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MERRDAD KAIVANPOR (Applicant) v SUSSEX CENTRAL JUSTICES (Respondent) & BRIGHTON & HOVE CITY COUNCIL (Interested Party) sub nom MERRDAD KAIVANPOR v DIRECTOR OF PUBLIC PROSECUTIONS (2015)

DC (Beatson LJ, Wilkie J) 28/10/2015

LICENSING - ROAD TRAFFIC - LOCAL GOVERNMENT

APPEALS : BIAS : BURDEN OF PROOF : LICENCES : LOCAL AUTHORITIES' POWERS AND DUTIES : MAGISTRATES' COURTS : PERVERSITY : RECUSAL : REVOCATION : TAXIS : LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 s.61, s.51 : GOODS VEHICLES (LICENSING OF OPERATORS) ACT 1995

An applicant bore the burden of proof when applying for a taxi licence under the Local Government (Miscellaneous Provisions) Act 1976 s.51 to show that he was a fit and proper person to hold such a licence, but when considering revocation of the licence it was for the local authority as the licensing authority to prove that the applicant was no longer a fit and proper person or that circumstances had changed.

The appellant appealed by way of case stated against a magistrates' dismissal of his appeal against a local authority's revocation of his private hire and hackney carriage licence.

The appellant had been a taxi driver and was involved in an accident with a cyclist. The appellant initially stopped but he did not get out of his vehicle to ascertain the cyclist's well-being. He informed the police and the vehicle owner within an hour of the accident. He was charged with driving without due care and attention and failing to stop following an accident. In the meantime, following an email from the cyclist the appellant was interviewed by the local authority who revoked his licence pursuant to the Local Government (Miscellaneous Provisions) Act 1976 s.61, and he was informed of his right to appeal. A district judge directed that the appellant's licensing appeal should be heard by the same bench and held immediately after his criminal trial. That decision was not challenged. At his criminal trial the appellant pleaded guilty to failing to stop but contested the charge of driving without due care and attention. The magistrates found him guilty and his licence was endorsed with nine points. The appellant objected to the magistrates proceeding to decide his appeal against revocation of his licence. He maintained that the magistrates should recuse themselves and not hear the revocation appeal. Another court in the same building had offered to assist by hearing the revocation hearing. The hearing would not be concluded on that day, which was contrary to the court's guidelines. The court nevertheless proceeded and adjourned it part heard. There was a factual dispute between the appellant and a witness as to how the accident had happened. The magistrates appeared to have taken that evidence that was heard in the criminal trial into account when determining the regulatory appeal. They accepted a witness's account of the case and not the appellant's. The questions were whether the magistrates were right 1(a) not to recuse themselves; 1(b) to place the burden on the appellant to show that he was a fit and proper person; (2) whether the decision to dismiss the appeal was perverse.

The appellant submitted that (1) a fair-minded informed observer would have perceived there was bias as the magistrates had decided the criminal trial and then proceeded to hear the regulatory appeal despite his opposition, and where it was aware that another court was available to hear the regulatory appeal and that it would not be concluded that day, which was a practice that was discouraged. The fair-minded and informed observer would also be aware that one of the core issues in the regulatory appeal was that the appellant had pleaded guilty to failing to stop after the accident and was convicted of driving without due care and attention where his evidence was contradicted and the court had disbelieved him; (2) there were clear parallels in the statutory schemes in the 1976 Act and the Goods Vehicles (Licensing of Operators) Act 1995. Under both schemes, it was for an applicant to show that he was a fit and proper person to hold a taxi licence when making the initial application for a licence, but that it could be revoked only if the licensing body was satisfied that the

applicant was not a fit and proper person or that the circumstances had changed; (3) the decision had been perverse.

HELD: (1) There could be no criticism of the way the magistrates conducted the criminal appeal. It could be said that there was no disadvantage in the same court conducting the regulatory appeal. The issues in the regulatory appeal were different from those in the criminal appeal. There was no reason to suppose in dealing with the regulatory appeal they would be biased by what they had heard in the criminal case. There was no merit in the argument that a fair-minded observer would have formed the view that there was a real possibility of bias, R. v Gough (Robert) [1993] A.C. 646 followed and R. v McElligott Ex p. Gallagher and Seal [1972] Crim. L.R. 332 considered. (2) The magistrates had been referred to the relevant authorities, Canterbury City Council v Ali [2013] EWHC 2360 (Admin), [2014] L.L.R. 1 considered and Muck It Ltd v Secretary of State for Transport [2005] EWCA Civ 1124, [2006] R.T.R. 9 followed. The magistrates had erred in law in giving the weight to Canterbury and should have applied the Court of Appeal's decision in Muck It. Canterbury had a number of limitations and deficiencies; the decision had been reached with only one party represented and was based on the absence of the Court of Appeal authority, and the decision on the burden of proof was not strictly speaking necessary for that decision. The two statutory schemes reflected the dichotomy between an application and a revocation. Where a person had applied the burden of proof was on him. Once he had a licence the scheme sensibly required the licensing authority to be satisfied of certain matters; the burden was on the licensing body to satisfy itself of changes of circumstances and not for the holder of the licence to show that. The magistrates had erred in law in following Canterbury instead of Muck It. It was not right to place the burden of proof on the appellant. (3) The appellant did not come close to establishing a perversity case. (4) The matter was remitted to a differently constituted bench to decide the question of the burden of proof.

Appeal allowed

Counsel:

For the appellant: David Lewis-Hall

For the respondent: No appearance or representation

Solicitors:

For the appellant: Howlett Clarke solicitors

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