

Land Transport Appeals Tribunal
Sitting at Nausori & Suva.

Appeal # **54 of 2014 &
56 of 2014.**

54 of 2014

Between: **Latchan Holdings Limited
Central Transport Company Limited**

Appellants

And: **Land Transport Authority**

Respondent

Nadera Transport Limited

Interested Party

56 of 2014

Between: **Island Buses Limited**

Appellant

And: **Land Transport Authority**

Respondent

Nadera Transport Limited

Interested Party

Date of Hearing: 24th November 2017 (at Nausori)

Appearances and Representations

For Central Transport : Mr Viren Kapadia.
For Island Buses & Latchan's : Mr Faizal Haniff.
For LTA : Ms Venina Naisilasila.
For Interested Party (Nadera) : Mr Ramesh Prakash.

Judgment

Introduction

The two matters are related and deal with similar issues. The parties agreed to a consolidated hearing. The Tribunal has noted that the Secretary to the Tribunal has served all the parties.

On 14th August 2014, the LTA Board resolved to approve an application by Nadera Transport Limited for additional trips from Monday to Sunday departing Narere Road Stage 1, Waidranu Street Roundabout to Suva Bus Stand (via Waimanu Road, Marks Street, Thompson Street, Victoria Parade, Stinson Parade, May Street, Rodwell Road). The LTA granted the application, however it was subject to the condition that Nadera Transport Limited did not pick passengers along Waimanu Road and only allowed dropping off passengers along Waimanu Road.

The appellants being aggrieved with the LA decision have appealed the decision.

The Grounds of Appeal

In Action Number **54 of 2014** the grounds of appeal are as follows:

" 1. The Authority erred in law and in fact in proceeding to hear the application of Nadera for amendment of RRL 12/6/54 as an unopposed application and granting the application to Nadera without considering the written objections of the Appellants which were provided to the Authority as follows:

(a) Latchan's letter dated 20th July 2009 was received by the Authority on the 23rd July 2009

(b) Central's letter dated 27th July 2009 was received by the Authority on the 27th July 2009.

The Authority had acknowledged receipt of the above mentioned objections. There was also another objection by Island Buses Limited received by the Authority on the 22nd July 2009.

2. *The Authority erred in proceeding to hear and determine the application by Nadera for amendment of RRL 12/6/54 as an unopposed application when the Authority was made aware of the opposition to the application by the Appellants. The Authority thereby breached Regulation 4(6) of the Land Transport (PSV) Regulations 2000 by not giving notice of hearing and disclosures to the Appellants.*
3. *The Authority erred in proceeding to hear the application of Nadera for amendment of RRL 12/6/54 when its Regional Manager Central/Eastern Mr. Apatiniko Vaurasi had emailed Central on the 11th September 2013 stating that the application of Nadera which was listed before the Board of the Authority on the 12th September 2013 would be deferred to allow Central's objection to be heard when the matter was set down for hearing at a later date. No notice of hearing of Nadera's application was thereafter served on either of the Appellants nor was any disclosure documents received by them. At no time had the Appellants withdrawn their letters of objection nor were they given any opportunity to object to the application when it was heard by the Authority.*
4. *The hearing and determination of the application of Nadera as an unopposed application has resulted in a serious miscarriage of justice to the Appellants.*
5. *That the Appellants were objectors to the said application of Nadera but neither of them were provided with the notice of the hearing nor disclosure of all materials and documents and reports relied on by the Authority at any hearing that the Authority may have held to hear Nadera's application. Neither of the Appellants were provided with any written submissions of Nadera which had been filed or relied upon by the Authority in coming to its decision and the Appellants did not have any opportunity to reply, rebut or comment on the oral or written submissions if they were filed. The Authority has therefore erred in law and in fact in not complying with the Act and Regulations and acted in breach of the principles of natural justice causing grave prejudice and injustice to the Appellants.*
6. *The Authority has erred in failing to give any or any adequate reasons for its decision of the 14th August 2014 when it granted*

an approval to Nadera for amendment of its RRL 12/6/54 as applied with additional condition of 5 minutes services when there was no need for such large number of additional services from Waidranu roundabout and when similar applications by Nadera in the past had been refused by the Authority and the Tribunal save for 2 additional services.

- 7. That the Authority erred in law and in fact in granting a condition to Nadera in its said resolution of the 14th August 2014 allowing Nadera to operate additional trips every 5 minutes during peak period from 6.00am to 9.00am and 2.30pm to 6.00pm which condition was not applied for by Nadera as set out in its advertisement of the 17th July 2009 in the Fiji Sun. This condition would now affect not only the Appellants but all other bus operators on Kings Road and the grant of this condition has resulted in a serious miscarriage of justice as the Appellants and other bus operators on the route had no opportunity to object to this condition.*

- 8. The Authority erred in law and in fact in failing to properly evaluate the evidence, documents and the representations made by the Appellants in their objection letters in coming to its decision to approve the amendment application of Nadera as an unopposed application. In particular the Authority did not consider that:*
 - (a) The needs of the public did not require the grant of such a large number of additional trips from Waidranu Roundabout which is only 200 meters away from the junction of Kings Road near Laqere Bridge.*
 - (b) The Authority failed to take into account that the Tribunal in dismissing an Appeal by Nadera in Appeal No. 193 of 2003 in a decision dated 26th April 2005 had ruled that Nadera was operating illegally on the route to the disadvantage of other bus operators and that there was no need for additional trips to be granted to Nadera apart from the two additional trips that the Authority had granted to Nadera on the 22nd October 2003.*
 - (c) The Authority did not consider calling for load checks reports or waybill records of Nadera on its existing*

- services from the Waidranu Roundabout to establish whether there was a need for 12 additional services from Waidranu Roundabout to Suva Bus Stand and 15 additional services from Suva Bus Stand to Waidranu Roundabout with the special condition that it could operate trips every 5 minutes from 6.00 am to 9.00 am and 2.30 pm to 6.00 pm.*
- (d) The Authority in hearing the application did not comply with clause 1 of PSV Guidelines issued by the Authority effective from 1st June 2014.*
- 9. The Authority has erred in law and in fact in making a decision that is wrong on the face of the record in treating the application as an unopposed application.*
- 10. The decision of the Authority to grant the said application to Nadera is unfair, unreasonable and in breach of the principles of natural justice.*
- 11. The decision of the Authority has not been published in accordance with the provisions of the Act and Regulation 6 of the Land Transport (Public Service Vehicles) Regulations 2000 which has resulted in procedural irregularity and unfairness as the Appellants and Suva/Nausori corridor bus operators were unaware of the decision that the Authority has made in this matter and also about the special condition that Nadera could operate services every 5 minutes at peak times of 6.00 am to 9.00 am and 2.30 pm to 6.00 pm.*
- 12. That the application for amendment of RRL by Nadera was filed on the 21st May 2009 but was heard by the Authority in June 2014, after a delay of more than 5 years. The Appellants have been unfairly prejudiced by the said decision because of the lengthy delay in finalizing the application.*
- 13. The Authority has erred in law and in fact in approving Nadera's application for additional services without any or any adequate consideration of the following matters:*
- (a) The effect of the proposed services on other public service operations, those provided by the Appellants and other bus*

operators on Kings Road between Suva and up to Waidranu/Kings Road junction as required by Regulation 5(1)(b) of the Land Transport (Public Service Vehicles) Regulations 2000.

(b) The suitability of the Waidranu junction as a commencement point from which the additional services are to be provided under the said permit of Nadera as required by Regulation 5(1)(c) of the Land Transport (Public Service Vehicles) Regulations 2000.

(c) Failing to take into account the decision of the Tribunal in Appeal No. 193 of 2003 dated 26th April 2005 concerning the need for such large number of services from Waidranu Roundabout and illegal operations on this route by Nadera in the past which continues to date as required under Regulation 5(1)(d) of the Land Transport (Public Service Vehicles) Regulations 2000.

(d) The prejudicial effect of these direct additional services on the Waimanu Road route of Central that relies mainly on passengers from Samabula Bus Stand who arrive there on Kings Road buses.

14. The Authority has erred in law and in fact in not considering that Central's Waimanu Road route is a small circular city route that relies on passengers from Samabula Bus Stand brought by the Nausori/Suva bus services and that the grant of numerous bus services to Nadera through Waimanu Road will seriously and adversely affect its loading from Samabula Bus Stand and also seriously increase congestion and noise in the streets of Suva City.

15. The Appellants reserve the right to file further amended or additional grounds of appeal upon receiving all relevant documents that the Authority had on the application of Nadera at the time it made the decision and upon receiving reasons for the decision.

And such other additional and/or amended grounds the Appellants may give notice of after receipt of the record of the proceedings of the Authority."

In Action Number 56 of 2014 the grounds of appeal are as follows:

- " 1. The LTA erred in not affording an opportunity to Island Buses to be heard on its objection to Nadera Transport's application. Island Buses therefore seeks that the purported decision of the LTA be quashed and referred back to the LTA for fresh determination of Nadera Transport's application for additional trips.
2. There was a legitimate expectation on the part of Island Buses that it would appear before the Board of the LTA and be heard on its objection to Nadera Transport's application for the additional trips.
3. Island Buses reserves the right to add fuller grounds of appeal."

The Function and Powers of the Tribunal

Section 40 (2) of the Land Transport Act provides that the Tribunal is "to hear and determine appeals against decisions of the Authority relating to -

- (a) licensing of drivers under section 56;
- (b) any matter requiring a decision of the Authority under Part VI ; and any other matter prescribed by the Minister by regulations."

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 made at the Hearing

Mr Kapadia (For Central Transport)- Matter is simple. Had advised LTA no case. They filed consolidated record. Filed 2 times. Application listed as unopposed. Matter heard in Labasa as unopposed. Seek Tribunal set aside the decision. Seek appeal be allowed. Seek decision be set aside. On 26th April 2005 (193/2003) - Nadera appeal, a decision of Sir Vijay R Singh. LTA has conceded the appeal. Tribunal needs to direct LTA. No decision letters came out. Seek costs. Blatant clear case. Seek substantial costs. Not proper for Tribunal to remit. Seek appeal be allowed. Seek costs.

It's unusual. Normally in applications like this authority in position to look. For Tribunal to take on Board's role. Tribunal's function is to see if LTA acted within its role. If decision of Nadera set aside, Nadera can re-apply. LTA make concession on

objection letters. Parties not heard. Miscarriage of justice. Parties to sort out. No point in directing. No need for Tribunal to indulge in hearing. Tribunal should not put itself in position. Miscarriage of justice. Seek appeal be allowed with costs. Taken 3 years.

Mr Haniff (Island Buses and Latchan's) - got written submissions. Proper for LTA to concede appeal. LTA has no grounds to defend. Those things can be fixed in Tribunal decision. On date of hearing, LTA conceded the appeal. Seek \$1500 or \$2000 costs for each party. Number of times we got here to get records straight. No affidavit required. Appeal is conceded. Seek direct order to Board to quash decision. LTA will issue S.66 to defy Tribunal's decision.

Rely on submissions. Concession by LTA Objection not heard. Tribunal has before it an appeal. Should stick to appeal records. Will delay appeal. Seek early decision. Seek matter be heard afresh. Possibility Tribunal can hear. Can hear fresh on appeal. Tribunal normally remits.

LTA (Ms. Naisilasila) - seek matter be remitted to Board. Was dealt with as unopposed. PSV officers had overlooked objection letters. Seek matter be remitted to Board to be heard afresh. not conceding the appeal. Overlooked by PSV Section.

Mr Prakash - We accept application granted as unopposed application. LTA saying they made mistake. No affidavit filed by LTA. Legal position blatant error of law. If objection letter in place. Thorough search on file on first hearing. Tribunal informed no objection letter. Things not satisfactory. They must explain situation with an affidavit. When did letters surface. Matters requires serious investigation. Do not accept manner in which things come about. LTA must explain. Matter is serious.

LTA not conceding appeal. Some objection letters by rubber stamps. Which is received by LTA. We accept 4 letters with rubber stamps marked received. If application was opposed decision is to be set aside. Tribunal needs to find out if application was opposed or unopposed?

Our position it was an unopposed application. Matter heard in Suva originally. Chairman directed matter be looked at. Not a single letter in the file when it was adjourned. Tribunal has to make finding on 2 occasions it proceeded before LTA as unopposed. Is it opposed as there is a rubber stamp. Could be put in later. Not in record. How it appeared later?

Tribunal has jurisdiction. Appeal cannot be determined until Tribunal determines objection letters were not before LTA. Whole subject matter arises out of it. Letters were not there that day. Listed as unopposed not once but twice. LTA to file affidavit to explain. Information is lacking. They should provide it. Tribunal can direct LTA to file affidavit. Seek Tribunal hear the application. If Tribunal sets aside the decision. Tribunal should make decision. Way to and fro. Tribunal has power to hear. No need to remit matter.

Analysis

The Tribunal has noted the grounds of appeal filed by the Appellants and the submissions at the hearing.

One of the crucial issue in the matter is whether the objection letters were filed by Dee Cees Bus Limited, Latchan Holdings Limited, Central Transport Limited and Island Buses Limited with LTA following the application by Nadera Transport for the additional trips. All the parties are in agreement that if the objection letter was filed and not considered by the LTA the decision of LTA should be set aside.

Mr Prakash representing Nadera Transport Limited informed the Tribunal that the time the LTA Board dealt with the application it was dealt with as unopposed, and that no objection letters were in the files or with LTA. At the hearing before the Tribunal the LTA counsel stated that the objection letters were overlooked by the PSV Section. No

affidavit has been filed by LTA explaining what happened and how the objection letters were overlooked.

Having perused the files the Tribunal notes that the records are disorganised. The consolidated record does not contain the application filed by Nadera Transport Limited. The application starts the process; it is the initiating document which sets in process matters before LTA. The Tribunal has numerous times reminded the LTA that it is a record keeping institution and that proper record must be kept and when the need arises LTA **must compile and share** its records with the Tribunal and the other parties. Most matters that come before LTA can be appealed. LTA must be prepared that its decision can be challenged or brought before the Tribunal or the Court. LTA must receive and properly file documents. The LTA is not a new organisation which should still be developing its system of record keeping. By now LTA should not have had in place an appropriate system of receiving and filing of documents and mode of preparation of records.

The consolidated records before the Tribunal shows 4 objection letters. The objection letters of Island Buses and Central Transport have a similar received stamp and were respectively filed on 22nd July 2009 and 27th July 2009. The objection letter of Dee Cees Bus Service has a different received stamp. The date of the letter is 17th July 2009. The date on the stamp is not clear but "17" is written in. The month is not clear while 2009 can be read. The stamp that was used on the Dee Cees letter had a time adjustable stamp. The stamp indicates time as 12.30, however time is written by hand as 3.30pm. The other objection letter in the records is from Latchans Holdings Limited. The letter is dated 20th July 2009. This letter is not stamped with a received stamp but received is written in by hand and it is signed and dated 23rd July 2009. The matters at hand clearly show the incompetency at LTA in handling and managing the application that was filed. The parties in this

matter, the Bus Operators are greatly inconvenienced due to the laxity of the LTA staff in properly handling the applications.

At the hearing the LTA counsel easily stated that the 4 objection letters were overlooked by LTA. No affidavits have been filed explaining what actually happened and how the objection letters were overlooked. The Tribunal cannot comprehend how 4 objection letters received from 4 separate bus operators on 4 different dates was overlooked by the LTA. The Objectors for their part are showing the Tribunal letters that bear LTA stamp and filed in LTA's own record showing that objections were filed within time. The existence of the objection raises many questions. Mr Prakash has submitted without any disagreement from the other parties that when the matter was first adjourned by the Board no objection letters were disclosed and the application was dealt with as unopposed application. The Tribunal cannot make assumptions and will neither speculate what might have happened. Having heard all the parties the Tribunal notes that the Objectors are clearly able to show that they have submitted objections. The LTA for its part has admitted overlooking the objections.

This is not the first occasion that the Tribunal has highlighted that the LTA is not properly carrying out its duties. The LTA must properly and methodically deal with matters that come before it. Each application that is filed incurs costs upon parties. The applicant pays for the application, the advertisements, etc. The other parties who object also incur costs. Where lawyers are involved the parties have to pay their counsel. Each application that is lodged with LTA is important. LTA must seriously deal with the applications that come before it. The documents that are filed must be properly vetted and processed. The retention and safe custody of the documents are vital.

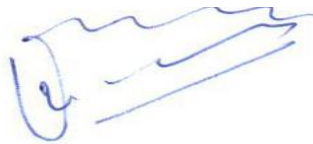
The LTA by stating to the Tribunal that they overlooked the objection letters admitted fault. It means that if the objection existed then LTA did not consider the objection by the other bus operators. The Management Report prepared for the Chairman took the application to be an unopposed application. This also means that none of the objections were considered when the report was prepared. Regulation 5 of the Land Transport (Public Service Vehicles) Regulations 2000 sets out certain factors which the LTA must consider when it deals with an application. One of the factors is contained in Regulation 5 (1) (b) which is "the effect of the proposed service on other public service vehicle operators." The four objectors who wrote to the LTA were all bus operators. In their letters to the LTA they outlined the reasons for their objections. The LTA did not consider the objections of the bus operators who had objected under Regulation 5 (1) (b) of the Land Transport (Public Service Vehicles) Regulations 2000. The LTA erred by not following the Regulations.

The Tribunal would like to suggest that it is in favour of a consistent method of receipt of applications. If a consistent method is adopted it will eliminate confusion and the issues that have arisen in these matters. The receiver of the objection letter at LTA must clearly sign and write his/her name, and endorse the date and time of receipt of the letter. A similar stamp should be used on all documents that are received.

Having found that the LTA breached Regulation 5 (1) (b) of the Land Transport (PSV) Regulations 2000, in not considering the objection letters containing the effect of the proposed trips on other public service operators, which was a mandatory consideration the Tribunal does not think it is necessary to look at other grounds of appeal. For the foregoing reasons the decision of the respondent, LTA is set aside. The Parties have the right of appeal.

Orders of the Tribunal

- (a) The Decision of the LTA (vide its resolution of 14th August 2014, delivered through a letter dated 16th September 2014) approving the application of Nadera Transport Limited subject of appeal numbers 54 of 2014 and of 56 of 2014 is set aside. The LTA is directed to hear the matter afresh.
- (b) The Respondent, LTA is to pay each party \$2000.00 costs which are summarily assessed. In simple terms, LTA is to pay Nadera Transport \$2000.00, Central Transport Limited \$2000.00, Latchans Holding \$2000.00 and Island Buses Limited \$2000.00. The costs are to be paid within 21 days.



Chaitanya Lakshman

Land Transport Authority Appeals Tribunal

9th February 2018

