

**Land Transport Appeals Tribunal  
Sitting @ Labasa**

Appeal # 38 of 2017

Between: **Dalip Chand & Son Limited**

[Appellant]

And: **Land Transport Authority**

[Respondent]

**Vishnu Holdings Limited  
Rajendra Deo Prasad T/A Northern Buses**

[Interested Parties]

**Appearances:**

**For the Applicant:** Mr. A. Sen.

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

**For Vishnu Holdings Limited:** Mr F. Vosarogo.

**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 have appealed against the decision of the LTA to grant amendment of Road Route Licence **RRL No. 12/24/10** for the route - **Wailevu Tunuloa/Labasa Bus Stand/Wailevu Tunuloa, Wailevu Tunuloa/Savusavu Bus Stand/Wailevu Tunuloa** to Vishnu Holdings Limited, the Interested Party.

A motion for stay was filed by the Appellants 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 Vishnu Holdings 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 Vishnu Holdings Limited in breach of the encroachment principle as Dalip Chand & Son Limited was an existing operator along the said route from Labasa/Savusavu, Savusavu/Labasa at similar times.
3. **THE** Authority erred in not providing any cogent reasons in its letter dated 20th April 2017 addressed to Vishnu Holdings 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 Labasa/Savusavu, Savusavu/Labasa 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 substantially deviated from its own current policies and guidelines when granting the approval of a new road route licence to Vishnu Holdings Limited under the pretext of an amendment.
8. **THAT** the decision of the Authority to grant a new road route permit to Vishnu Holdings 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.
9. **THAT** Vishnu Holdings Limited did not have any approval or confirmation from Local Government Authorities and Labasa Town Council of the availability of proper bases at Labasa Bus Stand at the times of arrival and departure and further in view of the fact that Labasa Bus Stand was already congested.
10. **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 Vishnu Holdings 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.
11. **THE** Authority erred in failing to consider or relying on proper load checks at specific points of reference with a proper methodology and did not consider or evaluate composite timetable relevant to the application in conjunction with that of the other operators.
12. **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 are noted by the Tribunal.

## **The Submissions**

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

The **Appellants submission** by **Mr A. Sen** - "written submissions and grounds of appeal filed. Facts not been challenged in any manner. LTA had published for Board Meeting. Encroachment. PSV Guidelines. Existing operator. Concern not taken consideration of. LTA deviated from the guidelines. Labasa Bus Stand congested. Board meeting unfair. Did not rely on load checks. Annexure 6 - Board Minutes.

Got composite timetable. Composite timetable and load checks not properly considered. Boards starting point incorrect. Appellant did not agree with load checks. Deliberations not in structured manner. Application made in Suva. They are trying to take control of Macuata trip. No affidavit contradicting our trip. Seeks costs."

**Mr A. Pal** for **Rajendra Deo Prasad** - "issue of amendment. Advertisement says amendment of additional trip. They do not have existing trips. How can they have additional trips. It is not an amendment but a new application. 2 different highways cannot be connected. Annexure 4 - Board Report. Bus fleet is similar to appeal 37 of 2017. Load check average of 214 passengers in one bus. No composite timetable. We had highlighted deficiencies.

Monopoly argument. Vishnu Holding and Coastline control all operations from Savusavu. It is their attempt to move into Labasa route. Will undermine every operator in Labasa. Application their example of their strategy. They have not filed any evidence. No evidence of need of service. Void of

merit. Appeal should be allowed with costs. Seek substantial costs."

**LTA** - "in the Board meeting Board considered materials before them (it was put out on a screen) existing operator Vishnu Holding on the route. Amendment in Labasa Route. Wailevu/Tunaloa- existing trip. Rely on written submissions."

**Mr F. Vosarogo** for **Vishnu Holdings** - "is application for Natewa area. 5.15am trip. Return leg - Labasa 2.45 pm to primary school at Tunaloa District. Reason for request for trip provides service to people of Tunaloa area. They come and trade in Labasa. 14 villages and settlement from route to Savusavu. 76 km of road. Will benefit service. Does anyone else provide this service. People want to get to Labasa. Dalip Chand begins at 9.30, leave Savusavu. 1 hour time difference. Not biting into someone else's time.

Vishnu Holding operating from Savusavu to Labasa. How is Rajendra Deo affected? How is Dalip Chand affected? Had presented to Board on reason for application and no impact on existing operators. In original application we made before the Board. Not a stage service. No stopping between Savusavu to Labasa. Regardless of form it can be rectified. PSV Regulations Section 3 (7) consideration is same. Amendment is treated as new application. Dalip Chand - 1 hour later this application based on need of people. Need was sufficient. Was enough for the Board. No uninterrupted service if appeal is allowed. Not a new operator. No impact on existing operators. Go to PSV guidelines. When we dealing with PSV transport - Section 8 (1) a and b of LTA Act is basic. Heard statements of LTA. On requirements of public utmost consideration.

*Consideration for existing operators. What is paramount is service that would reach public. Grounds of appeal would not hold water."*

**Mr A. Sen** in reply - *"it's a bus service. 14 villages. 76km. we will not be distracted by emotions. How many people of Tunalooa travel. Entire application is masked with deception. No proper load checks. Para 8 (1) (b) of LTA Act. Area they want to chip into."*

### **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 summarise the grounds of appeal covering 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 Management report showed that other operators served from Labasa/Savusavu/Labasa. Vishnu Holding operated from Wailevu Tunulooa/Savusavu/Wailevu. In the application Vishnu Holding sought amendment of RRL extending the trip to Labasa Bus Stand from Wailevu Tunulooa and back to Wailevu Tunulooa, through Savusavu. Which meant that Vishnu Holding would be operating on the route served by the other Operators like Dalip Chand and Rajendra Deo Prasad T/A Northern Buses.

The Principle of encroachment applied and needed to be examined and considered by the LTA. The LTA did not consider this. Proper load checks were not carried out to support the need for the trips. The LTA Board in its decision states that need is established as per the loading report. The information contained in the management report on the load checks is inadequate and flawed. The total load check report in page 13 of the Management Report has no structure. It does not set out the method or the mode of data collection. Quality control measures of the data obtained is not contained in the report. Load check averages of RRL of 214.21 are not explained. The Tribunal has highlighted numerous times how LTA should collect data and analyse it. The LTA has neither taken on board the suggestions made by the Tribunal nor attempted to devise a better method of load check analysis for the buses.

The LTA needed to consider the objections and deal with the objections in its deliberations. It is not clear from the minutes whether the LTA considered and dealt with the objections of the Interested Parties. The effect of the proposed service on other public service operators is an issue that the LTA must consider in its deliberations. Following which the Board must state whether the objections are valid or dismissed. Reasons for accepting or dismissing the objections must be contained in the minutes of the Board.

The composite timetable in the report is not the composite time table for the trips but cut and paste of the timetables. The composite timetable must be considered in totality. It must be part of the records submitted to the Tribunal.

It is clear from the records that the LTA wanted to approve the application and made a decision to approve the application and provided reasons as an afterthought. The decision is not based on merit and the information that was before the Board.

For the foregoing reasons the appeal succeeds. The decision of the LTA to approve amendment of RRL 12/24/10 to Vishnu Holdings Limited - for Wailevu Tunuloa/Labasa Bus Stand/Wailevu Tunuloa, Wailevu Tunuloa/Savusavu Bus Stand/Wailevu Tunuloa is set aside.

#### **Orders of the Tribunal**

1. Appeal succeeds.
2. The decision of the LTA to approve amendment of RRL **12/24/10** to Vishnu Holdings Limited - for Wailevu Tunuloa/Labasa Bus Stand/Wailevu Tunuloa, Wailevu Tunuloa/Savusavu Bus Stand/Wailevu Tunuloa 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. The Costs are to be paid within 30 days of this judgment. The costs have been summarily assessed.



Chaitanya Lakshman

**Land Transport Appeals Tribunal**

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

