

Land Transport Appeals Tribunal
Sitting @ Suva.

Appeal # **10 of 2017 &
11 of 2017.**

10 of 2017

Between: **Maharaj Buses Limited**

Appellant

And: **Land Transport Authority**

Respondent

**Shankar Singh Transport Limited
Pacific Transport Limited
Taunovo Buses Limited
Shore Buses Limited**

Interested Parties

11 of 2017

Between: **Taunovo Buses Limited**

Appellant

And: **Land Transport Authority**

Respondent

**Shankar Singh Transport Limited
Maharaj Buses Limited
Pacific Transport Limited
Shore Buses Limited**

Interested Parties

Date of Hearing: 9th February 2018

Appearances and Representations

For Maharaj Buses : Mr Mohammed Afzal Khan.
For Taunovo Buses : Mr Filimoni Vosarogo.
For LTA : Ms Vinaya Naisilasila.
For Shankar Singh : Mr Ramesh Prakash.
Pacific Transport : Not Present - No Representation.
Shore Buses : Not Present - No Representation.

Judgment

Introduction

The two matters are related and are appeals against the same decision of the Land Transport Authority (LTA). The parties agreed to a consolidated hearing. The Tribunal has noted that the Secretary to the Tribunal has served all the parties.

On 25th August 2016, the LTA Board resolved to approve an application for amendment of RRL 12/10/102 for additional trips by Shankar Singh Transport, subject to the departure times in the proposed timetable being varied. The decision of LTA is contained in a letter dated 7th February 2017.

The Grounds of Appeal

In Action Number **10 of 2017** (Appeal filed by Maharaj Buses Limited) the grounds of appeal are as follows:

- 1. THAT the appellant's Solicitors Messrs Khan & Co had written a letter to the Board dated 2nd August 2016 for the meeting on 4th of August 2016 to be deferred as the appellant was attending another matter at Suva High Court.*
- 2. THAT the letter was received by your good office on the 3rd of August 2016. Annexed hereunto marked "A" is a copy of the letter.*
- 3. THAT despite giving a notice to the Board for the meeting to be deferred, the Board proceeded with the meeting which resulted in the appellant being prejudiced and which amounts to denial of natural justice.*
- 4. THAT the appellant had also made an application for the Amendment of Road Route Licence RRL 12/10/101.*
- 5. THAT the appellant's application is pending from 2002, which is yet to be determined before the Board whereas the application made by Shankar Singh Transport which was made in 2015 was heard by the Board.*
- 6. THAT the appellant was also an objector in this application by Shankar Singh Transport.*
- 7. THAT the appellant was not informed of the date of hearing for Shankar Singh Transport's application therefore the appellant could not be present as an objector.*
- 8. THAT the Board had proceeded with the meeting despite receiving the letter for the meeting to be deferred.*

9. *THAT the Board did not approve Shankar Singh Transport's original application for the Amendment of Road Route Licence RRL 12/10/102 dated 17th February 2015.*
10. *THAT the Board has approved extra trips to Shankar Singh Transport which were not applied for in their initial application.*
11. *THAT the trip for 11:30 am departing Suva to Navua is a direct confrontation/ duplication with the appellant's trip which starts at the same time for Shankar Singh Transport.*
12. *THAT as a result of this direct confrontation/duplication for the 11.30 am trip the appellant is subjected to issues with the parking base as this base is now shared between the appellant's bus company (Maharaj Buses Limited) and Shankar Singh Transport.*
13. *THAT in the appellant's initial application the appellant had applied for a trip at 5:40 pm which is yet to be approved whereas Shankar Singh Transport had applied for the same trip at 5:35 pm which the Board had approved. Thus the decision is unjustified/unfair and contrary to the rules of fair justice.*
14. *THAT the appellant had applied for the trips at 3:30 pm and 8:15 pm which is yet to be heard by the Board, however these trips have been approved for Shankar Singh Transport.*
15. *THAT Shankar Singh Transport in its initial application have not applied for the trips at 7:30pm and 8:00 pm however the Board had approved these trips.*
16. *THAT the appellant believes the approved trips for Shankar Singh Transport would be operated by Nasese Buses Company Limited as Nasese Buses Company Limited has assisted Shankar Singh Transport in its business operations. Thus this theory could not be presented before the Tribunal as the appellant was not present at the meeting.*
17. *Maharaj Buses Limited reserves the right to file amended or additional grounds of appeal upon receiving reasons for the decision and the record of the proceedings of the Authority."*

In Action Number **11 of 2017** (Appeal filed by Taunovo Buses Company) the grounds of appeal are as follows:

1. *"THAT the 2nd Respondent applied for amendments of its RRL 12/10/102 and on the 25th August 2016, the Board deliberated on the application and also heard the objectors to the application.*
2. *THAT the Board through the Regional Manager Central Eastern conveyed/ wrote to the Appellant and the 2nd Respondent on the 7th of February 2017 relaying its decision which are as follows:*

Approve the Application for amendment of RRL 12/10/102 for additional trips on the following justification:

That the departure time in the proposed timetable be varied.

3. *THAT the Board did not specify in the decision what exactly was the approved timetable and what has been varied from the original application.*
4. *AND TAKE NOTICE that the Appellant intends to appeal against the said decision of the 1st Respondent.*
5. *AND TAKE FURTHER NOTICE that the Grounds of Appeal are as follows:*
 - 5.1 *THAT the Board failed to properly evaluate all the evidence presented to it by its own management report and at the hearing on the 25th of August 2016 which failure was prejudicial to the Appellant's expectation to not have its trips loading affected.*
 - 5.2 *THAT the Board failed to consider the fact that the 2nd Respondent did not meet the requirements of the 1st Respondent to operate RRL 12/10/102 but did nevertheless, grant its application, which grant was perverse and unsatisfactory considering the weight of the evidence against the 2nd Respondent at the hearing before the Board.*
 - 5.3 *THAT the Board failed to provide reasons for varying the timetables without considering the new timetables and how that would impact on the Appellant's trips which would be greatly affected by the grant.*
 - 5.4 *THAT in all the circumstances, the decision was without merit and must hence with be overturned by the Tribunal and the application for amendments before the Board be quashed.*
 - 5.5 *THAT the Appellant reserves the right to file additional grounds of appeal once the timetable of the approved trips is formally communicated to the Appellant."*

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)- In 2002 Maharaj Buses had made 3 applications for plying on those routes. Galoa to Suva. Application sitting with Board since then to-date. Taunovo Buses and Shankar Singh made application in 2015. Taunovo made 2 applications. Hospital trip and Galoa trip to Suva. Shankar Singh made single application for 30 trips. 15 return trips. Trips awarded in 2017. Prior applications. On its own volition LTA deferred its meeting. Notice of that could only reach us a day so in advance. Client left with little choices. I had another Court matter. LTA had meeting on 4th August in absence of appellants. Made decision in favour of Shankar Singh. Consequences of those decisions affect the business of my client.

We are severely prejudiced. Board in breach of interests of fairness and natural justice. Inherent obligation under spirit of legislation to fairly deal with the matter. Decision of Board to approve Shankar Singh's trip affects clients route - Navua - Suva. LTA to get its act right. The Tribunal is harping about it. LTA is not vigilant. 3 applications of Maharaj not attended to. Have been superseded. Corresponding application by Shankar Singh and Taunovo.

Doing of the most disorganised institution in Country. In record keeping. Respecting interest of parties in industry. Judicial interference is ruling is warranted. Seek Tribunal interferes with decision of LTA. Lesson to LTA.

Application dealt with ignored subsequent application. No doubt will affect those who were beneficiaries. Matter is short and simple. Knife on neck of my client. Appeal is on that basis. Public policy and public interest. Seek Tribunal do humble thing to suspend the order granted that day to Shankar Singh Buses and Taunovo Buses. Seek Maharaj's application be heard. Could be consolidated. If consolidated require additional submissions. Why should my client be subject to prejudice. Seek Tribunal view why my clients application was treated that way. Why adjourned that way. Seek decision made be set aside. All matters be listed for hearing.

Mr F. Vosarogo (For Taunovo Buses)- One additional matter in relation to what Mr Khan said. Reading of Board decision on 4th August 2016, Page 3 (1.4) discussion of present appeal. Page 4 - Board deliberation - Board decision. No decision made. All Board said resolved to defer its decision. Was there ever a decision approving this application. Which Board meeting approved the decision. Neither approved or refused. Origin of decision not properly established. Never any decision

approving 30 odd trips to Shankar Singh. Tribunal should immediately put stay. No basis to give approval. No approval made by the Board. No decision made by Board. Any operation should be stayed.

LTA (Ms. Naisilasila) - written submissions for both appeals. Rely on it. 2002 applications the appellant should have come back to us. Grounds of appeal filed by Maharaj and Taunovo. Annexed composite timetables in annexure 6. Shankar Singh approval at 1.35pm. More than 30 minutes interval. Board proposed to amend timetable. Decision of Board deferred to 25th April. Board looked at reports. Times do not clash. Reasonable intervals.

Mr Prakash - Will put submissions in writing to assist the Tribunal. Whole appeal arises. Complains of fairness. Failure to attend to hearing on 4th August 2016. They did attend hearing or make oral representations. Accept application by any letter. Adjournment applications are discretionary. If discretion exercised. Appeal must be on refusal of adjournment. Everything for Maharaj arises from adjournment. Adjournment was discretionary matter. No details of matter in High Court. Someone was instructed. Discretion exercised. Maharaj not present. No reason in affidavit.

Something much more for Tribunal to base it on. Objection letter still before Authority. No oral representation. They mention management report. Letter was there. Deliberations show further they considered Regulation 5 matters. They granted approval subject to departure times. Desirable that final approval is given correctly in letters. Board has power to vary timetable. Can make minor variations. None of Maharaj's existing times are in conflict. What is the real complaint. Stage carriage application. They made decision of a gap of 15 minutes. 30 minutes for express.

Final decision is actually made. Minutes of 25th August show decision made. Timetable approved to be annexed to licence. Timetable are public documents. Everybody knows what other has. Nothing new. Before Board. Public documents. Operators knew it. A public hearing. No question. No need. Routes similar, but different routes. Needs of public considered. Need was there nobody challenges that. Grounds of appeal must be looked at. Authority found need. Subject to variation of timetable. Variation so it does not conflict with existing timetable. Stage carriage bus. Public need to be served. Pending applications, onus on Maharaj. Nothing in affidavit of Maharaj - 2002- 2017. 15 years later. Any effort whatsoever. Any single letter to LTA. Routes of pending application not as applied for by Shankar Singh. Not sure of the route. Board considered not to affect others. Appeal arises out of refusal of adjournment. No representation by Maharaj. Unfairness not occurred to Maharaj. Board considered objection - Para 7.

Reply - Mr M. A. Khan - No advertisement for meeting. For Board Meeting. No notice of 4th August 2016. LTA records is full of defects. Variation of timetable should be given to operators for input and comments. Had written to LTA for adjournment. It was an official communication. Board failed to consider letter. They changed date of meeting. Prejudice caused.

Reply - Mr F Vosarogo - decision of 15th August. On grounds of appeal Board failed to provide reasons to vary timetable. Shankar Singh got what they did not apply for. Parties who might be affected due to change of timetable should be given a chance. On 25th August no party got chance to have a say.

Analysis

The Tribunal has noted the grounds of appeal filed by the Appellants and the submissions. The grounds of appeal in both the matters are not precise and need to be summarised. The grounds of appeal that the Tribunal need to address can be summarised as follows:

- (a) Inadequate decision and no reasons given for varying timetables.**
- (b) Previous application and request for deferment by Maharaj Buses.**
- (c) Procedural fairness and natural justice.**
- (d) Approval of trips not applied for.**
- (e) Board failed to properly evaluate all the evidence.**

The Tribunal would now go over each ground of appeal in turn.

- (a) Inadequate decision and no reasons given for varying timetables.**

The LTA in the decision letter to Shankar Singh Transport stated that the application for amendment of RRL 12/10/102 for additional trips is approved "on the following justification: a. That the departure time in the proposed timetable be varied."

The applicant, Shankar Singh Transport had made an application for numerous additional trips and had sought to amend its RRL 12/10/102. The minutes of the LTA Central Eastern Board meeting of 4th August 2016 (marked annexure "7" in the Records) shows that the LTA deferred its decision for the management to compare composite timetable to ensure that there was no clash of times with other bus operators. The subsequent minutes of the LTA West Board meeting of 25th August 2016 on page 8 states as follows:

"10.0 Opposed application for amendment of Road Route License - Shankar Singh Transport Limited

An application to amend RRL 12/10/102 for additional trips for Shankar Singh Transport Limited.

Board Decision

The Board has resolved to approve the application subject to variation in the departure timetable."

The LTA Board Minutes of 25th August 2016 does not contain any deliberations of the Board. It does not set out the reasons for the Boards decision in varying the departure times of the trips. The Tribunal has noted that the LTA Board had deferred its decision from an earlier Board Meeting (4th August 2016) to compare composite timetable to ensure that there was no clash of times. If the Board had considered the composite timetable it should have recorded or taken minutes of its deliberations. **Time and again the LTA has been reminded that it needs to accurately record and minute its deliberations and findings.**

This Tribunal would like to reiterate what the Fiji Court of Appeal recommended to the Transport Control Board (TCB) the predecessor to Land Transport Authority, which is still pertinent now, in **Pacific Transport Ltd v Khan [1997] FJCA 3; Abu0021u.1996s (12 February 1997)**. The Fiji Court of Appeal stated that ***"we strongly recommend to the TCB what was recommended to it in 1984 by this Court - namely, that in all cases, it give brief reasons for its decision. Failure to do so involves parties in more cost and litigation. As is noted in some of the authorities, a failure to give reasons can make a 'disappointed' litigant a 'disturbed' litigant."***

The Tribunal notes from the Fiji Court Appeal decision that the practice required of the TCB and now the LTA is to give reasons for its decisions. It can be brief. In this matter the **LTA needed to explain why the departure times were being varied.** The **LTA also needed to state what the variation in the departure timetable was.** The **bus timetable is a component of**

the application which must be deliberated and determined in Board meetings and not in isolation. The time a bus arrives and departs is crucial to all parties. These cannot and should not be determined in the absence of the parties. The **LTA Board must ensure that it deals with all issues that are contained in the application at the Board Meetings and not separately.**

(b) Previous application by Maharaj Buses and request for Deferment.

One of the issues raised by Maharaj Buses in its appeal is that it has a previous application lodged in 2002 pending before the LTA. The Tribunal has noted that Maharaj Buses in its objection letter notified LTA that it has pending application before LTA since 2000 and onwards. The Management Report dated 23rd August 2016 contained the objector's summary and informed the Board that the proposed trips by Shankar Singh Transport would affect Maharaj Buses and that Maharaj Buses had applied for similar trips along the same route and these applications were pending before the LTA.

Once it became known to LTA that it had similar pending applications it was incumbent upon LTA to first deal with the pending application. The **LTA must deal with applications that come before it promptly and in a sequential order. Where competing applications are received they must be dealt with together.** It is unfair to Maharaj Buses that its application to LTA has to wait for over 15 years while those lodged later are being processed. While it has been said what Maharaj Buses has done following its application? That the onus was on Maharaj Buses to pursue its application. The Tribunal is of the view that while an applicant is expected to pursue its application the **primary onus is on the Land Transport Authority as the Regulator and the Licensing Authority to**

expeditiously deal with the application. Maharaj Buses, the appellant reminded the LTA when Shankar Singh Transport lodged an application that the LTA had yet to deal with their application. What more can be expected from Maharaj Buses.

When an application is considered the LTA is required to consider the effect on other public service operators. From the records it is evident that LTA did not consider the submission of Maharaj Buses that if the LTA dealt with the application lodged by Shankar Singh Transport that it would have an impact on an its application which was lodged prior to the Shankar Singh Transport application. No records are contained in the Board Minutes that the Land Transport Authority at the time it considered the application of Shankar Singh Transport considered the prior application by Maharaj Buses.

The LTA Board considered the request by Maharaj Buses for deferment of the hearing. The Board refused to defer the hearing. The right to grant or refuse deferment of hearing of applications is a discretionary right which the LTA Board can determine. The right is to be exercised rationally taking into consideration all relevant factors. In the given situation the Board fairly dealt with the request by Maharaj Buses for an adjournment. The Tribunal also finds that the Maharaj Buses had proper notification of the hearing dates of the LTA Board Meetings.

(c) Procedural fairness and natural justice.

In ***Local Government Board v Arlidge* [1915] AC 120**, a House of Lords decision Lord Shaw stated:

"the words 'natural justice' occurs in arguments and sometimes in judicial pronouncements in such cases. My Lords, when a central administrative board deals with an

appeal from a local authority it must do its best to act justly, and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are ex necessitate those of Courts of justice is wholly unfounded. This is expressly applicable to steps of procedure or forms of pleading. In so far as the term 'natural justice' means that a result or process should be just, it is a harmless though it may be a high-sounding expression; in so far as it attempts to reflect the old jus naturale it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far as it is resorted to for other purposes, it is vacuous."

In this matter the Tribunal has noted that the appellants were given opportunity to make representation. Submissions were made through objection letters and orally at the hearing. Opportunity was given to parties to make representations.

In **Kioa v West [1985] HCA 81; (1985) 159 CLR 550 at 584**, Mason J said that the law in relation to administrative decisions, "has now developed to a point where it may be accepted that there is a common law duty to act fairly, in the sense of according procedural fairness, in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary intention." In addition to Mason J's pronouncement the Tribunal would like to add that the **LTA must ensure fairness and natural justice is accorded to all in the**

processes (filing and submission of application), the procedures (at the Hearing) and in its decision making.

(d) Timing and approval of trips not applied for.

One of the grounds of appeal advanced by appellants is that the trips that were not applied for were granted by the LTA. Regulation 5 (5) of the Land Transport (Public Service Vehicles) Regulations 2000 provides that *"the Authority may, when granting an application, vary the service as proposed in the application subject to conditions and restrictions if in its opinion such variations will not seriously affect any other holder of a permit."* It has to be noted from Regulation 5 (5) that the LTA has powers to vary the service and service includes destination (place) and time (arrival and departure) and consideration must be taken by LTA that it will not seriously affect other permit holders.

In deliberations under Regulation 5 (5) the LTA needs to consider serious effect not just effect on other permit holders. Objection letters normally outline the position of the objectors and the effect the proposed application will have on the objector's trips. This information is before the Board. Furthermore Regulation 5 (1) (b) of the Land Transport (Public Service Vehicles) Regulations 2000 requires the LTA to consider the effect of the proposed service on other PSV operators. The Management Report evaluated the effect of the proposed application on other PSV Operators. The LTA failed to consider the application of Maharaj Buses that was pending. It seems that **LTA is not cognisance of the fact that if it deals with a latter application first, and a similar prior application is pending and LTA grants trips under the later application the prior applications might be rendered nugatory.**

The holding of a prior application without any reasons and

dealing with similar latter applications is unfair to the earlier applicant.

Timing is an important factor in the bus operations. Applications are made on specified times. The applications are made for specified times. Departure and arrival are specified. The LTA considers the times and how it affects other operators where there are existing operators on the route. When decisions are made the LTA should be clear as to what time (either departure/arrival) is being approved. **The Tribunal is not in favour of decisions that state that the application is approved subject to variation of time. The LTA must state the time in its decision.**

(e) Board failed to properly evaluate all the evidence.

The Board had information before it that there was a similar pending application. This was brought to the attention of the LTA by Maharaj Buses. This was not considered by the LTA. The Management Report prepared for the Board under Regulation 5 (1) (a) on the needs of the public is not reliable. The methodology of the way in which the data was obtained and analysed is not explained. The Tribunal's reading of the report and data and information contained in the report does not show a need for the trips. The information only shows loading and does not show any drop off and at which locations. If the LTA Board relied on the management report the Tribunal finds the data to be unreliable and misleading. A proper load check survey needs to be conducted. Following the load check an analysis of the load check needs to be prepared for consideration by the LTA Board.

The Tribunal has previously highlighted this and would like to restate that the **LTA must work out a proper and relevant methodology of collating and analysing data for all applications that it deals with. Once the methodology and system is in place the same should be used for all similar**

applications. The data collated must be credibly collected. Once data is collected quality control mechanisms must be in place to verify the data. This will add credence to the data. The analysis of the data must be relevant to the application and thoroughly analysed and depicted as simple tables or in graphic form.

The minutes of the LTA Central Eastern Board meeting 4th August 2016 (marked annexure "7" in the Records) shows that the LTA deferred its decision for the Management to compare composite timetable to ensure that there was no clash of times. No records or minutes exist of any deliberations of the LTA to show what was considered when the composite timetable was considered and what consideration was given to ensure that there was no clash of times. In absence of such information the Tribunal finds that the LTA Board did not consider the composite timetable and enquire and consider the time of operation of other bus operators. In the absence of such information or minutes the Tribunal concludes that no discussion was held on the issues of composite timetables and the effect on other parties.

Having considered everything the Tribunal allows the appeal. **The LTA Board and Management is asked to take heed of the Tribunals findings and observations.** The decision of the LTA, (letter dated 7th February 2017) approving an application of Shankar Singh Transport for amendment of RRL 12/10/102 is set aside. The matter is remitted to the LTA Board for a re-hearing.

Orders of the Tribunal

1. The decision of the LTA, (letter dated 7th February 2017) approving an application of Shankar Singh Transport for amendment of RRL 12/10/102 is set aside.
2. The matter is remitted to the LTA Board for a re-hearing.
3. LTA to pay each party \$1000.00 costs which is summarily assessed. LTA to pay Maharaj Buses \$1000.00, LTA to pay Taunovo Bus Company Limited \$1000.00 and LTA to pay Shankar Singh Transport \$1000.00 each within 30 days.



Chaitanya Lakshman

Land Transport Authority Appeals Tribunal

6th April 2018

