



the notification. Copies of these documents are "SKD6" and "SKD7" are attached to the founding papers in this application.

This decision gave rise to this application for review. The Applicant is enjoying the respite afforded him by a temporary mandamus requiring the Board to issue a temporary permit pending a decision in this matter

The first ground on which the decision is attacked, is an alleged failure of the Board to observe the audi alterem partem rule. The Applicant claims that he was not invited to attend the meeting on the 17th December at which the decision was taken, He was so he says not therefor given an opportunity to state his case. This argument ignores what is pointed out by the Respondents in Affidavits which have been filed in response to this application, namely that no evidence or argument was heard on the 17th and that the Board made its decision on the basis of the proceedings at which the Applicant had been present or represented. It does not seem that there has been a failure to afford the Applicant a hearing. He has not indicated that there was anything fresh which he wished to submit.

His application, upon which the mandamus was granted, was directed to getting the Respondent to give its decision, which it had deferred, on his application for renewal.

The second ground upon which the Applicant seeks a review is that the Board laboured under a misapprehension in regard to the particulars of the original application. This allegation has given rise to counter allegations and disputes of fact which cannot and may not be decided in these proceedings. If the applicant has grounds for complaint on this score his remedy is not a review but lies in an appeal as provided for in the act. In providing for such an appeal the legislature has restricted the remedies of a dissatisfied applicant to recourse to the forum provided for.

KENDLA. WPD

3

In this connection the observations of Holmes J A in LOCAL ROAD TRANSPORTATION BOARD AND ANOTHER v DURBAN CITY COUNCIL AND ANOTHER 1965 (1) SA 586 (A) at page 594 are apposite,

"In the present case the correct approach is to enquire whether and to what extent the intention of the Legislature, as expressed in Act 39 of 1930 (read with Act 44 of 1948), was to oust the Court's jurisdiction pending exhaustion of the statutory remedy of appeal to the Commission. There will be an ouster only

'if that conclusion flows by necessary implication from the particular provisions under consideration, and then only to the extent indicated by such necessary implication'

- per OGILVIE THOMPSON, A. J. A., in Welkom Village Management Board v Leteno, 1958 (1) SA 490 (A.D.) at p. 502 and further at p 594:-

"Reviewing all the foregoing, it seems that the Legislature has made ample and effective provision for redress on appeal in regard to the wide range of matters incidental to the general application of the Act; and that in respect of such run-of-the-mill matters there may be - it is not necessary to express an opinion - a necessary implication of an ouster of the Court's jurisdiction pending exhaustion of the remedy of appeal provided for in sec. 6 (2). But I can find no sufficient basis for holding that there is a necessary implication of such an ouster of the Court's power to entertain a review in regard to matters such as an illegality or a material irregularity committed by the local board, which fall outside the purview of the application of the Act. This was also the view of MILLER, J., in the Court a quo, and of

HENOCHSBERG, J., C in Main Line Transport v Durban Local Road Transportation Board, 1958 (1) SA 65 (D) at p. 73 G".."

I am satisfied that this is an instance where the legislature by amending the Act to create an appeals board has by necessary implication indicated that an appeal to the Appeals Board would be the only relief available to an applicant dissatisfied with the Board's decision. Review is only possible where there is some defect in the procedure of the Board. A misdirection on the facts or a wrong view of the law, is in itself not a ground of review. There are no maintainable allegations of bias or malice, or that the Board has

KENDLA. WPD

4

failed to put its mind to the applications made in this application. Clearly it has done so

I have had occasion previously when dealing with another of the Applications relating to this ongoing dispute to refer to AIROADEXPRESS (PTY) LTD v CHAIRMAN, LOCAL ROAD TRANSPORTATION BOARD, DURBAN, AND OTHERS 1986 (2) SA 663 (A)

That was a case dealing with the grant of interim relief pending an Appeal to the Road Transport Commission which in the Republic of South Africa is the equivalent of the appeals Board in Swaziland. What is to be observed is that the Appellant in circumstances closely resembling those of the instant case exercised its right of appeal and did not have recourse to a review. It was pending such an appeal that the court ruled that it was competent to grant interim relief by way of ordering the issue of a temporary permit pending the outcome of the appeal.

An appeal to the Appeals board is " a rehearing in the fullest sense of the word" as was held in National Transport Commission and Another v Chetty's Motor Transport (Pty) Ltd 1972(3) SA at 735.

Although in Swaziland the wording of the corresponding statute is different to that of the Republic of South Africa, the concept and intention of the statutes is similar. The reasoning of the decision is applicable to the provisions of the local act.

There are no allegations in the papers explaining the Applicant's decision to seek a review rather than to take the Board's decision on appeal. There is no suggestion as to why the appeals board would not in the course of a rehearing of the matter correct any errors, into which the Board may have fallen.

The third ground on which the Applicant seeks to review the decision of the Board is that it " committed a grave irregularity by purporting to review what had gone on in previous years" This does not appear to be a correct categorization or interpretation of the reasons given for refusing the renewal. But whether it is or not, this too is a matter which should be raised on appeal. It is not a basis for review

There appears to be some basis for the Applicant's criticism of the Board's reasons to be found in DURBAN CITY COUNCIL AND ANOTHER v LOCAL ROAD TRANSPORTATION BOARD AND ANOTHER 1964 (3) SA 244 (D) (this being the decision in the court a quo which was upheld on appeal in the report to which I have referred earlier) in which Miller J said (at p255)

KENDLA. WPD

5

"I cannot read into these provisions, read in the context of the Act as a whole, any implied power in a

local board to decide disputed questions involving the interpretation of other legislation and the determination of the powers, rights and obligations of other statutorily created bodies or associations.

Nor am I able to interpret the Act to give local boards the power to review their own previous decisions and to decide that certificates issued or renewed or transferred by them in the discharge of their duties and in the exercise of their discretion in terms of the Act, were wrongly issued or renewed or transferred and to set aside their own decisions. For that, in effect, is what the Local Board purported to do in December, 1963, when it refused the applications for renewal of certificates previously granted or renewed by it."

I find myself in agreement with this statement in so far as the power of a Board to review its own decisions is concerned. I do however see an argument that a refusal of a renewal on the grounds that the permit would not have been granted in the first place had all the facts been known, does not amount to a review by the Board of its earlier decision. Of course the Board may not, having issued a permit, reconsider its decision and withdraw the permit, for having issued the permit for the current year it became functus officio.. But surely it may on a subsequent application for renewal of the permit consider all relevant facts afresh and base its decision thereon. If the Board considers that the permit should for whatever reason not have been granted in the first instance this factor might properly weigh with it in considering an application for renewal. The grant of a permit cannot be a guarantee of perpetual renewal. If that were so, there would be no purpose in providing for renewals at all. There are after all ground upon which a permit may be withdrawn

I do not however decide this question which is a matter for the Board and the Appeals Board. The papers do not disclose any grounds recognised in law for the review and setting aside of the Board's decision and the application is accordingly dismissed with costs.

S W Sapire

KENDLA. WPD