

IN THE HIGH COURT OF SWAZILAND

CIV.CASE NO. 1633/96

In the matter between:

HERMON SAMBO GULE 1ST APPLICANT

SONDELANI MTHUPHA 2ND APPLICANT

and

THE ROAD TRANSPORTATION BOARD 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

PETROS DLAMINI 3RD RESPONDENT

CORAM : DUNN J.

FOR THE APPLICANT : MR DUNSETH

FOR THE RESPONDENT: MR ZWANE

JUDGMENT

(19TH SEPTEMBER 1996)

On the 8th July 1996 the applicants obtained an order from this court, in the following terms-

1. That a rule nisi do issue calling upon the respondents to show cause on Friday 12th July 1996 why-
 - a) Public Service Permit no. 03209 issued to the third respondent by the first respondent should not be declared invalid and set aside
 - b) The respondents should not be ordered to pay the costs of this application.
2. That the first respondent be and is hereby directed to dispatch the record of proceedings

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relating to the application for and the issue of the aforesaid permit no 03209 to the Registrar of the High Court within 14 days of service of this order.

According to the affidavits filed in support of the application, the applicants are bus operators with buses plying inter alia the Pigg's Peak/Mbabane route. The third respondent applied to the first respondent for the grant of a Road Transportation Service Permit to operate along the Pigg's Peak/Mbabane route. The applicants objected to the grant of the application and duly appeared at the hearing thereof on 23rd June 1994. The applicants' grounds of objection were that the route in question was "already well served and an additional operator will cause unreasonable overtrading and timetable clashes". The first respondent granted the application on the 27th October 1994.

The applicants set out that " in accordance with the usual practice and procedure of the Board (first respondent), a letter was written to the third respondent advising him of the Board's approval. In terms

of the Board's standard letter, the third respondent was advised that the Board's approval will be valid for a period of ninety (90) working days, and unless an extension of time is requested before the end of the prescribed period the approval will automatically lapse and once it lapses, the third respondent would be required to re-apply". The applicants state that this standard letter is sent as a matter of course to every successful applicant when the Board has approved the fresh issue of a permit. The applicants further state that " the third respondent did not have a bus to operate under the fresh permit, notwithstanding that he had falsely informed

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the Board at the hearing that he had already bought the bus. As a result, he was unable to obtain issue of the permit within the prescribed ninety days, and the approval of the Board automatically lapsed on the 26th January 1995. No application for an extension was made by the third respondent.

After a period of seventeen months, and on the 19th June 1996, the secretary of the first respondent summarily issued a new letter authorising the third respondent to obtain issue of a permit."

The applicants contend that the letter of the 19th June 1996 was irregular and unprocedural as " no application was made to the Board, and the objectors were neither consulted nor given any opportunity to oppose his unauthorised action." It is stated that following the letter of the 19th June 1996 the third respondent was issued with a permit on the 20th June 1996.

Except for the filing of a copy of the minutes of the meeting of the first respondent of the 23rd June 1994, no papers have been filed on behalf of the first respondent by the second respondent who is cited in his official capacity as the legal representative of the Government of Swaziland.

The third respondent filed an answering affidavit in which several preliminary points were raised for argument at the hearing. All but two of these points were subsequently abandoned. The first point relates to the attestation of the applicants' affidavits. The copies of the affidavits served on the third respondent did not clearly reflect the date on which the affidavits were deposed to. The original affidavits which were filed with the court and which were open for inspection by the third respondent, bear a clear impression of the Registrar's stamp with the date reflected

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as the 5th July 1996,

The second point raised is that the applicants' have no locus standi to bring this application in that "they were not parties to the issuance of the permit in issue and had no right to be consulted in respect to what was a purely administrative act, the quasi-judicial aspect of the matter which did not involve them, having ended with the completion of the hearing before first respondent, which hearing resulted in the decision to grant the third respondent the permit in issue."

The applicants' answer to the second point is that the third respondent was obliged, upon the lapse of the ninety day period and in the absence of any extension thereof, to re-apply to the first respondent for the grant of a permit. The fresh application, it was contended on behalf of the applicants, would have had to comply with the provisions of Part III of the Road Transportation Act no. 37/1963 (the Act), relevant to the publication of the application and the noting of objections thereto, if any, before the hearing of the application by the first respondent. It is the applicants' contention that these peremptory provisions of the Act were not complied with and that they (applicants) have a sufficient interest in the matter, to seek the relief applied for.

On the merits, the third respondent's case is that the first respondent is not empowered by the Act or

any regulations thereunder, to impose any conditions in granting an application for a permit. It was argued in the alternative that even if the first respondent is so empowered by the Act, the first respondent did not exercise such powers in respect of the grant of the third respondent's application

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as no conditions are set out in the minutes of the meeting of the 23rd June 1994 and the standard letter issued by the first respondent.

It is necessary, in the circumstances, to decide whether the first respondent is empowered to impose conditions when granting a permit and if so, whether any conditions were imposed by the first respondent in respect of the grant of the third respondent's application.

The first respondent is established in terms of section 5 of the Act . One of the functions of the first respondent is to consider and determine applications for or relating to the granting, renewal and amendment of permits under part III of the Act (Section 7(a)). The procedure for the filing and consideration of applications and the powers of the first respondent in relation thereto is provided for under Part III. No section under Part III specifically empowers the first respondent to impose conditions in granting an application for a permit. Section 14 and 15 do, however, refer to " conditions imposed" by the first respondent. Section 14 provides in part-

A road transportation service permit shall be issued by the secretary to the Board on behalf of the Board and shall specify-

- a) the full names of the person to whom it is issued;
- b)
- c)
- d)
- e)
- f) any other condition imposed by the Board.

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Section 15 provides in part-(1) The Board may at any time-

(a) suspend or cancel a road transportation permit if it appears to it that-

- i. Any of the conditions imposed on the grant of such permit or renewal or amendment thereof are not being observed;
- ii.
- iii.

The first respondent enjoys a fairly wide discretion, to be properly exercised, under section 11 of the Act, in the considerations of applications for permits. Section 12 provides for the factors to which the first respondent is obliged to have regard in considering such applications. Some applications might fall short, to varying degrees, of one or some of these matters and a wide interpretation of the Act is necessary in order to vest the first respondent with power to impose conditions giving effect to the Act, without being unduly technical and costly to applicants who fall short of a requirement that can be quite easily cured without the need for a re-hearing. Sections 14 and 15 clearly indicate that the first respondent does have the power to impose conditions in granting an application for a permit.

In so far as the second leg of the enquiry is concerned, it is necessary to look to the contents of the standard letter and to ascertain whether any conditions for the grant of a

permit are contained therein.

The body of the standard letter, is in the following terms-

I am directed to inform you that this letter authorises you to have your vehicle/s mechanically examined and issued with a certificate of fitness by the Revenue office if the vehicle/s has/have been passed fit.

2. I am also to inform you that before issue of the permit by this office, you will be required to submit the following documents for the vehicle/s intended for operation:

3. The public vehicle licence plus "T" Disc will only be issued to you by the Accountant General or his duly authorised agent upon production of:

- (a) A permit issued by the Secretary of the Board.
- (b) Certificate of Fitness in respect of every vehicle to be used
- (c) and a declaration of adequate insurance in respect of every vehicle to be used.

4. The Board's approval will be valid for a period of ninety (90) working days for fresh issues and (30) working days for other issues, that is excluding Saturday /Sundays and Public Holidays in Swaziland as from the dates stipulated above up to and including-unless an extension of time is requested before the end of the prescribed period the approval will

automatically lapse and once it lapses, you will be required to re-apply.
yours faithfully.

SECRETARY/ROAD TRANSPORTATION BOARD.

The purpose of the first paragraph is not clear. A successful applicant does not require the authority of the first respondent to have the vehicle, in respect of which an application is granted, mechanically examined for fitness. A certificate of fitness of the vehicle to be utilised is not a requirement for the grant of a permit by the first respondent. It is not one of the particulars to be furnished by an applicant under Section 9 of the Act nor is It one of the matters to be considered by the first respondent under section 12. Such a certificate is only required for the issue of a licence by the Accountant General under section 19(1) (b).

The second paragraph does not set out the documents which it is stated the third respondent is required to produce before the issue of the permit. The paragraph stops with the colon after the word "operation". The paragraphs that follow are self contained and are not sub-paragraphs of the second paragraph.

Paragraph three sets out the provisions of section 19(1) relevant to the issue of a licence by the Accountant General. This paragraph is nothing more than information to the third respondent of what he was required to do in order

to obtain a licence. It has nothing to do with the issue of a permit.

Paragraph four does not, with respect, make any sense in the context of a grant of a permit. Once an application is granted by the first respondent, it is the responsibility of the secretary of the first respondent to issue the necessary permit, specifying the information set out under section 14(a) to 14(f) of the Act. Upon issue of the permit, an applicant is then required to comply with the requirements of section 19(1) in order to obtain a licence. The Act does not set out any time limits within which this exercise shall be carried out. If the first respondent considers it necessary in any given case to place a time limit within which an applicant is required to comply with certain conditions or to obtain a licence, the first respondent should do so in no uncertain terms. No such conditions are set out under paragraph four. The first respondent is not empowered to fix any period for the validity of its approval of an application. What it is empowered to do is to fix a period, not exceeding three years, for the validity of a permit it has issued. (Section 13 of the Act)

The standard letter relied upon by the applicants does not support the applicants' case that the permit which the secretary of the first respondent was obliged, unconditionally, to issue to the third respondent could not be issued after the expiry of the ninety day period.

The rule nisi issued on the 8th July 1996 is hereby set aside with costs.

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It would appear that there is urgent need for the first respondent to examine the contents of the standard letter that is issued to successful applicants, in the light of the provisions of Part III of the Act.

B. DUNN

JUDGE