THE HIGH COURT

[2024] IEHC 130

Record No. 2022/279MCA

IN THE MATTER OF AN APPEAL PURSUANT TO ARTICLE 13 OF THE EUROPEAN COMMUNITIES (ACCESS TO INFORMATION ON THE ENVIRONMENT) REGULATIONS 2007-2018

BETWEEN

ELECTRICITY SUPPLY BOARD

APPELLANT

AND

COMMISSIONER FOR ENVIRONMENTAL INFORMATION0

RESPONDENT

AND

RIGHT TO KNOW CLG AND GWEN MALONE STENOGRAPHY SERVICES UNLIMITED COMPANY

NOTICE PARTIES

Ruling of Mr. Justice Mark Heslin delivered on 29 February 2024

1. This short ruling should be read in conjunction with the judgment delivered on 17 January 2024, [2024] IEHC 17 ("the judgment").

2. Notwithstanding the finding in the judgment, the Respondent (otherwise the "Commissioner") contends that the appeal in question (which he determined by way of a decision of 29 August 2022) should be remitted to him for further consideration.

3. I have received written submissions from the Appellant and Respondent on this issue, dated 16 and 23 February, respectively. No useful purpose would be served by setting out the contents of same. Suffice to say that I have carefully considered all submissions and the various authorities relied upon.

4. I also gave consideration to whether it was necessary for an oral hearing. I am satisfied that the interests of justice do not require it and any such hearing would give rise to unnecessary time, cost and demands on finite court resources. In fairness to the Respondent, their written submissions made clear that an oral hearing was no longer sought.

5. The central submission made on behalf of the Respondent is that the Commissioner *"…should be entitled to make a new decision on whether certain extracts of the Transcript come within the scope of the definition*" (of 'environmental information' in Article 3(1) of the AIE Regulations). This, according to the Commissioner *"…remains a 'live' issue."* (See para. 4 of the Respondent's written submissions). I disagree.

6. It is important to recall the original request, made by the First Notice Party (otherwise "RTK") which ultimately gave rise to the appeal decided by the Commissioner. It was a request for the Transcript in its *entirety*.

7. As noted in the judgment (See para. 77) the Commissioner's 29 August 2022 decision on the appeal before him correctly identified the first question as being: *"(i) Whether the Transcript constitutes 'environmental information' within the meaning of the Regulations…"* (because no question arose in the appeal as to whether extracts or parts of the Transcript might be considered to be environmental information).

8. The Commissioner decided that the Transcript *was* environmental information. For the reasons set out in the judgment, the Commissioner's decision was incorrect as a matter of law.

9. RTK did not request *parts* of the Transcript. Nor did RTK ever consider that only *"certain extracts"* of the Transcript comprised environmental information. On the contrary, RTK contended that "*the entire transcript is environmental information"* (See para. 45 of the judgment). Therefore, the appeal before the Commissioner did not concern the issue which the Respondent now seeks to make *"a new decision on".*

10. This Court has determined that the document which was the subject of the access request (being the entire Transcript) is *not* environmental information within the meaning of the AIE Regulations. Thus, this Court's decision is determinative of the appeal which was before the Commissioner.

11. It follows that the Commissioner no longer has jurisdiction with regard to the request made by RTK which gave rise to the appeal.

12. The Commissioner enjoys no jurisdiction to make a new decision on a question which did not arise in the appeal, in the wake of a judgment which is determinative of that appeal.

13. In short, remittal simply does not arise.

14. Whilst the case decided by Court was a statutory appeal, as opposed to Judicial Review proceedings, both the Appellant and the Respondent acknowledge that remittal is a matter for this Court's discretion.

15. Irrespective of how wide that discretion may be, this Court is not prepared to exercise discretion in favour of remittal, given that there is nothing, in respect of the appeal in question, which remains to be remitted.

16. In short, no useful purpose could be served by remittal.

17. The appellant has been entirely successful for the reasons set out in the judgment. The appellant has also been successful in opposing the Respondent's argument for remittal. My preliminary view on the question of costs was set out in paras. 194 and 195 of the judgment (i.e. that the appropriate order is for costs against the entirely unsuccessful party) and this remains my view.

18. In respect of any 'stay' on costs, my preliminary view is that execution on foot of such a costs order should be stayed from the date of perfection of this Court's final order for such period as is allowed for the lodging of any appeal and, in the event of such appeal being lodged, that execution be further stayed until the first directions hearing in the Court of Appeal.

19. In the event of a dispute on any issue, including costs, short written submissions should be furnished within 14 days. Otherwise, the parties are invited to submit an agreed draft order within the same period.