



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 3 March 2025

Case No. 2025-017039

In the matter between:

WITWATERSRAND AFRICAN TAXI ASSOCIATION

Applicant

and

GAUTENG PROVINCIAL REGULATORY ENTITY

First Respondent

THE NANCEFIELD DUBE WEST TAXI ASSOCIATION

Second Respondent

MEC FOR ROADS AND TRANSPORT, GAUTENG

Third Respondent

**THE MINISTER FOR THE EXECUTIVE COUNCIL
FOR ROADS AND TRANSPORT**

Fourth Respondent

THE GAUTENG NATIONAL TAXI ALLIANCE

Fifth Respondent

THE SOUTH AFRICAN NATIONAL TAXI COUNCIL

Sixth Respondent

CITY OF JOHANNESBURG

Seventh Respondent

SOUTH AFRICAN POLICE SERVICE

Eighth Respondent

MEC FOR COMMUNITY SAFETY, GAUTENG PROVINCE

Ninth Respondent

JUDGMENT

WILSON J:

- 1 Section 5 (3) of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”) provides that where an administrator takes an administrative decision without providing reasons it must “be presumed in any proceedings for judicial review that the administrative action was taken without good reason”. Section 5 (4) provides an exception to this rule where a person affected by the administrative decision has been informed of the decision-maker’s election to depart from the duty to give reasons, and of the justification for that election.

The decision

- 2 The applicant, WATA, is an association of just over 700 taxi owners, some of which operate along routes in Soweto. The first respondent, the GPRE, was established by the third respondent, the MEC, under the National Land Transport Act 5 of 2009. The GPRE is part of the MEC’s department (section 23 (1) of the Act), and consists of “dedicated officials” from that department (section 23 (2)). The GPRE’s statutory functions are to “monitor and oversee public transport” in Gauteng (section 24 (1) (a)) and to “receive and decide on applications relating to operating licences for intra-provincial transport where no municipality exists to which the operating licence function has been assigned” (section 24 (1) (b)).
- 3 On 16 January 2025, the GPRE notified WATA of its decision to award the right to load passengers and to “bind” (to terminate a taxi’s journey) on specified routes operated by WATA’s members to the second respondent, NANDUWE. NANDUWE is a rival association of taxi owners. The decision

was said to be “applicable immediately but enforceable 21 days after receipt” of the notice in which it was contained. Soon after the decision was announced, NANDUWE began preventing WATA from operating on the contested routes. Although this case was argued on the basis that the seventh respondent’s police department, the JMPD, and the eighth respondent, the SAPS, are taking steps to implement the 16 January decision, there is scant evidence of their conduct and attitude on the papers. In particular, it is not clear whether they have actively assisted in the implementation of the 16 January decision, or have simply stood by while NANDUWE did so itself.

- 4 Either way, the enforcement of the decision means that taxis owned by WATA members are not permitted to load passengers, or to terminate their journeys, along the defined routes. Despite demand, the GPRE has failed to provide any reasons for its decision. At the hearing of this matter, Mr. Mlambo, who appeared for the GPRE and for the MEC (who also seems to have been joined again as the fourth respondent), did not suggest that reasons had been given. Nor did he argue that the failure to provide reasons was in any way justified.
- 5 WATA now seeks interim relief restraining the implementation of the 16 January decision on the basis that it is *prima facie* unlawful, because section 5 (3) of PAJA says so. The interim relief WATA seeks will operate pending the resolution of a review or internal appeal of the decision, the grounds of which WATA says it is presently unable to specify, precisely because the GPRE’s decision was completely unreasoned.

The dispute

6 The GPRE's decision appears to have been taken against the backdrop of intense competition over the routes to which it applies. That competition has on occasion been violent, and it has endured for at least ten years. The fifth respondent, the GNTA, which is an umbrella body for several taxi associations, including WATA, filed an affidavit confirming that it will abide my decision. In that affidavit, a Mr. Piet Mahlangu sets out some vital context, none of which seems to be disputed. Mr. Mahlangu says that the source of this ten-year conflict is a GPRE decision to issue operating licences to both WATA and NANDUWE, which permit them to operate in competition with each other on the same routes. It is suggested that some of these licences were invalidly issued, but it is not clear from the papers whether, over the last ten years, anyone has sought to trace the authenticity of the various operating licences issued, or to work out a sustainable framework within which WATA and NANDUWE can share the contested routes. The upshot of this appears to have been a decision to refer the disputes between WATA and NANDUWE to arbitration. The record in this matter contains a number of court orders, stretching back several years, granting interim relief to one or other of the parties, pending that arbitration.

7 Two of those court orders are of particular relevance. The first is an order of Hofmeyr AJ, dated 13 September 2022, in which "the disputes relating to the route and permits allocated to the members" of WATA and NANDUWE were referred to arbitration. That order, at least *prima facie*, binds WATA and NANDUWE, together with the MEC, who apparently brought the application

on which it was granted. Neither Mr. Mlambo nor Mr. Mashaba, who appeared for NANDUWE, suggested that the order was wrongly granted, or that it had been set aside. Indeed, it was common cause before me that the arbitration envisaged in the order is set to proceed on 1 April 2025, before a senior member of the Johannesburg Bar

8 I issued the second order on 14 March 2024. My order restrains NANDUWE from harassing, intimidating or otherwise interfering with WATA members' operations along the contested routes pending the outcome of the arbitration. Again, that order was neither appealed against nor rescinded, and remains binding on all the parties to this application.

9 The GPRE's decision to revoke WATA members' rights to load and to terminate their journeys on the defined routes appears to have been taken on the basis of a complaint initiated by WATA that NANDUWE had disobeyed my order, and had continued to harass WATA members using the contested routes. Instead of addressing that issue, WATA complains, the GPRE purported to resolve the problem by effectively excluding taxis owned by WATA members from operating on the contested routes.

10 Neither Mr. Mlambo, nor Mr. Mashaba advanced anything like a coherent justification for that decision. Mr. Mlambo's submission amounted to the proposition that WATA has never had the right to operate on the defined routes in the first place. He referred me to a judgment of this court dated 2 December 2015, in which WATA was unsuccessful in reviewing a decision to exclude it from the contested routes. However, a cursory examination of that decision reveals that WATA was unsuccessful because the relevant

authorities denied that they had in fact taken a decision to exclude WATA from the relevant routes, not because an enforceable decision had been taken to do so.

11 For his part, Mr. Mashaba stated merely that I lacked the power to intervene because the GPRE had decided that WATA would no longer be entitled to operate on the contested routes, and was statutorily empowered to do so. That submission did no more than beg the question. Whatever its statutory powers, the GPRE is under a duty to act lawfully. On the face of it, the GPRE's 16 January decision exceeded the parameters of the complaints referred to it, and interfered with the terms of an order, binding on the MEC, to have the dispute between WATA and NANDUWE referred to arbitration. Without any sense of why GPRE acted as it did, the decision is *prima facie* unlawful.

12 There is no serious dispute that, prior to the enforcement of the 16 January decision, there were members of both WATA and NANDUWE operating on the contested routes with operating licences which were, on their face, validly issued. Since the enforcement of the decision, WATA members have been prevented from loading passengers and terminating their journeys on the routes, even if they are in possession of such a licence. The 16 January decision states GPRE's intention to revoke WATA members' licences, but that aspect of the decision does not appear to have been implemented yet.

The relief sought

13 Mr. Veerasamy, who appeared together with Mr. Sechaba for WATA, asked no more than that I grant interim relief suspending the implementation of the 16 January decision, and restraining the first to third respondents from

preventing those of WATA's members with licences from operating on the contested routes. The relief would operate pending the determination of an internal appeal or PAJA review of the 16 January decision. Mr. Veerasamy emphasised that WATA could not yet say whether it would appeal or review the decision, because no reasons for it had been given. Mr. Veerasamy submitted that, if the reasons suggested that the GPRE had acted *ultra vires* its enabling legalisation, then a review would be necessary. If, however, GRPE had acted within its powers, but simply got its decision wrong, an internal appeal would be necessary. It bears pointing out that the GPRE's decision itself envisages the exercise of a right of appeal or review against it, which makes GPRE's refusal to give reasons all the more peculiar.

- 14 Be that as it may, given the total absence of any justification for the 16 January decision, and the fact that the decision is clearly inconsistent with two orders of this court which seek to enable the dispute between WATA and NANDUWE to be arbitrated, I am bound to accept that WATA has a *prima facie* right of the strongest kind to the relief it seeks. The balance of convenience must be firmly in WATA's favour, since it seeks only to preserve the rights of those of its members who are in possession of operating licences, without interfering with the rights of NANDUWE members who may also be in possession of operating licences. WATA members in possession of operating licences are clearly suffering irreparable harm, not only because, as WATA's papers show, their income has likely taken a substantial dent since the 16 January decision was implemented, but also because their rights to have their dispute arbitrated under the orders that Hofmeyr AJ and I made have been compromised. In the

face of GPRE's baffling refusal to justify its decision, WATA clearly had no effective remedial alternative but to approach this court.

Order

15 For all these reasons -

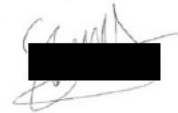
15.1 Pending the final determination of an internal appeal or of a review of the first respondent's decision of 16 January 2025 ('the decision') under the Promotion of Administrative Justice Act 3 of 2000, which must be launched within ten days of receipt of the first respondent's reasons for that decision, the first, second and third respondents are interdicted and restrained from –

15.1.1 implementing the decision recorded in the first respondent's letter of 16 January 2025, which is annexed to the applicant's founding affidavit and marked "FA8".

15.1.2 preventing those of the applicant's members who were on 16 January 2025 in possession of an operating licence permitting them to operate on the routes set out in the decision from loading passengers or "binding" on the routes set out in the decision.

15.2 The eighth respondent, and the police department of the seventh respondent, are authorised to take such steps as may be necessary to enforce this order.

15.3 The first, second and third respondents are directed, the one paying the other to be absolved, to pay the applicant's costs, including the costs of two counsel where employed. Counsel's costs may be taxed on scale "B".



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 3 March 2025.

HEARD ON: 25 February 2025

DECIDED ON: 3 March 2025

For the Applicant: I Veerasamy
S Mchunu
Instructed by Pather and Pather Attorneys

For the First and
Third Respondents: T Mlambo
Instructed by the State Attorney

For the Second Respondent: Mr. Mashaba
Instructed by HR Munyai Attorneys