

Constitutional and administrative law

Law



**ASSIGN
BUSTER**

Abstract

New legislation relating to the licensing of tyre disposal centres has resulted in several situations where the decisions of the public authority are in question. As a result judicial review is being considered as to whether the actions of the public authority could be deemed to be illegal, irrational or procedurally inaccurate. The Tyre Waste Act enacted by Parliament in 2012 has given powers to the Secretary of State to undertake certain administrative tasks such as the licensing of tyre storage and their destruction. A statement was also made that any decisions on the part of the Secretary of State cannot be challenged in a court of law, and the Secretary of State is given wide discretionary power under the statutory provisions. With this in mind and following certain concerns by three different companies, as well as a pressure group, the question has arisen as to whether or not the powers exercised by the Secretary of State in these scenarios could be subject to judicial review.

Introduction

The paper here will look, firstly, at the legal principles associated with judicial review, including identifying who may bring an action to judicial review and the grounds for such action, before applying this to the set of facts presented in relation to the individual entities in this case study.

Judicial Review – Rules

Judicial review provides a procedure whereby an individual or relevant group of individuals can bring an action in court to argue that a public body acted

in an unlawful manner (IRC, 1982). Broadly speaking, judicial review will fall into one of three categories: where a public body has acted illegally, i. e. failing to apply the law in the relevant manner; has acted irrationally by making a logical decision; or has undertaken some form of procedural impropriety which means that it has not followed the correct procedure. Where an action for judicial review is successful, the court may then quash the act undertaken by the public body or may require it to review the situation or may refrain the body from acting in the manner that it has been acting, previously. A typical example of this would be a declaration by the High Court that the public body had acted in an unlawful manner and would therefore require it to act differently, in the future (Fulham Corporation 1921).

Firstly, it is noted that judicial review is available against a decision made by a public body and, in this case, the Secretary of State for the Environment is a public body making public decisions and would therefore be potentially subject to judicial review, regardless of the statement that it cannot be held accountable in court (Hampshire Farmers Market Ltd., 2004). The individual bringing the action must also have sufficient standing in order to make the application (as defined by Section 31(3) of the Senior Courts Act 1981). In accordance with this section, it is stated that the permission shall not be given to bring an action, unless it is considered that the applicant has sufficient interest in the matter to bring the action (Gough, 1993).

Having been allowed to bring an action to judicial review, the next stage is to identify the grounds for challenge of the public authority's behaviour. Each of the three grounds will be looked at in turn, as each is potentially relevant, in <https://assignbuster.com/constitutional-and-administrative-law/>

this case. The classification of the grounds that will be discussed here was first established in the Minister for the Civil Service case decided in 1985.

Under the heading of illegality, there are several grounds for challenge, with one of the most common aspects of this being where there are allegations that the legislation has been misinterpreted (Anisminic 1969). Crucially, a decision can be deemed to be illegal for the purposes of judicial review, if the decision making body has ignored relevant considerations, or is taking irrelevant considerations into account when making decisions. This is particularly relevant when it comes to a situation whereby the public authority has a relatively high level of discretion in applying the rules and regulations by which it is guided. It is however noted that where the public authority is taking into account legally relevant factors and the decision they make is ultimately rationale this cannot then be queried simply because one of the parties does not agree (ex parte Westminster City Council 1986).

L Diplock also placed a large emphasis on the second ground for challenging the actions of the public body which is on the basis of irrationality. He stated that the decision would be deemed to be irrational if it could be seen as “ so, outrageous in its defiance of logic or accepted moral standards, that no sensible person, whether applied his mind to the question that have arrived at it.” (Associated Provincial 1948) This ground for judicial review is somewhat different than the other two in that it looks at the substance of the decision, but will only allow for judicial review where the decision is outrageous and again, not simply because one of the parties disagree (Barnett 2010).

Secondly, also under the umbrella issue of irrationality is that of proportionality meaning that the public body needs to make proportional decisions in order to achieve the underlying aim of the powers given to the public authority. For example it may be seen as disproportionate to prevent a particular protest march from taking place where it would have been possible to protect public safety by simply choosing an alternative route. Proportionality is seen as being particularly relevant when it comes to the European convention on human rights is also an issue that is dealt with when looking at decisions relating to the application of the European convention on human rights under UK law. Fundamentally therefore, where the public body has acted in a way that is disproportionate this could be used as an example of irrationality and therefore offer an opportunity for judicial review (Daly, 2001).

Finally there is the category of procedural impropriety which deals with an allegation that the public body has not used the processes and procedures required in order to make the decisions that it has made (Oliver 1987). A distinction is drawn between a procedural requirement which is perceived as being mandatory and a simple direction with any breach of a mandatory requirement allowing for judicial review on the grounds procedurally proprietary. There are also rules associated with natural justice, which are linked to procedural requirements and where it has been a breach of natural justice it is likely that judicial review of the procedurally proprietary will be allowed (Lloyd, 1987). For example, there are specific rules of natural justice, which ensured that no bias is shown and that each individual has the right to a fair hearing. An individual will have a legitimate expectation of how their

case should be dealt with and a failure to offer the opportunity to have a fair hearing could result in procedural impropriety (Nottinghamshire CC 1986).

Unlike other countries there is not a general requirement under English administrative law to give reasons for decisions however it may be required by statute to provide reasons and this would then prevail. Rules relating to legitimate expectation are also likely to be relevant as it is only reasonable that individuals form expectations on how their own situation will be treated and failure to comply with this can result in procedural impropriety (Fairmount 1976).

Once an action for judicial review is successful, there are several different remedies which may be available, including a declaration of incompatibility as well as options for the court to nullify the decision made by the public authority by the requirement for the relevant authority to revisit their decision and to comply with the public authority duties that are relevant (Liverpool Corporation 1972).

Bearing in mind the various different issues associated with judicial review the position in relation to the four possible claims for judicial review will be looked at in turn.

Alpha Ltd (A)

Two decisions have been made that A is confused by. These issues are firstly, the refusal to offer a grant for the recycling expansion due to environmental concerns and secondly, the requirement to cease trading due to the lack of licence. A stores no more than 1000 tyres at a time and these

are shredded within 12 months. Schedule 1 (B) states that a licence is not required where the tyres are stored for less than 12 months and there are less than 1000 stored at any point in time. Based on this interpretation it would seem irrational that the Secretary of State for the Environment failed to allow the exemption to apply and this would result in a declaration being made and the position having to be re-considered.

By contrast it is simply stated that a recycling grant would require the applicant to show that the waste to be recycled will not be harmful to the environment. It is argued here that the belief by the Secretary of State that the chosen recycling approach by A would be harmful and as such it would be appropriate to refuse the grant and could not be deemed to be irrational or disproportionate as it would seem reasonable to disallow a grant that would potentially support some form of non environmentally friendly approach.

Beta Ltd (B)

An application for a licence has been rejected by the Secretary of State by B as it is using technologies that are seen to be safe and have been proved as such in Germany but has not gained approval in the UK as is required under the statutory provisions. This presents a reasonably difficult position when it comes to judicial review as it could be argued that the Secretary of State has followed the requirements under the statutory provision yet has potentially acted in a disproportionate manner and has failed to take into account the tests that have taken place in Germany.

Despite the potential argument of irrationality that B could put forward, it is suggested on balance that the Secretary of State has followed the processes contained within the statutory provisions and therefore it is unlikely that judicial review will be successful in this situation.

Gamma Ltd (G)

G has also been refused a licence despite having a strong environmental record. G was initially afforded a licence automatically however this was reneged and G was told to apply for a licence which was ultimately refused due to the previous investigations relating to the theft of tyres, this was not an environmental issue. It is also suggested that bias is being shown as the decision maker was involved in the original investigation. Bearing both of these points in mind it is suggested that the judicial review would be successful on the grounds of procedural impropriety on the grounds of bias as well as illegality as the rules contained within the statutory provision have not been applied appropriately with the relevant investigations needing to be environmental in nature if a licence is to be rejected.

Tyred Out (T)

T is a special interest group looking at environmental issues associated with the disposal of tyres and is arguing that Delta (D) should not be granted a licence due to a poor environmental record. Firstly it is concluded based on the concepts of material interest that T is able to bring an action for judicial review as it has sufficient interest. Secondly it has been put forward by the Secretary of State that a licence was granted based on the devastating potential on the employment in the area despite poor environmental records.

It would be necessary to look therefore whether the decision was rational and proportionate, something which it is suggested based on the facts here that the decision was indeed appropriate and could not be deemed irrational. Discretion is given to the Secretary of State and this discretion has seemingly been applied appropriately making it unlikely that judicial review will be successful.

Conclusions

By looking at the specific rules and applying this to the four scenarios presented, it could be seen that there are mixed results with judicial review being likely to be successful in the case of Gamma Ltd and partly in relation to Alpha Ltd but would be unsuccessful in the other areas.

References

Anisminic Ltd v. Foreign Compensation Commission [1969] 2 AC 147

Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1 KB 223)

Attorney-General v. Fulham Corporation, ex relatione Yapp [1921] 1 Ch 440,

Barnett, H (2010) Constitutional & Administrative Law, Taylor & Francis

Bradley, A. W. and Ewing, K. D., (2003) Constitutional and Administrative Law, Pearson.

Council of Civil Service Unions v. Minister for Civil Service [1985] AC 374

Fairmount Investments Ltd v. Secretary of State for the Environment [1976]

1 WLR 1255

IRC v. NFSESB [1982] AC 617.

Lloyd v McMahon [1987] AC 625

Nottinghamshire CC v. Secretary of State for the Environment [1986] 1 AC

240

Oliver, D (1987) "Is the Ultra Vires Rule the Basis of Judicial Review" [1987] P.

L. 543

R(Daly) v Secretary of State for the Home Department [2001] 2 AC 532

R (on the application of Beer) v. Hampshire Farmers Market Ltd [2004] 1

WLR 233

R v. Gough [1993] AC 646

R v. Liverpool Corporation, ex parte Liverpool Taxis [1972] 3 WLR 224