 were exerciseable only in so far as emergency required. After examining the legislation the Judge held that if the injunction were granted it would operate to thwart the Board's powers in what is obviously considered an emergency situation. In addition to the interpretation which the Act suggested the Judge could not agree that the plaintiff could suffer any irreparable damage i.e. to justify an interim injunction.

Held Application for interim injunction refused.

MISHRA, J.

A

Judgment

This is an application for an interim injunction to restrain the respondent Board from amending the plaintiff's road service licences until the final determination of the action involving very much the same issue. The writ seeks a declaration that a certain increase in bus fares ordered by the Board is contrary to the provisions of the Traffic Act and that, in any case, the order is not binding on the plaintiffs who have not sought any such increase.

B

The Board is a statutory body established under the Traffic Act to generally control public transport. It has been given powers to issue, renew, transfer and amend road service licences without which a public service bus may not be operated. The Board is empowered to attach to a licence conditions such as the time-table to be followed and fares to be charged. An amendment of an existing licence may involve alteration, revocation or addition to such conditions. Where a bus operator fails to comply with the conditions of his licence, the licence itself may be revoked.

C

The Board may amend a licence of its own accord without an application from an operator.

The cause of the applicants' complaint arises in this way: Bus Operators' Association made representations to the Board seeking a general rise in the bus fares to meet the rising costs. Later almost all the operators in Fiji made application to have bus fares increased and their licences amended. The applicants did not apply. At a public hearing held before the Board, the applicants appeared and objected to any increase in bus fares.

D

After an enquiry the Board came to the view that an increase in fares was justified and granted an overall increase of 22.28 percent. The applicants have refused to accept the increase and have not surrendered their licence for the amendment of their fare-tables. Hence the writ and this application to this Court for declarations and an interim injunction.

E

Unlike the Prices and Incomes Board which fixes a maximum price, leaving it to entrepreneurs to compete within that limit, the Transport Control Board fixes a uniform fare for all bus operators eliminating all possibility of competition. The provision of the Traffic Act under which it does so is contained in section 67(d) which empowers it to attach to a licence a condition.

F

"(d) Where the Board considers it desirable in the public interest, fixing fares or fixing minimum or maximum fares;"

The Board has the power to fix a maximum fare. It did not do so. It fixed a fare. This it considers desirable in the public interest.

G

The applicants, in this case, do not wish to charge their customers higher fares. They would appear not to consider it necessary. To them, the profit they make on their present fares is quite sufficient. Their customers, the travelling public, also wish to pay no more than what they pay now. To an average man, it must be difficult to see why it is "desirable in the public interest" to compel the plaintiffs to charge, and the travelling public to pay, higher fares than either of them wants.

H

It is, however, not for this Court to unravel the mysteries of public transport or to embark upon an enquiry on what is desirable in the public interest. That function

A the legislature has assigned to the respondent Board. This court must confine itself to determining whether the power which the Board has sought to exercise does exist and whether the exercise of that power is otherwise valid.

The plaintiffs concede that the power to fix fares does exist. They, however, say that the power is not exercisable under section 74(1) of the Act under which the Board is seeking to exercise it. This is particularly so, they say, where no application has been made for an increase and the Board is acting of its own motion. Section 74(1) is in following terms—

"74(1) Where the Board considers that the public interest necessitates the immediate establishment of a new service or the immediate amendment of an existing road service licence, the Board may issue a new road service licence for such service or may amend such existing road service licence without complying with the provisions of section 65 of this ordinance."

C The Board's power to amend a licence of its own motion is contained in section 72(1) of the Act—

"72(1) During the currency of any road service licence the Board may of its own motion or on the application of the licensee amend the licence by altering or revoking any of the terms or conditions of the licence or by adding any new terms and conditions that in its opinion are necessary in the public interest."

D The applicants contend that the powers given under section 72(1) is exercisable under section 74(1) only in so far as an emergency requires. It does not, they say, extend to a general raising of fares. They submit that the words "the immediate establishment of a new service or the immediate amendment of an existing road service licence" in section 74(1) should be read together so as to give the word "amendment" a restricted meaning i.e. any amendment necessitated by an immediate establishment or extension of a new service. I find it difficult to accept that the Board's powers to amend a licence have been curtailed in that manner. The use of the word "or" in "immediate establishment of a new service or the immediate amendment of an existing road service licence" contemplates two distinct situations not necessarily dependant on each other.

F The power under section 74(1) is exercisable in an emergency and, when so exercised, certain procedural requirements under section 65 are temporarily dispensed with. It is, however, for the Board, and not for this Court, to decide if "the public interest necessitates" such exercise of its powers.

I cannot, therefore, accept the applicants' contention that the Board has acted beyond its powers in deciding to amend their road service licences under section 74(1) of the Act.

G The present application, however, is not for a declaration but for an interim injunction. If the injunction is granted, it would operate to thwart the Board's powers in what they obviously consider an emergency situation. It is, on the other hand, difficult to see how the applicants are likely to suffer any irreparable loss or damage by charging higher fares in the meantime.

H However much one might sympathise with the stand taken by the applicants, it is not one that would entitle them to the relief of an interim injunction.

The application is refused.

There will be no order as to costs.

Application refused.