

Land Transport Appeals Tribunal
Sitting @ Suva.

Appeal # **43 of 2016.**

Between: **Maharaj Buses Limited**

Appellant

And: **Land Transport Authority**

Respondent

**Taunovo Bus Company Limited
Shankar Singh Transport Limited
Pacific Transport Limited**

Interested Parties

Date of Hearing: 6th April 2018

Appearances and Representations

For Maharaj Buses : Mr Mohammed Afzal Khan.
For Taunovo Buses : Mr Filimoni Vosarogo.
For LTA : Mr Gabriel Stephens.
For Shankar Singh : Mr Ramesh Prakash.
Pacific Transport : Mr Ramesh Prakash.

Judgment

Introduction

On 25th August 2016, the LTA Board resolved to approve an application by Taunovo Bus Company Limited for amendment of RRL 12/10/17 for the Navua Town/Navua Hospital/Wainadoi and return route. The decision of LTA is contained in a letter dated 6th October 2016 as follows:

"...a. That Management to vary the proposed timetable as per timetable as per Composite Timetable and Management Report presented to Board.

2. Please note that variations have been carried out accordingly in accordance with the Management Composite and Management Report."

The Grounds of Appeal

The amended grounds of appeal filed by the Appellants are as follows:

"1. THAT I had also made an application for the Navua Hospital trip which is yet to be advertised.

2. THAT my application is pending and yet to be determined before the Board.

3. THAT I am the objector in this application for Taunovo Bus Company Limited.

4. THAT I was not informed of the date of hearing for Taunovo Bus Company Limited application therefore I could not be present as an objector.

5. THAT I had received a letter dated 6th October 2016 on my postal address which was stamped and posted by the Authority on the 20th of October that Taunovo Bus Company Limited have [been] granted the RRL.

6. THAT due to the negligence of the Authority I have received the letter on the 30th of October 2016.

7. THAT the authority failed to properly consider the effect on passengers residing in the area due to lack of public transportation that had been proposed.

8. Maharaj Buses Limited reserves the right to file amended or additional grounds of appeal upon receiving reasons for the record of the proceedings of the Authority."

The Function and Powers of the Tribunal

Section 40 (2) of the Land Transport Act sets out the function of the Tribunal.

The powers of the Tribunal for the purposes of hearing and determining appeals according to Section 46 are to "(a) to issue a summons to a witness in the prescribed form; (b) to call for the production of books, plans and documents; (c) to examine witnesses on oath or affirmation; (d) to admit any evidence whether written or oral and whether or not such evidence would be admissible in civil or criminal proceedings;

(e) to exclude any person if necessary so as to ensure the proper conduct of the appeal or to preserve order."

Furthermore, under Section 46 (2) "on an appeal under this Part the Tribunal may dismiss the appeal or make such order as it thinks just and reasonable in the circumstances directing the Authority to issue, transfer, or cancel any licence, certificate or permit, or to impose, vary, or remove any condition or restriction in respect of a licence, certificate or permit, and the Authority shall comply with that order." And under Section 46 (3) "Upon the determination of an appeal under this section the Tribunal may make such order as it thinks just with the respect to the costs of the appeal, and any person to whom any such costs are awarded may recover the amount of those costs in any court of competent jurisdiction, as a debt due from the person against whom those costs are awarded."

According to Section 47 of the Land Transport Act, the Tribunal "for the purposes of the hearing and determination of any appeal the Tribunal shall have regard to those matters which the Authority is required to have regard to in considering an application under this Act."

The Submissions at the Hearing

Mr M. A. Khan (For Maharaj Buses) - Rely on written submissions. The records are clear.

LTA (Mr. G. Stephens) - Got written submissions.

Mr Prakash - Rely on earlier decision of the Tribunal.

Mr F. Vosarogo (For Taunovo Buses) - My client applied first. We applied first then Maharaj filed objection. Maharaj did not file earlier. Not matter where my client got preferred treatment. Based on need. Already servicing need. People who needed to get to hospital. Why should they be disadvantaged? Fair assessment of clients application. All cases are peculiar on facts. Formalisation of existing trip. LTA had to do own assessment. 2 years in existence of operation. Section 66 and extension of Section 66 for 2 years.

Reply - Mr M. A. Khan - Paragraph 2 and 4 only illustrations. Material and fundamental decision principally on earlier cases of 10 and 11 of 2017. No reasoning given. Reasoning not in line with due enquiries or due diligence. Board not elevated to take quasi-judicial notice. What are actual facts on the ground. Follow natural justice. Follow procedures.

Analysis

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

1. THAT I had also made an application for the Navua Hospital trip which is yet to be advertised.

This ground of appeal is not clear. The Tribunal assumes that the Appellant is saying that he has an application pending with the LTA. From the submissions and the supplementary affidavit filed by the Appellant the Tribunal finds that the application by Taunovo Buses Limited was made on 12th August 2014 (the date the fees for the application was paid). According to the supplementary affidavit of Mr Shiu Maharaj for the appellant they made an application on 23rd July 2015. The Tribunal finds from the records that the application by Maharaj Buses was made One (1) day after the Appellant filed an objection against the application by Taunovo Buses Limited.

Having perused the applications the Tribunal finds that the application by Taunovo Buses was filed first and before the application by the Appellant, Maharaj Buses. The application by Taunovo Buses was made first and dealt accordingly by the LTA.

2. THAT my application is pending and yet to be determined before the Board.

The Tribunal notes this ground of appeal. The Appellant must pursue the matter with the Respondent, LTA.

3. THAT I am the objector in this application for Taunovo Bus Company Limited.

The Tribunal notes that the Appellant is an objector and the LTA acknowledged and considered the objections.

4. THAT I was not informed of the date of hearing for Taunovo Bus Company Limited application therefore I could not be present as an objector.

The Tribunal notes from the Minutes that Maharaj Buses had requested for deferment of Board meeting and this was refused by the Board. From this it is clear that the Appellant had notification of the Board Meeting.

5. THAT I had received a letter dated 6th October 2016 on my postal address which was stamped and posted by the Authority on the 20th of October that Taunovo Bus Company Limited have [been] granted the RRL.

There is no issue of the timelines for the appeal. There also was no objection to the filing of this appeal by any other party.

6. THAT due to the negligence of the Authority I have received the letter on the 30th of October 2016.

There was no evidence provided by the Appellant of the negligence of the Respondent, LTA on the delivery or postage of the decision letter.

7. THAT the authority failed to properly consider the effect on passengers residing in the area due to lack of public transportation that had been proposed.

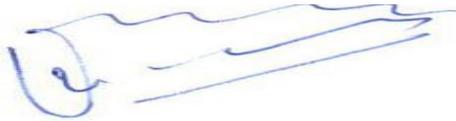
From the LTA records and all the materials the Tribunal finds that the Respondent, LTA properly evaluated all the materials that were before it before it made its decision. The need is shown in the report. The bus service is an important service for the people in that locality. The bus service that is provided is a regular bus service for the people to the new Navua Hospital.

Having perused the application of the amendment of RRL by Taunovo Buses the Tribunal finds that the Board considered the Objections by the other Operators. The hospital service proposed by Taunovo Buses was one of 40 minutes from the Navua Bus Stand. It is to reach the Hospital in 15 Minutes and after 5 minutes it is on its way back to Navua Bus Stand. The additional trips provided people living in Wainividio, Naitoni, Naitata and Calia Back Road transportation to Navua Hospital. The amendment also provided people from Wainadoi and Mau village Bus service to hospital. The Tribunal from its perusal of the timetable finds that these services did not adversely affect other bus operators. Any person wishing to go to the hospital should have access to regular transportation. The service proposed by Taunovo is a regular bus service for the people in the locality.

Having gone over all the grounds of appeal this Tribunal finds that none of the grounds of appeal are made out. For this reason the appeal is dismissed. The Appellant is to pay each party \$1000.00 costs which are summarily assessed.

Orders of the Tribunal

1. Appeal dismissed.
2. Maharaj Buses to pay each party \$1000.00 costs which is summarily assessed. Maharaj Buses to pay LTA \$1000.00, Maharaj Buses to pay Taunovo Bus Company Limited \$1000.00 and Maharaj Buses to pay Shankar Singh Transport \$1000.00, and Maharaj Buses to pay Pacific Transport \$1000.00. Costs to be paid within 30 days.



Chaitanya Lakshman

Land Transport Authority Appeals Tribunal

11th May 2018

