

IN THE SUPREME COURT OF FIJI

ACTION NO. 1136 OF 1983

REG. V. TRANSPORT CONTROL BOARD
Ex Parte NAUSORI DAILY TRANSPORT LIMITED

ACTION NO 1 OF 1984

REG. V. TRANSPORT CONTROL BOARD
Ex Parte K. R. LATCHAN BROTHERS LIMITED

J U D G M E N T

On 31st March, 1983, Nausori Daily Transport Limited, an incorporated company (hereinafter referred to as "Nausori Daily") made application to the Transport Control Board for the renewal of Road Service Licence 12/7/20 (hereinafter referred to as "the licence").

There is no doubt at all that, prior to that date, the licence was held by two brothers, Vijay Brij Lal (now deceased) and Vidya Brij Lal, as trustees for Nausori Daily.

The survivor of those two brothers, Vidya Brij Lal, in an affidavit sworn on 17th February, 1984, stated that the licence was obtained by them as trustees for Nausori Daily in the early part of June, 1977: see paragraphs 3(a)-(c) of that affidavit.

Annexure "A" to that affidavit shows that Nausori Daily was incorporated at the end of that month i.e. on 30th June, 1977. It may be that, as often happens when a company is about to be formed, the two brothers, as trustees, applied to the Board for, and obtained, the licence with the intention that, upon the incorporation of Nausori Daily, they would see to the transfer of the licence to Nausori Daily. However, the terms of the trust have not been revealed to me and, for all I know, there may be conditions in those terms which, because they remain unsatisfied, prevent the transfer of the licence to Nausori Daily.

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In paragraph 3(e) of that affidavit, Vidya Brij Lal stated in effect that, on about 28th September 1977, the Board granted an application to transfer the licence to Nausori Daily, but that, due to clerical error, it continued in the names of the trustees as such.

Clerical error or no clerical error, it is clear that the licence continued to be held by trustees for Nausori Daily. According to paragraph 3(g) of Vidya Brij Lal's same affidavit, the licence was renewed in 1978 "in the name of the said trustees" (albeit on an application by Nausori Daily). Again, the minutes of a meeting of the Board held on 17th January, 1983 (Annexure "A" to the affidavit of Apaitia Seru, a member of the Board, sworn on 26th January, 1984) show that, on that day, an application for the transfer of the licence was considered, and rejected, by the Board. The then Chairman asked why the licence had not been transferred to Nausori Daily and said that Nausori Daily should have applied for a transfer to itself of the licence. Counsel for Nausori Daily, according to those minutes, then "said that the licence belong to one of the trustees who wish to transfer the same to another company".

Now, that same surviving brother, Vidya Brij Lal, had sworn on earlier affidavit - on 6th December, 1983. Annexed to that affidavit is a copy of the agenda of a meeting of the Board to be held on 29th June, 1983, on page 3 of which there are entries concerning an application for the transfer of the licence. The following is an extract from those entries which, mind you, were held out by Vidya Brij Lal as being valid entries - see paragraph 6 of his affidavit.

"OBJECTIONS HAVE BEEN RECEIVED AS FOLLOWS:

- (a) 11.4.83 SHERANI & CO ON BEHALF OF VIDYA LAL s/o
BRIJ LAL

We act for our abovenamed client and are instructed to object to the application for transfer of road service licence 12/7/20 from Nausori Daily Transport Limited to K. R. Latchan Brothers Limited which was advertised in the Fiji Sun of the 8th day of April, 1983.

The ground of objection for the application for transfer of road service licence 12/7/20 is that the said road service licence is presently held by our client and VIJAY BRIJ LAL (f/n Brij Lal) as TRUSTEES of Nausori Daily Transport Limited and that our client has not been consulted nor has his consent been obtained to the proposed transfer. Our client does not consent and nor has he any intention of transferring the said road service licence to K. R. Latchan Brothers Limited.

Our client reserves the right to raise further objections at the hearing."

It is reasonable to suspect, if not to conclude, on the basis of that extract, that the "Vidya Lal s/o Brij Lal" who was asserting through his then solicitors in April, 1983 that he held the licence as a co-trustee, was none other than the Vidya Brij Lal to whom I have been referring, the surviving brother who, in paragraph 3(e) of his affidavit of 17th February, 1984, asserted that the Board had, in 1977, granted an application to transfer the licence to Nausori Daily.

It is, in my view, abundantly clear that the licence was never transferred to Nausori Daily and that, if it still subsists, it is held in trust by Vidya Brij Lal and whoever succeeded Vijay Brij Lal as co-trustee following his death.

On 29th November, 1983, Nausori Daily's application for the renewal of the licence was granted by the Board subject to the deletion of several routes. By that time, a second company, K. R. Latchan Brothers Limited, (to which I shall refer as "K. R. Latchan") had responded to the advertisement of Nausori Daily's application by making an application for a new licence for the same service. The Board decided on that same day, 29th November, 1983, to grant to K. R. Latchan a new licence in respect of the routes which had been deleted from the licence that was renewed in the name of Nausori Daily.

Applications for the renewal of road service licences are made under Sections 64 and 65 of the Traffic Act (Cap. 176) the

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relevant parts of which read:

"64(1) An application for a road service licence or for the renewal, transfer or amendment thereof shall be made in the prescribed form and shall be forwarded to the Board accompanied by the prescribed fee"

"65(1) On receipt of an application for the renewal of a road service licence, being an application complying with the provisions of the last preceding section the Board shall give notice in a newspaper stating that within the next ten days following the date of the notice it will receive representations for and against the application, and also that within the next ten days following the date of the notice it will receive other applications in respect of the proposed service:

Provided that -

- (a).....
- (b).....
- (2)
- (3)
- (4) after receiving any evidence and any representations the Board may grant or refuse any application in respect of the proposed licence."

What happened was that Nausori Daily applied for the renewal of a licence it did not hold - the licence was held by trustees - and K. R. Latchan, in response to the advertisement of that application, applied for a new licence in respect of the same service. Clearly, it was known to K. R. Latchan that the licence was not held by Nausori Daily. That is shown by the objections which K. R. Latchan lodged against the proposed renewal: see foot of page 2, Annexure "A" to Vidya Brij Lal's affidavit of 6th December, 1983.

It seems to me that Nausori Daily had no right to apply in the first place for the renewal of a licence it did not hold - Section 65,

in my view, entitles only the holder of a licence to apply for its renewal. Nor did the Board have jurisdiction to entertain, let alone to grant, an application by Nausori Daily for the renewal of a licence it did not hold. It follows that the Board's decision to renew the licence in the name of Nausori Daily (with or without the deletion of several routes) was ultra vires.

I cannot see that Section 70(2) of the Act, which says that every application for a renewal of a licence shall be deemed to be an application for a new licence, is of any assistance to Nausori Daily. Whatever the intention of that provision may be, it certainly is not, in my view, to enable a company to apply for the renewal of a licence of which it is not the holder.

Nor, in my view, did the Board, having received an invalid application for the renewal of a licence, have any jurisdiction, on the basis of that invalid application, to invite and subsequently to entertain any application for a new licence in respect of the same service. Section 65(1) empowers the Board on receipt of an application for the renewal of a licence "being an application complying with the last preceding section" to advertise that application and to invite other applications in respect of the proposed service. That power to advertise and to invite other applications arises, in my view, only when an application complying with Section 64 has been received. But Nausori Daily's application for renewal did not comply with the provisions of Section 64 - it was an application which it had no right to make under that section. It follows, in my view, that the Board had no jurisdiction to grant, as it did, a new licence to K. R. Latchan in respect of the routes it had deleted from the renewed licence.

K. R. Latchan, as I have already remarked, knew that Nausori Daily's application, on which the proceedings were founded and on which the Board relied for its jurisdiction, was invalid. It can hardly be said that K. R. Latchan would be treated inequitably if the decision to grant it a new licence were quashed for lack of jurisdiction.

In these consolidated applications made under R.S.C. O.53, Nausori Daily applies, inter alia, for certiorari to quash the decision to grant the new licence, No. 12/7/131, to K. R. Latchan for the routes which were deleted from licence No. 12/7/20

and K. R. Latchan applies, inter alia, for certiorari to quash the decision to renew licence No. 12/7/20 in the name of Nausori Daily.

For the reasons I have given, I grant both applications and order accordingly.

If licence No. 12/7/20 has by now expired, the Board will have to consider granting a temporary licence or licences in respect of the service under Section 74(1) and exercising its powers under Section 74(3).

The two decisions having been quashed, I see no point in entertaining the applications for other forms of relief for which Nausori Daily and K. R. Latchan have applied, as they now appear to be superfluous.

Each party will bear its own costs.

R. A. Kearsley

(R. A. Kearsley)

JUDGE

Lautoka

24th May, 1985.