THE SUPREME COURT OF APPEAL

OF SOUTH AFRICA

Reportable
Case no: 358/04

In the matter between:

MZAMBA TAXI OWNERS' ASSOCIATION	First Appellant
LUNGELO TOBO	Second Appellant
and	
BIZANA TAXI ASSOCIATION	First Respondent
BAMBANANI TAXI ASSOCIATION	Second Respondent
HIBISCUS COAST MUNICIPALITY	Third Respondent
THE MINISTER OF SAFETY & SECURITY	Fourth Respondent
THE KWAZULU-NATAL PROVINCIAL TAXI REGISTRAR	Fifth Respondent
THE EASTERN CAPE PROVINCIAL TAXI REGISTRAR	Sixth Respondent

Coram: *Harms, Navsa, Mthiyane, Ponnan JJA et Maya AJA*

Date of hearing: **25 August 2005**

Date of delivery: **9 September 2005**

Summary: Administrative law – endorsement by provincial taxi registrar of a voluntary agreement between two taxi associations in terms of which a taxi rank is shared not subject to review – rival taxi association's rights not infringed – right to operate route by virtue of public permit issued by transportation board – such right not conferred by endorsement.

JUDGMENT

NAVSA JA:

[1] This appeal involves a dispute concerning the use of a taxi rank in Port Edward within the province of KwaZulu-Natal. It is directed against a judgment of McLaren J in the Pietermaritzburg High Court, whereby he dismissed an application by the two appellants, who had sought to set aside the endorsement (purportedly made in terms of applicable statutory provisions) by the fifth and sixth respondents of an agreement

('the agreement') between the Bizana Taxi Association and the Bambanani Taxi Association (the first and second respondents) to share part of the taxi rank in question. The present appeal is before us with the leave of the court below.

[2] The first appellant is a voluntary association (not for gain) of minibus taxi operators, as are the first and second respondents. The second appellant is an authorised taxi operator and a member of the first appellant. The third respondent is the Hibiscus Coast Municipality within whose area of jurisdiction Port Edward is situated. The fourth respondent is the Minister of Safety and Security. The fifth and sixth respondents are the KwaZulu-Natal Provincial Taxi Registrar and the Eastern Cape Provincial Taxi Registrar, respectively.

[3] The appellants claim that the endorsement of the agreement, to which the fifth and sixth respondents appended their signatures signifying an apparent assent, was irregular and that implementation thereof would adversely affect its members, mainly financially. The present dispute is one of a number of disputes between the first appellant, on the one side, and the first and second respondents, on the other. The Umtata High Court, the Pietermaritzburg High Court, as well as the police have been kept busy dealing with these disputes. For

present purposes, however, it is not necessary to deal with their other disputes.

[4] For the sake of convenience I shall refer to the first appellant as Mzamba, the first respondent as BTA, and the second respondent as Bambanani.

[5] Mzamba has an office at the Port Edward shopping centre but is based in the Eastern Cape. BTA has its principal place of business in Bizana in the Eastern Cape. Bambanani, on the other hand, has its principal place of business at Margate, KwaZulu-Natal.

[6] The Port Edward taxi rank is a point on a minibus taxi route between KwaZulu-Natal and the Eastern Cape. The route in question is the Bizana - Port Edward - Port Shepstone route (the route). Before the agreement was signed, Mzamba and Bambanani shared the Port Edward taxi rank, each utilising a geographical half independently. Mzamba's members operate the route and Bambanani's members do not conduct services beyond Port Edward into the Eastern Cape.

[7] On 9 December 2002 Mzamba was informed that the third respondent intended facilitating the signing on 11 December 2002 of an inter-provincial operations agreement by BTA and Bambanani. Mzamba was informed that the conclusion of the agreement would entitle BTA to

the use of Bambanani's half of the Port Edward taxi rank. Such agreements are commonly referred to in the taxi industry as *gapping* agreements. Simply put, it is an agreement in terms of which one taxi association agrees to the use of its taxi rank facility by members of another taxi association.

[8] Mzamba was neither considered nor invited to be part of any discussion preceding the conclusion of the agreement. Mzamba was also not invited to the meeting at which it was envisaged the signing of the agreement would take place.

[9] On 11 December 2002, Mzamba, through its attorneys, wrote to the fifth respondent, objecting to the proposed signing of the agreement, stating that the agreement would result in encroachment on its entitlement to the use of the Port Edward taxi rank and that it would in consequence suffer financial prejudice. Mzamba called for the postponement of the meeting and of the signing of the agreement.

[10] On the same day Mzamba's chairperson called at the offices of the fifth respondent and was assured that no agreement would be signed. However, on 7 January 2003, Mzamba was informed by BTA and Bambanani's attorney that an agreement had in fact been signed which

entitled BTA members to operate from the Port Edward taxi rank in their travels to and from the Eastern Cape and on to Port Shepstone.

[11] There were communications between the parties during the ensuing month but to no avail. BTA members attempted to operate from the Port Edward taxi rank. Tensions arose and violence erupted.

[12] On 11 March 2003 Mzamba and the second appellant sought and obtained an order from the Pietermaritzburg High Court (Kondile J), inter alia, interdicting BTA, Bambanani and the fifth and sixth respondents (the taxi registrars) from implementing the agreement pending the finalisation of an application to have the decision by the registrars to endorse the agreement set aside. In the alternative, Mzamba and the second appellant sought an order declaring the agreement to be invalid.

[13] In the court below the second, third, fourth, fifth and sixth respondents did not oppose the application and indicated that they would abide the decision of the court. They adopted the same attitude before us.

[14] After considering the facts and the relevant statutory provisions, McLaren J held that the participation of the two registrars in the process culminating in the agreement amounted to administrative action within the meaning ascribed to that expression in terms of the Promotion of

Administrative Justice Act 3 of 2000 (‘PAJA’). He held, however, that the appellants failed to prove on a balance of probabilities that the decision or conduct by the two registrars adversely affected their rights, or that it had a direct external legal effect, all requirements for the review of administrative action under PAJA. In his view the right of members of BTA to operate the route was by virtue, in each instance, of a public permit and not the agreement. He concluded that the agreement did not affect the appellants’ rights in any way because the agreement ‘simply is one between the first and second respondents in terms whereof the second respondent shared its limited geographical half share of the Port Edward taxi rank with the first respondent’s members, allowing the latter to park there and collect passengers.’ It is these latter conclusions that the appellants challenge.

[15] It is necessary at this stage to examine the statutory framework within which minibus taxi operators are obliged to operate.

[16] The Road Transportation Act 74 of 1977 (the RTA) provides for the control of certain forms of road transportation and for matters connected therewith. The authority to operate a minibus taxi within or across particular geographical areas is granted by local boards established in terms of the RTA (see s 7). This is done by issuing a public permit.

Section 21 deals with the conditions governing the issue of a permit. Section 21(3)*(e)* provides that the permit should specify:

‘the points between and the routes upon which or the area or areas within which the motor vehicle to which it refers may be used in road transportation, and if any restriction is imposed in connection with any transportation upon any portion of such a route or routes or in any area or areas or in any portion of such area or areas, the points between or the area within which such restriction shall be applied and conditions thereof’.

[17] The National Land Transport Transition Act 22 of 2000 (the NLTTA) was enacted to provide for the transformation and restructuring of the national land transport system of South Africa and matters incidental thereto. Section 2, inter alia, provides the measures to give effect to national policy concerning the first phase of the transformation and restructuring process and to achieve a smooth transition to a new system, applicable nationally.

[18] In the province of KwaZulu-Natal, the KwaZulu-Natal Interim Minibus Taxi Act 4 of 1998 (the KNIMTA) applies. Its preamble states that it was enacted as interim legislation to regulate the minibus taxi industry and to formalise, restructure and legalise minibus taxi registration and services during the period leading up to the enactment of national and provincial land transport legislation, and to provide for

matters incidental thereto. It has not been suggested that the provisions of the KNIMTA are in any way in conflict with any of the provisions of the NLTTA or that they do not apply.

[19] The KNIMTA provides for the appointment of a taxi registrar (s 5). In s 7 the registrar is endowed with certain powers, including the power to instruct the relevant parties, where there is a dispute concerning routes, to appear before him or her in order for a hearing to take place to enable a decision to settle the dispute. Section 25 provides for the establishment of a KwaZulu-Natal Interim Minibus Taxi Tribunal, which has the authority, inter alia, to hear and decide appeals against any decision of the Taxi Registrar relating to disputes about the operations of minibus taxi services.

[20] It is clear from the provisions of the KNIMTA that its object is to ensure that minibus taxi operators operating within its jurisdiction do so legitimately and that all the statutory prescripts for such operations are complied with. In s 3 of the Act the principles governing provincial interim minibus taxi policy are spelt out. These include the prevention of encroachment on services provided by duly authorised operators and the promotion of taxi services within the law.

[21] In the definition section of the KNIMTA there is reference to an ‘area defined permit’, in terms of which a local road transportation board

established in terms of the RTA may authorise minibus taxis to conduct operations within a defined geographical area. It is evident that, in executing his or her regulatory functions, a registrar must ensure that the appropriate public permit has been issued to minibus taxi operators conducting taxi services within the province.

[22] The two registrars in question, in appending their signatures and thus their apparent assent to the agreement, purported to act in terms of the regulations promulgated in terms of the KNIMTA and in particular in terms of regulation 18.

[23] It is necessary to consider the provisions of regulation 18:

'**18. Agreements between minibus taxi associations.**— (1) The Provincial Taxi Registrar shall prescribe a document to be completed and signed by minibus taxi associations operating minibus taxi services —

(*a*) of common origin and/or destination;

(*b*) within a commonly defined geographical area; and/or

(*c*) sharing ranks or other public facilities which the general public is also entitled to use,

which document shall be referred to as an agreement document.

(2) The agreement document shall include details regarding —

(*a*) routes or geographical areas operated by the affected minibus taxi associations;

(*b*) shared routes, ranks or other public facilities;

(*c*) existing operational arrangements; and

(*d*) any conflict or contestation of routes, ranks or other public facilities.

(3) Minibus taxi associations shall when requested by the Provincial Taxi Registrar, complete an agreement document which shall be signed by the chairperson of the minibus taxi association.

(4) A minibus taxi association which refuses to complete an agreement as contemplated in subregulation (3) shall be ─

(*a*) subject to a fine of R10,000; and

(*b*) suspended from registration until it complies with the requirement.

(5) Minibus taxi associations shall at all times abide by the terms and conditions in the agreement document and shall ensure that their members operate in accordance with these terms and conditions.

(6) A minibus taxi association which contravenes the provisions of sub-regulation (5) shall be ─

(a) liable to a fine of R10,000; and

(b) suspended from registration until it complies with the provision.'

[24] McLaren J described regulation 18 as 'gibberish'. It is difficult to make sense of its provisions and substantial parts may well be of questionable validity. As can be seen it provides that the provincial registrar is obliged to prescribe a form which it is envisaged will be completed by taxi associations and will comprise an agreement dealing with specific matters relating to taxi associations. Regulation 18(3)

appears to oblige taxi associations to comply with a request by the registrar to complete such an agreement. Regulation 18(4) provides a criminal sanction for failure to comply with such a request and renders the offending association subject to suspension. Regulation 18 does not, however, on any reading, confer authority on the registrar to sanction the operation of minibus taxi services beyond the provisions of the RTA which is the primary regulatory statute. So, for example, it is not within the power of the registrar to issue a public permit. An agreement between associations cannot by itself transfer or bestow the right to operate along a specific route. That right, as referred to earlier, is by way of a public permit in terms of the RTA. More importantly, the regulation does not empower the provincial registrars to nullify the rights that flow from a properly issued public permit.

[25] It is common cause that in the present case members of the BTA have the relevant permits authorising them to operate the route. Properly construed, the appellants' complaint is that their members will be prejudiced financially by the increased competition due to the BTA operating the route. Counsel representing the appellants was constrained to concede that their main objection to BTA operating from the Port Edward taxi rank was that their members would be subject to competition. Counsel was unable to point to any other form of prejudice

to which the appellants would be subjected as a result of BTA and Bambanani sharing the latter's half of the Port Edward taxi rank in terms of the voluntary arrangement between them.

[26] In a throwaway line, in a replying affidavit, the appellants contend that they intend challenging the validity of the public permits. The present appeal does not involve a consideration of that issue.

[27] It appears that the appellants misconceived their remedy. If indeed the public permits were issued irregularly, the decisions to issue them would be ones that would adversely have affected the appellants and would have had a direct external effect. They would qualify as reviewable decisions within the parameters of PAJA.

[28] In the present case, BTA and Bambanani voluntarily concluded an agreement in terms of which the latter provided the former with the use of its half of a taxi rank. Even if one assumes that a 'request', as envisaged in regulation 18(3), by the fifth respondent to Bambanani and BTA to complete an agreement document, may amount to administrative action, the problem is that it was never the appellants' case that there had been such a request nor was there any evidence to that effect. There was, therefore, no administrative action by the fifth respondent in terms of the regulation because there was no decision that amounted to

such action as defined in s 1 of PAJA. The endorsement by the two registrars provided no further legal impetus to the agreement voluntarily concluded by Bambanani and BTA. It did not confer the authority to operate the route. That was already in place by virtue of the public permits. There was thus no administrative action by either registrar which was open to challenge by the appellants, either in terms of PAJA, or otherwise.

[29] To prevent BTA members from using the Port Edward taxi rank would be to frustrate the rights acquired by them in terms of the relevant permits from the relevant road transportation boards, which are the primary regulators of minibus taxi operators. The regulatory statutes were never intended to frustrate lawful competition. On the contrary, they were designed to ensure safety, efficiency and lawful competition in the public interest.

[30] In my view, McLaren J was correct in the latter part of his reasoning referred to in para [14] above and correctly dismissed the application in the court below.

[31] For the reasons stated, the appeal is dismissed with costs including the costs of two counsel.

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M S NAVSA
JUDGE OF APPEAL

CONCUR:

HARMS JA
MTHIYANEJA
PONNAN JA
MAYA AJA