



IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 2133/94

In the matter between:

HERMON SAMBO GULE

Applicant

vs

THE ROAD TRANSPORTATION BOARD

1st Respondent

THE ATTORNEY GENERAL

2nd Respondent

ALBERTINAH MITHUPHA

3rd Respondent

CORAM:

Hull, C.J.

FOR THE APPLICANT

Mr. Flynn

FOR THE DEFENDANT

Mr. Maseko

FOR THE THIRD RESPONDENT

Mr. J. Mavuso

Judgment (oral)

(31/3/95)

By the Road Transportation Act (No. 37 of 1963) Parliament, or the law making authority, has constituted a regime for the granting of permits to carry out certain road transportation services and it has seen fit in this system - I will call it loosely a system of licensing - to provide for the advertising of applications, and to provide for the lodging of objections to applications, and then for the hearing of applications and objections.

In the present case the third respondent had an application before the licensing authority, which is the Road Transportation Board. The applicant has said on oath that he lodged an objection. He has produced a copy of the objection which bears the stamp of the secretary - the office of the secretary to the licensing board. It is

his evidence that he delivered the objection by hand, and he has annexed to his papers a copy of the objection which is stamped with the stamp of the Road Transportation Board - the secretary.

He has said on oath that he also sent a copy to the third respondent but there is no proof - for example, by way of a registered receipt - there is no further proof that he did so. She herself has denied that she received this.

Her application was set down for hearing. The present applicant was not given notice of the hearing but happened to be before the Board on the day on which the other matter came on for hearing, and he got up and he pointed out that he was objecting; and in the result although he informed the Board that he was objecting, the Board said that they had no such objection before them - they had received no such objection - and they declined to postpone the matter so that it could be checked; and they granted the application of the person who is here the third respondent - and he now comes to this court seeking relief by way of review.

The basis for his relief is that he says that as a matter of fact, he had given notice. He is also saying, as I understood him, that in the circumstances, when it became clear that that was what he was saying, the Board should have postponed the matter to allow it to be checked, having become aware that he was giving notice.

Section 10(2) of the Act stipulates the procedure to be followed in giving notice. The first requirement, and in my view the principal requirement initially, is that the objector must lodge within fourteen days after publication of the notice indicating that an application has been made and may be examined - he must lodge within fourteen days with the secretary to the Board his objection, and he must also send his objection in writing to the applicant together with the grounds on which it is based, and do so by registered post. That is his duty. It is however clear, in my view, from section 11(3), in the proviso thereto, that the Board itself has a discretion whether or not to hear an objection, if the objection does not comply with these requirements.

Now clearly the purpose of the scheme of the Act, as I have indicated at the outset, is that applications are to be advertised, there is to be a hearing on them, and that objectors are to be given the chance to stand up and oppose the application - and all of that therefore, I have no doubt, and it has been held in this court many times, involves ensuring that natural justice is followed, namely that each side is given an opportunity to be heard.

If it were the case that the Board had refused to postpone this matter because it was not satisfied that the third respondent had been served with notice of the objection, then I think that the applicant would have difficulty in succeeding on this application for judicial review. He would have difficulty, in my view, for the reason that the granting of a postponement or not would be a matter of discretion for the Board.

But that is not the basis before me on which the Board declined to hear him. The Board chose to decline to hear him on the basis that he had not himself given notice of objection to the Board, and it declined to hear him even though he stood up at the hearing, fortuitously, and he said that he was an objector and he wished to be heard. Coming back to the point that I have just raised, in other words if its basis for refusing had been that he had not given Mrs. Mthupha due notice, I think that even then in considering whether to exercise its discretion or not, the Board may well have had regard to the fact that he was now standing up before the court and asking that he be heard and saying that he had an objection that he had lodged, even though it had not been shown to have been served on her. It may have exercised its discretion nevertheless in her favour and gone ahead but that would be an additional factor to take into account in deciding whether or not to postpone the matter. But as I say, on the papers before me that is not the basis on which the Board refused to grant a postponement or allow the present applicant to be heard. It did so on the basis that he had never filed an objection and that, it seems to me on the weight of evidence, is incorrect.

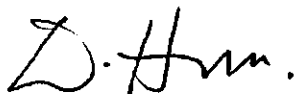
He has deposed that he delivered an objection. He has produced a copy of the objection which is stamped with the stamp of the secretary to

the Board. The Board has not seen fit - I do not say it reflectively but the Board has not in fact produced an affidavit which is made by the secretary, whom I think would have been the appropriate person to make this affidavit; and it has not in any event sought to explain how the stamp appears on the letter of objection.

For all these reasons, and notwithstanding that it has not been proved clearly that the third has been given notice of this objection, it is my view that the Board has been shown to have failed to exercise its discretion properly. It is my view therefore that the decision of the Board should be set aside as sought, and that Mrs. Mthupa's application should be referred back to the Board to be heard afresh taking into account the objection lodged by the applicant in these present proceedings and that will be my order.

There will be costs in favour of the applicant against the first respondent. No order as to costs against the third respondent.

The application is allowed. The decision is set aside, the application to be referred back to the Board for rehearing with all objections (including, of course, the objection of the applicant here, and to be heard of course in accordance with law, by which I mean in compliance with natural justice.)



DAVID HULL
CHIEF JUSTICE