

IN THE SUPREME COURT

THE FULL COURT

BEFORE: SMITH, C.J., BINGHAM AND ELLIS, JJ.

SUIT NO: M 77 of 1981

R. v. Licensing Authority and Benhur Gordon
Ex parte Sun Enterprises Ltd.

SUIT NO. M 79 of 1981

R. v. Licensing Authority and James Bryan
Ex parte Sun Enterprises Ltd.

Dr. Lloyd Barnett and Dr. Adolph Edwards for Applicant
Norman Wright for Respondents Gordon and Bryan

1982 - June 23

Bingham J:

On 23rd June, 1982 we heard arguments from Counsel for the Applicants and the second-named Respondents Benhur Gordon and James Bryan respectively and by a unanimous decision granted the relief sought in both motions. We promised at that time to give our reasons in writing at some future date.

This is a fulfilment of that promise.

These are two applications by Sun Enterprises Limited, a company registered under the Companies Act with registered offices at 114 Maxfield Avenue in Saint Andrew. The Applicant seeks by way of motion the following relief:-

- a) An Order of Prohibition prohibiting the specially constituted Licensing Authority from continuing the hearing and/or adjudicating on an application made by the Respondents Benhur Gordon and

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the Licensing Authority for the grant of a Stage Carriage License.

The Licensing Authority in accordance with Regulation 102 of the Road Traffic Regulations 1938 caused a notice of both applications to be sent by registered post to "the current holders of licenses along the proposed routes" to which the applications were relevant.

The applicant company was such a "person" in relation to applications. The company acting through its Managing Director, Mr. Errol Panton, lodged objections to both applications. The objections which were in the form of a letter disclose at least one prima facie ground for the consideration of the Licensing Authority. Without going into the merits of these objections apart from the matters which the Licensing Authority in exercising its discretion to grant or refuse a license for a stage or express carriage in respect of any route is required under the Road Traffic Act to consider, it is obligatory on it by Section 63 in the case of an application for a license, other than in respect of a contract carriage, to consider the needs of the traffic area as a whole in relation to traffic including the provision of adequate, suitable, and efficient transport services, the elimination of unnecessary services, and the prevention of unenumerative services (the underlining is mine).

It is necessary at this stage to turn to the meeting of the Licensing Authority held on 8th October, 1981 to see just what transpired there when the Applicants objections were dealt with. From the affidavit it can be gathered that Dr. Adolph Edwards, an Attorney-at-law was briefed to represent the company and he attended the meeting of the Authority on the date in question to deal with one application, number 161.

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He was not advised that any of the two objections which relate to the applications submitted by the respondents were to be dealt with, or were being questioned as to their validity at the meeting. Dr. Edwards dealt with application number 161 and having completed his business then left the meeting. Thereafter the other two applications numbers 199 and 267, were mentioned and a ruling was made by the Chairman of the Licensing Authority that both objections were invalid.

The question therefore arises as to whether the Licensing Authority had the power to deal with and determine the matter in so far as it relates to the objections filed by the company in the manner that it did.

It is clear from the arguments advanced for and against the Motion that the final outcome of the applications turns on this question - Was the Special Sitting of the Licensing Authority as constituted on 8th October, 1981 seised with the jurisdiction to consider and determine the validity of the objections lodged by the applicant's company?

If the question posed is answered in the negative then it is clear that this will effectively serve to dispose of the issue in favour of the applicants as the absence of jurisdiction would render any decision of the Licensing Authority nugatory.

In dealing with the jurisdictional ground Dr. Barnett for the applicant has submitted that:-

1. The body which comprised the Special Sitting of the Licensing Authority on 8th October, 1981, was improperly constituted.
2. The question for the Court to determine will be as to whether such a body could properly rule out an objection made when it was not properly constituted having regard to the statutory

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provisions providing for its establishment.

3. Having regards to the nature of both applications the Authority to be properly constituted had to include a member from the Licensing Authority for the southern area as both applications were concerned with a route which passed through that area.

4. It is clear from the notice of objection furnished by the applicant that it had the capacity to object to both applications.

For these reasons he contends that the decision of the Licensing Authority in ruling on the validity of the objection, was wrong in that the Authority acted without jurisdiction.

Mr. Wright when his turn came to make his contribution immediately conceded that the Special Sitting of the Authority as constituted was not properly constituted as required by Section 65 (2) of the Road Traffic Act. One would have felt that in those circumstances, with such a critical concession on his part that was an end of the matter bearing in mind:-

- 1. The fact that the Licensing Authority is a creature of statute.
- 2. The mandatory provisions of Section 65 (2) of the Road Traffic Act.

He, however, contends that having regard to the nature of the business which the Authority had to deal on the 8th October, 1981, it did not have to be properly constituted.

I must confess to finding such a statement as surprising. The Licensing Authority being a creature of statute can only have such powers as the statute endows it with. Before it can seek to act, however, it has as a condition precedent to have the capacity to do so.

Mr. Wright is not without some experience in the manner in which the Licensing Authority is supposed to function having been its Chairman

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for some five years.

The Courts attention was directed to Regulation 98 of the Road Traffic Regulations.

Mr. Wright further pointed out that there are two mandatory dates when the Authority must meet which are in February and August in each year. These two dates are referred to as return days. On these days all applications for Road Licenses are assessed. At the end of the day matters not disposed of are set down for hearing during the intervening period. The first date is not a hearing date.

Our attention was then drawn to the notice sent by the Licensing Authority to the applicant for the meeting in August. This was a notice to re mention matters. If the objection was on the face of it invalid then it would as a matter of practice be thrown out at that stage. The objection in both these matters were not signed and were both therefore defective. From his experience it happened with alarming regularity that objections were made but not followed up. This tended to frustrate applicants as an application generally takes up to three years to reach the hearing stage. It was due to the applicant's own fault that the objection in respect to application 199, was dealt with. In any event the applicant knew as a person having business at the Authority's meeting of the procedure adopted with respect to all applications on return days.

Mr. Wright further contended that Section 65 (2) of the Road Traffic Act needs only to be complied with when the Licensing Authority is hearing applications on the merits. It does not have to be properly constituted to determine the validity of an objection.

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Our attention was also directed by Mr. Wright to Section 6 of the Road Traffic Act under which the Licensing Authority is created and made a body corporate. When Section 6 was read together with Sections 28 and 54 of the Interpretation Act, these provided a complete answer to Dr. Barnett's arguments on the jurisdictional issue.

Dr. Barnett in reply sought to enquire as to just who was this creature which sought to take unto itself such far reaching powers and wondered just where it got its authority to perform these acts.

Having regard to the submissions it may be convenient at this stage to refer to Section 65 of the Road Traffic Act. The Section reads:-

- (1) "This section applies to an application made in accordance with subsection (2) of Section 61 for a licence to operate a stage carriage or an express carriage on a proposed route which lies in more than one licensing area.
- (2) An application to which this section applies shall be considered and determined by the Licensing Authority to which the application is made, which, however, shall be constituted for such purposes by the addition of one member of the Licensing Authority for each other licensing area in which any part of the proposed route lies, nominated in accordance with subsection (3).
- (3) A Licensing Authority which receives an application to which this section applies (hereinafter referred to in this subsection as the appropriate Licensing Authority) shall give notice of the application to the Licensing Authority for each other licensing area in which any part of the proposed routes lies, and the chairman of each such Licensing Authority upon receipt of such notice shall nominate one of the members of that Licensing Authority to be a member of the appropriate Licensing Authority for the purpose of hearing and determining the application.
- (4) A Licensing Authority constituted under this section shall, in relation to an application to which this section applies and to any licence granted pursuant to such application, be deemed for all purposes to be a Licensing Authority established under Section 6.
- (5) Where a licence has been granted by a Licensing Authority constituted in accordance with this section, the powers conferred by this Act upon a Licensing Authority to suspend or revoke a licence shall, in relation to any licence granted, be exercised by a Licensing Authority constituted in accordance with this section, and accordingly any question as to the

"exercise of such powers shall be referred to the Licensing Authority which receives the application for the licence and the provisions of subsection (3) shall apply mutatis mutandis as if such reference of that question were the receipt of an application by that Licensing Authority."

When this section is examined it is beyond question that it is mandatory as to its terms. A failure to fulfil any of the requirements as laid down by the Act therefore renders any decision made by the Authority bad as to its validity. The Licensing Authority having owed its origin to an Act of Parliament can only act within the ambit of the powers given to it by Act. It is therefore to the Road Traffic Act and the Road Traffic Regulations that one must look to see just how the Licensing Authority has to be constituted in considering applications.

A perusal of Section 65 (2), 65 (3) and Section 65 (4) of the Act shows clearly that before the Licensing Authority could even begin to consider the validity of the objections it had to have the capacity to do so. It had to be properly constituted under Section 65 (2): This meant that in addition to the members present at the meeting, because of the nature of the two applications in question, it was necessary for there to be a member from the southern area. As it is conceded by Mr. Wright that this was not so, that appears to me to be an end of the matter. Far from being a complete answer to Dr. Barnett's contentions, Mr. Wright's reference to Sections 28 and 54 of the Interpretation Act misses the entire point. One is not here dealing with the question of the manner of the exercise by the Licensing Authority of the power given to it under the Act but, whether it was seised in the first place with the authority^{so} to act. The cases referred to are also of very little assistance, applying as they do to completely different situations. In any event, before the situation envisaged under

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the 'deeming' provisions of Section 65 (4) of the Act could be prayed in aid by the respondents to justify the decisions arrived at by the Licensing Authority it was a condition precedent that the Authority had to be properly constituted under Section 65 (2). This fact is spelt out in the clearest possible terms by the Act.

In the light of this the arguments on the other two grounds now become only a matter of academic interest.

For these reasons I hold that prohibition and certiorari must go to grant the relief sought.

Ellis J: (Ag.)

I am in agreement with the judgments of the Chief Justice and Mr. Justice Bingham but wish to say a few words on the matter. The matters were heard together because the complaints are similar although the respondents are different persons. They are before the Full Court of the Supreme Court on Notices of Motion dated 5th November, 1981, pursuant to leave granted by Mr. Justice Harrison (Actg.) on 30th October, 1981, and seek the issuance of Orders for Prohibition and Certiorari against a Special Licensing Authority.

The applicant seeks to prohibit the Special Licensing Authority from hearing and adjudicating on applications by Benhur Gordon and James Bryan for licences to operate Stage Carriage Services and seeks Certiorari to bring up to this Court and to have quashed, decisions by the Special Licensing Authority which held that the applicant was not a valid opposer or objector to the granting of the Stage Carriage Licences to the abovenamed persons.

The grounds on which the orders are sought are:

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- (i) That the Specially Constituted Licensing Authority was not properly constituted in accordance with the Road Traffic Act;
- (ii) The Specially Constituted Licensing Authority acted improperly and/or illegally and without jurisdiction or in excess or abuse of jurisdiction;
- (iii) The said Licensing Authority acted in breach of the principles of natural justice and/or contrary to law.

The affidavits of the applicant's Managing Director show that in September, 1981, he was served notices to attend a meeting of the Central Licensing Authority on the 8th of October, 1981, when objections to applications for licences would be heard. Prior to that, the applicant had registered the intention to object to the proposed grant of licences to Benhur Gordon and James Bryan on their applications 199 and 267 respectively.

The affidavits show that the applicant instructed an Attorney-at-Law to represent him at the hearing to prosecute the objections in respect of applications 3 and 161 and that at the conclusion of the hearings of those matters the Attorney left the meeting as he had no instruction in relation to any other matter.

In the absence of representation on the applicant's behalf, the Authority purported to consider and determine that the objections to applications 199 and 267 were invalid and that Sun Enterprises Limited was not a proper opposer.

Was the Authority properly constituted?

Section 6 of the Road Traffic Act provides for the establishment of Licensing Authorities for each licensing area of the Island. Each Authority shall consist of four members nominated by the Minister and Section 28 of the Interpretation Act shall apply to it.

In addition to Licensing Authorities ~~created~~ created under Section 6 of the Act, Section 65 (2) of the Act provides for a Specially Constituted Licensing Authority which shall comprise the Licensing

to which an application is made and one member from the Authority for each other licensing area in which any part of the proposed route falls. A Special Authority so constituted shall be deemed for all purposes to be a Licensing Authority established under Section 6 of the Road Traffic Act.

There is no dispute that a member from the Southern area Licensing Authority was absent when the applicant's objections were considered and determined. There is also no dispute that the Licensing Authority for the Southern area was a relevant Authority for the purposes of Section 65 (2) of the Road Traffic Act. Dr. Barnett contends that the absence of that member invalidated the composition of the Licensing Authority with the consequence that it had no competence to adjudicate on the objections.

Mr. Wright for the respondents submitted inter alia that Section 6 of the Road Traffic Act together with Section 28 (1)(d) of the Interpretation Act make for the proper constitution of the Authority in the circumstances.

Looking carefully at Section 65 of the Road Traffic Act I am concluded that the purpose for mandating the composition of a Licensing Authority vide Section (2) of the Road Traffic Act is to ensure the participation of Licensing Authority of an area through which a proposed route passes, since that Authority would have experience as to the adequacy, ^{inadequacy} or other conditions of transportation in that area. That experience would facilitate the proper consideration of an application made under Section 65.

To my mind, any Licensing Authority constituted without the participation of all relevant Authorities cannot be properly constituted in that it would be contrary to the purpose of Section 65 of the Road Traffic Act. The deeming provision at Section 65 (4) cannot be prayed in aid to cure a defective Special Licensing Authority since the provision can only relate to a properly constituted Authority as mandated by Section 65 (2) of the Road Traffic Act.

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The contention of Dr. Barnett is correct. The Specially Constituted Licensing Authority was improperly constituted. Being improperly constituted, the Authority had no jurisdiction to consider the objections by Sun Enterprises Limited.

In the light of the above findings, I do not find it necessary to consider the submissions in support of and against the other grounds on which the applicant seeks remedy. I too agree to a grant of the orders sought and say that the decision of the Authority is to be brought up to this Court to be quashed. I also agree that the Licensing Authority should be prohibited from hearing the applications in respect of Benhur Gordon and James Bryan respectively.

SMITH, C.J.:

The facts and opposing contentions in respect of these applications for orders of certiorari and prohibition have been fully stated by my brethren. The main issue for decision is whether or not the licensing authority as constituted at the time could validly decide that the applicant company's notices of objection were invalid.

No evidence was placed before us showing the grounds upon which the notices were rejected by the licensing authority. The affidavits of the applicant company's managing director merely state that his attorney-at-law had informed him that officers of the licensing authority had stated that at the meeting held on October 3, 1981 the licensing authority, in each case, "ruled and determined that the notice of objection sent by (the) company to the applicant was not a valid objection and that the company (was) not a proper opposer." There is overwhelming prima facie evidence in the affidavits that the applicant company was "a proper opposer" of each of the applications to which the company objected.

It was conceded by learned counsel for the respondents that the licensing authority was not constituted as provided in s. 65(2) of the Road

Traffic Act for a hearing of the applications on their merits in that a member of the licensing authority for the southern area was not present. He, nevertheless, contended that there were two grounds upon which the licensing authority, as constituted at the time, can be held to have had jurisdiction to reject the applicant company's notices of objection. Firstly, it was submitted that a meeting of the authority expressed to be, and held, for the purpose of "mentioning an application" (as was the meeting on October 9, 1981) "does not amount to a hearing of the application or a commencement of the hearing." It was stated that it was the established practice for licensing authorities to "evaluate objections" at these meetings, in addition to applications being mentioned. So, it was contended, "the capacity or the jurisdiction of the authority to mention cases or evaluate objections" would not be affected if it was not properly constituted as provided in s. 65(2). It was submitted, secondly, that a complete answer to the contention that the licensing authority was not properly constituted is provided by the power of the authority, a body corporate, to act by a majority. Reference was made to the provisions of s.23 of the Interpretation Act, which are made applicable to licensing authorities by s. 6(2) of the Road Traffic Act, and to s. 54 of the Interpretation Act.

It was not disputed that the applicant company provided transport facilities along or near to the routes which were the subject of the two applications before the licensing authority to which the company objected. Indeed, there is evidence that the company, in that capacity, received notices of the applications from the licensing authority, as provided in reg. 102 of the Road Traffic Regulations, 1938. In giving the notices of objection, the applicant company was exercising its right, recognized by reg. 103 and s.62 (1)(b) of the Act, to oppose the grant of the applications. The company had the further right, as an "interested party", to be represented at the hearing of the applications (reg. 103).

A licensing authority is, of course, obliged to consider objections made in opposition to an application for a licence in respect of a stage or express carriage when it is exercising its discretion whether

or not to grant the application, that is to say, when the application is being heard. This, in my judgment, is the stage at which the validity of objections as well as their merit should be determined. A licensing authority has the right to regulate its own procedure and business (see s. 28(1)(a)(v) of the Interpretation Act) and may well be entitled to fix special meetings in order to decide on the validity of objections to applications, if this is found to be a more efficient and convenient way to deal with them. This, however, can only properly be done, in my opinion, if the proceedings at the special meetings are regarded as the commencement of the hearing of applications on their merits, the validity of objections being dealt with in limine. The licensing authority at such meetings must, therefore, be properly constituted. As the authority which rejected the applicant company's notices of objection on October 3, 1981 was not properly constituted for the purposes of the applications in respect of which those notices were given, it acted without jurisdiction in so disposing of the company's objections.

The application of the provisions of s. 23 of the Interpretation Act to each licensing authority established by virtue of the provisions of s. 6 of the Road Traffic Act vests in a majority of the members of each such authority the power to bind other members thereof (s. 28(1)(d)). Section 54 of the Interpretation Act provides that whenever any act or thing is required to be done by more than two persons, a majority of them may do it, unless it is otherwise expressly provided by any Act. These provisions, it was submitted, enabled the members of the licensing authority present at the meeting on October 3, 1981 to perform validly the functions of the fully constituted authority.

In my opinion, this submission is clearly without merit. Though a specially constituted licensing authority under s. 65 of the Road Traffic Act is deemed for all purposes, when acting within its powers, to be a licensing authority established under s. 6 (see s. 65(4)), to apply either of the provisions of the Interpretation Act cited to the specially constituted authority merely by counting the heads of members could result in the whole purpose of establishing such an authority

being defeated. In my judgment, when the provisions of s. 65 are read as a whole, it is plain that an application to which the section applies may be considered and determined only by a licensing authority which includes among its number, when the application is heard, the additional member or members stated in subsection (2).

In the case before us, the evidence showed that a majority of the members of the licensing authority for the central area were present. The provisions of s. 25 of the Interpretation Act gave those present the power to bind the two members of that authority who were absent. But for the authority to be properly constituted for the purposes of the two applications with which we were concerned, an additional member from each other licensing area in which any part of the proposed routes lay was required. A member from the southern area was absent. The licensing authority was, therefore, not constituted as required by s. 65 and could not validly reject the applicant company's objections.

It is for the above reasons that I agreed with the judgment of the Court granting the applications.

James Bryan to operate a stage carriage service between Kingston and Siloah in Saint Elizabeth and between Kingston and Savanna-la-mar respectively until after the hearing of the Motions for further order.

- b) An Order of Certiorari to remove into this Court and quash a decision of the said Licensing Authority made on 8th October, 1981 that Sun Enterprises Limited was not a valid opposer of the applications made by the Respondents Benhur Gordon and James Bryan.

These two Motions were heard together by consent and the arguments as presented in so far as they relate to the one were taken to be applying equally to the other.

The Statement of Grounds filed pursuant to Section 564B of the Civil Procedure Code are also in like terms. They are:-

- i) that the specially constituted Licensing Authority was not properly constituted in accordance with the Road Traffic Act.
- ii) that the specially constituted Licensing Authority acted improperly and/or illegally and without jurisdiction.
- iii) the said Licensing Authority acted in breach of the principles of natural justice and/or contrary to law.

The facts giving rise to the Motions are not disputed. The evidence contained in the affidavits of Errol Panton, the Managing Director of the applicant's company has not been countered by the Respondents. A reference to Mr. Panton's affidavits presented the following picture.

It appears from the affidavits that the company operates a stage carriage service along several routes throughout the Island including the two proposed routes in respect of which both Respondents had applied to