

221/54

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(.....
DIVISION).
AFDELING).

APPEAL IN CRIMINAL CASE.
APPEL IN KRIMINELE SAAK.

Appellant.

VERSUS

Respondent.

Appellant's Attorney.....
Prokureur van Appellant

Respondent's Attorney.....
Prokureur van Respondent

Appellant's Advocate S. KENTRIDGE
Advokaat van Appellant

Respondent's Advocate G. G. LYNN
Advokaat van Respondent

Set down for hearing on:.....
Op die rol geplaas vir verhoor op:.....

Before: Centuriones C.J., Greenberg, Schreiner, v.d. Merwe & Noctor J.J.

12.40 pm - 12.55 pm.

2.15 pm - 4.15 pm

C. A. V.

Edgmont

12/3/55

Private
Registrar
11/3/55

Original

IN THE SUPREME COURT OF SOUTH AFRICA

(Appellate Division)

In the matter between :-

JACOB RAMATLO

Appellant

and

REGINA

Respondent

Coram: Centlivres C.J., Greenberg, Schreiner, van den
Heever et Hoexter, JJ.A.

Heard : 24th. February, 1955. Delivered: 11 - 3 - 1955

J U D G M E N T

SCHREINER, J.A. :- The appellant was convicted in the
magistrate's court of contravening section 9(1) of the
Motor Carrier Transportation Act (No. 39 of 1930), as
amended, which I shall call "the Act", and was fined £3.
His appeal to the Transvaal Provincial Division failed,
but he was granted leave to appeal to this Court.

Section 9 (1), so far as relevant,
provides that, "any person who carries on any motor carrier
"transportation shall be guilty of an offence unless he is
"the holder of a certificate or an exemption issued to
"him under this Act and unless he carries on the said
"transportation/.....

"transportation in accordance with the provisions of that
"certificate or exemption."

The appellant, who carries on the business of a taxi-driver for non-Europeans in Krugersdorp, was at the relevant date the holder of an exemption issued under the Act by a Local Road Transportation Board. One of the provisions of the exemption was that the taxi in respect of which it was issued was "authorised to carry 5 passengers" and no more. The evidence showed that on the occasion of the alleged contravention the appellant was carrying eight passengers for reward in the course of his business. It was accordingly not in dispute that the appellant then carried on motor carrier transportation not in accordance with the provisions of his exemption and was rightly convicted, if the provision limiting the number of passengers to five was valid. It was, however, contended on the appellant's behalf that this provision was invalid because the only basis for its introduction into the exemption was a regulation which was itself invalid.

The regulation in question is Regulation 11(5) (a) (9) which provides, inter alia, that "The Board or a local board may impose in connection
"with, or include in, any exemption issued by it, any
"or/.....

"or all of the following conditions or requirements:-

"(9) prohibiting the holder or his servant from conveying
"more than a specified number of passengers....at one and
"the same time."

The Board was the central body known as the Road Transportation Board for which by section 8 of Act 4 of 1948 there has now been substituted the National Transport Commission.

Regulation 11(5)(a)(9) was made under the powers conferred by section 19(1)(c) of the Act, which provides that with the approval of the Governor-General the Board may make regulations, not inconsistent with the Act or any other law, "(c) prescribing the conditions or requirements which the Board or a local board may impose in connection with, or include in a certificate or an exemption issued under this Act."

In terms, therefore, the provision in the exemption limiting the number of passengers to be carried in the appellant's taxi to five is covered by the regulation and the regulation is within the language of section 19(1)(c) of the Act, which does not restrict the regulating authority in regard to the conditions or requirements which it may prescribe as permissible

inclusions/.....

inclusions in an exemption. But the first of the three contentions advanced on the appellant's behalf was that the wide language of section 19(1)(c) must be given some restriction so as to bring it within the apparent scope and purpose of the Act, and that ^fsection 19(1)(c) is so construed the regulation is/ not covered by it and is consequently ultra vires. More specifically it was argued that the Act itself dealt with the question of the numbers to be carried in a vehicle engaged in motor carriage transportation and that though the regulation was not inconsistent with the express provisions of the Act in relation to numbers it was nevertheless inconsistent with the implications deducible from the Act.

Reference was made
Counsel for the appellant referred

us to the long title of the Act - "To Provide for the "control of certain forms of motor transportation and "matters incidental thereto" - but I am unable to gain from it any assistance as to the nature or purposes of the control that was envisaged. But consideration of the provisions of the Act in its original form and after amendment leaves little room for doubt that the statement of STRATFORD C.J. in Rex v. Dhlamini, 1938 A.D.441 at page

443 that "the object of the Act is to prevent competition
"with an authorised transportation route," is, broadly
speaking, a true estimation of the purpose of Parliament
in passing this legislation.

A competitor of the railways
and of buses operating under certificates granted under
the Act was always the motor taxi and the changes in the
treatment of taxi services in the Acts of 1930, 1932 and
1941 are instructive. In the 1930 Act the definition
of "Motor Carrier Transportation" was a restricted one.
So far as the carriage of persons was concerned trans-
portation in vehicles designed for the carriage of eight
or fewer persons, including the driver, although for
reward, fell outside the definition and therefore outside
the Act. The number actually carried was immaterial.
But by Act 31 of 1932 the control net was widened.

"Motor carrier transportation" was now extended by defi-
nition to cover inter alia the conveyance of any persons
on ^{any} a public road by means of any public vehicle for
reward. This would have covered all taxi services but
for the new proviso (c) to the definition which excluded
from motor carrier transportation "the conveyance of not

"more/.....

"more than seven persons simultaneously (including the
"driver.....by means of any motor vehicle designed or
"intended for the conveyance of not more than seven persons
"(including the driver) if such motor vehicle is not used
"for the regular conveyance of persons for reward between
"particular places where reasonable facilities are available
"for their conveyance.....by railway or by means of any
"motor vehicle in respect whereof a motor carrier certifi-
"cate has been issued." It will be noticed that both

the capacity of the vehicle and the actual number carried
are mentioned. Exemptions were introduced by the 1932
Act, but they had no relation to taxi services, which by
the abovementioned proviso were already excluded from the
operation of the Act, provided the vehicles were not
designed or intended to carry or actually carrying more
than seven persons (including the driver) and were not
following defined routes in competition with trains or
buses. By Act 15 of 1941 the control of taxi services
was further tightened. Proviso (c) to the definition of
"Motor carrier transportation" was repealed, so that taxi
services, no matter what the size of the vehicle or how
many persons were carried, fell within the definition. The
carrying/.....

carrying on of any taxi services became punishable under section 9(1), unless an exemption was held in respect of the vehicle; and section 9(2) was correspondingly amended inter alia by the addition of paragraph (g), which authorised the issue of exemptions for the conveyance of "not more than eight persons.....simultaneously(including "the driver).....by means of a motor vehicle designed "or intended for the conveyance of not more than eight "persons(including the driver).....for reward.....within "such area or areas or between such places as the Board or "local board may decide." At the same time the regulations section (19) was amended inter alia by substituting in subsection (1) a new paragraph (c), which authorised the prescription of conditions or requirements which might be imposed in connection with or included in an exemption and not only in a certificate as theretofore.

It is clear from the above summary of the changes in the law that the policy in relation to taxi services moved towards greater control and at the same time towards leaving more of the control to the boards, to be exercised by a consideration of the case of each vehicle in respect of which exemption was sought.

Since/.....

Since the Act is primarily concerned with the restriction of competition in transport services and with the protection first of the railways and then of certificated vehicles like buses, it may be accepted that it is not directly aimed at the safety of the travelling public. That this factor has not been wholly lost sight of in the legislation appears from the addition, by section 12 (iv) of Act 15 of 1941, to the existing powers of regulation of a power to make regulations. " (g) prohibiting the use in motor "carrier transportation of a motor vehicle in which there "is present any defect mentioned in the prohibiting provision or which is not intended or suitable for the class "of transportation in question." Counsel for the appellant argued that the express mention of the prohibition of the use of defective vehicles tends to negative a power to authorise the imposition of conditions prohibiting the use of efficient vehicles to carry more than a certain number of persons. It seems to me, however, that the more important ~~and~~ inference to be drawn from the reference to defective vehicles in the new section 19 (1) (g) is that the safety of passengers in exempted vehicles as well as in certificated ^v vehicles is not foreign to the scope of the Act./.....

Act. It should be borne in mind that competition may be rendered unfair by undercutting of more kinds than one. A vehicle on which little is spent in repairs may be able for that reason to compete unfairly with one that is properly maintained - at least for a time. So, overloading a vehicle may lead to accidents that may deter custom but it may also enable the owner of the overloaded vehicle to compete unfairly with those who are observing proper standards of safety.

It may be conceded that one might have expected that a power to regulate ~~for~~ the fixing of the numbers to be carried in vehicles engaged in motor carrier transportation would be expressly mentioned in section 19(1). But that is not a strong ground for holding that the general provision in paragraph (c) of section 19(1) for the laying down of conditions and requirements ^{not} does _A cover the fixing of such numbers. It is perhaps not without significance in this connection that the maximum, including the driver, to be carried without a certificate, after being reduced to seven in 1932, was again raised to eight in 1941. It seems contrary to the trend of the legislation that any relaxation in favour of taxi services was intended/.....

intended in 1941, it is more probable that Parliament considered that the question of numbers in relation to taxis would be solved by the new arrangement whereby they would require exemptions and the exemptions would be subject to such conditions or requirements as might be prescribed.

I do not think that the fact that the Act has itself dealt with the question of the number of passengers in the successive provisions referred to above shows that it was not intended that this matter should figure in the conditions or requirements mentioned in section 19(1) (c). The fixing of the number in the Act provides the lower limit of capacity for passengers carrying certificated vehicles but it does not show that Parliament was not in this legislation concerned with the question of overloading in the case of vehicles requiring exemptions and not certificates.

Counsel for the appellant stressed the distinction between certificates and exemptions and submitted that Parliament was apparently less interested in close control in the case of exempted vehicles than in the case of certificated vehicles. It may be that such a distinction in the thoroughness of the control/.....

control is discernible in the provisions of the Act, although it should be noticed that the powers of regulation, and in particular section 19(1)(c), apply indifferently to certificates and exemptions. But, however that may be, it seems that such differences as exist between the treatment of certificates and exemptions, if they are not wholly explainable by the fact that certificates came first and exemptions were a later addition, may well flow from the fact that so far as the carriage of persons is concerned buses and not taxis have been regarded as the more important competitors of the railways and as requiring therefore more elaborate measures of control. This would not, however, justify the inference that in relation to exempted vehicles the legislature intended that the control provisions should be treated as of minor importance and should accordingly be interpreted so as to operate less stringently than in the case of certificated vehicles.

For these reasons it seems to me that regulation 11(5)(a)(9) is within the scope and purpose of the Act and that the appellant's first contention therefore fails.

The second contention was that

Regulation/.....

Regulation 11(5) (a) (9) is invalid because it involves an improper and ~~invalid~~ unnecessary delegation to the local road transportation boards. But section 19(1)(c) of the Act clearly provides that conditions or requirements may be imposed in connection with or included in exemptions granted by local boards as well as by the Board. The fact that the Board after the 1941 Act was itself the regulating body does not, of course affect the matter and it is difficult to see how any question of unwarranted delegation could arise.

The third contention advanced in support of the submission that Regulation 11(5)(a)(9) is invalid was that it fails to provide adequate guidance to local boards as to how they are to decide on the proper number to specify for a particular vehicle. Reference was made in this connection to Natal Organic Industries v. Union Government (1935 N.P.D. 701), Rex v. Zondé (1942 T.P.D. 187) and Arenstein v. Durban Corporation (1952(2) S.A. 279). But once it is accepted that the regulating authority had power to make a regulation prescribing the numbers that might be conveyed in an exempted vehicle, it would seem to be inevitable that much must be left to the body that has

to/.....

to fix the number. In Regina v. Mahlole (1952(4) S.A.356) the Transvaal Provincial Division held to be ultra vires a regulation, framed under the Transvaal Motor Vehicle Ordinance, which, in effect, embodied certain conditions one of which was that licensed taxis must have their maximum carrying capacity fixed by an examining officer. At page 358 de VILLIERS J. who delivered the court's judgment said, "It is clear that it will be a comparatively easy matter "for the Administrator to prescribe the maximum number of "persons passengers that may be carried in public service "motor vehicles of different types and sizes. The number "of passengers may be made dependent on the footage of the "available seats, and may, if necessary, further be made "dependent upon the cubic area of the interior." I am not satisfied that the drafting of a regulation on the lines suggested would deal with all the factors that might be relevant to the proper carrying capacity of the vehicle. The vehicle's horse-power and the strength of its chassis might well be other factors, though no doubt the seating capacity would generally be decisive. However that may be, it was in my view permissible under the statutory provision concerned in this case to leave it to the exempting body/.....

body to decide in relation to the particular vehicle under consideration what limit to its capacity should be fixed without detailing the factors that were to be taken into account.

For these reasons the appeal

is dismissed.

Centlivres, C.J.
Greenberg, J.A.
v.d. Heever, J.A.
Hoexter, J.A. } Concur

P.W. Schreiner
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