

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 29/2013

[201] SCSC

REHOBOTH BUILDERS (PTY) LTD
(REP. BY ITS DIRECTOR MARC AGRIPPINE)
Plaintiff

versus

1. LICENSING APPEALS BOARD
(REP. BY ACTING CHAIRMAN MR. HERRANT KUMAR)
First Defendant
2. THE ATTORNEY GENERAL

Heard:

Counsel: Mr. N. Gabriel for plaintiff

Mr. Robert for defendants

Delivered: 4 July 2014

RULING

Renaud J

1. This is a Petition whereby the Petitioner is seeking a Judicial Review of the Order of the Licensing Appeals Board (hereinafter LAB) made on 28th March, 2013. The Order of the LAB is set out as follows:

“After reviewing the documents that were submitted to the Licensing Appeals Board for a decision following the appeal of Mr. Marc Agrippine, regarding the decision of the Seychelles Licensing Authority (SLA) revoking the license of his company namely Rehoboth Builders (Pty) Ltd upon

completion of contracts he has already undertaken.

Following a hearing with Mr. Agrippine and perusing the documents related to the Appeal. The Licensing Appeals Board (LAB) has come to the conclusion that the Seychelles Licensing Authority was right in taking the said decision against Mr. Marc Agrippine.

Therefore, in accordance with Section 19(a) of Licences Act, 2010 hereby confirms the decision taken by the Seychelles Licensing Authority.”

2. In its Petition the Petitioner averred that the decision stated above is illegal, and irrational because the 1st Respondent failed to fully hear the evidence of the Petitioner in support of his case, and secondly, the 1st Respondent failed to take into consideration the fact that the Petitioner had an exhaustive list of clients awaiting the termination of their building contracts.
3. The Petitioner, further or in the alternative, averred that the 1st Respondent in coming to its decision did not follow the principle of natural justice and or committed procedural impropriety.
4. According to the Petitioner, the 1st Respondent breached the principle of natural justice because it failed to grant it sufficient opportunity to call witnesses in support of its case, and secondly, the 1st Respondent failed to state the reasons for its decision of the 28th March, 2013.
5. The Petitioner is seeking the following remedies:
 - (a) ...
 - (b) ...
 - (c) To issue the following writs:
 - (i) A writ of **certiorari** quashing the decision of the Respondent upholding the revocation of the its licence;
 - (ii) A writ of **mandamus** compelling the 1st Respondent to take the decisions in accordance with the law and natural justice.
 - (d) Order both Respondents to pay the Petitioner damages in the sum of SR500,000 and

(e) Order costs for the Petitioner.

6. The Respondents objected to the Petition and set out their reasons for the objections. The Respondent *inter alia* averred that the decision included a proviso that the Petitioner would be able to complete the existing contracts under the current license and upon completion, his license would be revoked.
7. The 1st Respondent in reaching its decision did not impinge on the principle of fair hearing (natural justice) and the Petitioner was given sufficient opportunity to make his case within the ambits of the provision for Appeal under section 17 of the Seychelles Licensing Act.
8. The 1st Respondent perused documents provided by the Seychelles Licensing Authority (SLA) and the application of the Petitioner when hearing the Appeal.
9. The Respondents further averred that the Petitioner was asked by the 1st Respondent if he wanted to call any witnesses to which the Petitioner declined.
10. Taking the above-stated averments the Respondents also averred that it is not illegal or irrational the manner in which the 1st Respondent heard the evidence of the Petitioner.
11. The Respondents further averred that the 1st Respondent in reaching its decision did take into consideration the fact that the Petitioner had an exhaustive list of clients awaiting termination of their building contracts.
12. The Respondents stated that, however, given the fact that the SLA had received several complaints regarding quality of work provided by the Petitioner by the Fair Trading Commission dated 27th of August 2012 for breach of contract and the Petitioner's guilty plea in the Magistrates Court on the 31st of July 2012 for operating as a building contractor without a license, the 1st Respondent decided that it was correct that the Petitioner's license be revoked. Further, the SLA had provided for a proviso for the completion of the existing contracts under the license, thereupon completion of the said contract, the license be revoked which the 1st Respondent

confirmed.

13. The 1st Respondent averred that in reaching its decision it did not impinge on the principle of fair hearing (natural justice) and or procedural impropriety. The Petitioner was given sufficient opportunity to make his case within the ambits of the provision for Appeal under section 17 of the Licensing Act. The 1st Respondent perused documents provided by the SLA and the Application of the Petitioner when hearing the Appeal.
14. The Respondents further averred that the Petitioner was asked by the 1st Respondent if he wanted to call any witness to which the Petitioner declined. Notwithstanding that, the Petitioner was given an opportunity to call witnesses.
15. The Respondents also averred that it is not a breach of natural justice and/or procedural impropriety if the Petitioner is not given an opportunity to call for witnesses.
16. The Respondents also averred that it is not a breach of natural justice and/or procedural impropriety if the petitioner is not given full reasons by the 1st Respondent for its order when they confirm the reasoning of the decision of the SLA which had provided full reasons for their decision.
17. The Respondents further averred in relation to the hearing of the matter by the 1st Respondent on which this Petition is based that in coming to its decision the 1st Respondent was not illegal, irrational, unreasonable or procedurally improper.
18. The objections of the Respondents are supported by the contents of an Affidavit sworn to by a member of the Licensing Appeal Board.
19. The first question that needs to be answered is – Is the Licensing Appeals Board an adjudicating?
20. In the Constitutional Court case of ***Attorney General v Public Service Appeal Board, No. 2 of 1995*** the Court held that the PSAB is indeed an adjudicating authority. Its reasoning leading to its conclusion is apposite in the instant case.

Amerasinghe J cited Woodman C.J in the case of ***R v Superintendent of Excise & anor***, and the case of ***Ex Parte Confait (1936-55) SLR page 154*** –

“The question whether the discretion conferred is administrative, judicial or quasi-judicial is in every case a matter of interpretation of legislative enactment which confers the discretion.”

“The mere fact that an Act of Parliament specifies that something is to be done at the discretion of a public authority does not mean that in every case the discretion so conferred is a judicial discretion.”

21. Parker J in ***R v Manchester Legal Aid Committee (1952) 1 ALL E.R 480*** at page 489 stated –

“When, on the other hand, the decision is that of an administrative body and is actuated in whole or in part by question of policy, the duty to act judicially may arise in the course of arriving at the decision. Thus if in order to arrive at the decision, the body concerned has to consider proposals and objections and consider evidence, thus there is the duty to act judicially in the course of the inquiry.”

22. Article 125 (1)(c) of the Constitution of Seychelles empowers the Supreme Court to exercise supervisory jurisdiction over any adjudicating authority. Article 125(7) states that “**adjudicating authority**” includes a body or authority established by law which performs a judicial or quasi-judicial function.
23. Section 18(2) of the Licences Act 2010 establishes an Appeals Board (hereinafter “the Board”) to hear and determine appeals against the decisions of the Seychelles Licensing Authority (hereinafter “the Authority”). The Board is empowered to regulate its own proceedings. Where the Board entertains a notice of appeal, it may decide the appeal by confirming the decision, varying the decision and quashing the decision of the Authority. It may also order the Authority to reconsider its decision as it directs the Authority to do.
24. It is evident that the Board after hearing an appellant has the power to decide on the fate of the appellant by upholding or varying the decisions made by the Authority and may also make new decision and issue its own orders including directing the Authority to take the action that it may directs the Authority to do. Any Authority endowed with such powers cannot be less than an adjudicating authority envisaged by law.

25. It is my considered view that in the light of the above position of law it is reasonable to conclude that the legislature has envisaged that the complainant concerned to be noticed and be heard and the opinion formed to be the result of an equitable decision. The order of the Board followed that same procedure and that necessarily affects the rights of the aggrieved party, therefore brings the Board within the description of an authority exercising quasi-judicial functions.
26. I hold that the Board has exercised quasi-judicial functions in the instant case and in accordance with Article 125(1) read with Article 125(7) of the Constitution of Seychelles is subject to the supervisory jurisdiction of the Supreme Court of Seychelles having exercised such functions in the capacity of an adjudicating authority. The preliminary objection raised by the Respondents is accordingly dismissed.
27. As to the merits of the Petition I carefully reviewed the evidence before this Court as revealed by the record of proceedings. The Authority does not simply issue licences over the counter to all and sundry upon application. Criteria have to be met by applicant for any licence and once such criteria are met the Authority issues a licence. The licence issued is normally subjected to the Licence Holder maintaining certain conditions upon which the licence was issued.
28. The licence issued to the Petitioner obviously carried certain conditions required of a Building Contractor. I find that the conditions set by the Authority were fair and reasonable and not oppressive or prohibitive. The Petitioner cannot expect that the Authority when issuing him a Builders Licence gave him a mandate to carry out its activities in such a way that reasonable members of society suffered unreasonably and to their detriment by the way the Petitioner operated.
29. There are other institutions of State which are there to protect the interest of the society. One of such institutions is the Fair Trading Commission (hereinafter "the Commission"). The Petitioner has not been heard to say that the Commission when adjudicating matters involving the Petitioner and its Clients, the Commission had been biased or unfair in its decision. It would appear that the mode of operation of the Petitioner in his trade as a Builder has affected negatively many of its clients to the point that they have complained to the Commission and the Commission had established facts that prompted it to alert the Authority to curtail the operations of the Petitioner for good reasons and in order to safeguard the interest of the

public. That in my view is fair and reasonable on the part of the Commission.

30. The Authority responded to the concern advanced by the court with regard to the Petitioner and following its own investigation called upon the Petitioner to show cause why his licence ought not to be curtailed. The Authority having given the opportunity to the Petitioner to show cause and the Petitioner having failed to show good cause to the contrary, the Authority concluded that it has to withdraw the Builders Licence it had granted the Petitioner. The Authority did not immediately withdraw the licence but required the Petitioner not to enter into new building contract and also gave the Petitioner sufficient time to complete any uncompleted building contracts in progress.
31. The action of the Authority was appealed against to the Board. The Board considered the appeal of the Petitioner after giving him the opportunity to pursue his appeal without any let or hindrance. It was up to the Petitioner to canvass his appeal before the Board. I observed that he was given all the opportunity to do so. I note that the Petitioner could not convince the Board that the Authority has acted wrongly against him and the Board concluded by upholding the decision of the Authority. I find no reason to disagree with the conclusion of the Board based on the evidence before it.
32. Having reviewed the whole process, both before the Authority and the eventual decision of the Board, I find that the decision of neither the Authority nor the Board is illegal, irrational, unreasonable, or procedurally improper in the circumstances when handling the matter relating to the licence of the Petitioner. I find no merit in this Judicial Review and accordingly dismiss it. I make no order as to costs.

Signed, dated and delivered at Ile du Port on 4 July 2014

B Renaud
Judge of the Supreme Court