



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable

Case no: 5090/2023

In the matter between

ZEUS SHUTTLES AND COACHES (PTY) LTD

FIRST APPLICANT

LUNGI AND SONS SERVICES (PTY) LTD

SECOND APPLICANT

and

THE MEC: FREE STATE PROVINCIAL GOVERNMENT:

DEPARTMENT OF POLICE, ROADS AND TRANSPORT

FIRST RESPONDENT

INTERSTATE BUS LINES

SECOND RESPONDENT

THE MINISTER OF TRANSPORT

THIRD RESPONDENT

THE MINISTER OF FINANCE

FOURTH RESPONDENT

THE MANGAUNG METROPOLITAN MUNICIPALITY

FIFTH RESPONDENT

Neutral citation: *Zeus Shuttles and Coaches (Pty) Ltd and Another v MEC: Department of Police, Roads and Transport, Free State Provincial Government and Others* (5090/2023) [2026] ZAFSHC 299 (18 May 2026)

Coram: Daffue et Mhlambi JJ

Heard: 17 November 2025

Delivered: Judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14h30 on 18 May 2026.

Summary: Application to declare public transport service rendered by an operator to a Province unlawful and for striking down of contract – also, that Member of Executive Council (MEC) be ordered to embark upon an open tender process – held that the operator was delivering its services in accordance with a valid current tendered

contract, duly extended from time to time in accordance with s 47 of the National Land Transport Transition Act 22 of 2000 and ss 41, 42 and 46 of the National Land Transport Act 5 of 2009 – application dismissed with costs.

ORDER

The application is dismissed with costs of two counsel, that of senior counsel on scale C and junior counsel on scale B respectively.

JUDGMENT

Daffue J (Mhlambi J concurring)

Introduction

[1] This application concerns a challenge by two prospective tenderers of the continued use of a service provider by the Free State Provincial Government to provide subsidized road transport services to commuters within the boundaries of the Mangaung Metropolitan Municipality, Free State Province.

The parties

[2] The applicants are Zeus Shuttles and Coaches (Pty) Ltd and Lungi and Sons Services (Pty) Ltd. The first respondent is the Member of the Executive Council (MEC) of the Department of Police, Roads and Transport (the Department) of the Free State Provincial Government. The second respondent is Itumele Bus Lines (Pty) Ltd (IBL), trading as Interstate Bus Lines, a provider of a public transport service to members of the public within the boundaries of the Mangaung Metropolitan Municipality, particularly commuters travelling daily from Thaba Nchu and Botshabello to Bloemfontein and back. The Ministers of Transport and Finance are cited as the third and fourth respondents respectively. The Mangaung Metropolitan Municipality (the Municipality) is cited as the fifth respondent. The third respondent filed a notice to abide. The first and fourth respondents did not oppose the application and did not deliver answering affidavits or heads of argument. Although the Municipality gave notice of its intention to oppose the application, it failed to deliver an answering affidavit or heads of argument. Its counsel attended the proceedings on a watching brief.

The relief sought

[3] The applicants seek the following relief as set out in their notice of motion:

- ‘1. The First Respondent’s continued use of the Second Respondent for the provision of subsidized road transport services to commuters in the Free State, is declared unlawful in terms of section 6(2)(b), (c), (e)(i), (f)(i) and (ii) of the Promotion of Administrative Justice Act 3 of 2000.
2. Any existing contract concluded between the First- and Second Respondents for the provision of said services is struck down in accordance with the provisions of section 8 of the Promotion of Administrative Justice Act 3 of 2000.
3. The First Respondent is ordered to – in compliance with section 2 and 3 of the Public Finance Management Act 1 of 1999, read with section 2 of the Preferential Procurement Policy Framework Act 5 of 2000 and section 217 of the Constitution of the Republic of South Africa 108 of 1996 – embark upon an open tender process for the further provision of subsidised road transportation services in the Free State Province.
4. The First Respondent is ordered to pay the costs of this application. Should the other Respondents however oppose, that they be ordered to pay the costs of the application together with the First Respondent, payment by one the other to be absolved.’

The defences raised

[4] IBL raised several points *in limine* and also dealt exhaustively with the merits of the application. We decided at the onset of the proceedings that the parties should deal with the points *in limine* and the merits simultaneously. Before I deal with the points *in limine* it is necessary to explain what occurred on 17 November 2025, whereafter I shall present a brief history of the public transport service in dispute.

The proceedings on 17 November 2025

[5] This application was set down for hearing on 17 November 2025, together with a self-review application closely linked thereto, to wit application 5278/2024, instituted by the Free State Provincial Government. The respondents in the self-review application are IBL, the first respondent, the Ministers of Transport and Finance cited as second and third respondents and the Auditor-General of South Africa, the fourth respondent. The Acting Judge President granted leave that the two applications be heard by the same judges.

[6] When application 5278/2024 was called, there was no appearance on behalf of the Free State Provincial Government. At the request of IBL, we dismissed the application

with costs. In order to understand the dispute between the parties *in casu*, I shall now give a brief background.

History of the relationship between the Department and IBL

[7] It is necessary to briefly explain the history of the public transport service provided by IBL and its predecessors to the residents of the Municipality. On 29 September 1998, a tender was awarded by the now defunct Free State Tender Board to Interstate Bus Lines (Pty) Ltd, registration number 1977/000903/07, for the provision of bus transport services. A contract was concluded between the Department and this company on 27 November 1998. Some two years later, the National Land Transport Transition Act 22 of 2000 (the Transition Act) came into operation on 1 December 2000. The aforesaid contract would have expired on 30 November 2003 but was extended on several occasions as set out in the answering affidavit. The last extension occurred on 1 October 2019 in terms whereof the contract was extended on a month-to-month basis until further notice.

[8] On 20 April 2023, a MinMec meeting was held as is apparent from the resolutions of the meeting presented under the letterhead of the Minister of Transport. These resolutions are the following:

- '1. To approve the extension of subsidized bus contracts for a period not exceeding three years starting from 1 April 2023 to allow for transition into new tendered and/or negotiated contract, whichever is applicable;
2. That Provinces should immediately inform their Treasuries of the resolution while the Department informs National Treasury;
3. That the extensions should provide for an 'escape clause' in cases where IPTN's and/or transport plans are ready during the period when the extension is still in force, meaning that contracting authorities, including Provinces, that are ready to transition in to new contracts should be allowed to do so even before the three year period would have not (sic) expired;
4. That the National Department, in conjunction with provinces, should immediately develop a detailed implementation plan to incorporate subsidized bus contracts into identified IPTN cities as well as inclusion of areas outside IPTN cities where planning authorities would be assisted to develop comprehensive plans and service designed in preparation for the introduction of new contracts;
5. That where capacity is lacking within the local sphere of government efforts should be made to ensure that provinces assist to jointly perform the functions with affected municipalities

in terms of section 12(1) of the National Land Transport Act, which states in part as follows:

A province may enter into an agreement with one or more municipalities in the province to provide for the joint exercise or performance of their respective powers and functions contemplated in this Act and may establish a provincial entity or similar body in this regard, subject to the Constitution and this section;

6. That a National Technical Assistance Team should be established to coordinate, support and monitor the execution of the implementation plan; and

7. That National and Provincial Treasuries must be engaged to, among others, commit to medium to long term for financial support for the implementation of the plan.' (Emphasis added).

[9] This MinMec meeting and the resolutions taken thereat followed upon communication on more than one occasion between the Minister of Transport and the MEC which confirmed by their conduct that the extension of the existing subsidized bus transport contracts was lawful. This appears from the record of decision (ROD) provided by the Department in terms of rule 53 of the Uniform Rules of Court. I refer to letters by the Minister of Transport to the Department dated 1 June 2015, 22 February 2018 and 8 February 2023. These letters and the contents thereof are dealt with comprehensively in paragraph 50 of the answering affidavit. IBL is still continuing with its service delivery in terms of its current tendered contract with the MEC as extended.

[10] I shall now deal with the points *in limine* in separate headings whereafter the merits of the application will considered.

No prima facie case made out in founding affidavit

[11] The applicants relied on general contentions and a mere conclusion, without alleging the material facts in their endeavour to prove that procurement law had been flouted and therefore, that the Promotion of Administrative Justice Act 3 of 2000 (PAJA) kicked in. Their counsel, Mr Grobler SC, submitted that the history of the matter is 'shrouded in mystery' and that even IBL had to speculate as to the reasons why a lawful procurement process had not been followed. He is wrong in contending likewise as IBL dealt extensively with the problems experienced by the Department and the Municipality (the Governmental respondents). According to the applicants, the Governmental respondents failed to explain their actions, or inaction, and also failed to provide reasons in terms of rule 53 when they filed the ROD. Furthermore, they even failed to file answering affidavits in this application, although the Department had launched separate self-review proceedings. In my view, the applicants have no one else to blame for their

failure to apply to court to obtain the reasons from the Governmental respondents and the MEC in particular.

[12] It is trite that the applicants were required, not only to define the issues between the parties in their founding affidavit, but also to place the essential evidence before the court. Sufficient factual averments to support the cause of action must have been made in their founding affidavit. The applicants failed to appreciate that in motion proceedings, the affidavits serve not only as the pleadings, but must also contain the essential evidence which would ordinarily be led at the trial.¹ Where an illegality is complained of, as in this case, the applicants were required not only to plead such illegality as reiterated in *Pratt v FirstRand Bank Ltd*,² 'but also to adduce evidence of all necessary and relevant facts in its support'.³

[13] The applicants failed to identify the contract that exists between the Department and IBL which on their version is unlawful and should be struck down. They also failed to provide evidence in the founding affidavit for the conclusion to be reached that the public transport service is not provided in a lawful manner in terms of a current tendered contract or any extension thereof as contemplated in the legislation to which I shall refer later again when I deal with the merits.

[14] There is nothing wrongful for a respondent to submit that no *prima facie* case has been made out in the founding affidavit, even after having filed an answering affidavit. In *Afgri Grain Marketing (Pty) Ltd v Trustees for the time being of Copenship Bulkurs A/S (in liquidation) and Others*,⁴ the Supreme Court of Appeal confirmed, although that case dealt with reconsideration in terms of rule 6(12)(c), that it is a well-established principle in application proceedings that even when an answering affidavit has been filed, the respondent is not precluded from arguing at the outset on the basis of the founding affidavit that the applicant has not made out a case for relief.

¹ *Transnet Ltd v Rubenstein* 2006 (1) SA 591 SCA at 600G-H.

² *Pratt v FirstRand Bank Ltd* [2008] ZASCA 92; [2009] 1 All SA 158 (SCA); 2009 (2) SA 119 (SCA); (2009) 71 SATC 148.

³ *Ibid* para 12, relying *inter alia* on the well-known judgment, *Yannakou v Apollo Club* 1974 (1) SA 614 (A) at 623G-H.

⁴ *Afgri Grain Marketing (Pty) Ltd v Trustees for the time being of Copenship Bulkurs A/S (in liquidation) and Others* [2019] ZASCA 67; [2019] 3 All SA 321 (SCA); 2024 (1) SA 373 (SCA) para 13.

[15] I agree with IBL that the applicants failed to make a *prima facie* case in the founding affidavit and consequently, the point *in limine* was validly raised. However, insofar as it might be found that I came to an incorrect conclusion, I shall deal with the merits of the application as well.

Just administrative action and delay

[16] Before I deal with the delay in filing the review application, it is necessary to make certain comments. Although the applicants allege that they are entitled to review in terms of the provisions of PAJA, IBL disputes that the relief claimed relates to administrative action contemplated in PAJA. Mr DJ Van der Walt SC submitted on its behalf that the application is directed against the executive powers and functions exercised by the provincial executive referred to in s 1(b)(bb) and the executive powers of a municipal council referred to in s 1(b)(cc) of PAJA. Therefore, PAJA is inapplicable.

[17] It is trite that the decision to procure goods and services is an exercise of that executive authority as stated by the Supreme Court of Appeal in *SAAB Grintek Defence (Pty) Ltd v South African Police Service and Others*.⁵ Contrary thereto, the principles of administrative justice govern the relations between an organ of state and a tenderer.⁶ Courts should not lightly compel organs of state to enter into contracts to acquire goods or services when they decided not to do so. Section 217(1) of the Constitution is clear. It applies whenever an organ of state 'contracts for goods or services.' See *Airports Company South Africa SOC Ltd v Imperial Group Ltd and Others*.⁷ In this case it is common cause that there was a procurement process which met the requirements of the old tender regime at the time. Thereafter, the extensions occurred in accordance with the legislation with which I shall deal comprehensively hereunder.

[18] The applicants' reliance on *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others*⁸

⁵ *SAAB Grintek Defence (Pty) Ltd v South African Police Service and Others* [2016] ZASCA 104; [2016] 3 All SA 669 (SCA) para 21; see also *Cell C Service Provider (Pty) Ltd v MEC: Free State Provincial Government: Department of Treasury* [2019] ZAFSHC 45; [2019] 3 All SA 80 (FB) paras 90 and 95.

⁶ *Madibeng Local Municipality v DDP Valuers and Another* [2020] ZASCA 70 para 17.

⁷ *Airports Company South Africa SOC Ltd v Imperial Group Ltd and Others* [2020] ZASCA 2; [2020] 2 All SA 1 (SCA); 2020 (4) SA 17 (SCA) para 63.

⁸ *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC); [2013] ZACC 51; [2013] ZACC 42 para 2 and paras 58-60.

(*Allpay*) and *Logbro Properties CC v Bedderson NO and Others*⁹ (*Logbro*) in support of a submission that Government procurement is administrative in nature is misplaced. Their submission that when there is a failure to comply with a constitutional and legislative procurement framework, such actions must be impugned in terms of PAJA must be read in context. *Allpay* and *Logbro* dealt with tender processes as such. Surely, a tender process constitutes administrative action under the Constitution. There is an entitlement to full and procedurally fair processes and outcomes in such instances. We are not dealing with tender processes *in casu* and therefore, the applicants' submission and reliance on the aforesaid judgments are misguided.

[19] As mentioned, the Department's last extension of the contract with IBL, on a month-to-month basis, occurred on 1 October 2019. On the applicants' version as presented by their deponent, Mr DT Mothebe, the Department has for 25 years concluded contracts with IBL for the provision of State subsidized road transportation services in the Municipality's area without following a competitive bidding process. Mr Mothebe failed to tell the court when he became aware of this alleged unlawfulness.

[20] On 12 January 2023 the applicants sent a letter to the MEC of the Department recording the background and specifically the fact that 'interim contracts have been in existence for a period of more than 24 years now without going through a competitive bidding process'. The applicants requested in this letter that s 41 of the National Land Transport Act 5 of 2009 (the Transport Act). be invoked to conclude negotiated contracts as envisaged in that section. On the applicants' version, and at best for them, they should have brought this application, relying on PAJA, within 180 days from 12 January 2023, which they failed to do.

[21] The applicants' application was instituted on 27 September 2023. This is 257 days after 12 January 2023 and far beyond the 180-day threshold provided for in PAJA for the institution of administrative review. Neither the Department, nor IBL, agreed to extension of the 180-day period. The applicants failed to apply for condonation and failed to explain the delay.

⁹ *Logbro Properties CC v Bedderson NO and Others* [2002] ZASCA 135; [2003] 1 All SA 424 (SCA); 2003 (2) SA 460 (SCA) para 5.

[22] Applications for extension of the 180 days under s 9 of PAJA have been treated essentially as condonation applications. Therefore, the principles relating to condonation applications shall be applied as recently confirmed again in *Van der Vyver Transport (Pty) Ltd v Minister of Labour and Others*.¹⁰ The requirements for condonation were restated by the Constitutional Court in *Van Wyk v Unitas Hospital and Another*.¹¹ I do not need to repeat these, save to emphasise that an applicant for condonation must provide a full explanation for the delay, covering the entire period of delay. In my view, the applicants have not even come out of their starting stalls. No explanation for the delay has been provided.

[23] Section 1 of PAJA defines administrative action as any decision taken or any failure to take a decision by an organ of state, *inter alia*, exercising a public power or performing a public function in terms of any legislation. The emphasis is on the decision or the failure to take a decision and not the consequences thereof. Such decision or the failure to take a decision is subject to judicial review in terms of s 6 of PAJA. Brand JA held in *Opposition to Urban Tolling Alliance and Others v The South African National Roads Agency Ltd and Others*¹² (OUTA) that:

'... after the 180-day period the issue of unreasonableness is pre-determined by the legislature; it is unreasonable per se. It follows that the court is only empowered to entertain the review application if the interest of justice dictates an extension in terms of s 9. Absent such extension the court has no authority to entertain the review application at all. Whether or not the decision was unlawful no longer matters.'¹³

[24] The applicants submitted that the Governmental respondents' failure to do what the legislation obliges them to do, *ie* the awarding of a contract through a competitive and public tender process constitutes a continuous wrong. They submitted that each month when the IBL contract is extended, a continuous wrong against the public, the applicants and the rule of law is committed. Therefore, condonation was not required as no delay has occurred.

¹⁰ *Van der Vyver Transport (Pty) Ltd v Minister of Labour and Others* [2026] ZASCA 58 para 18.

¹¹ *Van Wyk v Unitas Hospital and Another* [2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) paras 20-22.

¹² *Opposition to Urban Tolling Alliance and Others v The South African National Roads Agency Ltd and Others* [2013] ZASCA 148; [2013] 4 All SA 639 (SCA).

¹³ *Ibid* para 26; see also *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Limited* [2019] ZACC 15; 2019 (6) BCLR 661 (CC); 2019 (4) SA 331 (CC) para 49.

[25] The applicants' reliance on *Barnett and Others v Minister of Land Affairs and Others*¹⁴ (*Barnett*) and *Singh and Others v Companies and Intellectual Property Commission and Others*¹⁵ is misplaced. In *Barnett* the court dealt with a plea of prescription in the case of alleged wrongful occupation of premises. The case is clearly distinguishable. The judgment in *Singh* does not support the applicants at all.

[26] The reliance on *Kate v Member of the Executive Council for the Department of Welfare, Eastern Cape*¹⁶ is also without substance. In that case the applicant applied for condonation and the extension of the 180-day period within which her PAJA review was to be instituted. Froneman J concluded that the applicant was entitled to the extension as applied for.¹⁷ If the matter was dealt with on the basis that a continuous wrong was committed against the applicant, it was not necessary to consider an application for the extension of the 180-day period and to grant such order.

[27] The point *in limine* should be upheld. On that basis it should have been the end of the road for the applicants. However, it is deemed appropriate to deal with a further point *in limine* as well and eventually the merits.

Lack of locus standi

[28] It is the applicants' claim that they provide public transport services in the Free State and have a direct interest in the matter as prospective tenderers. IBL submitted that they failed to plead the material facts for their conclusion and therefore failed to establish a direct, actual and existing interest in the matter. IBL referred to the fact that the applicants failed to prove that they do provide sufficiently similar passenger road transport services as provided by IBL. Relying on the applicants' website, it is IBL's case that the applicants' service is defined in the Transport Act as a charter service, which is dissimilar to the service rendered by IBL.

¹⁴ *Barnett and Others v Minister of Land Affairs and Others* [2007] ZASCA 95; 2007 (6) SA 313 (SCA); 2007 (11) BCLR 1214 (SCA) paras 20-21.

¹⁵ *Singh and Others v Companies and Intellectual Property Commission and Others* [2019] ZASCA 69; 2019 (5) SA 432 (SCA) paras 14-18.

¹⁶ *Kate v Member of the Executive Council for the Department of Welfare, Eastern Cape* [2004] ZAECHC 25; [2005] 1 All SA 745 (SE); 2005 (1) SA 141 (SE) para 21.

¹⁷ *Ibid* para 32.

[29] I accept that a broad and flexible approach should be adopted in determining whether the applicants have an interest which has been affected by unlawful administrative action.¹⁸ The mere fact that the applicants are in a different league than IBL should ordinarily not stand in their way to approach the court for appropriate relief. I have duly considered the submissions on behalf of both parties. The applicants should be non-suited as we are not concerned with administrative action *in casu* as already found herein.

Merits of the application

[30] To comprehend the submissions made on behalf of the parties and the evaluation thereof, it is appropriate to quote several definitions and relevant sections of the applicable legislation.

[31] I shall firstly quote some definitions contained in s 1 of the Transition Act as well as s 47 thereof. The following definitions are relevant:

“current tendered contract” means a contract concluded before the commencement date of this Act for the operation of a public transport service between the Department or a province, on the one hand and, a public transport operator, on the other hand, to whom the tender for the provision of a service was awarded by the State Tender Board or the competent provincial tender board or authority in accordance with law, and which is still binding between them, the term of which expires only after the date of commencement of this Act, and includes a contract which is binding between the- . . .

“subsidised service contract” means an agreement, other than an interim contract or a current tendered contract, concluded between a contracting authority and a public transport operator to operate a scheduled service provided for in a public transport plan and in terms of which the public transport operator, in addition to the passenger fares paid, receives financial support in terms of a tendered contract;’

[32] I also quote the relevant parts of s 47 of the Transition Act:

‘(1) After the expiry of any interim contract or current tendered contract or any extension thereof, whether provided for in such contract or negotiated, if the public transport service that had been

¹⁸ *Mkhize NO v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 50; 2019 (3) BCLR 360 (CC).

operated in terms thereof will continue to be subsidised, that service must be operated in terms of a subsidised service contract.

(2) Only a provincial department, a transport authority and a metropolitan municipality may enter into a subsidised service agreement with a public transport operator, and, subject to subsection (3), only if-

(a) the service to be operated in terms thereof, has been put out to public tendering in accordance with a procedure prescribed by or in terms of a law of the province;

(b) the tender has been awarded by the tender authority in accordance with that procedure; and

(c) the contract is entered into with the successful tenderer.

(3) The Minister may in terms of procedures prescribed, in consultation with the MEC and the relevant transport authority, if any, grant exemption from the requirements of subsection (2) and allow that a contract be negotiated with an operator, once only, . . .' (Emphasis added.)

[33] The following relevant definitions appear in s 1 of the Transport Act:

“contract” means a subsidised service contract, negotiated contract or commercial service contract;

“contracting authority” means-

(a) the Department;

(b) a province, subject to sections 11 (1) (c) (xxvi), 11 (6), 11 (8), 11 (9) and 11 (10); and

(c) a municipality, subject to section 11 (1) (c) (xxvi), 11 (2), 11 (8), (9) and 11 (10);

“integrated development plan” means the integrated development plan which, in terms of Chapter 5 of the Systems Act, must be prepared by a municipality;

“integrated public transport network” means a system in a particular area that integrates public transport services between modes, including non-motorised transport, with through-ticketing and other appropriate mechanisms, that may be implemented in a phased manner, to provide users of the system with the optimal solutions to be able to travel from their origins to destinations in a seamless manner with integrated pedestrian access for all passengers, and may, in appropriate municipalities, include-

(a) integrated rapid public transport networks, being high-quality networks of car competitive public transport services that are fully integrated regardless of mode, and may or may not have a dedicated right of way, with or without bus rapid transit systems; and

(b) bus rapid transit systems, which are high volume bus corridors served by an integrated feeder system;

“negotiated contract” means a contract contemplated in section 41 (1);

“public transport service” means a scheduled or unscheduled service for the carriage of

passengers by road or rail, whether subject to a contract or not, and where the service is provided for a fare or any other consideration or reward, including cabotage in respect of passenger transport as defined in the Cross-Border Act, and except where clearly inappropriate, the term “**public transport**” must be interpreted accordingly;

“**subsidised service contract**” means an agreement between a contracting authority and an operator to operate a service provided for in an integrated transport plan and in terms of which the operator receives direct or indirect financial support in terms of a tendered contract;

“**Transition Act**” means the National Land Transport Transition Act, 2000 (Act 22 of 2000);

[34] Section 5(6) of the Transport Act stipulates as follows:

‘(6) When a province or municipality cannot or does not fulfil an executive obligation in terms of matters relating to public transport, the Minister may intervene by taking the appropriate steps to ensure the fulfilment of that obligations, including issuing a directive to the provincial executive or municipal council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations and the provincial executive or municipality must comply with such directive.’

[35] Section 11 of the Transport Act deals with the responsibilities of the three spheres of government, sub-section 1(a) with the responsibilities of national government, sub-section 1(b) with that of provincial government and sub-section 1(c) with that of municipalities. The most relevant responsibilities of a municipality pertaining to transport functions are the following:

‘(i) developing land transport policy and strategy within its area based on national and provincial guidelines, . . .

. . .

(iv) in its capacity as planning authority, preparing transport plans for its area, ensuring the implementation thereof and monitoring its performance in achieving its goals and objectives;

(v) financial planning with regard to land transport within or affecting its area, . . .

. . .

(ix) developing, operating and maintaining a land transport information system for its area;

(x) encouraging, promoting and facilitating public consultation and participation in the planning, regulation and implementation of public transport, and applying the requirements of the Systems Act in that regard;

. . .

(xviii) the planning, implementation and management of modally integrated public transport networks and travel corridors for transport within the municipal area and liaising in that regard

with neighbouring municipalities;

(xxvi) concluding subsidised service contracts, commercial service contracts, negotiated contracts and stopgap contracts contemplated in section 41A, with operators for services within their areas of jurisdiction, subject to subsection (9).'

I shall soon hereunder consider the recently amended s 11(8).

[36] Section 41 of the Transport Act deals with negotiated contracts. It provides as follows:

'(1) Contracting authorities may enter into one or more negotiated contracts or a combination of such contracts with operators in their areas, once only, with a view to-

(a) integrating services forming part of integrated public transport networks in terms of their integrated transport plans;

(b) promoting the economic empowerment of small business or of persons previously disadvantaged by unfair discrimination; or

(c) facilitating the restructuring of a parastatal or municipal transport operator to discourage monopolies.

(1A) Where a negotiated contract is concluded in terms of subsection (1), the contracting authority is not precluded from-

(a) concluding other such contracts with different operators or in respect of different routes, even if such routes are in the same area;

(b) providing in such contract for the services to be provided under the contract to be increased or amended in a phased manner during the period of the contract: Provided that the total duration of the contract does not extend beyond 12 years; or

(c) concluding stopgap contracts contemplated in section 41A.

(3) A negotiated contract contemplated in subsection (1) shall be for a period not longer than 12 years.'

[37] In s 42 of the Transport Act subsidised service contracts are dealt with. The section reads as follows:

'(1) The Contracting authorities must take steps within the prescribed period and in the prescribed manner before expiry of contracts contemplated in subsection (2) (a), (b) or (c) to put arrangements in place for the services to be put out to tender so that the services can continue without interruption.

(2) If after expiry of-

(a) a negotiated contract concluded under section 41;

(b) a subsidised service contract concluded under this section; or

(c) a negotiated contract, interim contract, current tendered contract or subsidised service contract concluded in terms of the Transition Act,

or any extension thereof, the relevant services may continue to be subsidised, this must be done in terms of a subsidised service contract concluded in terms of this section.

(3) Where a contract referred to in subsection (2) (a), (b) or (c) has expired and no arrangements have been put in place to put the services out to tender, or such arrangements are unsatisfactory or inadequate in the Minister's opinion, the Minister must forthwith enter into negotiations with the contracting authorities, the National Treasury and the Auditor-General with a view to ensuring compliance with this Act and legislation on financial and procurement issues.

(4) Only a contracting authority may enter into a subsidised service contract with an operator, and only if the services to be operated in terms thereof, have, subject to section 80 (1) (a) of the Systems Act, been put out to public tendering and awarded by the entering into of a contract in accordance with prescribed procedures in accordance with other applicable national or provincial laws.

(5) The validity period of a subsidised service contract must not exceed seven years.' (Emphasis added).

[38] Section 46 of the Transport Act stipulates the following pertaining to existing contracting arrangements:

'(1) Where there is an existing interim contract, current tendered contract or negotiated contract as defined in the Transition Act in the area of a municipality, that municipality or the relevant province, as determined under section 11 may-

(a) allow the contract to run its course; or

(b) negotiate with the operator to amend the contract to provide for inclusion of the operator in an integrated public transport network; or

(c) make a reasonable offer to the operator of alternative services, or of a monetary settlement, which offer must bear relation to the value of the unexpired portion of the contract, if any.

(2)

(3) The Minister may make regulations providing for the transition of existing contracting arrangements and the transfer of the contracting function in terms of this section, section 11 or section 41, including the transfer or amendment of existing permits or operating licences to give effect to the provisions of the aforesaid sections.

(4) In applying this section, the contracting authority must give due regard to the rights of the workers employed by the operators in terms of the contract contemplated in subsection (1).' (Emphasis added).

[39] The National Land Transport Amendment Act 23 of 2023 (the Transport Amendment Act) came into operation on 12 September 2025. Section 11(8) now reads as follows:

‘Where a subsidised service contract, interim contract, current tendered contract or negotiated contract was concluded in terms of the Transition Act, in this subsection called an old order contract, and is still in force, and a municipality has not yet concluded one or more contracts to replace the old order contract or is not in the process of negotiating with operators to do so, the relevant province must engage with the operator concerned and the municipality or municipalities in whose areas the services are provided and must ensure that either the province or the municipality concludes appropriate new contracts to replace all old order contracts and where appropriate, the Minister must intervene or issue a directive to the province or municipality under section 5 (6).’ (Emphasis added.)

[40] To summarise: it is accepted in s 11(8) that:

- (a) the required arrangements contemplated in the Transport Act that have to be put in place in order to provide for the continuation of the bus transport services without interruption during the envisaged tender process are, at least in many instances, still not in place and have to be expedited in order to effect the replacement of the existing old order contracts with appropriate new contracts;
- (b) the conclusion of new contracts as part of the tender process to replace all old order contracts (including current tendered contracts) are delayed because the required arrangements to provide for the continuation of services without interruption are not in place;
- (c) the continued existence of IBL’s current tendered contract, as extended, is in the prevailing circumstances not peculiar; and
- (d) the continued existence of IBL’s current tendered contract is necessary to provide for the continuation of the bus transport services without interruption during the envisaged tender process and the replacement of such current tendered contract with an appropriate new contract or contracts.

[41] Section 41A which also came into effect on 12 September 2025 provides for so-called ‘stopgap contracts’ which may be entered into by a contracting authority. This is again proof that the legislator accepted that it was important to provide continuity of services.

[42] I repeat that the applicants failed to state the primary facts in support of their conclusion that the existing contract between the Department and IBL is to be declared unlawful and struck down. Mr Grobler conceded as much during his oral argument. Therefore, he did not insist that the relief claimed in paragraph 2 of the notice of motion be granted, but suggested that the relief sought be suspended for a period of 180 days. The applicants also failed to present any evidence to show that the Department could be ordered to 'embark upon an open tender process for the further provision of subsidised road transportation services in the Free State Province' as claimed in paragraph 3 of the notice of motion. IBL submitted that it is rendering the public transport service in terms of the provisions of s 47(1) of the Transition Act, read with the provisions of s 42(2) and s 46(1) of the Transport Act which is/was not subject to tendering. Mr Van der Walt emphasised that attention should be given to the word 'any' in s 47(1) of the Transition Act and s 42(2) of the Transport Act. The word has an even wider meaning in the Transport Act than in the Transition Act.

[43] In *Commissioner for Inland Revenue v Ocean Manufacturing Ltd*¹⁹ the Supreme Court of Appeal confirmed with approval the *dictum* that the word 'any' is 'a word of wide and unqualified generality. It may be restricted by the subject-matter or the context, but *prima facie* it is unlimited.'

[44] The extensions of the current tendered contract from time to time was not subject to a tendering process, but in my view formed part of a system envisaged by s 217 of the Constitution. In this regard, the Supreme Court of Appeal held as follows in *Gauteng MEC for Health v 3P Consulting (Pty) Ltd*:²⁰

'Before this court, counsel for 3P Consulting also relied on this regulation, despite the fact that it had not been mentioned in their papers. It is, however, not give any further consideration to this finding of the court below. It is clear that the renewal of the services agreement did not give rise to a new services agreement; it simply extended the duration of the services agreement for a period of three years. Properly interpreted, clause 2.3 of the agreement provides for a renewal for a period of two years on the same terms as before subject only to such amendments as may be negotiated and agreed between the parties. The negotiations between the parties in late 2008 ultimately gave rise to an agreement that the services agreement would be renewed for a period

¹⁹ *Commissioner for Inland Revenue v Ocean Manufacturing Ltd* 1990 (3) SA 610 (A) at 618H, relying on the *dictum* in *R v Hugo* 1926 AD 268 at 271.

²⁰ *Gauteng MEC for Health v 3P Consulting (Pty) Ltd* [2010] ZASCA 156; 2012 (2) SA 542 (SCA) para 25.

of three years, instead of the two years provided for in clause 2.3, and that the contract value for each of the remaining three years would be increased. The increases were described by both the Department's Programme Management Office and by the Department's Director of Supply Chain Management as 'being 'marginal increases only allowing for inflation, and also taking cognisance of the strategy to empower developing service providers in the body shop'. It is clear that these increases properly flowed from the negotiations contemplated in clause 2.3 of the services agreement. As there was no new services agreement, there was no new procurement of goods or services and it was therefore in my view not necessary to follow a competitive public bidding process in this regard.' (Emphasis added.)

[45] Although the Public Finance Management Act 1 of 1999 (the PFMA) and the Preferential Procurement Policy Framework Act 5 of 2000 (the PPPFA) upon which the Department relied in the self-review application and the applicants in this application cannot be disregarded *in toto*, I am satisfied that the special provisions of the Transition and Transport Acts regarding the conclusion of contracts for the procurement of public transport services prevail over the general provisions of the PFMA and the PPPFA.²¹

[46] It is instructive to consider the judgment of the Supreme Court of Appeal in *Golden Arrow Bus Services (Pty) Ltd v City of Cape Town and Others*²² where the court considered sections 41 and 46 of the Transport Act. I quote from paragraph 11 of the judgment:

'It [negotiated contracts] thus allows a deviation from the government norm in respect of private services, which is that procurement is put out to tender. In effect, it facilitates the quick implementation of a transport system within a Municipality.'

Consequently, I agree with IBL that the contract between the Department (as extended from time to time) is a current tendered contract as contemplated in ss 1 and 47(1) of the Transition Act and ss 42(2) and 46(1) of the Transport Act which still exists and did not expire as contemplated in any of the aforesaid sections.

[47] I repeat that IBL's version, as summarized in the previous paragraph, is at least confirmed by the Minister of Transport and the MEC by their conduct and as expressed in the communication and resolutions mentioned earlier, *ie* that the extensions of the

²¹ *Sunny South Cannery (Pty) Ltd v Mbangxa and Others* NNO [2000] ZASCA 194; [2001] 1 All SA 474 (A); 2001 (2) SA 49 (SCA) para 27; and *Sasol Synthetic Fuels (Pty) Ltd and Others v Lambert and Others* [2001] ZASCA 133; 2002 (2) SA 21 (SCA) para 18.

²² *Golden Arrow Bus Services (Pty) Ltd v City of Cape Town and Others* [2016] JOL 33607 (SCA) paras 11-13.

existing subsidized bus transport contracts, inclusive of the contract with IBL, are lawful. The evidence in this regard is admissible. The Supreme Court of Appeal held as follows in *Commissioner for the South African Revenue Service v Bosch and Another*²³ which *dictum* fully supports IBL's contentions:

'There is authority that, in any marginal question of statutory interpretation, evidence that it has been interpreted in a consistent way for a substantial period of time by those responsible for the administration of the legislation is admissible and may be relevant to tip the balance in favour of that interpretation. This is entirely consistent with the approach to statutory interpretation that examines the words in context and seeks to determine the meaning that should reasonably be placed upon those words. The conduct of those who administer the legislation provides clear evidence of how reasonable persons in their position would understand and construe the provision in question. As such it may be a valuable pointer to the correct interpretation. In the present case the clear evidence that for at least eight years the revenue authorities accepted that in a DDS scheme the exercise of the option and not the delivery of the shares was the taxable event, fortifies the taxpayers' contentions.'

[48] There is no reason not to accept IBL's version pertaining to the formula relied upon to claim payment for services rendered. On IBL's version, the Department was indebted to it on 29 February 2024 in the capital amount of R172 038 960. Consequently, IBL submitted that the inference is justified that the Department is not in a financial position to comply with its own payment obligations and will not be able to financially assist the Municipality when it enters into subsidized service contracts as envisaged in s 42 of the Transport Act. Therefore, extensions of the contract from time to time were and are necessary to prevent the interruption of passenger road transport services to residents of Thaba Nchu and Botshabelo. Such interruption of services will cause a chaotic situation. The *status quo* will hopefully allow the Municipality to comply with its obligations as set out in s 11(1)(c) of the Transport Act and to put arrangements in place for the public transport services to be put out on tender as contemplated in the legislation.

[49] IBL also filed a conditional counter-application in terms of the provisions of s 3(1)(a) of the Law of Evidence Amendment Act 45 of 1988. In terms thereof, it sought admission of the hearsay evidence contained in the answering affidavit. Although the applicants objected to the hearsay in their replying affidavit, they dealt with the evidence.

²³ *Commissioner for the South African Revenue Service v Bosch and Another* [2014] ZASCA 171; [2015] 1 All SA 1 (SCA); 2015 (2) SA 174 (SCA); 77 SATC 61 para 17.

The conditional counter-application was not opposed, but IBL did not move the application before us. The presented evidence is within the knowledge of the Governmental respondents who failed to file answering affidavits. IBL explained why it relied on hearsay evidence and that the evidence is relevant to the issues before us, *inter alia* whether the Municipality has the required capacity to put the provision of passenger transport services out to tender. I considered such evidence but emphasise that the applicants failed to make out a case for relief even if the hearsay evidence is ignored.

Conclusion

[50] In conclusion, I repeat that upon interpretation of the relevant sections quoted above, *ie* sections 1 and 47(1) of the Transition Act and sections 42(2) and 46(1) of the Transport Act, the initial contract between the Department and Interstate Bus Lines (Pty) Ltd, registration number 1977/000903/07, duly ceded, assigned and extended as fully set out in the uncontested answering affidavit constitutes a current tendered contract that still exists as contemplated in the aforesaid two Acts. In terms thereof IBL provides the subsidized public transport service to the Department. Obviously, the transport services will ultimately have to be put out to tender in terms of the provisions of s 42 of the Transport Act, a fact fully understood by IBL. Mr Grobler incorrectly submitted that IBL's stance will cause an absurd result insofar as its contract will be extended *ad infinitum*. I have shown herein that this is not IBL's viewpoint. Nothing more needs to be said.

[51] Finally, the Department cannot now be ordered, as the applicants insist, that a competitive tender process be embarked upon, bearing in mind the important issues raised by IBL as well as the Minister of Transport and the MEC mentioned above. IBL should continue to provide sustainable and reliable bus transportation services to passengers during the transformation and restructuring of the national land transport system. It is undisputed that IBL transports approximately 22 000 people from Thaba Nchu and Botshabelo to Bloemfontein daily and again from Bloemfontein to these towns at the end of a working day. It is apparent from the ROD and the facts presented to the court that the failure by the Municipality to establish an integrated public transport network and to approve an integrated transport plan, together with its incapacity, causes the delay in putting out a tender.

[52] IBL has put up a proper defence in respect of the merits of the application which

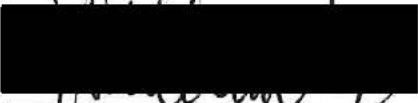
stands to be dismissed. It is not necessary to consider the alternative defence raised by IBL in terms of s 172(1) of the Constitution. There is no reason why IBL should not be awarded costs in its favour. The intricacy of the dispute and the importance of the case justify the appointment of two counsel and a suitable order in this regard shall be made.

[53] Consequently, the following order is made:

The application is dismissed with costs of two counsel, that of senior counsel on scale C and junior counsel on scale B respectively.


J P DAFFUE
JUDGE OF THE HIGH COURT

I concur.


J J MHLAMBI
JUDGE OF THE HIGH COURT