

## IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 74 of 1983

BETWEEN : IN THE MATTER OF TRAFFIC ACT, CAP.152

Applicant

A N D : IN THE MATTER OF AN APPLICATION BY  
EMPIRE BUS SERVICE

Respondent

Mr. G.P. Shankar Counsel for the Applicant

Mr. Govind Counsel for the Respondent

## J U D G M E N T

The applicant seeks an order quashing the decision of the Transport Control Board renewing Road Service Licence 12/15/13 to Subramani and Maslamani (hereinafter referred to as the Respondents) on 2/12/82.

The Respondents were granted a licence for one year to expire on 20/5/82. Prior to the expiry of the licence the Respondents made an application for its renewal. The applicant submitted objections and also submitted its own competing application. The applications were heard and argued on 31/5/82.

On that date the Board, purporting to act under Section 74 of the Traffic Act renewed the licence of the Respondents for a further 3 months, apparently to receive further evidence in respect of purported irregularities. This is rather surprising since Section 74 gives no power to renew a licence. The section is only an interim measure to enable the Board in the public interest to issue a new licence or amend an existing licence pending normal action under section 65.

The matter of the licence came up again before the Board on 23/8/82 when the Chairman said the Respondents didn't have enough buses and the Board would deal with him under Section 68 on 25/8/82. Section 68 gives the Board power to revoke, vary or suspend licences on the ground that any condition on which the licence was granted had not been complied with. Again this is rather a surprising step to take since the Board had still to grant a renewal of the licence, and was presumably still considering the application for renewal by the Respondents and the application for a competing licence by the applicant.

On 25/8/82 the Board, in private apparently, heard evidence relating to a transport officer's report, and a report from the Controller of Road Transport and submissions by the Respondents counsel (including what appear to be criticism of the applicants and allegations against them). This evidence concerned the condition of the Respondents buses their maintenance and the number of buses available. These were matters which the applicant had referred to in his objections and so they were very relevant to his objections and to his own application.

The Board then adjourned for private discussion and later resolved to give the Respondents until October to put their house in order. Whether the temporary licence was to continue or what was to happen to the service meanwhile was not stated (though under Section 74 the licence could only be valid for 3 months).

Nothing seems to have happened in October and the matter next came before the Board on 2/12/82 when apparently there was again private discussion and further submissions and further evidence in regard to bus conditions. It appears that the Respondents had not entirely satisfied the Board and was given a further 3 months to get the buses in order.

The minutes of the meeting on 2/12/82 and 3/12/82 are rather confusing, for it does seem that the Board was continuing the licence purportedly granted under Section 74 for a further period, though there is no provision for its continuance after 3 months.

And although the first resolution was to give the Respondents another 3 months to put their house in order, there is a later resolution renewing licence 12/15/13 for 3 years with a condition that the Respondents bring the matter regarding buses in order within 3 months.

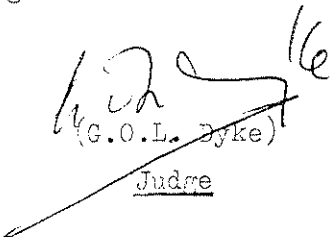
In the same resolution the applicant's competing application was refused.

This sounds a most extra-ordinary way for the Board to conduct its affairs and seems to play fast and loose with the provisions of the Traffic Act regulating its procedure.

But one of the main grievances of the applicant is that the Board heard evidence relating to the granting or refusing of licences in private, when it has no power to do so. All the matters it heard in private very much concerned the applicant. The applicant in its objections had raised questions concerning the Respondents buses, their maintenance and their sufficiency. If the Board was hearing evidence concerning these matters, if the transport officer and the Controller of Road Transport were raising objections to the renewal of the licence to the Respondents, then not only was it incumbent on the Board under its powers to hear that evidence in public but it was a breach of natural justice to hear it in private and deprive the applicant of making further submissions with regard to it. It is nonsense to say (as the Board says) that the evidence heard in private only concerned irregularities. It was evidence that very much concerned the issue whether or not to renew the licence or whether to grant it to someone else.

In the circumstances this Court has no alternative but to grant the order asked for by the applicant, to quash the decision of the Board made on 2/12/82 in respect of licence 12/15/13. The applicant to have his costs to be taxed if not agreed.

13th January, 1984  
LAUTOKA.

  
(G.O.L. Dyke)

Judre