

**THE HIGH COURT
JUDICIAL REVIEW**

[2023] IEHC 437

[Record No. 2021/345 JR]

BETWEEN

KEITH MCKENNA

APPLICANT

AND

THE COMMISSIONER OF AN GARDA SIOCHANA

RESPONDENT

JUDGMENT of Mr. Justice Charles Meenan delivered on the 20th of July, 2023

Background

1. The applicant is presently working as a truck driver and holds all the necessary licences and qualifications including a heavy goods vehicle licence which allows him to drive such vehicles both in this country and internationally. In 2019 the applicant wished to change his employment and applied to the respondent for a small public service vehicle (SPSV) licence within the meaning of Part 2 of the Taxi Regulation Act 2013 (the Act of 2013).

2. Unfortunately, the applicant has a significant criminal record. The applicant had been imprisoned for seven years in the United Kingdom for a drugs conviction after he was found driving a commercial vehicle with over £1 million worth of cannabis. At the time of his application the applicant was serving a five-year prison sentence (with the final eighteen months suspended) in Limerick Prison. This sentence had commenced on 2 January 2018, having been convicted under s. 15 of the Misuse of Drugs Act 1977 of being found in

possession of €98,000 worth of cannabis in Limerick in 2009. His SPSV application was submitted whilst he was on temporary release from Limerick Prison.

3. By a decision of 15 November 2019, the respondent wrote to the applicant refusing to grant him a SPSV licence for the following reason:

“The applicant is not a suitable applicant to hold an SPSV licence as the applicant still has a two and a half year suspended sentence in relation to the sale/supply of drugs.

The applicant has previous convictions for the international sale and supply of drugs in the United Kingdom and Ireland.”

The applicant appealed this decision to the District Court under s.13(3) of the Act of 2013.

4. The appeal was initially returnable to 19 December 2019 but due to the then Covid-19 pandemic the matter was not heard until 2 July 2020. On that day, the District Court was told that the applicant had an offer of employment with Irish Diamond Limousines and Vintage Wedding Car Hire should he obtain a SPSV licence. Further, the District Court was advised and it was acknowledged that the applicant had previous convictions for serious drug offences.

5. Having heard the evidence and submissions of the parties the District Judge reserved his decision. On 16 July 2020, the District Judge allowed the applicant’s appeal.

6. Following the decision of the District Court, the applicant was not issued with a SPSV licence. There then followed correspondence between the applicant’s solicitor and the respondent. Ultimately, on 22 December 2020, the respondent issued the SPSV licence but subject to the following condition: that the licence was approved for – “... subject to the conditions attached, namely, “for the purpose of Irish Diamond Limousines and Vintage Wedding Car Hire only.”

7. The applicant was dissatisfied with this condition and re-entered the matter before the District Court. The first available date on which the District Judge who had heard the appeal was sitting was 4 February 2021.

8. On 4 February 2021, the District Court was reminded of the history of the case and the respondent claimed that the licencing authority was entitled to place such a condition on the grant of the licence in accordance with s. 9(12) of the Act of 2013. The District Judge indicated that he did not believe he could interfere with the decision of the respondent and so the condition stood.

Application for Judicial Review

9. On 26 April 2021, this court granted the applicant leave to seek the following reliefs by way of judicial review:

- (i) An order of *certiorari* quashing the condition attached to the grant of the applicant of a Small Public Service Vehicle (SPSV) licence under Part 2 of the Taxi Regulation Act 2013, dated 22 December 2020.
- (ii) In the alternative, an order of *mandamus* directing the respondent (his servants or agents) to grant the applicant an SPSV licence under Part 2 of the Act of 2013 without the condition, namely, “for the purpose of Irish Diamond Limousines and Vintage Wedding Car Hire only.”
- (iii) A declaration that the respondent was not entitled to attach a condition to the grant of the licence that the applicant was licenced to drive a SPSV in “for the purpose of Irish Diamond Limousines and Vintage Wedding Car Hire only” under s. 9(12) of the Taxi Regulation Act 2013 the regulations thereto or under any other provisions.
- (iv) An order extending time to seek the reliefs sought above pursuant to O.84 r.21(1) of the Rules of the Superior Courts 1986.

Extension of time

10. The respondent submits that this application is out of time. Reliance is placed on the provisions of O.84 r.21 RSC 1986 (as amended) which stipulates that an application for leave

to seek judicial review must be made within three months from the date when the grounds for the application first arose. The court may extend time if satisfied that:

- (a) there is good and sufficient reason for doing so, and
- (b) the circumstances that resulted in the failure to make the application within three months were either outside the control of, or could not reasonably have been anticipated by, the applicant.

11. In support of its submission the respondent relies on the following passage in the judgment of Costello J. in *O'Donnell v. Dun Laoghaire Corp (No. 2)* [1991] ILRM 301:

“in considering whether or not there are good reasons for extending the time I think it is clear that the test must be an objective one and the court should not extend the time merely because an aggrieved plaintiff believed that he or she was justified in delaying the institution of proceedings. What the plaintiff has to show (and I think the onus under 0. 84 r. 21 is on the plaintiff) is that there are reasons which both explain the delay and afford a justifiable excuse for the delay.”

12. The respondent submits that the applicant was on notice of the said decision which he seeks to impugn on 22 December 2020 but did not institute these proceedings until 16 April 2021.

13. The applicant relies on the judgment given in the District Court on 16 July 2020. The transcript sets out the following:

“JUDGE: Well, what I am going to do is this. I am going to say appeal allowed and you have liberty to apply. You see, I don't take on the role of the licencing authority, but if there is any difficulty – so my order is appeal allowed, liberty to apply. If any difficulty arises you can come back to me.

Solicitor for Applicant: Revisit the matter with you. Thank you most sincerely Judge.

JUDGE: Alright, thank you very much.”

The applicant submits that when he received the licence with the condition he opted to apply to the District Court as per “liberty to apply”.

14. In my view, I believe it was appropriate for the applicant to apply to the District Court Judge when he became aware of the condition which the respondent sought to attach to his licence. The decision of the District Judge that he could not interfere with the condition was correct, but it does not follow from this that the application by the applicant was not reasonable. Thus, I accept the submission of the applicant that time did not begin to run until 4 February 2021, the date when the matter last came before the District Judge.

15. If I am incorrect in finding that the three-month period commenced on 4 February 2021, I am satisfied that the applicant is entitled to an extension of time. The fact that the applicant was given “liberty to apply” by the District Judge indicated that the matter could be brought back before the District Judge if circumstances arose, and I believe it was appropriate for the applicant to go through this procedure before initiating these judicial review proceedings.

Statutory provisions

16. The following are the relevant sections of the Act of 2013:

“6. (1) Subject to *subsection (2)*, the Authority is the licensing authority for the purposes of this Act.

(2) Notwithstanding *subsection (1)*, the Garda Síochána shall be the licensing authority to grant licences to drive small public service vehicles until such time as an order is made under *subsection (3)*.”

No order has been made under subsection (3).

“9. (1) The licensing authority may, upon application to it and in accordance with this section ..., grant to the applicant a licence.

- - -

(12) The licensing authority may, when granting a licence, attach such terms and conditions to the licence as it sees fit.”

“10. (1) A licensing authority shall not grant a licence under *section 9* to a person unless it is satisfied that he or she is a suitable person to hold a licence.

(2) In assessing whether a person is a suitable person to hold a licence, the licensing authority may, amongst any other matters, have regard to the following:

(a) whether the applicant is of good character;

(b) any concerns raised by the Authority or the Garda Commissioner or other member of the Garda Síochána regarding the applicant’s suitability to hold a licence;

(c) any convictions for offences (including offences under the enactments mentioned in the Schedule) committed by the applicant, and the extent to which those convictions are of relevance to the activities of the person in respect of providing small public vehicle services or driving a small public service vehicle, as the case may be;

- - - -

13. (1) ---

(2) ---.

(3) Where a person has been notified under *subsection (2)* of the decision of the licensing authority, to refuse to grant the licence or to revoke or suspend the licence, as the case may be, he or she may, not later than 28 days from the date of the service of the notification, appeal to the District Court against the refusal, revocation or the suspension, as the case may be.

- - - -

(7) On the hearing of an appeal under *subsection (3)* in relation to the decision of the licensing authority under *subsection (2)*, the District Court may either confirm the decision or allow the appeal. If the appeal is allowed in relation to a decision to refuse to grant a licence the licensing authority shall grant the licence.

(10) The decision of the District Court on an appeal under *subsection (3)* or *(8)* is final, except by leave of the Court an appeal on a specified point of law lies to the High Court.

---“

17. In this case the licencing authority, the respondent, refused to grant a licence to the applicant on the grounds that the applicant was not a suitable person because of his prior criminal convictions (s. 10(1) and (2)). The respondent appealed this decision to the District Court. The District Judge, having heard evidence, allowed the appeal. As the appeal was allowed, the respondent had to grant the licence (s. 13(7)). In granting the licence the respondent attached conditions to the licence (s. 9(12)).

Condition

18. Though s. 9(12) enables the respondent to attach conditions “as it sees fit”, it is not the case that there is no limitation on the scope or extent of what conditions may be attached. I refer to the following passage from the judgment of Simons J. in *Rahman v. Superintendent Heaney & Ors* [2022] IEHC 206:

“The licensing authority enjoys a wide discretion under the Taxi Regulation Act 2013 to impose such terms and conditions to the licence as it sees fit (s. 9(12)). Of course, such conditions must be related to the purpose of the legislation: the licensing authority is not at large. ...”

In *Rahman* Simons J. concluded that it would a proper exercise of the respondent’s statutory discretion to impose terms and conditions for the licencing authority to make it a condition of

a licence that the licensee produce to the authority a renewed immigration permission on the expiration of the then current one.

19. In broad terms, it seems to me that the purpose of the Act of 2013 is to provide a statutory framework to protect the interests and safety of members of the public who avail of the services provided by holders of SPSV licences. Hence the concern over the applicant having prior criminal convictions. At the same time, the requirement to protect the public has to be considered in the context of an applicant's constitutional right to earn a livelihood (see *N.K.V. v. Minister for Justice* [2018] 1 IR 246). Arising from this it seems to me that any conditions imposed by the respondent must be rational, reasonable and proportional.

20. In the instant case the applicant successfully appealed the refusal of the respondent to grant a licence. The respondent is now obliged to grant a licence. However, it would not be permissible for the respondent to impose a condition so restrictive as to, in effect, set at nought the decision of the District Court.

21. Looking at the terms of the condition imposed it is the case that the applicant in the District Court did make reference to working for his cousin, who operates a business as "Irish Diamond Limousines and Vintage Wedding Car Hire". However, making this a condition of the SPSV licence is a different matter. "Diamond Limousines and Vintage Wedding Car Hire" is not a legal entity. A licence is for a five-year period so what is to happen the applicant's licence if, in that period, there is a change in name or legal status? The answer would be that the applicant's licence would be no longer valid and thus his employment would cease, and he may not be in a position to obtain alternative employment. Further, if there was a change in name or legal status the applicant could possibly style himself as being "Diamond Limousines and Vintage Wedding Car Hire". This would defeat the whole purpose of the condition being that the applicant operate his SPSV licence under the supervision and/or direction of an appropriate person. Thus, I believe that the said condition is irrational and unreasonable.

22. In imposing a condition, given the applicant's record, it may not have been unreasonable for a provision to be made for the applicant to operate his licence under the supervision and/or direction of an appropriate person. I would make the observation that in other areas of law, it is often the case that when, for example, doctors, solicitors, or pharmacists have disciplinary issues they are allowed to continue practice provided it is done under the appropriate supervision of others.

Conclusion

23. By reason of the foregoing, I propose to make the following orders:

- (i) An order of *certiorari* quashing the condition attached to grant to the applicant of a small public service vehicle (SPSV) licence under Part 2 of the Taxi Regulation Act 2013, dated December 2020.
- (ii) An order remitting the matter back to the respondent for the purpose of granting to the applicant a SPSV licence, pursuant to the provisions of the Taxi Regulation Act 2013.

24. Given the outcome of these proceedings, my provisional view is that the applicant is entitled to be awarded the costs (including the reserved costs) of this application costs to be adjudicated in default of agreement. As this judgment is being delivered electronically, I will allow the parties until the 15th of September 2023 to make submissions concerning the orders I propose to make (such submissions to be no longer than 1500 words). I will list the matter on the 5th of October 2023 for the purposes of making final orders.