

**Land Transport Appeals Tribunal  
Sitting at Suva**

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Appeal # 10 of 2018

Between: **Shore Buses Limited**

[Appellant]

And: **Land Transport Authority**

[Respondent]

**Shankar Singh Transport  
Taunovo Bus Company Limited**

[Interested Parties]

**Appearances:**

**Appellant:** Mr V. Kapadia.

**LTA:** Ms L. Tikoinayau.

**Shankar Singh:** Mr R. Prakash.

**Taunovo Buses:** Mr F. Vosarogo.

Date of Hearing- 26<sup>th</sup> September 2019

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**Judgement**

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**Introduction**

The Appellant appealed the decision of the LTA. The Authority refused Appellant's application for extension and amendment of Road Route License for trips from Naboro to Wainadoi via Queens Road.

The Appellant is seeking an order that the decision to refuse the said application be set aside and that the application be granted.

## **The Grounds of Appeal**

The grounds of appeal are as follows:

- "1. *The Authority erred in not providing any documents on which the Board members relied upon to make the decision. The Authority refused to give relevant documents to Shore Buses at the hearing and advised that Shore Buses should submit on its application only and respond to the two objection letters. The Authority erred in not giving Shore Buses a right to a fait hearing and breached its legislative expectation as to procedural and substantive fairness in the hearing of its application.*
2. *The Authority erred in not making a decision on Shore Buses application for about 10 years and then citing the situation has changed since the initial application was made in 2008 without explaining how the situation has changed so that the application had to be refused. It is common knowledge that the population in Wainadoi area has increased significantly and therefore there was more need for the bus services provided by Shore Buses in Wainadoi area now then before.*
3. *The Authority erred in failing to give proper and informed rational reasons for the refusal of the application when stating that an Expression of Interest would be called to give fair chance to other existing operators in the area when there were no other operators in the Wainadoi area. Shankar Singh and Taunovo are long distance operators coming from Galoa and Navua and do not go into Wainadoi. Shore Buses is the bus operator nearest to Wainadoi from Naboro. The Authority there erred in giving inconsistent and illogical reasoning in its decision to refuse Shore Buses' application. The decision of the Authority is*

*contradictory, illogical and unreasonable and cannot be supported by the evidence on the application and the support for the application from residents of Wainadoi.*

- 4. The Authority has taken into account irrelevant considerations and engaged in vague reasoning to refuse the application of Shore Buses whereas at the same time in prior years approving applications of Shnakar Singh and Taunovo to extend their bus services in their area of operation around Navua and Galoa. The Authority at that time did not deem it fit to call for Expression of Interest on the reasoning it has provided on this application. The actions of the Authority in refusing Shore Buses application smacks of bias and is contradictory to earlier approvals given to the objectors.*
- 5. The Authority has failed to properly evaluate all the petitions and support letters that were received from the residents of Wainadoi when it made a decision to refuse Shore Buses application. The decision of the Authority is procedurally and substantially unfair, unreasonable and flawed and cannot be supported having regard to all the evidence, facts, law and circumstances of this application.*
- 6. The Authority erred in not following its Public Service Vehicle Guideline approved on 27<sup>th</sup> November 2014 when not extending Shore Buses services from Naboro to Wainadoi which would have minimal impact on other bus operators coming from a longer distance beyond Wainadoi such as Galoa and Navua. The Authority erred in not applying its own PSV Guideline which in Paragraph 1 (c) states that the Board will try to extend an existing trip to cater for need rather than give new trips altogether.*

7. *The Authority has failed to give reasons based on the objections of Shankar Singh and Taunovo who are not affected by any services proposed by Shore Buses. The Authority failed to look at the load checks of Shankar Singh and Taunovo both of whom do not go into Wainadoi Road and who operate numerous additional bus services on which the Authority has failed to take any action on.*
8. *The Authority erred when it acknowledged that there was a petition of demand for service from Wainadoi but then made a decision to advertise an Expression of Interest and refusing Shore Buses application that would have catered for that demand from Wainadoi.*
9. *That the decision of the Authority to refuse Shore Buses is in breach of the principles of natural justice, fair play and cannot be sustained given the evidence of need and demand from Wainadoi.*
10. *The Authority has failed to publish in accordance with provisions of the Land Transport Act 1998 and Regulation 6 of the Land Transport (Public Service Vehicle) Regulations 2000 a notice in the local newspaper and the gazette.*

*And such other additional or amended grounds of the Appeal it may give notice of after the receipt of the record of proceedings of the Authority."*

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

Section 40 (2) of the Land Transport Act provides for the function of the Tribunal, which 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."

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 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 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.*"

### Analysis

The Tribunal has noted the submissions made by the parties. The Tribunal will in turn deal with each ground of appeal.

**First Ground - The Authority erred in not providing any documents on which the Board members relied upon to make the decision. The Authority refused to give relevant documents to Shore Buses at the hearing and advised that Shore Buses should submit on its application only and respond to the two objection letters. The Authority erred in not giving Shore Buses a right to a fair hearing and breached its legislative expectation as to procedural and substantive fairness in the hearing of its application.**

The submission of the Appellant's Counsel was that they did not receive the PSV Report at the hearing. The LTA did not respond to this claim by the Appellant. The Tribunal has sighted the reports being referred to by the Appellant's Counsel. They are contained in the copy records (Annex 4) filed by the Respondent (LTA). The reports were prepared by the Management and addressed to the Chairman of the LTA Board.

5 Reports are contained in the records and the Tribunal takes it that these were prepared for consideration by the Board.

Any Report that is considered by the Respondent when it deals with an application must be disclosed to all the Parties. The Reports contain information relating to the Parties that are before the Board. The information relates amongst other things to trips being operated, load check analysis, criteria as per Regulations 5 of the Land Transport (Public Service Vehicle) Regulations 2000, and comments by the Management. All these issues and information collated about the Parties and which relate to the Parties must be made known to the Parties. The Parties should be provided copies of these Reports.

The Parties must be given an opportunity to question or challenge the contents of the Reports. LTA is not

conducting a fair hearing if the Reports are not disclosed to all the Parties and the Parties are not given an opportunity to scrutinise, raise issues and question the LTA on the contents of the Report.

**Second Ground - The Authority erred in not making a decision on Shore Buses application for about 10 years and then citing the situation has changed since the initial application was made in 2008 without explaining how the situation has changed so that the application had to be refused. It is common knowledge that the population in Wainadoi area has increased significantly and therefore there was more need for the bus services provided by Shore Buses in Wainadoi area now then before.**

For the Authority to sit with an application for 10 years is clearly failure on the part of the Authority to discharge its statutory duty. Such delays show a laxity on the part of the Authority. The Authority must promptly deal with an application. It is expected that within 10 years situations will change. An application lodged in 2008 and determined in 2018 will clearly be unfair to all the Parties.

The Authority should be aware that when it fails to carry out its duty professionally and within an appropriate time its credibility and reputation is in question. The credibility and reputation of the Authority is in its own hands. It can boost public confidence by improving the way it deals with applications and how it goes about making its decision. Fairness and transparency are the cornerstone of any decision making body.

Appropriate needs analysis is required to be carried out before an application can be determined. Increase in population is not the only ground to provide bus services. A need must exist. The LTA carried out certain needs analysis and relied on those information in its decision making.

**Third Ground - The Authority erred in failing to give proper and informed rational reasons for the refusal of the application when stating that an Expression of Interest would be called to give fair chance to other existing operators in the area when there were no other operators in the Wainadoi area. Shankar Singh and Taunovo are long distance operators coming from Galoa and Navua and do not go into Wainadoi. Shore Buses is the bus operator nearest to Wainadoi from Naboro. The Authority there erred in giving inconsistent and illogical reasoning in its decision to refuse Shore Buses' application. The decision of the Authority is contradictory, illogical and unreasonable and cannot be supported by the evidence on the application and the support for the application from residents of Wainadoi.**

The LTA had received an application for amendment of RRL. The decision of the LTA should have been in accordance with the laws. The application needed to be evaluated by LTA in relation to the Land Transport Act 1998 and Regulations of the Land Transport (Public Service Vehicle) Regulations 2000.

It would be ideal if the LTA sets out in the decision letter how the LTA arrived at the decision. If the letter properly sets out the reasons for the decision the Parties will be to get the rationale of the LTA. The letter may contain a summary of the application, a summary of the meeting or meetings and deliberations, what was considered, the LTA needs to cover the criteria listed in Regulation 5 and show to the parties its deliberations and considerations under each head. The reasons for the LTA's decisions could be provided under each head. This will give the parties an understanding of the decision of the LTA. If this structure is followed the parties would not complain that LTA did not give reasons for its decision.



The LTA has given some reasons for its decision in this matter. This is in line with the decision of the Board deliberations contained in the minutes of 28<sup>th</sup> February 2018. The Tribunal notes that the decision letter has not been properly drafted and contains several grammatical errors.

The LTA must ensure that its decision letters are properly and correctly drafted. It would also be prudent if the Board Secretary or the CEO signs the decision letter. This suggestion is being made as in many instances the Tribunal notes that Regional Managers or others end up signing off the Board decisions. The work of the Board is not completed until the decision letter is signed off by the Board Secretary or the CEO. Having the Board Secretary or CEO signing the letters will help eliminate the errors in the letter. They will thoroughly check the contents of the letter and ensure that whatever they are signing is in line with the decision of the Board.

The Tribunal expects the Lawyers at LTA to put forward the Tribunal's observations and suggestions to the LTA Board.

**Fourth Ground - The Authority has taken into account irrelevant considerations and engaged in vague reasoning to refuse the application of Shore Buses whereas at the same time in prior years approving applications of Shankar Singh and Taunovo to extend their bus services in their area of operation around Navua and Galoa. The Authority at that time did not deem it fit to call for Expression of Interest on the reasoning it has provided on this application. The actions of the Authority in refusing Shore Buses application smacks of bias and is contradictory to earlier approvals given to the objectors.**

The Tribunal from the records notes that the LTA had the benefit of the application, the objections, and

various Management Reports. The Application was made in 2008. The first deliberations by the Board on the application according to the Records were on 14<sup>th</sup> August 2014. The recommendation of the Board was *"Application not recommended as load check result shows that the need is not established. Another load check on 25/7 revealed the average load was 8. Load check conducted frm 11.49 - 5.07pm."* The Board decision was *"Board refused due to wrong motive by Shore Buses Ltd."*

It seems from the records and the submissions that this decision was never conveyed to the parties. How the application was kept afloat after the decision was made can only be explained by LTA.

However further perusal of other records shows that the minutes of PSV Sub-Committee of 16<sup>th</sup> April 2016 shows under deliberations *"the case was refused twice due to incorrect load check and wrong motive. Advise by former ML to do another fresh load check and resubmit to Board. Need more load check spread out in different days. Load check was only for January alone but will be good to do surveys in other months also. Consider the population at Wainadoi. Check other means of transport. Run on certain times, on peak times and let them build up their trips."* The decision (which should read as recommendations) of the PSV sub-committee was *"approved but to vary the time concentrating on the peak time. Approved subject to the trial runs, as we try to assess the better time out of the times applied. Another fresh load check to be done on different days. Vary the time and bring to Full Board."*

The PSV Sub-Committee decision is clearly confusing. The Sub-committee goes on to recommend approval, vary the times and at the same time do further load checks. The recommendation by the sub-committee should not have been made without all the information

in hand. These are the types of recommendations that cause confusion amongst the parties. Decisions and recommendations should only be made when all information is on hand. Load checks are so vital that no approval should be recommended when load checks have not been properly conducted.

The Tribunal has noted from the records that the LTA was grappling with the matter as it had no clear direction in dealing with the application. If load check showed no need established the application should have been refused. This was what was shown in the deliberations of 14<sup>th</sup> August 2014. Why was there a need to impose any further conditions or seek further load checks?

The delays by the LTA were further exacerbated by toing and froing by the Board. The Board needed to convey its first decision that it made to the Applicant on 14<sup>th</sup> August 2014.

Why the matter kept on going forward after 14<sup>th</sup> August 2014 is a mystery.

**Fifth Ground - The Authority has failed to properly evaluate all the petitions and support letters that were received from the residents of Wainadoi when it made a decision to refuse Shore Buses application. The decision of the Authority is procedurally and substantially unfair, unreasonable and flawed and cannot be supported having regard to all the evidence, facts, law and circumstances of this application.**

From the records the Tribunal notes that the Board over time had access to several reports. The support letters (though not in the records - is referred to in the Management Reports) and the objections were also before the Board. The Tribunal understands that the Management Report of 27<sup>th</sup> February 2013 was relied

upon by the Board when it met for the Board Meeting on 14<sup>th</sup> August 2014.

The Tribunal finds from the materials before it that the LTA considered the materials that were before the LTA in relation to the application. The decision that LTA made was not made in isolation. Initial assessment by LTA showed no need for the service. Later on further load checks were conducted to see the need for the service. The decision that was reached by LTA was in reliance on the materials that was before the LTA.

**Sixth Ground - The Authority erred in not following its Public Service Vehicle Guideline approved on 27<sup>th</sup> November 2014 when not extending Shore Buses services from Naboro to Wainadoi which would have minimal impact on other bus operators coming from a longer distance beyond Wainadoi such as Galoa and Navua. The Authority erred in not applying its own PSV Guideline which in Paragraph 1 (c) states that the Board will try to extend an existing trip to cater for need rather than give new trips altogether.**

The Point by the Appellant that if the route was extended it would have minimal impact on the Objectors is self-serving. Imagine if Shore Buses was told that the Objectors would start picking on Shore Buses route and it would have minimal impact on Shore Buses. Would that be acceptable to them? Every business dislikes competition.

The Bus industry is a highly regulated industry. Bus operators carefully guard their routes. The Tribunal feels this is a fair position of the bus operators. Bus operations are not easy. The costs and risks are high. While those who are not involved in it may see it as lucrative. The hard work that goes in running the business should not be overlooked.

The principle of "encroachment" being relied upon is to protect the operators from moving into the routes of those who are already operating within those routes. For a start the parties must be to be able to serve their existing routes well and with diligence. Moving into areas where others are covering will surely create friction and tension between operators.

In this matter the Appellant's are saying that it is not encroachment. The Respondents who operate through and cover Wainadoi say its encroachment. The submission by Mr Kapadia that they will be serving trunk route does not reflect in the application. The application does not say they will be serving the Wainadoi Road. The application needed to specify that they intended to serve Wainadoi Road. It is also noted by the Tribunal everywhere the reference is Wainadoi and not Wainadoi Road. It is improper for the Appellant's to state and submit they will serve Wainadoi Road when it's not in the application.

The Tribunal has noted that the Map shows the Wainadoi Road. But that does not mean anything unless its stated in the Application and the accompanying time table does not state that the intention is to service the Wainadoi Road. While on this the Tribunal and neither the LTA has any figures on the number of residents in Wainadoi or living along Wainadoi Road. The Map attached to the Application is misleading. The dots indicating houses are not as shown on Cavellier Road or in Wainadoi Village. While the Tribunal notes it cannot be exact. However, it must be very close to be as is on the ground.

The condition of the Wainadoi Road, the distance covered, the number of people living along that road, number of people seeking bus services along that road, and the turning points would have been appropriate considerations had the application included Wainadoi Road. The Appellant's seem to have

conveniently included Wainadoi Road in the submissions while it is not in the application.

**Seventh Ground - The Authority has failed to give reasons based on the objections of Shankar Singh and Taunovo who are not affected by any services proposed by Shore Buses. The Authority failed to look at the load checks of Shankar Singh and Taunovo both of whom do not go into Wainadoi Road and who operate numerous additional bus services on which the Authority has failed to take any action on.**

On the issue of objections the Board must deal with the objections and state in the minutes whether it accepts the objection or dismisses it. It will help the parties understand. By clearly stating whether the objections stand or are dismissed the parties will know the position of the Board in respect of the objections.

From the objection letters the Tribunal notes that Shankar Singh Transport Limited detailed to the LTA how it would be affected. It gave times and details of its trips and how they will be affected. Taunovo Bus Company for its part in its objection letter stated that there was no need for the 16 trips and that it was being adequately being served by the current operators along that route. Both the companies also informed the LTA of the financial implications should the application be granted.

The grounds of appeal by the Appellant refers to Wainadoi Road whereas the application is about service to Wainadoi. It seems to the Tribunal that since the filing of the application the Appellant has changed its position from Wainadoi to Wainadoi Raod. The Tribunal would like to highlight once again this is improper for the Appellant. The Tribunal does not condone such subtle changes. The motives of the

Appellant can only be explained by them. Credibility becomes an issue when such things happen. What is clear should not be shown to be another thing to the Tribunal. Clearly if the intention was to serve Wainadoi Road it should been in the Application and the proposed timetable.

**Eight Ground - The Authority erred when it acknowledged that there was a petition of demand for service from Wainadoi but then made a decision to advertise an Expression of Interest and refusing Shore Buses application that would have catered for that demand from Wainadoi.**

The Tribunal did not find any petition in the records. While there were some reference to support letters in the management reports. All public requests and any petition for demand need to be verified. The LTA should carry out its own investigations and determine the needs. A proper load check is needed to determine need. Public signing of petitions is not enough. It must be backed up by data from the field. LTA must satisfy itself of the actual need on the ground.

The Tribunal has noted from the records that the LTA has called for expression of interest. According to LTA this is yet to be decided by the LTA. The Tribunal will not go into this issue now. The matter may end up before the Tribunal so it would not be prudent for the Tribunal to give its view on it now.

**Ninth Ground - That the decision of the Authority to refuse Shore Buses is in breach of the principles of natural justice, fair play and cannot be sustained given the evidence of need and demand from Wainadoi.**

LTA could have dealt with the matter in a timely manner. It took LTA 10 years to reach a decision. Certain decisions were made. Then it was revisited. Parties were heard. Certain documents were not disclosed.

The Tribunal notes that at the first meeting on the Application it was decided by the Board that the application was not approved. This decision should have been conveyed to the Parties. Aggrieved Party might have appealed that decision. The records after that decision show several other Management reports.

**Tenth Ground - The Authority has failed to publish in accordance with provisions of the Land Transport Act 1998 and Regulation 6 of the Land Transport (Public Service Vehicle) Regulations 2000 a notice in the local newspaper and the gazette.**

The LTA has not shown to the Tribunal that the findings were published in accordance with provisions of the Land Transport Act 1998 and Regulation 6 of the Land Transport (Public Service Vehicle) Regulations 2000 a notice in the local newspaper and the gazette.

The Tribunal has found several flaws on the part of the LTA. There was a considerable delay. It affected all the parties. Certain documents were not disclosed to the parties.

Having considered all the materials before it the Tribunal is of the view that the LTA could not have granted the application on the material before it. A need for the service on the information before the LTA was not established. The Objectors were adequately serving the route. The principle of encroachment would have come into play should the application have been granted.



For the following reasons the appeal is dismissed.

**Orders**

- (a) The appeal is dismissed.
- (b) Each party to bear its own costs.



Chaitanya Lakshman  
**Land Transport Appeals Tribunal**  
**7<sup>th</sup> February 2020**

