

**Land Transport Appeals Tribunal  
Sitting @ Suva**

**Appeal # 125 of 2017**

Between: **Koromakawa Rentals and Tours**

[Appellant]

And: **Land Transport Authority**

[Respondent]

**Avin Amal Singh T/A  
Wananavu Rentals**

[Interested Party]

**Appearances:**

**For the Appellant:** Mr. F. Vosarogo.

**For LTA:** Mr G. Stephens.

**For Interested Party:** Mr R. Kumar.

**Date of Hearing:** 15<sup>th</sup> June 2018.

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**Judgment**

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**Introduction**

The Appellant, Koromakawa Rentals and Tours have appealed against the decision of the LTA dated 13<sup>th</sup> October 2017 conveyed by letter dated 8<sup>th</sup> November 2017 in favour of the Interested Party, Wananavu Rentals. The LTA had approved 5 hire permits in favour of Wananavu Rentals.

The LTA decision is as follows:

*"The Board have approved the applications for 5 new hire permits as the applicants have met all requirements pursuant to Regulation 5 (1) a-h and subject to confirmation from FRA and Town and Country Planning regarding the viability of the proposed base."*

On 13<sup>th</sup> April 2018 following an application by Koromakawa Rentals and Tours, the Tribunal granted interim stay pending the determination of the appeal.

### **The Grounds of Appeal**

The Grounds of Appeal as amended and filed for the Appellant are as follows:-

- "1. **THE** Authority erred in fact and in law in holding that the 2<sup>nd</sup> Respondent had met all the requirements pursuant to Regulation 5(1) (a) - (h) of the PSV Regulations 2000 when it was clear that the 2<sup>nd</sup> Respondent had not met all the Requirements and it was acknowledged to be so by the Authority in its decision letter.*
- 2. **THE** Authority erred in fact and in law in not considering the objection raised by the Appellant and/or not giving weight to the content of the objection and submissions further made at the hearing to which absence of proper consideration, the decision of the Authority was not fair and is perverse and improper.*
- 3. **THE** Authority erred in fact and in law in holding that there was evidence in Court that there was need established by the 2<sup>nd</sup> Respondent when the weight of the evidence suggested that there was no need for the issuance of the 5 new hire permits and the companies to which the permits*

would have to show contracts for the service either have not endorsed the application or have their own mode.

**4. THE** Authority erred in law and in fact in its reasoning and justification of the need to issue the 5 new hire permits when the evidence clearly support the issuance of none.

**5. THE** Appellant further says that the 2<sup>nd</sup> Respondent has until to date not fulfilled the preliminary requirements of the permit application process, which failure is fundamental to the decision and it must be annulled and declared void.

**AND UPON** such further and other grounds as the Appellant may advise in due course of the copy records are made."

The Appellant further prayed that "that the decision of the 1<sup>st</sup> Respondent dated 13<sup>th</sup> of October 2017 conveyed by letter dated 8<sup>th</sup> November 2017 for issuance of 5 new Hire Permits to the 2<sup>nd</sup> Respondent be wholly set aside and the 1<sup>st</sup> Respondent be directed to cancel the 5 Permits to the 2<sup>nd</sup> Respondent."

### **The Function and Powers of the Tribunal**

The functions and powers of the Tribunal are noted.

### **The Submissions**

The Tribunal has noted the submissions that have been made for and on behalf of the parties.

## **Analysis**

The Tribunal has noted the grounds of appeal filed by the Appellants and the submissions made by the parties. The Tribunal will go over each ground of appeal in turn.

**Ground One - The Authority erred in fact and in law in holding that the 2<sup>nd</sup> Respondent had met all the requirements pursuant to Regulation 5(1) (a) - (h) of the PSV Regulations 2000 when it was clear that the 2<sup>nd</sup> Respondent had not met all the Requirements and it was acknowledged to be so by the Authority in its decision letter.**

Regulation 5 of the Land Transport (Public Service) Regulation 2000 is the regulation dealing with PSV applications. It requires the LTA to take into account any matter it thinks fit or desirable to give effect to the provisions of the Act and in particular it must have regard to:

- (a) The needs of the public and the desirability of ensuring that services to passengers are maintained or enhanced;
- (b) The effect of the proposed service on other public service vehicle operators;
- (c) The suitability of the routes on which a service would be provided under the permit;
- (d) The suitability and fitness of the applicant to hold a permit;
- (e) The financial standing of the applicant;
- (f) Any evidence presented at a hearing conducted under Regulation 4;
- (g) The type of vehicle which the Applicant proposes to use on the service; and
- (h) The immigration status of the applicant.

The LTA when dealing with an application for issue, renewal or change in any condition of a permit must consider all of the above-listed issues in Regulation 5 (1).

Regulation 5 sets out the issues which the LTA needs to consider in each application for issuance, renewal or change in any condition of a permit. It also gives the LTA power to take into account any other matter it thinks fit or desirable to give effect to the Land Transport Act. The Land Transport Authority while considering matters listed in Regulation 5 (1) (a) to (h) has wide powers to consider other relevant matters.

The LTA is required to consider all matters and when LTA considers it at their deliberations the records/minutes should reflect each consideration. The outcome of each issue should be recorded and the deliberations should be on all the matters listed in Regulation 5 (1) (a) to (h). The LTA should in coming to its decision analyse in totality all matters in Regulation 5 (1).

In this matter the decision of LTA is irrational. In one part it states that the Applicant, Wananavu Rental has met all requirements under Regulation 5 (1) (a) to (h) and on the other it states that the proposed base has to be confirmed with the Fiji Roads Authority (FRA) and the Town and Country Planning. If everything is complied with then that should be it. In this matter if everything was in order then what was the need to confirm on the base. In the advertisement the Applicant, Wananavu Rentals proposed office of operation is Galoa Village, Serua. In the Preliminary Investigation Report reference is made to base location at Arts Village Complex, Pacific Harbour and the proposed office as Galoa Village. The Preliminary Investigation Report also states some of the findings as follows "The Applicant is un-employed and he

wishes to operate Five Hire permits from his home at Galoa Village, Serua. The Applicant will be base at the Arts Village Complex, Pacific Harbour which was approved by Navua Rural on the 4<sup>th</sup> of May 2017. The Company will be providing car hire service to seven different contracted company as mentioned above."

A proposed base is one of the requirements for some PSV permits. Currently Taxis operate from allocated bases. Hire cars do not operate from bases. It operates from a place of business approved by the Authority (Regulation 44 (1) (a). The Investigation finding on the part of LTA that the Applicant (Wananavu Rentals) intended to use Hire permits to operate from a base should have had alarm bells ringing within LTA. What was the reason the Applicant was seeking to operate from Arts Village. The Objectors had made allegations of illegal operations by the Applicant using his taxi (LT 6326). The LTA investigations and deliberations completely ignored these concerns of the objectors. Taxis currently operate from designated bases. Hire vehicles do not operate from bases. It is well known fact that Hire vehicle provision is made to transport Hotels and Resort guests and workers of large corporations. Hire vehicle is not a substitute for taxis or should be in any competition against taxis (Regulation 44 (2)).

**Ground Two - THE Authority erred in fact and in law in not considering the objection raised by the Appellant and/or not giving weight to the content of the objection and submissions further made at the hearing to which absence of proper consideration, the decision of the Authority was not fair and is perverse and improper.**

The record in Annexure "3" shows that there were 3 objectors (Focus on Fiji Travel, Koromakawa Rentals and Tours, and Estate Management Services Limited) to the application for the 5 new hire permits by Wananavu Rentals. The advertisement refers to 7 proposed binding contracts (Aquarium Fiji Limited, Vantex Solution, Design Contractors, Veejay Enterprises, The Bread Box, Galoa Village and Dranikula Village). Annexure "4" contains contracts between Wananavu Taxis Tours and Rental with: (a) Monier T/A Oasis Restaurant (b) Aquarium Fish (c) The Bread Box and (d) Vantex Solutions. The cover page of the records states contract between Wananavu Taxis Tours and Rental with Design Contractors, however no such contract is part of the records in annexure "4". The Tribunal is highlighting all this as reference is made in Preliminary Investigation Report (Annexure "5") and the PSV Board Meeting - Decision Paper (Annexure "6") of binding contracts with Design Contractors and, the Galoa and Dranikula Village Communities but none are in the records.

The LTA gave a lot of weight to the contracts and the absence of some of these contracts in the records shows that LTA took into consideration contracts that are non-existent. The records form the crucial documents which the Tribunal relies on in an appeal. Time and again the LTA has been reminded of the importance of the records and the need that it must contain all documents that are with LTA in relation to the matter that it determined. The Tribunal is of the view that absence of documents from the records mean that no such documents exist. Wananavu Rentals have not even pointed out following the filing of the records of the existence of the documents.

The Appellant had informed the LTA in its objection letter that the binding contracts were "irrelevant and irrational" as

some of the companies that entered into the contract had their own vehicles. The LTA did not verify the contracts and the issues raised by the objectors. LTA did not carry out due diligence checks. LTA did not take seriously the objectors views and neither it followed up on the objectors allegations against the Applicant, Wananavu Rentals.

The LTA did not give reasons why the objection raised by the objectors was not valid. The LTA completely ignored the objections. While considering under Regulation 5 (1) (b) the LTA should have gone over the objections and recorded why it accepted or rejected the objections filed. The objections were summarised in the PSV Board Meeting - Decision Paper (CED 05/17) but no discussion is contained in the paper on the objections. Later in the Decision Paper a recommendation was made to the Board "to endorse the application as applicant had met all requirements."

**Ground Three - THE Authority erred in fact and in law in holding that there was evidence in Court that there was need established by the 2<sup>nd</sup> Respondent when the weight of the evidence suggested that there was no need for the issuance of the 5 new hire permits and the companies to which the permits would have to show contracts for the service either have not endorsed the application or have their own mode.**

The need for the permit was an important determination that was to be made under Regulation 5. The mainly LTA took into consideration the existence of contracts with certain others and gave a lot of weight to the agreement with them in approving the hire permits. LTA did not carry out an independent enquiry as to whether a need existed. LTA did not

carry out proper checks and an enquiry despite being asked by the objectors to carry one out.

LTA did not give reasons why 5 permits were approved. No reason was given by LTA Why 5 permits were needed. It seems from the reports that LTA did not properly deal with the application. Due process was not followed. No proper analysis was made to comply with Regulation 5 of the Land Transport (PSV) Regulations 2000.

**Ground Four - THE Authority erred in law and in fact in its reasoning and justification of the need to issue the 5 new hire permits when the evidence clearly support the issuance of none.**

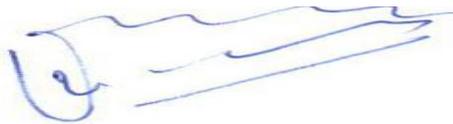
Based on the information before it the Tribunal finds that there was no justification for issuance of 5 hire permits. Some of the findings showed ulterior motive on the part of the applicant. He intended to operate Hire vehicle from a base. Allegations were before the LTA that he operated a taxi from another location then his designated base. This allegation was ignored by LTA. No rationale was given why the Galoa village and Dranikula community will be using the hire Vehicle. While no such contract is in the records LTA still accepted it as a binding contract.

**Ground Five - THE Appellant further says that the 2<sup>nd</sup> Respondent has until to date not fulfilled the preliminary requirements of the permit application process, which failure is fundamental to the decision and it must be annulled and declared void.**

The Tribunal has discussed this ground of appeal in discussion in ground one.

**Orders of the Tribunal**

1. Appeal succeeds. The decision of the LTA to grant 5 hire permits to Wananavu Rentals is wholly set aside.
2. The Tribunal directs the LTA to cancel the 5 Hire Permits issued to Wananavu Rentals immediately.
3. LTA to pay Koromakawa Rentals \$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**

17<sup>th</sup> day of August 2018

