

IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 2941/95

In the matter between:

HERMON SAMBO GULE

Plaintiff

and

THE CHAIRMAN OF THE ROAD TRANSPORTATION

APPEALS BOARD

Defendant

CORAM:

S.W. Sapire A.C.J.

FOR PLAINTIFF

Mr. S. Dlamini

FOR DEFENDANT

Mr. Nkwanyana

Judgment

(3/3/96)

The applicant Hermon Sambo Gule is a transport operator of Piggs Peak.

On the 13/12/94 he applied to the Road Transportation Board for a road transportation service permit.

The application was duly advertised in the local press and no objectors responded thereto.

On the 8th June 1995 the Road Transportation Board sat to consider the application, and on the 13th June 1995 advised the applicant by letter addressed to him at his post box address that his application for a

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road transportation service permit heard by the Transportation Board had been "refused, insufficient finance, no need for this service".

This intimation is laconic in the extreme and in no way the indicates to the disappointed applicant the reasons why the Board came to this conclusion.

The applicant lodged an appeal against the decision of the Road Transportation Board on the 21st July 1995. On the 29th November 1995 the Road Transportation Appeals Board sat to consider the appeal and dismissed it not even stating the grounds, let alone the reasons for such refusal.

The applicant was advised of this decision on the same form of standard letter as he had received when his application was turned down. On this occasion the Appeal Board merely stated "appeal dismissed". This intimation is even more laconic than the first.

The applicant now comes by way of urgent application to this court. The prayers to his notice of motion read as follows:

"1. That this Honourable Court dispenses with the usual time limits forms and provisions of service as are required in terms of the Rules of Court and that this matter be heard as one of urgency;

"2. That a Rule Nisi be and is hereby issued calling upon the Respondent to show cause on a date to be determined by this Honourable Court or so soon thereafter as the matter may be heard why an order in the following terms should not be made:-

"2.1 That the proceedings of the Road Transportation Appeals Board of the 29th November 1995 wherein applicant's appeal pertaining to application number 06532 was dismissed be reviewed and set aside.

"2.2 That the Secretary Road Transportation Board be directed to issue permit number 06532 to the applicant.

"2.3 That the respondent be directed to despatch, within fourteen days of the receipt of the notice of motion, to the registrar the

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record of the proceedings under review.

"3. That orders numbers 2.1 and 2.2 above are to operate as an interim order pending the final determination of this application.

"4. That the respondent be directed to pay the costs of this application.

"5. That the Honourable Court grants such other and/or alternative relief as it may deem fit."

A Rule Nisi was issued on the 6th December 1995 in terms of prayers 1 to 4.

As far as prayer 2.2 is concerned, this court cannot direct the Transportation Board to issue a permit especially on the scanty information contained in the papers. The power to issue permits is vested in the Transportation Board, and this court cannot in the present circumstances direct the Board as to how it is to decide on the application. See *Ferreira vs Levin and Others* 1995 (2) SA 813 W. especially 828.

Furthermore I am at lost to understand what is intended by prayer 3.

The substance of the application is however the relief claimed in paragraph 2.1 of the Notice of Motion in where an order setting aside the decision of the Appeals Board is sought.

The Appeal Board hearing an appeal from the Transportation Board is to approach the matter de novo and to reconsider afresh the available evidence. It is an appeal in the widest sense of the word, as described in the case of *Committee Of The Johannesburg Stock Exchange vs Chairman Stock Exchange Appeal Board* 1992(2) SA 30 and also in *Johannesburg Local Road Transportation Board vs David Morton Transport* 1976(1)SA 887.

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The Board is to review the evidence which was before the Transportation Board and may hear new evidence on the basis of all of which it is to make its decision.

On the papers before me, this was not done at all. It is no answer to the applicant's complaint for the

Secretary of the respondent to state in a replying affidavit that he is advised and verily believes that "the said cash is not enough and further the route is adequately served". Certainly the Appeals Board in advising the applicant of its decision to dismiss the appeal gave no reasons therefore. The secretary's opinion is of no significance at all.

What is required is that a review of the facts upon which the decision was reached is made, and a reasoned statement indicating that the Board put its mind to the problem should accompany every decision. Nowhere is the applicant in the present instance advised why his cash resources are considered inadequate or why it is considered that the route is adequately served.

The Board a quo declined the licence on two grounds. Firstly it came to the conclusion that the applicant did not have sufficient finance or funds. There was no indication from the Board as to what funds were required and for what purpose they were required. There was no indication how the applicant's resources fell short of its requirements in this regard. The Appeals Board did no better and seems to have endorsed the opinion of the Board without putting its mind to this at all.

In the second place the Board found that there was sufficient transport facilities available and that to grant to the applicant of a further licence would cause an oversupply. There is no indication however of the factual basis upon which this conclusion was arrived at. In this sense no reason were given for coming to the conclusion both by the Board and by the Appeal Board.

Because of the failure to furnish reasons an inference can be drawn that the Appeal Board did not properly put its mind to the issues before it and acted arbitrarily. Accordingly its findings and ruling

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should be set aside. See Northwest Townships (Pty) Ltd vs Administrator Transvaal 1975(4)SA 1 AD especially at page 10.

Coming to this conclusion it remains to determine how the matter should be dealt with. This court is not in a position to make any decision on the merits because of the absence of any evidence.

Furthermore it is doubtful that this court can itself make an order granting the applicant a licence. The proper course therefore is to re-submit the matter to the respondent for a rehearing.

The order I make is as follows:

1. The proceedings of the Road Transportation Appeals Board on the 29th November 1995 relating to the applicant's appeal are set aside.
2. The matter is remitted to the Appeals Board to be heard afresh and with directions to the Appeals Board that any decision given after such hearing is to be supported by reasons in which reference is made to the evidence on which the Board's decision is made.
3. The respondent is to pay the costs of this application.

S.W. SAPIRE

ACTING CHIEF JUSTICE