

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

(1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED.

 DATE 12/9/2024 SIGNATURE.....

CASE NO: 10379/2023

In the matter between:

BELA BELA VTS (PTY) LTD

Applicant

and

BELA-BELA MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER:

BELA-BELA MUNICIPALITY

Second Respondent

BELA-BELA MUNICIPAL COUNCIL

Third Respondent

MEC OF LIMPOPO DEPARTMENT OF

TRANSPORT AND COMMUNITY SAFETY

Fourth Respondent

JUDGEMENT

Gaisa AJ

INTRODUCTION

[1] This application concerns the interplay between local government powers and national regulatory frameworks in the context of vehicle testing stations. The applicant, Bela Bela VTS (Pty) Ltd, seeks to review and set aside a decision by the Bela-Bela Municipality not to provide a letter of support for its application to establish a vehicle testing station. This case raises important questions about the role of municipalities in the licensing process for vehicle testing stations, the interpretation of the relevant legislative framework, and the principles governing judicial review of municipal decision-making.

[2] The matter comes before this court as an application for judicial review in terms of the **Promotion of Administrative Justice Act**.¹ The applicant contends that the municipality's decision was unlawful, irrational and procedurally unfair. The respondents oppose the application on various grounds, including that there is no final decision to review and that the application is premature.

¹ Act 3 of 2000 ("PAJA")

[3] This judgment will address the following key issues:

- 3.1. whether there is a reviewable decision before the court;
- 3.2. the proper interpretation of the legislative framework governing vehicle testing stations;
- 3.3. the role and powers of municipalities in the licensing process;
- 3.4. whether the municipality's conduct constitutes reviewable administrative action;
- 3.5. if so, whether the decision should be set aside on any of the grounds of review.

FACTUAL BACKGROUND

[4] The salient facts are largely common cause between the parties. On 20 September 2022, the applicant applied to the Bela-Bela Municipality for a letter of support for its application to establish a vehicle testing station within the municipal area. This letter of support is required as part of the application process to the MEC for Transport in terms of the National Road Traffic Act 93 of 1996 and its Regulations.

[5] Despite follow-ups from the applicant, the municipality failed to respond substantively to the request for several months. On 27 July 2023, the Municipal Council considered the applicant's request but did not pass a resolution in support. Instead, the matter was referred back to the municipal administration

[6] On 3 August 2023, the Municipal Manager informed the applicant that the Municipal Council could not provide consent for the application at that stage, citing concerns about oversaturation of testing stations in the area and potential impact on the municipality's own testing station revenue.

[7] The applicant subsequently launched this review application, contending that the decision was unlawful and invalid. The municipality opposes the application, arguing *inter alia* that there is no final decision to review as the matter remains under consideration.

LEGAL FRAMEWORK

[8] The establishment and operation of vehicle testing stations is governed primarily by the National Road Traffic Act² and the National Road Traffic Regulations, 2000.

² Act 93 of 1996 ("NRTA")

[9] Section 38 of the NRTA provides:

"Any person, department of state or registering authority desiring to operate a testing station shall apply in the prescribed manner to the inspectorate of testing stations for the registration of such testing station."

[10] Regulation 128 sets out the manner of application for registration of a testing station. Of particular relevance is clause 6.2.2 of Schedule 3 to the Regulations, which states:

"The testing station proprietor shall provide a copy of the written resolution from the Municipal Council of the municipality in which the Testing Station is located, supporting the application of the Testing Station."

[11] This provision forms the crux of the dispute between the parties. Its proper interpretation and effect are central to determining the issues in this case.

ISSUES FOR DETERMINATION

[12] The following key issues arise for determination:

- 12.1. Is there a reviewable decision before the court?
- 12.2. What is the proper interpretation of clause 6.2.2 of Schedule 3 to the Regulations?
- 12.3. What is the role and extent of municipal powers in relation to applications for vehicle testing stations?
- 12.4. Does the municipality's conduct constitute administrative action reviewable under PAJA?
- 12.5. If so, should the decision be set aside on any of the grounds of review raised by the applicant?

ANALYSIS

[13] Is there a reviewable decision?

- 13.1. The first issue to address is whether there is in fact a reviewable decision before the court. The respondents contend that the application is premature as there is no final decision, merely a referral back to the administration.

13.2. In **Oudekraal Estates (Pty) Ltd v City of Cape Town and Others**³

the Supreme Court of Appeal held that:

"... administrative decisions are often built on the supposition that previous decisions were validly taken... [and] until the decision is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked."

13.3. While the Municipal Council did not pass a formal resolution rejecting the applicant's request, the letter of 3 August 2023 from the Municipal Manager clearly communicates a decision not to support the application at that stage. This constitutes an administrative decision with direct, external legal effect on the applicant's rights.

13.4. The fact that the municipality characterises this as an interim position does not detract from its immediate impact on the applicant's ability to progress its licence application.

13.5. I therefore find that there is a reviewable decision before the court.
The application is not premature.

³ 2004 (6) SA 222 (SCA)

[14] Interpretation of clause 6.2.2 of Schedule 3

14.1. The proper interpretation of clause 6.2.2 is central to determining the role and powers of the municipality in this process. The applicant contends that this provision merely requires the municipality to confirm that the proposed testing station would be located within its jurisdiction. The respondents argue that it empowers the municipality to consider the merits of the application and exercise discretion in whether to support it.

14.2. In **Cool Ideas 1186 CC v Hubbard and Another**⁴ the Constitutional Court reaffirmed the principles of statutory interpretation:

"A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important interrelated riders to this general principle, namely:

(a) that statutory provisions should always be interpreted purposively;

⁴ 2014 (4) SA 474 (CC) at para [28].

(b) the relevant statutory provision must be properly contextualised; and

(c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity."

14.3. Applying these principles, I make the following findings on the proper interpretation of clause 6.2.2:

14.3.1. The ordinary grammatical meaning of the words "supporting the application" suggests more than mere confirmation of location. It implies an evaluative process by the Municipal Council.

14.3.2. The purposive approach supports this interpretation. The legislature's inclusion of this requirement suggests an intention for municipalities to play a meaningful role in the process, likely due to their local knowledge and planning responsibilities.

- 14.3.3. Contextually, this interpretation aligns with the broader regulatory framework for vehicle testing stations, which involves multiple levels of government in ensuring public safety and proper planning.
- 14.3.4. A constitutionally compliant interpretation must respect the principle of cooperative governance enshrined in Chapter 3 of the Constitution. This favours an interpretation that gives meaningful effect to the municipal role rather than reducing it to a rubber stamp.
- 14.3.5. I therefore conclude that clause 6.2.2 empowers municipalities to substantively consider applications for support and exercise discretion in whether to provide such support. However, this discretion is not unfettered and must be exercised lawfully, rationally and in accordance with the constitutional principles of cooperative governance.

[15] Role and extent of municipal powers:

- 15.1. Having established that municipalities have a substantive role to play, it is necessary to delineate the extent of their powers in this context.

The respondents' argument that they can consider factors such as market saturation goes too far.

15.2. South African constitutional law affirms that municipalities must respect the distinct functions assigned to other spheres of government and may not usurp powers beyond their constitutional mandate. This principle is rooted in Section 41(1)(e) of the Constitution, which underscores the importance of cooperative governance and mandates that all spheres of government must respect each other's constitutional status and functions. The Constitutional Court has been instrumental in reinforcing this division of powers, ensuring that municipalities operate within their designated competencies and refrain from encroaching on functions that belong to the national or provincial spheres of government.

15.3. Municipalities may not usurp the functions of other spheres of government. Municipalities must respect the separation of powers and cannot assume roles that are constitutionally assigned to other spheres of government.⁵

⁵ Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others (2014) ZACC 9; 2014 (5) SA 256 (CC)

15.4. The power to register and regulate vehicle testing stations clearly falls within the provincial government's transport function. While municipalities have a role to play, they cannot arrogate to themselves powers that properly belong to the provincial sphere.

15.5. I therefore find that in considering whether to support an application under clause 6.2.2, municipalities are limited to factors within their constitutional competence. These would include:

15.5.1. Compliance with local zoning and land use regulations

15.5.2. Alignment with integrated development plans and local economic development strategies

15.5.3. Local traffic management considerations

15.5.4. Any other factors directly related to municipal planning and local government matters

15.6. Considerations such as market saturation or impact on existing testing stations fall outside the municipality's remit and are more

properly considered by the MEC in deciding whether to grant the licence.

15.7. Does the conduct constitute administrative action?

15.7.1. Having found that there is a reviewable decision and clarified the scope of municipal powers, the next question is whether the municipality's conduct constitutes administrative action reviewable under PAJA.

15.7.2. The elements of an administrative action for review purposes were summarised by the Constitutional Court in **Minister of Defence and Military Veterans v Motau and Others**⁶, by Khampepe J as follows:

"[33] The concept of 'administrative action', as defined in s 1(i) of PAJA, is the threshold for engaging in administrative-law review. The rather unwieldy definition can be distilled into seven elements: there must be (a) a decision of an administrative nature; (b) by an organ of state or a natural or juristic person; (c) exercising a public

⁶ 2014(5) SA 69 (CC)

power or performing a public function; (d) in terms of any legislation or an empowering provision; (e) that adversely affects rights; (f) that has a direct, external legal effect; and (g) that does not fall under any of the listed exclusions."

15.7.3. In **Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others**⁷, O'Regan J said:

"[25] The provisions of s 6 divulge a clear purpose to codify the grounds of judicial review of administrative action as defined in PAJA. The cause of action for the judicial review of administrative action now ordinarily arises from PAJA, not from the common law as in the past. And the authority of PAJA to ground such causes of action rests squarely on the Constitution. It is not necessary to consider here causes of action for judicial review of administrative action that do not fall within the scope of PAJA. As PAJA gives effect to s 33 of the Constitution, matters relating to the interpretation and application of PAJA will of course be constitutional matters."

⁷ [2004] ZACC 15; 2004 (4) SA 490 (CC)

15.8. Applying these criteria to the present case:

15.8.1. The decision was made by the Bela-Bela Municipality, an organ of state.

15.8.2. In considering the application for support, the municipality was exercising a public power derived from clause 6.2.2 of the Regulations.

15.8.3. This power is exercised in terms of empowering legislation, namely the NRTA and its Regulations.

15.8.4. The decision adversely affects the rights of the applicant by impeding its ability to progress its licence application.

15.8.5. The decision has a direct, external legal effect on the applicant's position.

15.9. I therefore conclude that the municipality's decision constitutes administrative action reviewable under PAJA.

GROUND OF REVIEW

[16] The applicant has raised several grounds of review, including that the decision was procedurally unfair, based on an error of law, and irrational. Having regard to the evidence before me, I make the following findings:

16.1. Procedural fairness:

The extensive delay in responding to the applicant's request, despite follow-ups, falls short of the standards of procedural fairness required by section 3 of PAJA. Despite the lengthy, not properly explained delay by the municipal respondents, the municipal respondents failed to give the applicant an adequate opportunity to make representations before reaching its decision.

16.2. Error of law:

The municipality's consideration of factors outside its remit, such as market saturation, constitutes an error of law in the form of a misconstruction of its powers under clause 6.2.2.

16.3. Rationality:

In ***Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others***⁸ the Constitutional Court held that rationality is a minimum threshold requirement applicable to the exercise of all public power. The decision must be rationally related to the purpose for which the power was given:

"[85] It is a requirement of the rule of law that the exercise of public power by the Executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the Executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action.

[86] The question whether a decision is rationally related to the purpose for which the power was given calls for an objective enquiry. Otherwise a decision that, viewed objectively, is in fact

⁸ 2000 (2) SA 674 (CC)

irrational, might pass muster simply because the person who took it mistakenly and in good faith believed it to be rational. Such a conclusion would place form above substance and undermine an important constitutional principle.”

[17] The municipality's stated reasons for not supporting the application - concerns about oversaturation and impact on municipal revenue - are not rationally connected to the purpose of clause 6.2.2, which is to allow municipalities input on local planning and governance issues. These considerations fall outside the municipality's proper role in the process.

[18] I therefore find that the decision falls to be set aside on multiple grounds under section 6 of PAJA.

REMEDY

[19] Section 8 of PAJA gives the court broad remedial powers when reviewing administrative action. In light of the constitutional principle of separation of powers, courts should be cautious about substituting their own decision for that of the administrator.

[20] In the circumstances of this case, I consider it appropriate to:

- 20.1. Set aside the municipality's decision of 3 August 2023;
- 20.2. Remit the matter back to the Municipal Council for reconsideration;
- 20.3. Direct the municipality to reconsider the application within 20 days of the order of this court, having regard only to factors within its constitutional competence as outlined in this judgment;
- 20.4. Direct the municipality to provide written reasons, within 5 days of the reconsideration, for its decision to the applicant.

CONCLUSION

[21] While municipalities have an important part to play in the regulation of vehicle testing stations, they must exercise their powers within constitutional bounds and with due regard to the principles of rationality and procedural fairness.

ORDER

[22] In the result, I make the following order:

- 22.1. The decision of the Bela-Bela Municipality communicated on 3 August 2023, declining to support the applicant's application for a vehicle testing station, is reviewed and set aside.
- 22.2. The matter is remitted to the Bela-Bela Municipal Council for reconsideration.
- 22.3. The Bela-Bela Municipality is directed to reconsider the applicant's request for support within 20 days of this order, having regard only to factors within its constitutional competence as set out in this judgment.
- 22.4. The Bela-Bela Municipality is directed to provide written reasons for its decision to the applicant within 5 days of making such decision.
- 22.5. The respondents are ordered to pay the applicant's costs.



N. GAISA
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

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DATE OF HEARING : 9 September 2024

DATE OF JUDGEMENT : 10 September 2024

This judgment is handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 10 SEPTEMBER 2024 at 12:00 PM.