

IN THE HIGH COURT OF FIJI  
WESTERN DIVISION AT LAUTOKA  
CIVIL JURISDICTION

HBA NO. 8 OF 2017

LTA Tribunal Appeal No. 33 of 2015

BETWEEN : NIKHIL BUSES LIMITED a limited liability Company having its registered office at Tuvu, Bemana, Valley Road, Sigatoka, Fiji.

Appellant

AND : LAND TRANSPORT AUTHORITY a body corporate established under Section 6 of the Land Transport Act 1998.

Respondent

AND : VALLEY COMFORT TRANSPORT LIMITED and COASTLINE TRANSPORT LIMITED

Interested Parties

**Before** : A.M. Mohamed Mackie – J.

**Counsel** : Ms. A. B. Swamy for the Plaintiff.

: Ms. Dauvere for the Respondent.

: Mr. F. Vosarogo for the 2<sup>nd</sup> Named Interested Party.

**Date of Hearing** : 8<sup>th</sup> February 2019.

**Written** 31<sup>st</sup> August 2018 by Appellant

**Submissions** : 14<sup>th</sup> January 2019 by Respondent

: 9<sup>th</sup> November 2018 by 2<sup>nd</sup> Named Interested Party

**Date of Judgment:** 21<sup>st</sup> March 2019.

# J U D G M E N T

## A. Introduction:

1. This is an Appeal by the Appellant hereof, namely, NIKHIL BUSES LIMITED, against the decision dated 23<sup>rd</sup> June 2017 delivered by the **Land Transport Authority Appeals Tribunal (the Tribunal)** pursuant to the Appeal preferred by the same Appellant against the decision made by the **Land Transport Authority Board (the Board)** on 26<sup>th</sup> November 2015.
2. The Appellant on 10<sup>th</sup> July, 2017 filed the instant Appeal by way of its Notice of Originating Motion together with four (4) grounds of Appeal.
3. In addition to the contents of the written submissions filed, learned counsel for all the parties, at the hearing held before me, have exhaustively addressed the court orally as well for which I am thankful.

## B. Background of these Proceedings

### 4. **It is submitted on behalf of the Appellant that:**

- 4.1. *“The Land Transport Authority Board (hereinafter referred to as the “Board”) by its decision on the 26<sup>th</sup> of November, 2015 revoked the route permit number 12/21/10 subsequent to the calling for the Expression of Interest for the said route.*
- 4.2. *The said route permit was initially issued to the first named interested party on the 15<sup>th</sup> of May, 2009. The Appellant understood that the permit for the said route was valid for 10 years from the date of issuance as per Regulation 10 (2) Land Transport (Public Service Vehicles) Regulations 2000. The said route permit was transferred with the approval of the Authority from the first named interested party to the Appellant on the 15<sup>th</sup> of May, 2009 with effect from 14<sup>th</sup> May, 2009. This was further re-emphasized after a private hearing after which the Authority in their letter dated 1<sup>st</sup> October, 2015 stated that;*

*“With reference to the Authority private hearing held at LTA, Votualevu*

*on the 01/10/2015 it has been resolved that you are to start with the operation for Valley Comfort route on RRL 12/21/06 and RRL 12/21/10 with effective from 02.10.2015 until further notice .” (Emphasis mine)*

- 4.3. *It was clear that the appellant was given the permanent permit that was given to the interested party.*
- 4.4. *The Respondent without giving any revocation notice of the permit to the Appellant or any notice of any kind or nature in any manner whatsoever called for expression of interest for the said route on the 3rd of October, 2015. The permit to the Appellant remained valid at all material times.*
- 4.5. *The Appellant through its solicitors had raised various objections by letters. The Respondent replied by stating that the permit issued to the Appellant was a temporary permit and hence implied that the Authority can do whatever it wanted if the permit for the said route was a temporary one. The appellant draws the attention to a letter from the Authority in page 50 of the record received from the Respondent Authority in reply to the letter of the solicitor’s for the Appellant, which letter is at page 43 of the record.*
- 4.6. *Thereafter the Board dealt with the Expression of Interest and decided not to approve the permit for the said route in favor of the Appellant.*
- 4.7. *Before the Board the Counsel for the Appellant raised the issue whether the expression of interest can be proceeded with as the Appellant had a temporary permit and there was no notification of suspension or cancellation of the permit for the said route. This argument was not fully heard by the Board, as the Board intended to proceed with dealing with the expression of interest and advised the counsel that there did not exist a right to reply and the Appellant was refused for fair hearing before the Board.*
- 4.8. *The essential question is whether the LTA can call for an expression of interest of a route when the route is still extant and the holder of the route has not been given prior notice that the said route will be subject to an expression of interest in accordance with the relevant regulations”.*

### The Decision of the Land Transport Authority Board:

5. It is further submitted on behalf of the Appellant **THAT**
  - 5.1. *On the 26<sup>th</sup> of November, 2015, the "Board", after receiving and hearing submissions from the Appellant and the 2<sup>nd</sup> Interested Party, decided to give RRL 12/21/6 to the Appellant and RRL 12/21/10 to the 2<sup>nd</sup> Interested Party.*
  - 5.2. *The Authority revoked the permit on the basis that what had been issued to the Appellant for Route number RRL12/21/10, was only a Temporary permit, which was subject to review after three (3) months to assess the capability of service to the route.*

### **Appeal to the LTA Tribunal:**

6. Against the decision of the Board dated 10<sup>th</sup> December 2015, the Appellant preferred an Appeal to the Tribunal on 6 grounds of Appeal and on 17<sup>th</sup> June 2017 managed to obtain a stay against the execution of the decision of the Board.
  - 6.1. The Tribunal by its judgment dated 23<sup>rd</sup> June, 2017 ruled that the decision reached by Board was fair and dismissed the Appeal.

### Appeal to the High Court of Fiji (This Court)

7. It is against the above judgment, the Appellant is before this Court moving to set aside the judgment of the Tribunal and the decision the Board and to have the said route permit restored in favor of the Appellant.
  - 7.1 The Appellant by way of Notice of Originating Motion filed on 10<sup>th</sup> July 2017, Appealed the decision dated 23<sup>rd</sup> June 2017 delivered by the said Tribunal relying on the following grounds for Appeal;
    1. ***THAT** the Land Transport Appeals Tribunal erred in law and in fact in holding that the (Land Transport Authority), the Respondent was correct in revoking*

RRL 12/21/10.

2. *THAT the Land Transport Appeals Tribunal erred in law and in fact in holding that the Appellant was issued temporary permits under Section 66 of the Land Transport Act and therefore expression of interests was properly called for by the Respondent for RRL 12/21/10.*
3. *THAT the Land Transport Appeals Tribunal erred in law and in fact in failing to make a finding on what the consequences were for the Respondent's failure to give adequate reasons for its decision dated the 10th of December, 2015 whilst the Respondent revoked the RRL 12/21/10.*
4. *THAT the Land Transport Appeals Tribunal erred in law and in fact in holding that the proper procedure under the Land Transport Act and its regulations were adopted and or complied with by the Respondent when the Respondent in breach of Regulation 10 (2) of the Land Transport (Public Service Vehicles) Regulation 2000 and Regulation 12 (2) of the Land Transport (Public Service Vehicles) Regulation 2000, failed to give the Appellant an opportunity to be heard when the Respondent called for Expression of Interest for RRL 12/21/10.*

C. The Law

8. It is prudent to consider the following provisions of the law, which are relevant and applicable for the determination to this Appeal.

- 8.1. The Land Transport Act 1998 (hereinafter referred 'the Act') at Section 66 establishes the discretion of the Respondent in issuing a temporary permit to the public service vehicles and it states as follows:

***"Special conditions relation to road permits"***

66. (1) *The Authority may issue a temporary road permit for a period of not more than 3 months and such permits authorizes the carriage of persons on such routes or within such areas as may be specified in the permit and subject to such conditions [as] may be specified .*

8.2. Regulation 10 sub-regulation 2 of the Land Transport (Public Service Vehicles) Regulations 2000 gives discretion to the Respondent to issue Road Permit for a minimum period of 5 years and up to 10 years. The Provision is stipulated as follows:

*Duration of a permit*

*10 (2) A road permit may be issued for a minimum period of 5 years and up to 10 years unless surrendered or cancelled [except in a case of a road permit in respect of a road contract license – the Authority may issue a road permit subject to the validity of the road permit contract license.*

8.3. Regulation 10 sub-regulation 3 of the Land Transport (Public Service Vehicles) Regulations 2000 further states that:

*10 (3) If a holder or a road permit failed to lodge an application under regulation 3 (6), or if the permit is cancelled or suspended by the Authority, the Authority may advertise for expression of interest to operate the services authorized by the permit.*

8.4. Regulation 5 of the Land Transport (PSV) Regulations 2000 (TAB 2) provides criteria for the Respondent to take into account when making a decision on an application of any permits. Regulation 5 states as follows:

*Decision on application*

*5(1) In considering an application to issue, renew or change any condition of a permit, the Authority must take into account any matter it thinks fit or desirable to give effect to the provisions of the Act in particular 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.*

8.5. For the issuance of a permanent RRL on a bus operator, the Authority has the power to advertise for an expression of interest under Regulation 4 of the Land Transport (Public Service Vehicle) Regulations 2000 which states as follows:

**Public Review of Application**

*4(1) Subject to sub-regulation (2) and (3) and unless the application is frivolous, scandalous or vexatious the Authority must, upon receipt of the Application, publish a notice in at least one newspaper published in the English language and circulating throughout Fiji stating –*

- a) the details of the application; and*
- b) that written representations for or against the application will be received up to 14 days from the day of the notice.*

8.6. The Authority has the discretion to cancel a Road Permit under Regulation 12 of the Land Transport (Public Service Vehicle) Regulations 2000 which states:

**Authority may cancel, vary or suspend**

*12 (1) The Authority may cancel, vary or suspend a permit if a condition subject which the permit was granted has not been complied with and the Authority is satisfied that the breach is serious, frequent or causes inconvenience or danger to the public.*

**D. The Analysis & the Decision:**

- 9. The stern position of the Appellant from the inception of the dispute before the LTA Board is THAT:

- a. *The LTA Board had given the Appellant the RRL 12/21/10 as a permanent one and it was not revoked, suspended or varied in any manner whatsoever and as such the Appellant was still holder of the permit for the said road.*
  - b. *The Authority did not provide any and/or any valid reasons as to why the expression of interest was advertised and no notice was given to the Appellant for the same. The Tribunal failed to take into account that the Appellant was never aware of the intention of the Authority in revoking its permit.*
  - c. *The Appellant had ordered two new buses for its fleet and both the Authority as well as the tribunal had failed to consider this. There was never any issue regarding the capability of the Appellant to serve on the said route and the decision of the said Tribunal is unjust and unfair.*
10. The pivotal issues that demand adjudication in this Appeal, in view of the aforesaid stance of the Appellant are;
  - i. **Whether the permit bearing number RRL 12/21/10 granted by the Authority to the Appellant was a permanent one?**
  - ii. **Whether the Authority was under obligation to provide any and/or any valid reason as to why the expression of interest was advertised?**
  - iii. **Whether the Appellant was unaware of the Authority's intention to revoke its permit?**
11. The contents of the impugned letter dated 1<sup>st</sup> October 2015 sent by the Authority to the Appellant , clearly demonstrate that the permission granted for the Appellant to operate under permits number RRL 12/21/06 and RRL 12/21/10 with effective from 02<sup>nd</sup> October 2015, was only **until further notice**. It means that the situation will not change until another announcement is made.
12. The wording “**until further notice**” used in the aforesaid letter, in my view, clearly demonstrate that the permission given by it can become ineffective or invalid at any moment in future once a further notice is issued. It does not



guarantee a specific time period for same to be in force nor does it mean that it is permanent.

13. The disputed permit enjoyed by the Appellant until its cessation, was not a fresh permit issued to the Appellant after following the prescribed procedures for issuing a route permit. Originally, the permit in issue (RRL -12/21/10), along with RRL 12/21/06, was given to the "Valley Buses Limited" and thereafter, purportedly, transferred to "Valley Comfort Transport Limited" (the 1<sup>st</sup> named interested party) on 14<sup>th</sup> May 2009.
14. The "Valley Comfort Transport Limited" being taken to task by the Authority in July 2013, after deliberations at the LTA, the Appellant came into the scene with the approval of the Authority to run the service on both the permits jointly with the 2<sup>nd</sup> named interested party, namely, Coastline Transport Limited.
15. Undoubtedly, this permit, as submitted by the learned counsel for the Appellant, could not have been a permanent one, which generally has the lifespan of 5 to 10 years period or for any remaining period of the permit issued to the "Valley Buses Limited" in the year 2009. Since the Appellant was not the holders of the permit number RRL 12/21/10 being selected by following the prescribed procedure for issuing of permit, the LTA had to advertise the call for expression of interest on 18<sup>th</sup> December 2013 and again on 26<sup>th</sup> February 2015 in order to select the most suitable operator .
16. Perusal of the record shows that despite several shortcomings and allegations on the part of the Appellant in the operation of the route under the disputed permit being reported, the Appellant had been on the mercy of the Authority and was permitted to continue only as a temporary permit holder until further notification as duly indicated by the impugned letter dated 1<sup>st</sup> October 2015 and revocation by the letter 26<sup>th</sup> November 2015.
17. Had the Appellant been granted a permanent permit for 5 to 10 years as per the provisions of the Act, no necessity would have arisen for the Authority to call for the expression of interest on two occasions as aforesaid.

18. The arrangement that was in place for the Appellant to run the services under permit number RRL 12/21/10, was made possible, obviously, not after making the prescribed Application by the Appellant, not subsequent to the call for the Expression of Interest and by following other formalities. The permit, on which the Appellant was serving during the in between period was necessarily a Temporary Permit and not a permanent one with a prescribed time period.
19. If the permission granted to the Appellant for the interim period is to be treated to be on permanent basis, the very purpose of the relevant provisions of the LTA Act for the selection of the suitable operators would become redundant and the opportunity to display the transparency in the process would be lost.
20. Even if it is assumed for the sake of argument that the permit granted was a permanent one as averred on behalf of the Appellant, the admitted failure on the part of the Appellant to maintaining the required fleet would, probably, have disintitiled the Appellant to continue as a service provider and justified the Authority in calling for the expression of interest and cancelling or revoking such a permit.
21. Since the permit granted to the Appellant was a temporary and limited for 3 months, the Authority had the liberty to call for the expression of interest at any time as and when the situation demanded, which it did twice, to select the suitable service provider. The Authority need not necessarily have noticed or informed the Appellant as in case of a permanent permit. The mere calling of expression of interest by the newspaper publication itself was a sufficient notice for the Appellant to be informed and the Authority was not under obligation to notice to the Appellant in view of the nature of the permit, under which the Appellant was operating.
22. Conversely, if the Appellant was a permanent permit holder, selected by going through the prescribed process as per the provisions of law, and in the even the Authority is called upon to deal with any alleged failures, short comings or irregularities on the part of the Appellant, the requirement to give prior notice may become compulsory in order to abide by the principle of *Audi alteram partem*.

23. However, from the day the Appellant started to operate jointly with the 2<sup>nd</sup> named interested party, it should have been aware of the very fact that the permit it possessed was only a temporary one. The Appellant could not have pleaded ignorance about the calling of the Expression of Interest initially in December 2013 and thereafter in October 2015. In other word, the Appellant could not have taken the Temporary Permit for granted.
24. The Appellant, who had been in and out of the LTA office, being a Temporary permit holder since the year 2013, is now seems to be clinging on to the impugned letter dated 1<sup>st</sup> October 2015 to make out a case on the purported ground that it was unaware of what had unfolded in the process and alleging that the Respondent Authority did not give him a hearing.
25. The permit being a temporary one, the Respondent Authority was at liberty to revoke or cancel it at any time and, in my view, the requirement of giving notice of any impending cancellation or revocation is not warranted as in the case of Permanent Permit. The act of advertising for the calling of expression itself has served as sufficient notice and the Appellant has had his say before the Board as and when required. If the performance of the Appellant as a service provider was satisfactory, there cannot have been any hurdle to obtain a new permanent Permit for 5 to 10 years as per the Act.
26. From the above I find that the learned Tribunal Magistrate has arrived at the correct finding that the Respondent was correct in revoking RRL 12/21/10 and also in holding that what was issued to the Appellant was none other than a Temporary permit under section 66 of the Act and therefore the Expression of Interest for RRL 12/21/10 was properly called.
27. The letter dated 1<sup>st</sup> October 2015 refers to the private meeting held where the decision was taken for the expression of interest to be called forthwith in respect of the RRL 12/21/10 for same to be given on permanent basis to the operator, who meets the guide line. But still the Appellant was required to continue his service under strict condition that it should bring two more busses until the new operator was selected. How can the Appellant claim that it was in dark and not heard?.

28. The Appellant, being a Temporary Permit Holder, was required to run only until further notice and that too under strict condition of meeting the fleet requirement and if it had failed to meet the requirement nothing could have been expected from the Respondent other than revocation of the permit.
29. By the letter dated 10<sup>th</sup> October 2015, the Respondent had duly informed the Appellant about the mandatory requirement of advertising the routes in order to get the representations from the public including the Appellant for or against the Respondent's proposition on the service of both Routes.
30. It is clear that from the year 2013, with the calling of Expression of Interest, the original permit being revoked both Routes have been serviced only on Temporary permits for over a period of 2 years until further notice.
31. The Respondent was bound to provide maximum service to the Public with a shortest possible delay and could not have allowed the operation on Temporary permits with reduced number of busses and causing hindrances to the public..
32. Thus, the Respondent's decision to call for Expression of Interest and its actions according to the provisions of the Act and Regulations cannot be found fault with by the Appellant, who had only a Temporary Permit, with allegation against it about irregular services and shortage of busses.
33. Considering the financial position of the Appellant, the Respondent has allowed sufficient time period for the Appellant to increase the fleet by two more busses and the Appellant had also been called upon by the Respondent to answer the allegations of irregular services where the Appellant had the opportunity of being represented by a counsel who admitted the shortage of the busses. The allegation of the Appellant that he was not heard in this regard cannot be accepted.
34. This Court is fully convinced that the decision of the Board in revoking the RRL 12/21/10 and the finding of it that the permit given to the Appellant was Temporary are correct and not blameworthy, which stand confirmed by the

Tribunal's decision appealed against to this court. In my view these decisions do not warrant intervention by this Court.

35. I find that the learned Magistrate at the Tribunal is correct in holding that proper procedures under LTA Act and its regulations were duly complied with by the Respondent.
36. I find that the LTA having dealt with the Appellant within the framework of the Law and relevant regulations in relation to the Temporary Permit with the presence and representation of the Appellant, by its letter dated 26<sup>th</sup> November 2015 duly informed the decision of revocation of the Appellant's Temporary Permit.
37. The service provided by the Appellant was on a Temporary Permit issued without following the due procedures of the Law and Regulations, only as an interim measure to meet the service demand and such a permit cannot be treated and acted upon as a Permanent permit issued for 10 years.
38. Regulation 12 comes into play only when any breach of the conditions of a Permanent permit is looked into by the Authority. To my understanding, if breach is in relation to a Temporary permit, which is generally given for 3 months or until further notice, like in this case, the Authority is at liberty to revoke it at any time by calling for the expression of interest leading to issuing of permanent permit by following all the due procedures.
39. I find that all four (4) grounds of Appeal herein have been fully addressed in this judgment.

**E. Conclusions:**

1. The permit number RRL12/21/10, on which the Appellant provided service, was a Temporary one issued as an interim measure until a permanent permit was issued after following the due procedures according to the LTA Act and Regulations, which commenced with the calling of expression of Interest.

2. The Respondent had the liberty to revoke this Temporary Permit at any time and it shall not fall under the Regulation 12 of the Land Transport (Public Service Vehicle) Regulation 2000.
3. The allegation of the Appellant that he was neither informed about the revocation nor given a hearing has no basis and both the Board and the Tribunal have exercised their jurisdiction judiciously. There is no room for the intervention of this Court by way of Appeal.

**F. Final Orders:**

- a. The Appeal preferred by the Appellant is hereby dismissed.
- b. The Respondent and the 2<sup>nd</sup> Interested Party are entitled for \$1,000.00 each from the Appellant being the summarily assessed costs totaling to \$2,000.00.
- c. The costs shall be paid within 21 days.



**At Lautoka  
21<sup>st</sup> March, 2019**

**A. M. Mohammed Mackie  
Judge**