PRETORIA UNITED TAXI ASSOCIATION & ANOTHER RESPONDENT

and

CITY COUNCIL OF PRETORIA AND ANOTHER APPELLANT

NESTADT, JA

CASE NO. 155/86
/CCC

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

THE PRETORIA UNITED TAXI ASSOCIATION — FIRST APPELLANT

FRANS MORUDU — SECOND APPELLANT

and

THE CITY COUNCIL OF PRETORIA — FIRST RESPONDENT

THE ADMINISTRATOR OF THE TRANSVAAL — SECOND RESPONDENT

CORAM: CORBETT, VAN HEERDEN, NESTADT, VIVIER JJA et NICHOLAS AJA

DATE HEARD: 2 NOVEMBER 1987

DATE DELIVERED: 27 NOVEMBER 1987

J U D G M E N T

NESTADT JA:

On 2 May 1985 second respondent (the

Administrator/ .....

Administrator of the Transvaal) sanctioned a resolution of first respondent (the City Council of Pretoria) to cancel a certain taxi rank or stand in Pretoria. Appellants thereupon applied to the Transvaal Provincial Division for an order reviewing and setting aside second respondent's decision. The matter, which was opposed, came before FLEMMING J. The learned judge dismissed the application. With his leave, appellants are now appealing.

The resolution was passed in terms of sec 65 bis of the Transvaal Local Government Ordinance, 17 of 1939. It was then (in so far as is now relevant) in the following terms:

"65. bis/ .....

"65. bis (1) The council may from time to time by resolution -

(a) ... determine the routes to be followed by public vehicles ... from one specified point to another, either generally or between specified times, or alter or cancel such routes, or alter such times;

(b) fix the stopping places and stands for vehicles mentioned in paragraph (a), or cancel any such stopping places or stands or fix other stopping places and stands.

(2) Whenever such resolution has been taken the council shall at its own expense publish a notice in the Provincial Gazette, and in at least one English and one Afrikaans newspaper circulating in the municipality, stating that such resolution has been taken and is lying for inspection at a place, which shall be specified in such notice, and up to a date, which shall be similarly specified and which shall not be earlier than twenty-one days from the

date/ .....

date of publication of the newspaper or Provincial Gazette in which such notice is published last, and calling upon any person who has any objection to lodge his objection with the town clerk, in writing, not later than the last day on which such resolution will be lying for inspection.

(3) If no objection is received by the town clerk in terms of sub-section (2), the resolution shall come into operation on a date specified by the council which shall not be earlier than the day following the last day on which such resolution was lying for inspection.

(4) If objections are received by the town clerk the matter shall be referred to the Administrator who may sanction such resolution, with or without modification, as he may deem fit, or he may refuse to sanction such resolution, which shall then have no force and effect.

(5) Any decision by the Administrator in terms of sub-section (4) shall be notified in the Provincial Gazette at the expense of the council, and if such resolution has been sanctioned by the Adminis-

trator/ .....

trator, either with or without modifica-
tion, the date from which such resolution
shall come into operation shall be stated
in such notice.

(6) -----"

"Public vehicle" is defined by sec 2 to include "any ... vehicle... plying for hire ... or used for carrying passengers ... for ... reward". "Administrator" in terms of the same section means that officer "acting on the advice and with the consent of the Executive Committee of the Province."

The stand in question (I refer to it as "the rank") was situate in Bloed Street in the city centre. It had been used by black taxi drivers since about 1972. In February 1983 first appellant was informed by first

respondent/ .....

respondent that it was considering closing the rank and establishing an alternative one at the Belle Ombre railway station in the vicinity. The founding affidavit alleges that first appellant is an organisation whose membership consists of some 900 black taxi drivers (and that this number includes about 75% of those drivers who used the rank). This is not quite correct. First appellant comprises a number of associations of taxi drivers rather than the individual drivers themselves. Nothing, however, turns on this. Its locus standi to act as it did was conceded. Its constitution states one of its objects to be "to protect the interests of members in all matters relating to the promotion and development of their calling as bona fide taxi owners".

First/ .....

First appellant was concerned about the contemplated closure by first respondent of the rank. It felt that the interests of its members would be adversely affected. Accordingly, through its erstwhile attorneys, it, on 21 June 1983, met with representatives of first respondent to discuss the matter. A number of further meetings between them, as well as an exchange of correspondence, ensued. There is some dispute as to what the nature and outcome was of the negotiations which, in this way, took place between the parties. But to the following extent the sequence of events is clear:

(i) At the first meeting, first appellant was told that the reason for the proposed removal of the rank was twofold, viz, that the road adjacent to it was

to be reconstructed and that the opening of the rail-way station would create a demand for taxis there.

(ii) It would seem as if first appellant accepted this state of affairs and in particular that the closure of the rank was inevitable. It, however, made a virtue of what it presumably regarded as necessity. Thus it proposed that the rank be closed only when construction of the new road was about to begin. It was anticipated that this might not be for "some years".

(iii) This attempt to ameliorate the position of first appellant bore fruit. In August 1983 first respondent agreed that closure of the rank would not occur before due advertisement in terms of sec 65 bis but in any event not until approximately July 1984. Prior to this,

first respondent would, in addition to the establish-
ment of the new rank at the station, create nine "loading" points in various parts of the central area of the city. These would not be ranks where taxis could park and wait but merely places where passengers would embark and alight.

(iv) Their location was agreed to. So, too, was the fact that they would be controlled by first appellant.

(v) On 14 September 1983 first respondent caused to be published a notice in terms of sub-sec (1)(b) advertising its resolution to create the nine stopping points in question. It contains details of how many vehicles are to operate at each of them. It was suggested in argument on behalf of first appellant

that a resolution was not in fact passed, but there is no reason to doubt that it was. First appellant did not, in terms of sub-sec (2), object to the resolution.

This was the position when, on 15 November 1983, first respondent formally resolved, in terms of sub-sec (1)(b), to cancel the rank. The requisite notice, in terms of sub-sec (2), of such resolution was published on 30 November 1983. The sole reaction to it came from first appellant. On 21 December 1983 a letter was written to first respondent by first appellant's attorneys on its behalf. The relevant part of it reads:

> "We have been requested to place on record that in a number of discussions held with members of the City Council during the period June 1983 to August 1983, it was agreed between

the members of the City Council who attended the meetings and our client that the existing Taxi Rank at Bloed Street, Pretoria would not be closed until such time as:

1. The proposed new taxi ranks at Belle Ombre bus station were constructed and available for use by the taxi operators presently using the taxi rank at Bloed Street, Pretoria; and
2. The City Council of Pretoria had established nine stopping places situated within the central business area of Pretoria which nine stopping places would be fixed after consultation with representatives of our client.

In terms of a letter addressed to our firm by the City Secretary of the City Council of Pretoria dated 31st August 1983, we were notified that the new taxi rank at Belle Ombre railway station would only come into operation towards the middle of 1984. Although we understand that the prescribed Notices in regard to the nine stopping places concerned have been published, no further progress appears to have been made in regard to the development and establishment of these ranks.

In/ .....

In the premises and until such time as the agreed conditions on the closure of the Bloed Street taxi rank have been complied with, our client has instructed us to object to the proposed closure of the taxi rank at Bloed Street, Pretoria, as advertised in the Pretoria News on the 30th November 1983.

The grounds of our client's objection are the following:

1. At this stage inadequate alternative arrangements have been made for the satisfactory loading and off-loading of passengers in the Pretoria central area by the existing taxi operators authorised to use the existing rank at Bloed Street; and
2. That at this stage the need to provide loading and off-loading facilities at various points throughout the central district of Pretoria, which was accepted by the Pretoria City Council during the discussions held with it by our client, has not been catered for by the establishment of the nine additional "ranks". Accordingly the demands of the public to

have/ .....

have easily accessible taxi ranks from various parts of the Pretoria central district have not been catered for.

It is accordingly our client's respectful submission that until such time as the conditions agreed to by the City Council of Pretoria have been complied with, the proposed cancellation of the Bloed Street rank should not take effect as both the interest of the travelling public in Pretoria and the interest of the lawful taxis operating to and from Pretoria will be seriously prejudiced should the rank be closed prior to the aforementioned conditions being complied with."

This letter featured prominently in the argument before us. I return to it later. It will be referred to as letter "H". This was the identification it bore as an annexure to the founding affidavit.

First respondent did not (for reasons which will appear) on receipt of letter H refer first appellant's

objection/ .....

objection to second respondent (in terms of sub-sec (4)).

Instead, discussions and correspondence continued between the parties during 1984. It is not necessary to deal with them in any detail. Their tenor, if not express wording, is a confirmation of first appellant and first respondent having agreed that the rank would only be closed after the new one at the station and the nine stopping places were operative. This, according to what first respondent stated in November 1984, would take place in April 1985.

On 7 November 1984 first respondent passed the following resolution:

> "Dat kennis geneem word van die verslag in die verband en dat die onderskeidelike afdelingshoofde se optrede en hulle voorgenome optrede, soos dit in die verslag uiteengesit is, vir sover dit nodig is, goedgekeur en bekragtig word."

The/ .....

The report referred to was apparently in substantially the same terms as a memorandum which on 25 March 1985 was sent by first respondent to second respondent. In it, as will be seen, it is stated that first appellant and first respondent had entered into an agreement (on the terms which I have earlier set out). The significance of first respondent's resolution of 7 November 1984 will be explained later.

At about this time there occurred what can only be described as a change of front on the part of first appellant. It coincided with a new executive committee having taken over the management of its affairs together with different attorneys being instructed to represent first appellant. On 22 November 1984 they

wrote/ .....

wrote a letter ("P") to first respondent in which the following is said:

> "1. All discussions and negotiations which have taken place in regard to the proposed closure of the Bloed Street site were conducted on the premise that such site would be required by your Council for part of a new roadway development.
> 2. The proposed roadway is not being proceeded with.
> 3. In the circumstances the underlying causa which originally motivated our clients to consider moving no longer exists.
> 4. Accordingly our clients are not prepared to vacate the Bloed Street site."

In a follow-up letter dated 11 December 1984 ("S") it is alleged that:

> "Clearly if there are no definite plans (regarding the proposed roadway development) in the immediate future, it can hardly be said that a basis exists upon which our clients ought to vacate the existing taxi rank ...

> We reiterate that the concept of a 'stilhou plek' is not acceptable to our client as it will seriously impede and interfere with the proper conduct of our client's business.
> We again place on record that we dispute that any definite agreement has been concluded."

Not surprisingly, first respondent did not accept first appellant's new stance. By letter dated 23 November 1984 ("R") it told first appellant that it was proceeding with the implementation of "the agreement" between the parties. First appellant's response to this was to write a letter ("T") dated 11 December 1984 directly to second respondent. It enclosed copies of letters P, S and R "in order to put this matter in its proper perspective." The letter concludes:

> "It is our respectful submission that the whole basis upon which the discussions originally took place has now fallen away

and/ .....

and in the light thereof, we request that any application made to you by the City Council of Pretoria in an attempt to proceed, be refused."

What happened in the next few months marks the final chapter of the events which preceded the application. By letter dated 1 March 1985 the Director of Local Government (who for our purposes can be taken to represent second respondent) told first appellant that "the matter had been ("was being"?) attended to". On 12 March 1985 he asked first respondent to furnish him with a "kort, volledige verslag van die verloop van die aangeleentheid". This first respondent did. Under cover of a letter dated 25 March 1985 it sent the Director a memorandum together with such correspondence as had been exchanged between first appellant and first respondent during the period

21 December 1983 and 15 November 1984. The letter and memorandum (read with a later letter dated 15 April 1985 from first respondent to second respondent) contain a number of allegations which first appellant says, though prejudicial to it, were not disclosed. In summary, they are the following:

(i) The rank had for some time been "'n doring in die vlees van die Raad, die Suid-Afrikaanse Polisie, sekere kerke, die Suid-Afrikaanse Bloedoortappingsdiens en die breë publiek in daardie omgewing"; its closure should not be looked at in isolation; it should be considered as part of the development of the area around the station.

(ii) Negotiations between first appellant and first respondent had resulted in agreement between them that the rank be closed provided that the new one

at the station and the nine stopping places first be available.

(iii) In the circumstances first appellant's objection to first respondent's resolution was merely a provisional one; the conditions to which the objection was subject had been or were being fulfilled; it was accordingly "nie 'n geldige beswaar ... nie"; first appellant had recently "begin kibbel... oor nuwe maar irrelevante aspekte van die aangeleentheid..."

On 9 April 1985 first respondent informed first appellant that it had been requested by the Director to submit to him "representations ... relating to the intended closure" and, on 12 April, that it was referring the matter to second respondent in terms of sec 65 bis (4); in the meantime

the/ .....

the simultaneous opening of the new rank at the station and the closing of the rank were to be postponed to a date to be determined. On 15 April 1985 first respondent, in a letter mentioned earlier, referred the matter to second respondent in terms of subsec (4). On 22 April 1985 it was placed before second respondent and the Executive Committee. The member responsible for local government received a file containing first respondent's memorandum (and accompanying correspondence) and the letters written to second respondent on behalf of first appellant (together with the annexures thereto). In addition, each member of the committee had an internal memorandum dated 18 April 1985 prepared by an official in the office of the Director. On 29 April 1985 there was received a letter dated 19 April 1985 addressed to the Director by first appellant's attorneys in which he is asked whether "it is possible for our clients to submit

further representations to you, either in writing or by means of oral evidence as we would like an opportunity of putting as much evidence as possible before the Honourable, the Administrator". It was, however, decided by officials in the Director's office that it was "prakties gesproke onmoontlik en onwenslik" to allow further representations at that late stage. As I have said, first respondent's resolution of 15 November 1983 was sanctioned by second respondent on 2 May 1985 (in terms of sub-sec (4)). Pursuant to sub-sec (5), second respondent's decision was published in the Provincial Gazette. This was on 5 June 1985. The notice fixed 30 June 1985 as the date on which the resolution was to come into effect.

These are the basic facts on which the application (which was launched on 9 July 1985) had to be

decided/ .....

decided. As I have said, it was for an order reviewing and setting aside second respondent's decision in terms of sec 65 bis (4) to sanction first respondent's resolution of 15 November 1983. Before dealing with the grounds relied on I must refer briefly to the second applicant (now second appellant). He is also a taxi driver who, though apparently not a member of any of the associations belonging to first appellant, used the rank as well. However, he did not object to first respondent's resolution. Clearly, he was not entitled to contest its approval by second respondent. He had no locus standi in the procedings before the court a quo. In what follows, therefore, only first appellant's claim for relief need be considered. Consequently I henceforth refer to it simply as "appellant".

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Appellant's attack on second respondent's decision

was, according to the founding affidavit, based on a number of averments. They were, broadly speaking: (i) that it was prompted by an ulterior motive; (ii) that, contrary to the audi alteram partem rule, appellant had not been afforded a proper opportunity to present its case to second respondent; and (iii) that, in any event, first respondent's resolution of 15 November 1983 had been amended or replaced by the one of 7 November 1984 so that the sanctioning of the former was ultra vires second respondent. Before us, ground (i) was not pursued. In what follows, therefore, I confine myself to (ii) and (iii).

I commence with the former, ie appellant's complaint that it had not been given a fair hearing by

second/ .....

second respondent. No point was made, in this regard, of the internal memorandum being placed before second respondent or of first respondent being asked for and having furnished a memorandum. Furthermore, Mr Zeiss conceded on appellant's behalf that a fair hearing did not mean that it was entitled to make oral representations to second respondent (before he exercised his discretion under sub-sec (4)). The argument that there had been a breach of the audi alteram partem rule rested (i) on the failure to inform appellant of the contents of first respondent's memorandum to second respondent so that it could comment thereon and (ii) on the refusal of the request, contained in its letter dated 19 April 1985, to make further representations to second respondent. Each of these, so it was said, constituted a gross irregularity and resulted in the principles of natural justice not having been adhered to.

I deal firstly with (i) above. It was argued on behalf of appellant that it was only after 15 April 1985, when the matter was finally referred by first respondent to second respondent in terms of sub-sec (4), that any question of audi alteram partem (from the point of view of appellant) arose; when this occurred, appellant, for the first time, acquired a right to present its case; it was therefore entitled to be notified of and have the opportunity of traversing the memorandum. I am unable to agree. Sec 65 bis incorporates the audi alteram partem principle. Sub-sec (2) makes express provision for objections. Obviously an objector would be entitled, if not obliged, to

make/ .....

make representations in support of his objection. In terms of sub-sec (4) these have to be referred to the Administrator. In this way, the objector is afforded a hearing. This is what happened here. Appellant's objection, as contained in letter H, sets out fully its attitude to the proposed closure. It was placed before second respondent preparatory to him making his decision.

It does not, however, follow that appellant's right to a hearing was thereby exhausted. Sub-sec (4) does not, in terms, entitle a council, in referring a matter to the Administrator, to make representations. But having done so (whether mero motu or at the instance of the Administrator), it may be said to be only fair that an objector have the opportunity of dealing with what the council has to say. The following remarks of FEETHAM, JA in Loxton vs

Kenhardt/ .....

Kennhardt Liquor Licensing Board 1942 A D 275 at 315 are in this regard apposite:

> "Where an administrative authority entrusted with quasi-judicial functions holds an enquiry on a question submitted for its decision, and the party whose rights or claims are the subject of such enquiry is entitled to a hearing, it is one of the requisites of a fair hearing that, if the authority avails itself of its own knowledge, in regard to particular facts relevant to the question submitted to it, or of information in regard to such facts independently obtained from outside sources, it should give the party concerned notice of any points, derived from such knowledge or information, which may be taken into account against him, so as to give him an opportunity of meeting such points."

(See, too, Rose Innes: Judicial Review of Administrative Tribunals in South Africa, 159, 162; Baxter: Administrative Law, 553). This rule would a fortiori apply where the information emanates from one of the parties to the enquiry (in this case, first respondent).

Whether it does apply depends on the facts of

each/ .....

each case. In one such as the present, the significance, if any, of first respondent's representations to second respondent must be judged, not in vacuo, but in the light of appellant's objection. If what was stated by first respondent is unrelated to appellant's grounds of opposition or is not at variance with them, it can hardly be said that the dictates of fairness require that it be disclosed to appellant. Even where the information is prejudicial, an objector, who has anticipated and dealt with it, will not normally be given a second chance of doing so. And finally, it is worth stressing that an applicant in review proceedings, who complains that he was not afforded the opportunity of commenting on prejudicial allegations, should set out, with reasonable particularity, what his reply to them would have been.

With these principles in mind, I turn to an examination of the memorandum in order to determine

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whether, as argued for appellant, it contained prejudicial allegations of which it was entitled to have notice. It will be remembered that the one allegation said to be prejudicial related to the reasons why first respondent resolved to cancel the rank (including the "doring in die vlees" assertion); the second was that there had been consensus that the rank be closed provided the two conditions referred to were met; and the third was that they had been met (so that appellant's objection was not a valid one).

For basically two reasons I am of the opinion that appellant did not establish that it should have been informed of any of these allegations. I proceed to deal with the first. I shall assume that, notwithstanding the lapse of almost a year after the 21 day period for objections stipulated in sub-sec (2) had expired, appellant would have been entitled

to object afresh or amend its original grounds. But letters P and S do not purport to do this. They merely constitute a repudiation of the agreement previously concluded between the parties. They advance no positive reasons why the rank should not be closed. The fact that appellant does not agree to it, is not a ground of objection. Its consent was not a prerequisite to first respondent's resolution or second respondent's sanction thereof.

Letter H must therefore be looked to in order to determine the grounds of appellant's objection. It is not an objection to the principle of cancellation at all. On the contrary, it is, in substance, a consent to cancellation provided that the actual physical closure of the rank does

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not occur until the new rank at the station and the nine stopping places be established and operative. And it alleges that first respondent has agreed to these conditions. In other words, it reveals that appellant's concern was not whether there was to be closure but when this was to take place. This, incidentally, is how first respondent regarded it. In subsequent correspondence with appellant it more than once makes the allegation (which until appellant's change of attorneys was not denied) that the rank "has been cancelled". It also explains first respondent's failure, until 15 April 1985, to refer the matter to second respondent in terms of sub-sec (4). Its attitude was that, there having been no effective objection, it was unnecessary to do so. Indeed, before us, Mr Maritz, on behalf of first respondent, in support of the submission that appellant had no right to a hearing at all, persisted in this approach. It is not a sound one. The cancellation of

the rank was (eventually) treated as being objected to and the matter was referred to second respondent in terms of sub-sec (4).

Do any of the allegations contained in the memorandum conflict with what is stated in letter H, so construed? I do not think so. Mr Zeiss conceded as much. That part of the memorandum relating to the reasons for closure has no relevance to the essence of appellant's grievance, viz, that closure of the rank should not take place until alternative arrangements had been made. The allegation that appellant had consented accorded with its own version as contained in the letter. Of course, the objection does not admit that the conditions subject to which appellant agreed to the closure of the rank were fulfilled, whereas the memorandum alleges that they were. But on the facts, it must be found that the allegation is correct. The new rank and the nine stopping places were created prior to 30 June 1985

(when the rank was to be closed). The only respect in which appellant itself says that agreement had not been reached is in regard to the number of taxis that would be permitted to operate at each of the stopping places. I do not propose to analyse the evidence in question. Suffice it to say that on the papers (and appellant did not in the court a quo seek a reference to oral evidence) first respondent's version that the parties did agree on this point is more probable than appellant's that they did not. I would only deal with one particular submission that was made on behalf of appellant. It was based on a letter dated 13 June 1985 from first respondent to appellant's attorneys. In it appellant is "invited to resume discussions with my Council's officials concerned regarding control of the new taxi stand at Belle Ombre and the 9 stopping places around the City

Centre"/.....

Centre". This, it was said, shows that first respondent was still in the process of negotiating with appellant on matters concerning the nine stopping places and that agreement on the point had not been reached. There is no merit in this submission. As is explained on behalf of first respondent in an affidavit filed in answer to appellant's replying affidavit, the offer was made "ten einde praktiese beslag te gee aan ... die ooreenkoms tot samewerking ter uitvoering van die kontrole soos ooreengekom". Control was in the hands of appellant but, as it was put in one of first respondent's letters to appellant, this was to be exercised "in close collaboration with and subject to law enforcement by my Council's Traffic Department and subject to by-laws which will be drawn up by the Traffic Department

in collaboration with the interested parties concerned, ..."

The remaining ground on which appellant contends that no agreement resulted and that the memorandum, in alleging the existence of such agreement, contained prejudicial information, can also be briefly dealt with. It was that the agreement was concluded on the supposition that the rank had to be closed because of the contemplated construction of the road. This, it was said, turned out to be an incorrect common assumption; no new road is being built; on the authority of Williams vs Evans 1978(1) S A 1170(C) the agreement therefore failed. The argument cannot be sustained. It is true that at the commencement of the negotiations in mid-1983, mention was made of the road. But it thereafter became apparent that

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its construction would not occur for many years. Despite this, negotiations proceeded and agreement was reached. Moreover, it is denied in first respondent's answering affidavit that the road will no longer be reconstructed. Appellant has, in my view, not established that it was entitled to resile from the agreement on this (or any other) ground.

Even if, however, in evaluating the effect of what is stated in the memorandum, appellant is not confined to its original objection as contained in letter H, I do not think (and this brings me to the second reason referred to earlier) that appellant had an unfair or inadequate hearing. This approach involves taking account of appellant's letters P and S. As indicated, they notify first respondent that

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appellant refuses to vacate the rank. The purported justification for this is that it was never agreed that it would; alternatively such agreement was concluded on an incorrect assumption (viz, that the road was to be built) and was therefore not binding; and that the concept of stopping places was unacceptable. The memorandum is at variance with this but only to a limited extent. It alleges that agreement was reached and that there had been no valid objection to first respondent's resolution. For the rest, however, it is not germane to what is stated by appellant in letters P and S. Their contents are not addressed.

These letters were, in any event, put before second respondent "in order to place this matter in its proper perspective". Mr Zeiss submitted that account

should/ .....

should not be taken of letter T because it was written prior to the reference of the matter to second respondent. As counsel put it, it was wrong to try to incorporate submissions made at a stage when no official proceedings under sec 65 bis (4) were pending into the audi alteram partem rule. This is an untenable approach. An argument to this effect has already been rejected. Appellants cannot legitimately object to letter T and its accompanying annexures being looked to when this is what it sought. It follows that second respondent was made aware of appellant's contentions. There is no question of his having had only one side of the picture. To the extent that, from appellant's point of view, it may not have been as complete as it would have liked, it has itself to blame. Of course, it

cannot/ .....

cannot be said that appellant, in writing letter T, should then have anticipated that a memorandum would be furnished. At the same time, however, appellant knew from letter R that first respondent maintained that it had agreed to the rank's closure and that such closure was being proceeded with. Yet, far from seeking to amplify what it stated in its earlier letters, or to make any further representations, it baldly (in letter T) requested second respondent to refuse any application that first respondent might make (for closure). This was after it had been stated in letter S that second respondent was being written to "in order to place before him our contentions". Now appellant says that it should have been given another opportunity to put its case. But it does nothing to rebut the inference

that it was, in the circumstances, content to rely on what is said in letters P and S.

It is, moreover, difficult to ascertain from appellant's affidavits what, additionally, it would have wished to say in reply to the allegations contained in the memorandum. Would it have been in support of the proposition that no agreement was concluded or that, though one was, it was vitiated by an incorrect assumption or that it was subject to conditions which were not fulfilled? There is no satisfactory answer to these questions. Nor is there any reason to think that appellant could have furnished any further information on these issues that was not already before second respondent. Another possibility is that appellant would have put forward reasons why, contrary to what is stated in the

memorandum, first respondent's resolution should not, on the merits, be sanctioned. Despite appellant never having previously raised this issue, I shall assume that it would have been open for it to do so. But what is alleged it would have wished to say in this regard? In the founding affidavit the following appears:

> "(T)he refusal to allow further representations by the First Applicant was unlawful and deprived the Applicant of bringing highly relevant, crucial and pertinent information to the attention of the Administrator prior to him making a decision in terms of Section 65 (bis)(4) of the Local Government Ordinance."

There is, however, no clear indication of what the nature of such information would have been. All that is stated is the following:

> "The Administrator's refusal to afford the Applicant an opportunity of submitting

further/ .....

> further representations deprived it of the right of drawing attention to the current situation as opposed to that which prevailed at 21 December 1983. There have, in my respectful submission, been substantial changes to the relevant facts and to Government policy since December 1983, which, had they been drawn to the Administrator's attention, would have caused him to refuse to sanction the City Council's resolution closing the Bloed Street rank. In particular I refer to the policy that central business districts are to be opened to all racial groups."

Besides this there is merely a suggestion, in the replying affidavit, that the area where the new rank was to be established is not a suitable one. These are vague and unsubstantiated statements. They do not, to my mind, sufficiently establish appellant's ability to have placed any meaningful representations before second respondent in answer to what is stated in the memorandum.

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To sum up so far, appellant has, in my view, wholly failed to show that the memorandum should have been disclosed to it or that it was prejudiced by this not being done.

This brings me to the second respect in which it is said that appellant was deprived of a fair hearing, viz, the failure or refusal to grant the request contained in its letter dated 19 April 1985. Though couched in the form of an appeal for advice, it must, I consider, be read as a request to actually make further representations. The statement in the Director's letter of 8 May 1985 that it was not possible to comply with it because the matter had been submitted to second respondent on 18 April 1985 is not quite correct. It was submitted to him on 22 April 1985. Even so, the decision not to allow further representations cannot be criticised. When the letter was received on 29 April 1985, the meeting at which second respondent

was to consider the matter was only three days away. It would undoubtedly have had to be postponed if appellant's request was to be acceded to. No reason was advanced why this was "prakties gesproke onmoontlik" but having regard to the long history of the matter I have understanding for the allegation that it was "onwenslik". This is particularly so when account is taken of the fact that the official concerned would have known that appellant had already made representations to second respondent (by means of letter T). Furthermore, as already stated, appellant has not satisfactorily explained what further representations it wished to make.

My conclusion is that appellant has not

established/ .....

established that it did not have a fair hearing. In my view it did. The attack on second respondent's decision on the ground that there was a breach of the audi alteram partem rule must fail.

It remains to consider appellant's second contention, viz, that first respondent's resolution of 15 November 1983 was replaced or amended by its resolution of 7 November 1984 and that it was therefore beyond the powers of second respondent to sanction it; his action in having purported to do so was a nullity. The effect of the resolution of 7 November 1984 was simply to approve of or ratify the agreement which, according to the report referred to in it, had been concluded between appellant and first respondent.

In/ .....

In the report it is stated:

> "Na onderhandelings met die genoemde beswaarmaker oor laasgenoemde aangeleentheid ... is die genoemde beswaar formeel teruggetrek.
> Daar word dus geag dat geen beswaar daarteen ontvang is nie en die bepaling van die standplaas is derhalwe nie aan Administrateursgoedkeuring onderworpe nie."

The statement that the objection was withdrawn is not correct. It was not withdrawn and the opinion which follows, ie, that the matter was to be regarded as unopposed, whilst right at the time, turned out to be unjustifiably optimistic. But I fail to see that first respondent's resolution of 15 November 1983 was withdrawn or in any way amended. It remained. It was, therefore, capable of sanction. This attack on second respondent's decision must also fail.

The/.....

The costs of the application for leave to appeal were reserved by the court a quo. First respondent was then represented by two counsel. I do not think that this was warranted. The fees of two counsel (in relation to the application for leave to appeal) will therefore not be allowed.

The result is that the appeal is dismissed. Appellants are jointly and severally to pay the costs of the respondents including in each case the fees of two counsel. Appellants are also jointly and severally to pay the costs of the application for leave to appeal.

H H NESTADT, JA

CORBETT, JA)
)
VAN HEERDEN, JA) CONCUR
)
VIVIER, JA)
)
NICHOLAS, AJA)