

**Land Transport Appeals Tribunal  
Sitting @ Labasa**

Appeal # **42 of 2016**

Between: **Dalip Chand & Son Limited**

[Appellant]

And: **Land Transport Authority**

[Respondent]

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

[Interested Party]

**Appearances :**

**For the Applicant:** Mr. V. Kapadia.

**For LTA:** Ms. V. Naisilasila.

**Rajendra Deo Prasad:** Mr A. Pal.

**Date of Hearing:** 9<sup>th</sup> March 2018.

**Judgment**

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**Introduction**

The Appellant, Dalip Chand and Son Limited has appealed against the decision of the LTA to cancel its Salusalu Street Route and grant temporary permit to Rajendra Deo Prasad, the Interested Party and call for expression of interest within 3 months for the said route.

## The Grounds of Appeal

The Appellants grounds of appeal are as follows:

- "1. The Authority erred in law and in fact in not providing any Regulation 12 Show Cause Notice with particulars, any complaint letter, correspondence or relevant documents to Dalip Chand nor did it inform Dalip Chand beforehand on what the Board wished to question it on in relation to any complaint concerning its bus operations on Salusalu Street Route. The Authority acted in in breach of the fundamental rule of common law doctrine of natural justice that a person is entitled to know what is being alleged against him and be given a reasonable opportunity to seek legal advice and/or reply.
2. The Authority erred in law in acting verbally without prior written notice and without any Regulation 12 show cause notices being issued to Dalip Chand when cancelling the Salusalu Street route of Dalip Chand in an unjustified manner in breach of its own PSV Guidelines.
3. The Authority erred in not serving and not providing any complaint letters and investigation to Dalip Chand and did not give to Dalip Chand the right to respond or be heard before deciding to cancel its Salusalu Street Route operation. Dalip Chand was denied the right to be told what exactly the complaint was and also was denied the right to legal advice or access to its solicitors who were forced to wait outside the room. Dalip Chand was not told that its route was liable to be cancelled.
4. The Authority erred in cancelling the Salusalu Street Route on its RRL 12/23/28 when another government agency, the Labasa Drainage Board had ordered Dalip Chand to stop running the bus services on a portion of the Salusalu Street Route linking Nadawa Road called the Seawall Road.
5. The Authority erred in giving a temporary permit to Rajendra Deo Prasad to operate Salusalu Street Route without investigating whether the Seawall Road can sustain bus operations, in the light of prohibition on operation of bus services by the Labasa Drainage Board.

Rajendra Deo Prasad is also not operating on Seawall Road.

6. The Authority erred in granting a temporary permit on Salusalu Street route to Rajendra Deo Prasad who was previously twice served with a Regulation 12 Show Cause Notice by the Authority for illegal bus operations in Salusalu Street on the 19th October 2010 and again 11th March 2016.
7. The Authority erred in law and in fact in not contracting working with Dalip Chand to investigate whether the whole of the route from Salusalu Street to Nadawa Road is serviceable by bus, in the light of fact that the road was not properly maintained or even gazetted as a public road by the Road Authority of Fiji.
8. The Authority erred in law and in fact in calling for an Expression of Interest on the Salusalu Street Route without carrying out a proper investigation as to why Dalip Chand could not operate on part of the road between Salusalu Street and Nadawa Road.
9. The Authority erred in stating as grounds for the decision that Dalip Chand did not satisfactory service the route for about 5 years and on the basis that the road was bad, uneconomical and that it did not inform the Authority when the Authority was aware of the condition of the road and the reasons for non-operation on part of that route.
10. The Authority erred in law and in fact in not providing copies of any documents or material in respect of any investigation it may have done on the non-operation of the Salusalu Street Route by Dalip Chand and did not give Dalip Chand a reasonable and fair opportunity to be heard.
11. The Authority acted in a bias manner when it did not accord procedural and substantive fairness in dealing with Dalip Chand on the complaint by Rajendra Deo Prasad and handed over to Rajendra Deo Prasad a temporary permit to operate a service that Dalip Chand was operating when Rajendra Deo Prasad was found guilty of illegally operating on Dalip Chand's route on two occasions.

12. *The Authority failed to properly evaluate the evidence and documents and deal fairly with Dalip Chand before making a decision to cancel the Salusalu Street Route of Dalip Chand and issue a temporary permit to Rajendra Deo Prasad who was illegally operating on Salusalu Street and also call for expression of Interest on the Salusalu street Route of Dalip Chand when none of these matters were notified to Dalip Chand prior to being ambushed at a Board meeting.*
13. *The Authority acted unfairly, unreasonably in breach of the legitimate expectation of Dalip Chand and its decision is flawed and cannot be supported having regard to all the evidence facts and circumstances and the relevant Act and Regulations.*
14. *The Authority erred in law in deliberately acting in breach of Section 65 of the Land Transport Act and Regulation 12 of the Land Transport (PSV) Regulations and there-by conjuring an advantage to another operator who has been cited twice for operating illegally on that very route. The Authority therefore acted in a bias and illegal manner in blatant breach of its own Act and Regulation and Clause 4 of PSV Guidelines.*
15. *The Authority failed to disclose its reports and /or recommendation from management (if any) and the decision of the Authority was made illegally unfairly and irregularly and in breach of the principles of natural justice and the legitimate expectations of a permit holder to be dealt fairly and in accordance with the procedures set out in the Land Transport Act and the Land Transport (Public Service Vehicle) Regulations and the PSV Guidelines.*
16. *The Appellant reserves its right to file amended or additional grounds of appeal upon receiving further documents and reasons for the decision and the record of the proceedings of the Authority."*

## 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 V Kapadia** (Appellant) - "Filed appeal. It got facts. LTA cannot defend its decision. Para 4 - complaints. No statutory declaration filed as complaint. LTA not following its own guidelines. Report prepared by LTA- Annex 9. Not given to Dalip Chand.

LTA is in clear breach of guideline 4 (d). no notification of Regulation 12 held on 29<sup>th</sup> September 2016. Annex "B" of Rohinil - no public or private notice of show cause. Annex "A" of appeal. Letter of Alfred. Deferment of application. Reference to show cause matter. Only reference nothing else.

PSV guidelines not followed. Rohinil was questioned verbally. Was not allowed Counsel. Contained in affidavit. Annex "L" letter to R. Deo. Drainage Board letter. Annex "F" email - Annex "G". LTA knew why Dalip Chand had stopped. He was called and questioned. R Deo was in before- in Board. No record in minutes of what transpired. They did it orally without a lawyer. Breach of Regulation 12. Breach of natural justice. Cannot be justified. Blatant violations of Act and guidelines.

Procedure that Sir Vijay R Singh used (Appeal # 301/2005) clear cut case. Nothing in records to show that will save LTA. Nothing in minutes of PSV Board Meetings. Most unusual, lacks transparency. Seek appeal be allowed and indemnity costs of \$5000.00."

**Ms V Naisilasila** (LTA) - "Annex 10 - copy of records. Dalip Chand admitted on his own. He said road was bad and uneconomical. Why Board made decision to issue trips to R. Deo. Annex 8 - copy records. Letter that Dalip had to attend meeting on 29<sup>th</sup> September. Letter stated show cause. Clear on records. Show cause. Under Regulation 12. PSV Regulations. Board proceeded to hear show cause. Board made decision after Dalip Chand did not serve for 5 years. Dalip Chand legal operator for the route. Annex 5 copy records."

**Mr A Pal** (Interested Party)- "not as bleak as put by appellants. Appeal after Regulation 12 hearing. Regulation 12 procedure is contained in PSV Regulations. 12 (1) Regulation - Authority's Power. Key is Reg 12 (2). They were heard. Annex "8" - written to Dalip Chand by LTA. Dalip Chand should check with LTA. Annex 10 records. Operator had opportunity to inform LTA. Would fact by his own admission that he was not operating change. Procedural point.

Tribunal has given similar decision some time back in Prem Chand transfer of licence matter. LTA does not follow its own guidelines. Operator admitted not operating. If everything submitted Board would come to same conclusions."

**Mr V Kapadia** - (Reply) - "Trying to justify the unjustifiable. Has to be a right to fair hearing. Para 10 of affidavit. Seawall road was bad. Main road - no gravel. A summary. No record. LTA needed to give proper letter. Letter about deferment of application and a show cause matter. Would not know what show cause is about.

No report where Dalip Chand was operating. Email to LTA. Stopped by Drainage Board. Not a single letter to Dalip Chand to explain if Dalip Chand not operating. No reports. No

findings. Cannot justify situation. Not how to show cause. Seek appeal be allowed.”

### **Analysis**

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

From the records the Tribunal notes that the LTA did not give proper notice and details to the Appellant for a show cause proceedings. The letter of 22<sup>nd</sup> September 2016 by LTA to the Appellant is not a show cause notice. A show cause notice should outline the allegations or complaints against which the party is called on to respond. Copies of allegations or brief outline of the allegations must be given together with other relevant documents for the party to respond.

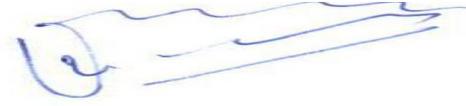
A party should be accorded natural justice which is a right to fair trial, including the right to legal representation. The Appellant's through an affidavit of Rohinil Chand have deposed that they were not allowed to call a lawyer to the Board meeting. This affidavit of Rohinil Chand is unchallenged.

The decision of the LTA was in breach of natural justice and therefore it cannot stand. The decision of the LTA to cancel the Salusalu Route served by Dalip Chand is set aside.

### **Orders of the Tribunal**

1. Appeal succeeds.
2. The decision of the LTA to cancel the Salusalu Street route under RRL 12/23/28 operated upon by the Appellant, Dalip Chand and Son Limited is set aside.
3. The Tribunal directs the LTA to revoke the temporary permit issued to Rajendra Deo Prasad T/A Northern Buses.

4. LTA to pay Dalip Chand and Son Limited \$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**

13<sup>th</sup> day of July 2018

