

THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE
Port-of-Spain

Claim No. CV2018-04863

BETWEEN

NAVIN NERANJEN

1st Claimant

DOODNATH NERANJEN

2nd Claimant

AND

THE HONOURABLE MINISTER OF WORKS AND TRANSPORT

Defendant

Before the Honourable Mr. Justice Seepersad

Date of Delivery: April 30, 2019

Appearances:

1. Mr. Raj Joseph instructed by Mr. Robert Boodoosingh for the Claimant.
2. Mr. Brenston Francois instructed by Ms. Ryanka Ragbir for the Defendant.

DECISION

1. By fixed date claim form filed on January 18, 2019, the claimants filed a claim for judicial review together with an affidavit from the second named claimant Mr. Doodnath Neranjen, seeking declarations from this court that the Ministry of Works and Transport ('the Ministry') unlawfully and without any alleged natural justice 'seized' the Priority Bus Route Permit ('PBR Permit') of the first named claimant.

2. The grounds upon which the reliefs are sought and the brief details of the claim are that:
 - i. The alleged 'seizure' of the claimants' PBR Permit was illegal.
 - ii. The continued detention of the said PBR Permit is unreasonable, irregular and an improper exercise of authority.
 - iii. The refusal of the defendant to return the said PBR Permit is inconsistent with the rules of natural justice and in breach of clause 8(b) of the said Regulations.

3. The claimants prayed for the following reliefs:
 - i. A declaration that the 'seizure' and detention on November 28, 2018 of the Priority Bus Route (PBR) Permit at Macoya on the PBR issued to the first named claimant was illegal, null and void and contrary to conditions 2 and 3 of the PBR Permit authorizing use of the PBR by Maxi Taxi: Made by the Minister Under Regulation 7 of the Priority Bus Route (Special Roads Toll) Regulations, 1998 and the rules of natural justice.

- ii. An order of mandamus directing the defendant to return the aforesaid PBR Permit to the first claimant with immediate effect.
- iii. Costs.
- iv. Such further and consequential orders and directions as the court deems fit in the circumstances.

ISSUE

4. The primary issue for the court's determination was whether the surrender/seizure of the Priority Bus Route Permit/Pass and its retention was lawful and/or reasonable.

THE EVIDENCE

5. The evidence adduced was as follows:
 - i. The affidavit of Doodnath Neranjen filed on January 18, 2019.
 - ii. The affidavit of Keron Mc Lean filed on February 8, 2019.
 - iii. The affidavit of Candace Preudhomme-Cropper filed on February 8, 2019.
 - iv. The affidavit of Sintra Ragbir filed on February 8, 2019.
 - v. The affidavit in response of Doodnath Neranjen filed on March 1, 2019.
 - vi. The affidavit of Robert Boodoosingh filed on March 1, 2019.

The Claimant's evidence

Doodnath Neranjen

6. This witness deposed that the first claimant is the registered owner of the 25-seater maxi taxi registration number HCW 6474 and that he is the first claimant's father. The maxi taxi he said was purchased specifically for him to operate as he worked nowhere else and has no other source of income.
7. He further stated that on Wednesday November 28, 2018 whilst he was driving the said maxi taxi west along the Priority Bus Route (PBR) ,with passengers, he was stopped by Transit Police Officers at a road block at Macoya; and a Transit Police Officer (TPO) approached him and asked for his documents. He handed over his drivers permit, his taxi badge, and produced a receipt/chit from the Licensing Department evidencing the fact that he had paid on November 14, 2018 for the renewal of his taxi drivers' badge. He further stated that he indicated to Officer Mc Lean that he had been advised by an official at the Licensing Authority that the presentation of the receipt/chit would be acceptable while his taxi drivers' badge was being renewed, as it was estimated that the renewal would take 2-3 weeks.
8. The witness also stated that while he was in the process of retrieving the certificate of insurance, TPO Mclean reached inside the maxi taxi and removed the Priority Bus Route Permit/Pass from the dashboard and indicated that he was seizing same. Shortly thereafter, he was issued with a fixed penalty ticket and he was charged for using the PBR without lawful authority.
9. He subsequently contacted the first claimant and who went to the Head office of the Ministry of Works and Transport in Port of Spain and attempted to retrieve said PBR Permit/Pass but was unsuccessful.
10. Subsequently, Mr. Robert Boodoosingh was retained, and he wrote a letter dated November 30, 2018 to the Attorney General of Trinidad and Tobago

requesting the return of the PBR Permit/Pass and compensation for loss of earnings. This letter was copied to the Permanent Secretary, Ministry of Works and Transport and the Commissioner of Police. No response was forthcoming.

Robert Boodoosingh

11. Mr. Boodoosingh asserted that on November 30, 2018 he sent a letter addressed to the Attorney General and copied same to the Permanent Secretary, Ministry of Works and Transport as well as the Commissioner of Police. He followed up his letter with a telephone call to the said Ministry but was put on to Ms. Ragbir who confirmed that the said PBR Permit/Pass had been returned to the Ministry with a note, and due to his legal letter, the matter had been referred to the Legal Department of the Ministry. Mr. Boodoosingh deposed that he asked to be transferred to the Legal Department and spoke to Ms. Cropper who informed him that she was unaware of the matter but would investigate same. He said he was told that the Head of Legal Department had to make a decision as to the return of the PBR pass.

The Defendant's evidence

TPO Keron Mc Lean

12. TPO Mc Lean testified that the second claimant was stopped in the vicinity of Macoya on the PBR and that he proceeded to have a brief conversation with the second claimant. He stated that he requested all driving particulars and the PBR Permit which he verified. However, the taxi badge had expired. He said he was shown the receipt/chit for the renewal of the taxi badge but did not accept the explanation advanced and formed the view that the second claimant was not in possession of a valid taxi badge. He eventually told the second claimant that he would be issued with a fixed penalty notice for the offence of unauthorized use of the PBR and issued same.

13. In his affidavit, he stated that he observed that the second claimant's picture was not on the PBR Permit/Pass and he told the second claimant that he would be required to "surrender" the said permit and thereafter took the surrendered permit to the appropriate office. TPO Mc Lean denied that he ever seized the PBR Permit/Pass.

Candace Preudhomme- Cropper

14. This witness is attached to the Ministry of Works and Transport and outlined her telephone conversation with the claimants' attorney-at-law Mr. Robert Boodoosingh on December 5, 2018 concerning the letter he had written in relation to the return of the PBR Permit/Pass to the claimants. In her conversation, she asserted that at no time did she have sight of his letter and from her inquiry, none of the legal officers in her unit had any knowledge of the PBR Permit/Pass matter.

Sintra Ragbir

15. The witness pointed out that on November 28, 2018 the second claimant was driving a red-band maxi taxi registration number HCW 6474 along the Priority Bus Route with a valid 2018 PBR Permit/Pass, but his photograph and his name were not on the said Permit/Pass.

16. The aforesaid vehicle was stopped at Macoya on the PBR on the said day and the PBR Permit/Pass was taken by Officer Mc Lean and retained by him and the second claimant was issued with fixed penalty notice.

17. She further stated that the first claimant on November 28, 2018 unsuccessfully visited the Head Office of the Ministry of Works and Transport in an attempt to have the Permit/Pass returned to him.

18. The witness outlined her position in relation to conditions attached to the PBR permit which was exhibited to her affidavit "S.R.5". The PBR Permit/Pass did not have the photograph of the second claimant. She further asserted that there was no seizure, suspension and/or detention of the PBR Permit, as condition 2 of the PBR Permit specifically states that "the permit is the property of the Ministry of Works and Transport and must be surrendered immediately on the instruction of the Minister or person authorised by him to give such an instruction".

19. Having reviewed the affidavit evidence, the court formed the view that the material undisputed facts are as follows:

a) That on November 28, 2018 the second claimant was driving a red-band maxi taxi registration number HCW 6474 along the Priority Bus Route with a valid 2018 PBR Permit/Pass, but his photograph and his name were not on the said Permit/Pass.

b) The aforesaid vehicle was stopped at Macoya on the PBR on the said day and the PBR Permit/Pass was taken by Officer Mc Lean and retained by him. The second claimant was also issued with fixed penalty notice.

c) That the first claimant on November 28, 2018 visited the Head Office of the Ministry of Works and Transport to try and have the said Permit/Pass returned to him without success.

20. The court found that it was also more probable to conclude that the PBR pass was not voluntarily surrendered but that it was seized. This view is consistent with the documentary evidence before the court given that the memorandum of Assistant Superintendent of Police Edwin Phillips which was addressed to the Permanent Secretary – Ministry of Works and Transport and which said

memorandum was annexed as "S.R.5" to the Ragbir Affidavit, spoke to the fact that the permit was seized.

LAW AND ANALYSIS

21. The Priority Bus Route (PBR) is governed by Section 3 of the Highways Act Chapter 48:01 and from a legislative perspective, this roadway or route is a special road. The establishment of the PBR was primarily to provide an express entry/exit route into and from Port of Spain and the said route was intended to be used by persons who obtained the express authorisation from the Line Minister. The Line Minister under regulation 7 of the Priority Bus Route (Special Roads Toll) Regulations, 1998, can attach to the grant of a permit applicable conditions and compliance with same should be mandatory as special conditions can attach to special roads.

22. The conditions however must be considered through a lens of reasonableness because commercial hire vehicles primarily use the PBR and the ability to use the PBR may have economic implications for them.

23. Conditions were endorsed on the back of the First Claimant's PBR pass and condition 3 states that:

"This permit is intended for the exclusive use of the person named thereon and is not to be transferred or assigned to another person for use. This permit shall not be copied, reproduced or in any other manner duplicated."

24. On the evidence before the Court, the PBR pass/permit which was shown to TPO Mc Lean did not have the second claimant's name or image endorsed thereon. This circumstance could have legitimately caused the officer to become concerned. In addition, the second claimant did not at the material time, have a valid taxi badge.

25. The court accepted the evidence of the second claimant in that he had paid for the renewal of his taxi badge but was not in receipt of same. It cannot be denied that in this society administrative functions, such as the processing of documentation, are not discharged with a degree of alacrity. It is therefore plausible to conclude that although the renewed taxi badge was paid for, the renewed document was not generated at the time of payment. Notwithstanding this reality, section 111 (5) of the Motor Vehicles and Road Traffic Regulations provides that an application for the grant or renewal of a taxi drivers' licence and badge may be dealt with at any time within one month before the date on which the taxi driver's licence and badge expires. The factual matrix suggests that the second claimant in this case was less than proactive and he may have delayed his licence renewal.

26. Regulation 111 (1) of the Motor Vehicle Road Traffic Regulations provides that a person shall not drive any registered taxi unless he holds a taxi driver's license. The second claimant did not have a valid taxi driver's license although he paid for same.

27. Having observed that the PBR pass did not bear the name and/or image of the second claimant, the officer took possession of the PBR permit and proceeded to issue a fixed penalty notice. The State argued that pursuant to condition 2 as endorsed on the pass, the officer was entitled to request that the pass be surrendered.

28. Condition 2 provides as follows:

*"This permit is the property of the Ministry of Works and Transport and must be surrendered immediately upon the date of expiry of the permit **or on the instruction of the Minister (or person authorised by him to give such an instruction).**"*

29. This condition must be read in conjunction with condition 8(d) which defines an authorised person to include transit police officers. Condition 2 provides for the surrender of a permit in two circumstances. Firstly, there is a mandatory obligation to surrender same when the permit is expired and secondly, the permit is to be surrendered on the instruction of the Minister or of an authorised person. Condition 2 lays down no requirement as to how or under what circumstances such an instruction should be given.
30. The defendant argued that conditions 8(a) and 8(b) only apply to a situation where the owner of the Maxi Taxi is listed on the particular PBR Permit or any person operating the vehicle on the owner's behalf by virtue of being listed as a driver on the PBR Permit and having their photograph on the PBR Permit, has been convicted of a traffic offence or has paid a fixed penalty notice under any applicable traffic law, order or regulations governing the use of the PBR or stands otherwise in breach of the conditions.
31. The defendant further argued that when the second claimant was stopped by TPO Mc Lean on November 28, 2018, he was not listed as the owner on the said PBR Permit nor was he listed as a named driver on the said PBR pass.
32. In the circumstances, the defendant submitted that there was no obligation on its servants and/or agents to issue any written notice under condition 8.
33. Condition 8 provides where the owner/operator is convicted of a traffic offence or paid a fixed penalty notice under any applicable law, order or regulation governing the use of the Priority Bus Route of the Port of Spain Transit Facility, or otherwise in breach of these conditions, the Minister or any authorised person may issue written notice to the owner. The notice should advise of the fact of the breach of the conditions and/or the relevant law, warn

of the possible seizure, suspension or revocation of the Permit, and ask the recipient to show cause why this should not be done.

34. The condition lays down four criteria:

- i. The Minister or an authorised person can issue a **written notice to the owner**.
- ii. The notice can be issued where the owner is convicted of a traffic offence on the PBR or stands in breach of the conditions.
- iii. The owner will be warned of the possible seizure and suspension or revocation of the Permit.
- iv. The notice would call upon the owner to **show cause** why this should not be done.

35. Condition 8(b) provides that the **owner** can make written representations to the Minister or authorised person within seven (7) days of the receipt of the notice showing just cause why the Permit should not be seized and suspended or revoked.

36. Condition 8(c) provides that the Minister or authorised person in rendering a decision, may set further specific conditions regarding the reissue or further usage of a Permit.

37. **The court does not live in the fringes of the society and is acutely aware of the significant and important role the red band maxis play by transporting thousands of citizens into and from Port of Spain, on a daily basis. Maxi taxis are expensive and many, if not most, are not operated by the owners but by contracted drivers. When a driver, with the consent of the owner, is operating the vehicle and such a person is not a listed or named driver on**

the permit, the said use may be in breach of condition 3 of the permit but the process outlined under condition 8 has to be followed in relation to the owner. Where a circumstance as the one which operated in the instant matter arises the permit may be taken but same should then be returned to the owner to whom it was issued and a notice under condition 8 may then be issued. The owner would thereafter be afforded an opportunity to explain why an unlisted driver was using the vehicle on the PBR and he would have to show cause why the permit should not be surrendered and/or why further conditions should not be imposed.

38. The court therefore holds the view that , in so far as it relates to the owner, the second limb of condition 2 has to be read in conjunction with condition 8 and a decision to seize and /or to not return a PBR pass can only be effected, in a circumstance other than a case where the permit has expired, when the process outlined under condition 8 has been fully engaged.

39. In the instant case, the court cannot condone the actions of the second claimant in operating a maxi taxi without a valid licence. Whether or not there was a delay in the renewal of his licence, he had an obligation to ensure that his documentation was in order. There has to be a reorientation of thought and action. Citizens have to commit to doing that which is right, even if the right course of action is inconvenient. The court also condemns the unauthorised use of the PBR as there was a seeming disregard for the requisite conditions of non-transferability and the need to have drivers listed. The PBR pass enabled and authorised the owner and/or authorised drivers, to use this special road, subject to the conditions endorsed at the back of the pass. It was therefore not unreasonable for the officer to take the said permit from the second claimant who was both unlicensed and unauthorised to use the PBR or to be in possession of the first Claimant's PBR

pass /permit. Consequently the second named claimant has no locus to advance the instant claim.

40. An irregularity however arose in relation to the process which unfolded after the pass was taken from the second named claimant. Instead of returning the pass to the first named claimant and invoking the procedure outlined under condition 8, the retention of the pass continued in circumstances where the first claimant was denied the due process outlined under condition 8. The first claimant was not afforded an audience with the Minister or authorised persons to advocate his position before any decision relative to the revocation of his right to have possession of permit was effected. The course of action which was adopted, was arbitrary, not sanctioned under the stated conditions and violated procedural fairness.
41. Given the economic and social importance of the services provided by maxi taxis, the Minister of Works and Transport should consider effecting amendments to the PBR conditions so as to ensure that there is absolute clarity. The strictures with which the permit is to be used, ought to be pellucid and practical. Consideration should also be given to the employment of policy measures which would enable maxi taxi owners to easily change and or register the names of the authorised drivers who would use of the PBR.
42. On the factual matrix before the court, while TPO Mc Lean was an authorised person, the decision not to return the permit to the owner and thereafter activate condition 8 was fundamentally flawed. The course of action adopted was not characterised by the required requisite degree of procedural fairness and regularity which is consistent with the entrenched principles of natural justice. All authorised persons and in particular police and transit officers need to be instructed that they have no authority to seize and or

withhold from the owner a valid PBR pass unless the process outlined under condition 8 has been engaged and a decision is made after due regard is had to the relevant criteria.

Are the claimants entitled to an order of mandamus?

43. On the evidence, there is no dispute that the first claimant's PBR permit has since expired. The purpose of a writ of mandamus is to compel an inferior tribunal to exercise inter-alia a jurisdiction or discretion which was wrongly declined and/or exercised by the application of immaterial and/or irrelevant criteria or to mandate the discharge a statutory obligation. Given that condition 2 mandates that expired permits must be surrendered, the court cannot compel the defendant to return an expired permit.

44. The issue as it relates to the grant of a new permit is a matter for the Minister who ought to exercise his discretion in a manner which is procedurally fair and practical but at this stage the issue of a renewal is entirely outside this court's remit.

45. For the reasons which have been outlined the court declares and orders as follows:

- i. It is hereby declared that the detention of the First Claimant's PBR Permit/Pass from November 28, 2018 until the expiration date which was endorsed on same was illegal, null, void and of no effect and the action adopted contravened the essential conditions made by the Minister under Regulation 7 of the Priority Bus Route (Special Rds. Toll) Regulations, 1998.
- ii. The defendant shall pay to the first claimant costs to be assessed by the court in default of agreement.

FRANK SEEPERSAD

JUDGE