

CITATION: *Abdul Qadir v Registrar of Motor Vehicles* [2018] NTLC 003

PARTIES: Abdul QADIR
v
REGISTRAR of MOTOR VEHICLES

TITLE OF COURT: Local Court

JURISDICTION: Civil

FILE NO: 21328982

DELIVERED ON: 12 January 2018

DELIVERED AT: Darwin

HEARING DATE(s): 18 December 2017

JUDGMENT OF: Greg Macdonald

CATCHWORDS:

Appeal – Jurisdiction – *Commercial Passenger (Road) Transport Act* – Power to direct relevant offices.

REPRESENTATION:

Counsel:

Appellant: Mr M Crawley SC
Respondent: Mr T Anderson

Solicitors:

Appellant: Pipers
Respondent: Solicitor for the Northern Territory

Judgment category classification: B
Judgment ID number: [2018] NTLC 003
Number of paragraphs: 15

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21328982

BETWEEN:

Abdul QADIR

Appellant

AND:

REGISTRAR of MOTOR VEHICLES

Respondent

REASONS FOR JUDGMENT

(Delivered 12 January 2018)

Judge Macdonald:

Background

1. On 14 December 2017 the Appellant Mr Abdul Qadir made Application for orders that the Local Court direct the Respondent Registrar of Motor Vehicles (Registrar) to issue to Mr Qadir accreditation, an identity card, and renewed licences to drive a commercial passenger vehicle and operate a taxi. Associated with those directions was that the Local Court should also extend time under s 44(1)(b) of the *Limitation Act* within which Mr Qadir could seek renewal of accreditation. The directions are sought for the purpose of the *Commercial Passenger (Road) Transport Act (Act)* and *Motor Vehicles Act*.
2. The litigation in which the Application was made has a particularly long and tortuous course and history, and arose from decisions by the Director of Commercial Passenger (Road) Transport (Director) and Registrar made in

2013¹. Other than in relation to one observation below, I do not consider the distinction between the offices of Registrar and Director, which may be fulfilled by the same person, to be materially relevant.

3. The litigation culminated on 28 November 2017 with the Respondent seeking orders that the Notices dated 13 September 2013², being the subject of Mr Qadir's appeal, be set aside. The basis of the Respondent's application that day was that the authorisations to which the Notices related had all expired. That is, none of Mr Qadir's relevant accreditation, identity card or licences to drive a commercial passenger vehicle and taxi, remained extant, so the appeal was rendered inutile.
4. Subject to reserving to the Appellant a right to make application for costs or consequential orders within 14 days, the orders sought by the Registrar on 28 November 2017 were made by consent.
5. As noted, on 14 December 2017 Mr Qadir made Application for the directions and extension referred to at 1. The foundation of the Application is that; "[T]he legal and practical effect of the decisions made 13 September 2013 [which were set aside on 28 November 2017] was that the applicant has been deprived of his business and unable to operate or drive a taxi for more than 4 years". Further, the Applicant has essentially succeeded in his appeals but, in the result, is in no better position than if he had been unsuccessful, which outcome would be unjust and should be avoided.
6. Mr Qadir particularly relied on s 77(7)(c) of the Act, which empowers the Local Court on determination of any relevant appeal to; "**make any further or other order as to costs or any other matter that the case requires**"(my **emphasis**).

¹Paragraph 2 of the Applicant Appellant's written submissions dated 15 December 2017 refer to 13 September 2013, whereas *Qadir v Department of Transport* [2015] NTSC 86 at [2] and *Qadir v The Director of Commercial Passenger (Road) Transport* [2017] NTSC 76 at [2] refer to 4 July 2013.

²It was those Notices issued by the Director and Registrar which constituted the decisions the subject of the appeal to the Local Court, and subsequent litigation.

7. It is contended by Mr Qadir that various principles of statutory construction enable and ensure that the Local Court has jurisdiction, including on the basis of s 77(7)(c) of the Act, to grant the relief sought by the Application, and should do so³. In addition, it was submitted that disjuncture and nuances between the Act and *Motor Vehicles Act* in relation to appeals from decisions of the Director and Registrar and the licensing regime effectively placed Mr Qadir in a position where application to those offices could not possibly remedy his situation.
8. In my view it is relevant that s 78 of the Act provides a legislated stay to any decision of Director upon appeal to the Local Court. Holders of licences and the like under legislated regulatory regimes are generally obliged or taken to know and understand the effect of relevant provisions⁴. In the context of the Act and that it is the appeal provisions which provide for the stay, Mr Qadir might not be taken to have been aware of s 78. Nonetheless, the existence of the stay was noted at interlocutory hearing on 19 May 2014 (noting that the Registrar submitted against its effect).
9. Most relevantly, although self-represented at many points in the litigation, Mr Qadir has at least had the benefit of legal assistance since 2015. Due to the relationship between the Act and the *Motor Vehicles Act*, and what may be taken as obvious Parliamentary intent in the licensing regime established by that scheme, it behoved Mr Qadir to make application for renewals at the appropriate times. Any refusals could then have been added to the litigation, including seeking relief against any technical or unduly legalistic decision by the Registrar under the *Motor Vehicles Act*.
10. Section 77(8) of the Act provides that appeals from the Director are *de novo*, with s 16(6) of the *Motor Vehicles Act* being equivalent in respect of

³*Public Transport Commission of NSW v JE Murray - More* (NSW) Pty Ltd (1975) 132 CLR 336 at 350; *Federal Commissioner of Taxation v Smorgon* (1977) 16 ALR 721 at 729; *Owners of the Ship Shin Kobe Maru v Empire Shipping Co Inc* (1994) 181 CLR 404 at 421; and *Electric Light and Power Supply Corporation Ltd v Electricity Commission of NSW* (1956) 94 CLR 554.

⁴*Sobey v Commercial and Private Agents Board* [1979] 22 SASR 70.

decisions of the Registrar. Had the appeals proceeded, the Registrar would have been *dux litis*, and Mr Qadir would not need to have proven any error requiring correction. All of the issues would have been retried.⁵

11. Noting the principles of construction relied on by Mr Qadir⁶, I consider that the broader principles set down by the High Court in *Project Blue Sky v ABA* [1998] HCA 28 at [69] and [70] are most apposite. That includes having regard to the provisions of s 77 of the Act as a whole, read in the broader context of the Act. To grant the relief sought by the Application without any hearing of the relevant evidence, which I note would be as available at the date of hearing rather than as at September 2013, would not have sufficient regard for the unity of the scheme of the Act, or the *Motor Vehicles Act*.
12. I agree that the words “or any other matter that the case requires” of s 77(7)(c) are particularly broad. However, having regard to the terms and purpose of both s 77 of the Act and s 102AAD of the *Motor Vehicles Act*, including in the context of the regulatory scheme they are part of, I find that the Local Court does not have jurisdiction to direct and extend as sought by Mr Qadir.
13. It is also my view that, to find otherwise, it would be necessary to rely upon the principles concerning implied jurisdiction or powers of statutory courts⁷ in order to give the directions sought by Mr Qadir’s Application.
14. If I am wrong in my conclusions on the extent of jurisdiction of the Local Court in the circumstances, I would nonetheless decline to exercise jurisdiction to grant the relief sought.

⁵*Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission* [2000] HCA 47 at [14]; *Turnbull v New South Wales Medical Board* [1976] 2 NSWLR 281 at 297, and *Southwell v Specialised Engineering Services Pty Ltd* (1990) 70 NTR 6.

⁶See paragraph 7 and footnote 3 above.

⁷*Grassby v The Queen* (1989) 168 CLR 1; *Consolidated Press Holdings Limited v Wheeler* [1992] NTSC 102 and *Alice Springs Town Council v Mpweteyerre Aboriginal Corporation* [1997] NTCA 78 at 21.

15. Each party should bear their own costs in the Application.

Dated this 12 January 2018



Greg Macdonald
Local Court Judge