

IN THE HIGH COURT OF LESOTHO

In the Application of :

TSOLOANE MAKOALA

Applicant

v

SOLICITOR-GENERAL

Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice  
T.S. Cotran on the 21st day of February 1983

This is an application in which the applicant Tsoloane Makoala is seeking an order to compel the Road Transport Board(the Board) to "renew" Motor Carrier Certificates (on road sectors to be detailed in a moment) in respect of four vehicles owned by the applicant for the year commencing 1st January 1983 to 31st December 1983.

The Board resists the application.

The applicant avers in Clause 3 of his founding affidavit that during 1980 he applied for and was granted a Certificate to operate a passenger bus Registration No.D 1106 between Phoofolo (in TY district) to Maseru Bus stop which Certificate was allegedly renewed for the years 1981 and 1982 but refused for 1983. The applicant did not produce such a Certificate (not even a copy) for any of the years in question.

The applicant avers further that during 1981 he applied for and was granted three other Certificates in respect of three other vehicles Registration Nos D 1522(for the same route) D 0929 and D 1488 for the route Phoofolo-Maputsoe. In his replying affidavit applicant produced photocopies of only two Certificates in respect of vehicles

/Registration

Registration Nos D 1522 and D 1488. Mr. Radebe says from the bar that the originals of all four Certificates have been taken by the Board. This allegation was not substantiated in the two affidavits sworn by the applicant and the Board could not therefore answer an allegation not made on oath. I will assume, in favour of the applicant, and for the purpose of this judgment, that this may have been the position.

The Board is a statutory body originally established under s.162 of the Road Traffic and Transport Order No. 15 of 1970 (Vol.XV Laws of Lesotho 179 at p 266). The Order and the Regulations made thereunder (the principal one being Legal Notice 25 of 1970 same volume p 581 as amended from time to time except apparently Chapters XVIII and XIX) were repealed by the Road Traffic Act 1981 (Act 8/81) and the Road Transport Act (Act 6/81) which Acts came into force on 1st October 1982 vide Government Notice No. 93 of 1982 published in Gazette No. 31 of 30th July 1982. The 1970 Order was thus split into two Acts. There are two new sets of Regulations: the Road Transport Regulations 1981 (L.N. 83 of 1982) published as a supplement to Gazette No. 1 of 15th January 1982 and the Road Traffic Regulations 1981 (L.N. 84 of 1981) published as a supplement to Gazette No.2 of 22nd January 1982.

If I may digress for a moment the Regulations made under powers conferred upon the Minister by the two Acts of 1981 (which it should be noted had only come fully into operation on 1st October 1982) came into force earlier: The Road Transport Regulations 1981 on the 1st January 1982 and the Road Traffic Regulations (as per the Interpretation Act 1977) on publication on the 22nd January 1982. The problem is whether Regulations made under powers conferred by two Acts which are not yet law can be effective before the date of the commencement of Acts. In the preamble to the Road Traffic Regulations 1981 the Minister refers to powers conferred upon him by s. 111 of the Road Traffic Act 1980. There is no Road Traffic Act of 1980, and s.111 of the Road Traffic Act 1981 (the printers may have made a mistake) does not confer upon the Minister powers to make regulations. Section 111 deals with the powers and duties of a vehicle

/examiner.

examiner. The section that gives the Minister powers to make Road Traffic Regulations is s. 114 of the Road Traffic Act 1981.

Fortunately nothing in this application depends on the disjointed legislation and what appears to be numerous typographical errors referred to. I have engaged in this exercise just to bring to the notice of the draftsman in the Law Office and Government printer the absolute necessity of clarity in expression, in intention, and reasonable accuracy in printing and proof reading. The task of the Judiciary will then be much more easy.

In the opposing affidavit the Chairman of the Board avers that the applicant did in fact apply for and was granted a Motor Carrier Certificate for the route Phoofolo-TY in April 1980. This was gazetted. The applicant also made an application in the same year for the route Phoofolo-TY-Maseru but this was refused. In 1981 the applicant made applications for the routes Phoofolo-Lekokoaneng and the route Maseru-Ramabanta which were also refused. The Chairman of the Board avers further that the applicant "never made one for the route Maseru-Maputsoe as alleged". The applicant did not in fact allege that he applied for this route: what he alleged was that he applied for the Phoofolo-Maputsoe route in 1981 which was granted. Counsel for the Board however submitted that this could not be true and he produced an application by the applicant (Exhibit C1) stamp dated 6th March 1980 for the route Phoofolo-Maputsoe which was also duly refused on the 28th March 1980 on the ground that the route was adequately served and the applicant was so informed in writing (Exhibit C2).

The attitude of the Chairman of the Board is that Motor Carrier Certificates which the applicant produced for renewal sometime towards the end of 1982 (for the year 1983) are "fabrications" by which word I understand him to mean that they were fraudulently or illegally obtained because if they were not, his applications for those routes would have been on file, the acceptance or rejection of the applications would also be on file, and the minutes of the Board (of which he was Chairman since 1980) would show the fate of every application. The question therefore of "renewing" invalid Motor Carrier Certificates "does not arise".

/Mr. Radebe

Mr. Radebe argues that once the applicant produces Motor Carrier Certificates apparently, or on the face of things, in order, the Board has no alternative but to renew the Certificates and then institute an action in the High Court to prove their invalidity on the analogy of Phillipson Municipality v Masrai and others 1926 CPD 82. Certainly the Board can do that if it wanted to but as I see it they are also entitled to resist if the applicant himself choses to come to court to compel the Board to act. The applicant may have a vested interest in renewal provided his Certificates are genuine but there is no presumption of validity in his favour unless the Certificates were duly certified as correct in terms of s. 170(2) of Order 15 of 1970 and there is not an iota of evidence that the originals were so endorsed and the two copies produced certainly were not.

The legal position under the Road Traffic and Transport Order 15 of 1970 and Regulations made thereunder in Legal Notice 25 of 1970 (as amended) when the applicant purportedly made his applications was primarily governed by s. 165 which defines the Board's functions. Granting, refusing, or renewing licences is in the "discretion" of the Board subject to an appeal by the person aggrieved to the Minister (s. 166).

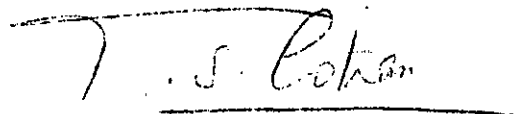
The duties of the interested applicant and the Board when applications for Motor Carrier Certificates at the time the applications were purportedly made, are found in Chapter XV of the 1970 Regulations (L.N. 25 of 1970 Regulations 181 to 202 at p. 653 et seq). When the applicant allegedly applied for the routes mentioned in his affidavit in 1980 and 1981 it was incumbent on the Board to publish the particulars in the Government Gazette. The Government Gazettes of Lesotho are full of such advertisements. The applicant had not demonstrated that his applications for the routes were properly made or gazetted let alone granted. The Chairman swears no such applications exist in his office, and Board minutes do not show that these applications were considered or discussed. On balance of probabilities therefore as the papers now stand these Motor Carrier Certificates have been prima facie illegally obtained by the applicant.

/Assuming

Assuming the Certificates were genuine as the applicant maintains, and assuming the Board did refuse to renew the Certificates and assuming the applicant's applications for renewal were made before 1st October 1982 the applicant must have exhausted his statutory remedies first by appealing to the Minister. The applicant has not done so.

On the same assumptions, if the applications for renewal were made by the applicant subsequently to the 1st October 1982, then the Road Transport Act 1981 and the Road Transport Regulations 1981 will apply. The powers and duties of the Board has been somewhat changed. It is now obliged to take into consideration "the policy guide lines approved by the Government" whatever this policy may be from time to time and "policy" of course need not be published or indeed publicly stated. The Board has, at its discretion, the power to refuse to grant an application and by implication a renewal (Regulation 4). The aggrieved party has a right of appeal to the Minister in terms of s. 19 of the Act of 1981. The procedure is laid down. The applicant had not done so. Whether there can be judicial review by the Court from what appears to be a purely administrative decision does not arise for consideration now and I express no opinion.

I am satisfied beyond any doubt that this review application to the High Court, certainly at this stage, is utterly misconceived and must be dismissed with costs.



CHIEF JUSTICE  
21st February 1983

For Applicant : Mr. Radebe

For Respondent : Miss Lelosa (Law Office)