

**Land Transport Appeals Tribunal
Sitting @ Labasa**

Appeal # **41 of 2017**

Between: **Dalip Chand & Son Limited**

[Appellant]

And: **Land Transport Authority**

[Respondent]

**Coastline Buses Limited
Rajendra Deo Prasad T/A Northern Buses**

[Interested Parties]

Appearances:

For the Applicant: Mr. A. Pal On instructions of Mr A. Sen.

For LTA: Ms. V. Naisilasila.

Rajendra Deo Prasad: Mr A. Pal.

For Coastline Buses: No Appearance at Hearing.

Date of Hearing: 8th June 2018.

Judgment

Introduction

The Appellant, Dalip Chand and Son Limited has appealed against the decision of the LTA to grant to Coastline Buses Limited amendment of RRL 12/23/33 for the **Nakowaqa/Savusavu/Nakowaqa** route.

The appeal is by way of a letter and the grounds for appeal can be briefly summarised as:

(a) Dalip Chand had also applied for the route - had competing application.

(b) No company had the route in their RRL.

(c) Coastline was operating the route illegally.

(d) Expression of interest should have been called for by the LTA for the route.

The Function and Powers of the Tribunal

The functions and powers of the Tribunal are noted.

The Submissions

The written and oral submissions have been noted.

Mr A. Pal (for the Appellant) - "Competing applications. Dalip had competing applications. Annex "9" - Decision letter to Coastline on 2nd May 2017 decision letter to Dalip Chand. Rely on letters as grounds of appeal (26th April 2017. Need to look at copy records and PSV guidelines. A decision letter given to Dalip Chand. Need to be part of the records. Seek Tribunal look at the letters issued by LTA to Coastline and Dalip Chand.

2nd May and 8th August 2016 to Dalip Chand. 14th October 2016 to Coastline relate to same route and same application. Dalip Chand filed application first. It was assumed that it would be put in records. (as letters are LTA issued letters Tribunal should look at it. Consider it relevant in the interest of justice.

2 decision letters. Approval letter for Coastline. Sent to Dalip Chand on 2nd May 2017. 2 different reasons given. We applied 1st. we were 1st in time with application. Copy records page 277 route 562. No Nakowaqa in the route. Page 276 no Nakowaqa in the route. Kakowaqa falls before Nabale junction, along Coastal Road is separate road is about 9km long.

According to permit they do not service the route. Not correct Coastline are servicing the route. Nakowaqa not operated by any operator. My client services the route. Coastline goes in the opposite direction. Document 2 in records Page 195, 196. Page 197 - Bank details- nothing there. Section C not answered. Page 199 incomplete. Nothing attached. No justification of need. Reason trying to formalise trip. -

illegal operations. Application shows critical information is missing. It should not have been processed.

Board cannot make decision on the information contained in the application. Objection letters and support letters. Management report - 14th March 2017 - Page 184. Existing trips do not go to Nakowaqa. Page 187 - Section C - relevant information. 2nd Part of bullet point 2 is not correct. (amendment for additional trip) not correct. Bullet point 3 - no licenced route to Coastline to operate on. When application looked at only one support letter as character reference. On the permit they have 3 buses - operate on 2 routes and how can they have 78 staff. Page 189 - Regulation 5 - misleading information. Wailevu Coast Road goes in opposite direction. Nakowaqa goes in other direction - misleading. What is missing is those on trunk route- information is doctored. Load check - 2 days load check. RRL - average Load 152 - misleading. Page 190 - Taxis and Hire not relevant to Buses.

Regulation 5 (1) (b) will have impact. LTA identified impact on existing operator. But decision letter says otherwise. Contradictory. Regulation 5 (1) (c) - misleading information. QAMS - Vishnu Holding has 85% separate from Coastline. Separate companies. Talks of QAMS of Vishnu Holdings - irrelevant information of different operators.

In application no financial details. But management report. LTA trying to boost application by putting information in. unfair to other parties. Fleet details - 2 buses of Coastline - 2 separate routes. Why Vishnu Holdings included. They donot have fleet to run the routes. So many discrepancies. Is in contrast to what decision letter says. Substantial information is lacking. Management report tried to tick all boxes. No information when application filed.

LTA has put in decision - tell Coastline operations does not clash with existing operator. Management report shows clash. They told Dalip Chand no merit in application. Coastline had no permit. LTA's reasons cannot be sustained by looking at the records. Not true Coastline was serving the route. Basis for refusing Dalip Chand is incorrect. My clients application was first in time. Seek appeal be granted entire way application considered was mischievous. Wrong in fact and in law. Ground of appeal is made out.

Seek appeal be allowed. Seek Tribunal cancel grant to Coastline and grant to Dalip Chand. Section 42 (2) of the LTA Act. Tribunal can make those directives. Note Coastline counsel has sought time to respond by way of written submissions - we will respond to it."

Ms V. Naisilasila (LTA) - "They should file proper grounds of appeal when challenging decision of Board. No application for stay. During Board meeting on 3rd April 2017. Board took into consideration all materials and granted to Coastline. Tab 8 - Board Minutes - annexure 8. Dalip Chand served route due to their incapability Coastline took over.

PSV guidelines - 1 (c) public interest with minimum effect on other operators. Coastline has existing trip. They were operating majority of the area. 9km main road to Nakowaqa. Supporting letter of Turaga Ni-Koro. Board took consideration of Qams and fleet. Function of Authority. Difference in Time - Tab 3. Links to Page 187 no clash in time table. Got written submissions as well. "

Mr A. Pal - (Reply) - "The Turaga Ni-Koro shows support for one bus. No reason why they donot want Dalip Chand. Timetable - Clashes see Page 186 and 187. Impacts my client. Rajendra Deo Prasad not impacted on one leg. Coastline is just ahead or on same time as Dalip Chand. Management is saying it is impacting. Multiple application for other trips."

Analysis

The Tribunal has noted the grounds of appeal filed by the Appellants and the submissions made.

One of the grounds of appeal by the appellant is that they had a competing application before the Board for the route. From the Board Minutes of 3rd March 2017 the Tribunal notes Mr Sen for the Appellant Company informing the Board of this. The Board ignored this and went ahead and made a decision.

Dalip Chand had applied for the same route on 19th May 2016. The application for Coastline is dated 31st May 2016. The application by Coastline was dealt with separately and first by the LTA. Dalip Chand had applied first and should have had its application dealt with first. Why The LTA dealt with Coastline application first is not explained by LTA.

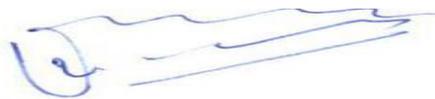
In itself dealing with Coastline application first the LTA was unfair to the Appellant. The Appellant were first in time with their application. The Appellant should have had its application dealt with first.

The information contained in the application by Coastline has been shown to be lacking. How LTA dealt with an application which lacks basic information is amazing. Later on in the Management reports information which is not in the application appears. LTA did not explain the missing information and the appearance of information in the reports later on.

The Tribunal finds that the appeal by the Appellant is made out. The Tribunal need not go into other issues raised by counsel for the Appellant. A lot of critical issues were raised. The LTA should follow procedures and the law. The manner in which this application was dealt with by side-lining the earlier application shows LTA's careless approach to matters. The Management and the Board need to do better. People expect those in decision making process to be thorough and fair.

Orders of the Tribunal

1. Appeal succeeds.
2. The decision of the LTA to amend route under RRL 12/23/33 for Coastline Buses Limited for Batinivurewai/Savusavu Bus Stand/Batinivurewai; Batinivurewai/Labasa Bus Stand/Batinivurewai; **Nakowaqa/Savusavu Bus Stand/Nakowaqa;** Levuka/Savusavu Bus Stand/Levuka; Valeni/Savusavu Bus Stand/ Valeni; Waisali/Naibalebale/Levuka/Savusavu Bus Stand/**return** is set aside.
3. LTA to Dalip Chand and Son Limited \$1000.00 costs. LTA to pay Rajendra Deo Prasad T/A Northern Buses \$1000.00 costs. The costs have been summarily assessed. The Costs are to be paid within 30 days of this judgment.



Chaitanya Lakshman

Land Transport Appeals Tribunal

13th day of July 2018

