

**Land Transport Appeals Tribunal
Sitting @ Labasa**

Appeal # **37 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. Sen.

For LTA: Ms V. Naisilasila.

For Coastline Buses Limited: Mr F. Vosarogo.

Rajendra Deo Prasad: Mr A. Pal.

Date of Hearing: 9th March 2018.

Judgment

Introduction

The Appellant, Dalip Chand and Son Limited have appealed against the decision of the LTA to grant amendment of Road Route Licence RRL No. 12/23/33 for the routes - Savusavu/Batinivurewai/Savusavu; 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/Nabalebale/Levuka**/Savusavu Bus Stand/**Return** to Coastline Buses Limited, an interested party.

A motion for stay was filed by the Appellant in this matter. The Tribunal had granted interim stay of the decision of LTA pending the substantive hearing.

The Grounds of Appeal

The Appellants grounds of appeal are as follows:

1. **THE** Authority erred in granting the said application of Coastline Buses Limited in breach of PSV Guidelines approved by the Board of the Authority on 24th April 2014 pursuant to Section 38 and 65 of Land Transport Act 1998.
2. **THE** Authority erred in granting the said application of Coastline Buses Limited in breach of the encroachment principle as Dalip Chand & Son Limited was an existing operator along the said route from Waisali/Nabalebale/Levuka/Savusavu Bus Stand/Return at similar times.
3. **THE** Authority erred in not providing any cogent reasons in its letter dated 20th April 2017 addressed to Coastline Buses Limited approving its licence for amendment of road route licence and suggesting that **it does not clash and affect the existing bus operators along the same route for stage trip** which was a fallacy.
4. **THAT** the Authority erred in failing to advise any reasons to the Appellant as to why its objections were not considered.
5. **THE** Authority erred in granting the said application in breach of the established practice and procedure of the Authority in particular, the operators like Dalip Chand and Son Limited who was an existing operator along the same route was whether capable of catering the need that may have existed before considering new trips to a new operator.

6. **THE** actions of the Authority are therefore in breach of Regulation 5(1)(b) of the Land Transport (Public Service Vehicles) Regulations 2000.
7. **THE** Authority erred in failing to consider or relying on proper load checks at specific points of reference with proper methodology and did not consider or evaluate composite timetable relevant to the application in conjunction with that of the other operators.
8. **THAT** the Authority did not properly evaluate the evidence, representations and submissions made by Dalip Chand & Son Limited before coming to its decision to approve a permit to Coastline Buses Limited and therefore the decision of the Authority is procedurally and substantially unfair, unreasonable and flawed and cannot be supported in regards to all the evidence and facts.
9. **THAT** the decision of the Authority to grant a new road route permit to Coastline Buses Limited under the pretext of an amendment has been arrived at in a grossly unfair and unreasonable manner and in breach of the principles of natural justice and the PSV guidelines.
10. **THE** Appellant reserves its rights to add or alter the Grounds of Appeal upon receipt of the copy record from the LTA Tribunal."

The Function and Powers of the Tribunal

The functions and powers of the Tribunal under the relevant law are noted by this Tribunal.

The Submissions

In addition to the written submission the following oral submissions were made.

The **Appellants submission** by **Mr A. Sen** - "got written submissions. Filed notice of appeal. 1st Interested Party on 12th May 2016. Composite timetable. Coincides with clients trip. Composite shows - contrary to Boards findings. Competing on same route on exactly same time where is merit. An amendment only - new trip. Appeal must be allowed with costs."

Mr A. Pal for **Rajendra Deo Prasad** - "Client had objected to appeal. Raised issue of monopoly. Vishnu Holdings and Coastline owned by same people. Savusavu area held by Coastline and Vishnu Holdings. Operations out of Labasa are competing. Application is trying to encroach into others areas. Board should seriously consider monopoly. Need to look at result in 5 to 10 years' time. Balance must be maintained. Management report. Load check data - page 258. Data is unreliable. They chose this data. Board relied on this data no sense comes out of it. If this was new application would be shut out. Operators ingeniously dressed up the application (garb). Page 261 - fleet composition of Coastline. Appears data of Coastline and Vishnu Holdings merged. Data so unreliable cannot be relied up. Decision wrong. Conduct of Authority after stay. LTA does not deal with merits. LTA does seek \$5000.00 costs. One case where Tribunal should say pay cost to us."

LTA - "During Board meeting on 3rd April - Board took into consideration all materials. Boards function to meet needs of public. To cater needs of public. Qualms considered. Composite Timetable was highlighted in Board meeting. Annexure "7" sufficient. Objection letters did not cover composite timetable. Board considered PSV guidelines. Decision of Board correct in public interest. Rely on written submissions."

Mr F. Vosarogo for **Coastline Buses Limited** - "Refer Tribunal to PSV guidelines. Mandatory requirements for 3 load checks. Regulation 5 and PSV guidelines. We need to be practical. Board members bring experience. Public hearings people give in a piece. Board considers every aspect of submission that is made. Existing trips at 7am. In fact RRL of Dalip Chand - depicts at 5.45am is supposed to reach Nabalebale at 7.30am. 7am no Dalip Chand bus service. Various correspondences with LTA. 5.45 am Labasa to Nabalebale 7.30am. clients applied to extend to pick up. Sacrifice trip. It is on humanitarian aspect. assume trips at 7am from Dalip. We start at 7am from Nabalebale. Dalip is 10 minutes ahead 1.2km ahead. Labasa to Nabalbale junction is 63 km. application for school children to get early start to school. PSV guidelines Para 1 (a). is a fine application."

Mr A. Sen in reply - "More filled with emotion than merits. Coastline do not start at Nabalebale. Any evidence on school children before Board. Have given composite timetable. LTA does not challenge the Timetable. No complaint by public against Dalip Chand. QAMS of Vishnu Holdings Page 287. No reasons of decision. Decision is flawed."

Analysis

The Tribunal has noted the grounds of appeal filed by the Appellant and the submissions made. Having perused the grounds of appeal the Tribunal would briefly summarise the grounds of appeal as follows:

- a. Breach of PSV guidelines.
- b. Breach of encroachment principle.
- c. No cogent reasons for decision.
- d. No consideration of objections.

- e. Needs of the trip and whether proper load checks carried out.
- f. Breach of Regulation 5 (1) (b) of the Land Transport Authority (PSV) Regulations 2000.
- g. Deviation from policy of LTA - breach of natural justice.

The Principle of encroachment applied in this matter and needed to be examined and considered by the LTA. The LTA did not consider this. No proper load checks were carried out to show the need for the trips. The information contained in the management report is inadequate. The Tribunal has highlighted numerous times how LTA should collect and analyse load check data for buses. The LTA has to-date not taken on board the suggestions made by the Tribunal.

The LTA needed to consider the objections and deal with the objections in its deliberations. The effect of the proposed service on other public service operators is an issue that the LTA must consider in its deliberations. It would have been appropriate if the LTA listed the objections and considered the objections by the other party and gave reasons why it accepted or dismissed the objections.

The composite timetable in the management report is not the composite time table for the trips but a "cut and paste" of the timetables. The composite timetable must be considered in the whole in the management reports as well. If it is on the screen at the meeting the same must be in the Tribunal Records and before the Board members in the management reports. The management report also highlighted that an approval of the application of the trip would affect other operators. The Board's view is contrary to the Management Report on the effect on other operators.

The record shows that the application (Annexure 2 of Copy Records) was by Vishnu Holdings Limited and not Coastline. The advertisement (Annexure 3) is for Coastline Buses. The Management Report (Annexure 5) is for Coastline Buses. The Board also took into consideration QAMS (Annexure 6) for Vishnu Holdings when it considered the application. It is erroneous for LTA to consider an application by one entity (Vishnu) and give the decision in favour of another (Coastline). The Tribunal cannot overlook all this facts. LTA need to be thorough.

For the foregoing reasons the appeal succeeds. The decision of the LTA to approve amendment of Route Licence RRL No. 12/23/33 in favour of Coastline Buses Limited is set aside.

Orders of the Tribunal

1. Appeal succeeds.
2. The decision of the LTA to approve amendment of RRL Route Licence RRL No. 12/23/33 - Savusavu/Batinivurewai/Savusavu; 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/Nabalebale/Levuka/Savusavu Bus Stand/Return** to Coastline Buses Limited - given to Coastline vide letter dated 20th April 2017 is set aside.
3. LTA to pay Dalip Chand and Son Limited \$1000.00 and LTA to pay Rajendra Deo Prasad T/A Northern Buses \$1000.00 and LTA to pay The Costs are to be paid within 30 days of this judgment. The costs have been summarily assessed.



Chaitanya Lakshman
Land Transport Appeals Tribunal
13th day of July 2018

