

## IN THE SUPREME COURT OF FIJI

## Appellate Jurisdiction

Miscellaneous Civil Causes Appeal No. 3 of 1959

Between

THE PRINCIPAL LICENSING AUTHORITY Appellant

AND

HARISH CHAND Respondent

Traffic Ordinance (Cap. 235) section 22 (4)—licences to drive public service vehicles—Principal Licensing Authority's refusal to issue—appeal to Magistrate who ordered issue—appeal to Supreme Court—test to be applied on refusal by Principal Licensing Authority—necessity for judicial consideration by him—previous convictions of applicant for offences under Traffic Ordinance—"good cause" for refusal to issue licence.

*Held.*—(1) The Principal Licensing Authority in deciding to refuse the issue of a licence to drive a public service vehicle was exercising a quasi judicial function and acted judicially ;

(2) The Authority is bound in law to take into consideration any previous convictions of an applicant for a licence to drive a public service vehicle ;

(3) If he considers that any previous conviction is of such a nature as to warrant a decision that the applicant is not a fit person to whom to issue a licence the Authority is bound to refuse the issue ;

(4) The Authority was right to refuse to issue a licence to the respondent.

*Appeal allowed.*

Cases cited :

*Nakuda Ali v. M.F. De S. Jayaratne* (1951) A.C., 66 ; *Rex v. Legislative Committee of the Church Assembly* (1924) 1 K.B., 205.

*Justin Lewis*, Solicitor-General, for appellant.

*R. A. Kearsley* for respondent.

LOWE, C.J. [14th July, 1959]—

This is an appeal against the judgment of the first class Magistrate at Suva reversing a decision of the appellant by which he refused to grant to the respondent a licence to drive public service vehicles.

The facts are that the respondent made application to the Headquarters Licensing Officer at Suva for the issue to him of a public service vehicle driving licence. Upon consideration of the application and in view of the fact that the respondent had various convictions, some of which were in respect of driving a motor vehicle, the appellant refused the application. At the hearing before the learned Magistrate, submissions were made by the Police Officer who appeared for the appellant and by learned Counsel for the respondent and the matter was dealt with in the normal manner of appeal procedure.

One ground of appeal states in effect that the learned Magistrate should have heard evidence to enable him to reach a conclusion, but this is not always necessary. In the instant case there can be no doubt that the appellant relied solely on the previous convictions of the respondent in forming his opinion that the respondent was not a fit and proper person to drive a public service vehicle and submissions in that respect were fully put to the court. In some cases, however, it might be necessary for evidence to be called at the hearing of such an appeal so that the court can reach decision as to the propriety of the action of a Principal Licensing Officer.

This court is indebted to learned Counsel for the respondent for drawing attention to the case of *Nakuda Ali v. M. F. De S. Jayaratne* (1951) A.C., 66, an appeal to the Privy Council from a decision of the Supreme Court of Ceylon. Counsel contended that that case was very similar in its circumstances to the instant case. The point which is of similarity is that under a certain Ceylon regulation "where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer" the Controller is empowered to cancel a licence previously held by that dealer. At p. 78, the judgment referred to a portion of the judgment in *Rex v. Legislative Committee of the Church Assembly* (1924) 1 K.B., 205 as follows:—

"In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be super-added to that characteristic the further characteristic that the body has the duty to act judicially."

The judgment in the Ceylon case went on:

"It is that characteristic that the Controller lacks in acting under regulation 62. In truth, when he cancels a licence he is not determining a question: he is taking executive action to withdraw a privilege because he believes, and has reasonable grounds to believe, that the holder is unfit to retain it. But, that apart, no procedure is laid down by the regulation for securing that the licence holder is to have notice of the Controller's intention to revoke the licence, or that there must be any inquiry, public or private, before the Controller acts. The licence holder has no right to appeal to the Controller or from the Controller. In brief, the power conferred on the Controller by Reg. 62 stands by itself on the bare words of the regulation and, if the mere requirement that the Controller must have reasonable grounds of belief is insufficient to oblige him to act judicially, there is nothing else in the context or condition of his jurisdiction that suggests that he must regulate his action by analogy to judicial rules."

In the instant case, there is a distinction which will become apparent from section 22 (4) of the Traffic Ordinance (Cap. 235) under which the Licensing authority acted. The subsection reads:

"An application for a licence or for the renewal of a licence to drive a public service vehicle shall be refused by the licensing authority if the licensing authority, by reason of the nature of any conviction of the applicant or for any other good cause, is of opinion that the applicant is not a fit and proper person to drive a public service vehicle."

It will be seen, therefore, that even a conviction of the applicant must be "a good cause" before the licensing authority is entitled to form the opinion that the applicant is not a fit and proper person to drive such vehicles. It will be seen also that there may be other good causes but they also must give "good" grounds for the opinion formed by the licensing authority.

The subsection differs from the Ceylon regulation in that in the latter the Controller need only have "reasonable grounds to believe". Also there is the fact that there is no appeal against the decision of the Controller.

In the instant case, not only must there be "good cause" but there is also, by subsection 5, a right of appeal to a Magistrate's Court. There is, in fact, adopting words from the judgment in the Church Assembly case, "a further characteristic super-added" which then calls for a judicial consideration and a decision based on evidence of "good cause". It follows that in my opinion the licensing authority, although he is not required to sit as, or perform the detailed functions of a judicial officer, is required to give judicial consideration to the evidence regarding the applicant before he can form an opinion that such evidence amounts to "good cause". In other words, in exercising his function under subsection 4, the licensing authority is exercising a quasi-judicial function. It is true that, as with the action of the Controller in the Ceylon regulation, the actual function of refusing or withdrawing a licence is an administrative function. Under the subsection, the quasi-judicial function must be exercised before that stage is reached. At the appeal it was necessary for the respondent to be able to satisfy the Magistrate that the licensing authority had not exercised his quasi-judicial function in a judicial manner before the respondent could have succeeded. The licensing authority, in refusing the respondent's application, had before him a list of the convictions of the respondent which showed that in 1952 he was convicted for being drunk and disorderly. Three other convictions for the same offence were entered against him during 1954 and 1955. In 1952 he was convicted of driving a motor vehicle whilst his efficiency was impaired by drink and he suffered the disqualification provided by law. This disqualification was removed by the court on the application of the respondent before the full period of disqualification had run. In 1957 the respondent was again convicted of a similar offence, namely that of driving a motor vehicle whilst he was under the influence of liquor and once more he was disqualified for holding a licence for a period of twelve months. He applied to the court successfully for a removal of this disqualification after approximately seven months from the date of his conviction. In 1958 he was convicted of assault occasioning actual bodily harm and was heavily fined.

A driver of a public service vehicle has a much greater duty as regards his good behaviour as a driver than has the driver of a private motor vehicle, for the obvious reason that he has in his care either certain goods or passengers whose safety must be safe-guarded. If such a driver shows a propensity to consume liquor to an extent that his efficiency as a driver is impaired, he must necessarily run a grave risk of imperilling the lives or safety of those passengers who have entrusted their safety to him or the safe carriage of goods. Also, if he is of such a nature of temperament that he assaults people he is not the type of person who should be entrusted with a licence to drive a public service vehicle because the very fact of holding such a licence would put him in contact with persons of all classes with whom arguments might well develop. The driver himself might of course be provoked by one or more of those people but an undisturbed conviction for assault is conclusive evidence of an offence committed and of the fact that the convicted person was acting unlawfully.

It is essential ; I do not think it is over-stressing the case to say that it is vital, in the interests of the public that a driver of a public service vehicle should keep himself above reproach. It is obvious that the licensing authority considered all of these questions. Furthermore, the intention of the legislature is apparent from subsection 4 and the licensing authority is not only bound to consider "any conviction" of the applicant but also it is clear that if any such conviction is of such a nature as to warrant the licensing authority reaching the conclusion that the applicant is not a fit and proper person to drive a public service vehicle, he is bound to refuse to issue such a licence. The law leaves him with no alternative.

The facts in the instant case leave no doubt that the licensing authority exercised a quasi-judicial function in a judicial manner ; no doubt exists either that the authority had "good cause" for refusing the issue of a licence. The respondent has shown by his past conduct that he is completely unfit to be the driver of a public service vehicle and the licensing authority would have been failing in his duty to the public had he not refused the licence.

Certain decisions made by other Magistrates in respect of different applications by the respondent were referred to at the appeal and submitted as good grounds for consideration by the lower court. That is not so, as they were completely irrelevant ; the only question affecting any application which should have been considered was that regarding the application which had been refused in the instant case.

Before I conclude this judgment, I would point out that certain portions of the petition of appeal, a Supreme Court document, were underlined, as were certain portions of the learned Magistrate's judgment. This is a practice which should not be followed as the underlining of one portion might well mislead the Court in its consideration of the grounds of appeal and the terms of the judgment in other respects.

The judgment of the learned magistrate is set aside as no grounds have been brought forward which could have shown that the licensing authority was not entitled in law to act as he did.

The decision of the licensing authority to refuse a licence authorizing the respondent to drive a public service vehicle is upheld and the appeal is accordingly allowed with costs.