

**Land Transport Appeals Tribunal
Sitting @ Labasa.**

Appeal # **33 of 2018**
Appeal # **35 of 2018**

Between: **Dalip Chand & Son Limited**
[Appellant in 33 of 2018]

And: **Land Transport Authority**
[Respondent]

Rajendra Deo Prasad T/A Northern Buses -
(Appellant in 35 of 2018)

Vishnu Holdings Limited
[Interested Party]

Appearances @ Hearing:

For the Appellant: Mr. A. Pal on instructions of
Mr. A. Sen (Maqbool & Co).

For LTA: Ms. Malani.

For Vishnu Holdings Limited: No Appearance.

Rajendra Deo Prasad: In Person.

Date of Hearing: 21st February 2020

Judgment

Introduction

The two appeals were consolidated as it dealt with the same decision of LTA contained in letter dated 4th September 2018.

The Appellants, Dalip Chand and Son Limited and Rajendra Deo Prasad T/A Northern Buses have appealed against the decision of the LTA to grant road route

licence (RRL) for Wailevu Tunuloa/Savusavu/Labasa to Vishnu Holdings Limited.

The LTA had called for an expression of interest after the Tribunal on 13th July 2018 set aside the decision to grant a permit to Vishnu Holdings Limited for the Wailevu Tunuloa/Savusavu/Labasa route.

The Grounds of Appeal

The grounds of appeal for the two appeals can be summarised as follows:

- (a) Vishnu Holdings did not comply with Expression of Interest (EOI) requirements.
- (b) Application not considered on merits.
- (c) Reasons and relevance of clause 2 (d) of the decision letter.
- (d) Encroachment issues.
- (e) Special bonding with villagers and travelling public.
- (f) Did not properly consider the applications as expression of interest.
- (g) QAMS.

The Function and Powers of the Tribunal

The functions and powers of the Tribunal are noted.

Analysis

The submissions of the parties, the records and the grounds of appeal filed by the Appellants have all been noted by the Tribunal.

The Tribunal will go over each ground of appeal in turn.

(a) Vishnu Holdings did not comply with Expression of Interest (EOI) requirements.

The Tribunal notes from the records that the LTA has not included a copy of the expression of interest. It is difficult for the Tribunal to work when proper records are not submitted to the Tribunal. Numerous times the Tribunal has reminded the LTA about submitting all the records. The Tribunal should not be requesting for each document. The LTA must provide all the materials it has in its possession which it used in determining a matter.

From the decision paper prepared by the Management team of LTA for the Board dated 24th August 2018 the Tribunal notes on page 5 the EOI was to be submitted with certain details. These included company profile, tax and FNPF compliance certificate, proposed timetable and sketch map for the proposed route to follow, existing fleet details, fleet commitment and surplus fleet, number of buses required on the proposed timetable, business licence, particulars of directors, photo of facilities/workmanship as per QAMS including RRL guidelines, and Council concern letter for usage of bus stands.

From the decision paper the Tribunal notes that Vishnu Holdings submitted the FNPF compliance certificate on 15th August 2018. The closing date for the EOI was 12 pm on 1st August 2018. The other two companies lodged the EOI with all the requirements on time.

The LTA records or deliberations do not show why a requirement of the EOI was accepted later on. No explanation is given by LTA on it. LTA should have given reasons for accepting certain detail following the EOI cut-off date. Normally all the requirements of the EOI must be met by a party for it to be in consideration. The LTA accepted the FNPF compliance

certificate after the close of EOI. On this issue and ground of appeal the Tribunal finds unfairness on the part of LTA and leniency and partiality shown towards Vishnu Holdings.

The position of LTA in its submissions is that there "is nothing to say that incomplete submission will not be completed. It only states that late submission will not be considered." The Tribunal does not have LTA guidelines for EOI and how it will consider it. It is difficult to judge what the advertisement stated with the LTA failing to provide copy of the expression of interest. The other parties for their part did not provide a copy of the EOI. They should have argued that the records are incomplete.

(b) Application not considered on merits.

The decision on an application for a RRL must be in line with Regulation 5 of the Land Transport (PSV) Regulations 2000.

Following the submission by the parties at the Board hearing. The LTA needs to analyse the application, the submissions and other information in light of the Regulations. It would assist if the LTA draws out the matrix of the information and compares the information about the parties.

Proper analysis of the applications and the submissions has not been carried out by LTA. It is not reflected in the records that are before the Tribunal. The manner in which LTA went about considering the applications shows bias towards Vishnu Holdings. Material submitted by all parties must be considered and evaluated in line with the Regulations.

(c) Reasons and relevance of clause 2 (d) of the decision letter.

Clause 2 (d) in the decision letter is an interesting inclusion. The issue of public convenience, continuity of journey, loading and re-loading, loss

and damage of produce, fare being cheaper, and lack of facilities are not only relevant to one party. These are issues which are in consideration when LTA deals with the applications.

By including clause 2 (d) and listing them in the decision letter LTA put up issues relevant to all parties as relevant only to Vishnu Holding. If the trip was approved to any party the same would have applied. The issues were not peculiar to Vishnu Holdings.

Clause 2 (d) was about public need and welfare of the public, hence was the reason for the call for the EOI. The LTA should not have included such points in the decision letter.

The LTA shows its bias towards Vishnu Holdings and it seems LTA is trying to justify its decisions in favour of Vishnu Holdings by stating issues which is applicable across-the board as reasons for decision in favour of Vishnu Holding.

If any of the issues listed in clause 2 (d) did not apply in favour of the other parties, LTA should have clearly stated that. The issues were not specific to one Party.

(d) Encroachment issues.

The principle of encroachment is well established in the bus industry. Even LTA acknowledges it and is on the lookout that encroachment does not affect bus operators. Regulation 5 (1) (b) Land Transport (PSV) Regulations 2000 requires that LTA have regard to "the effect of proposed service on other public service vehicle operators".

According to the records Vishnu Holdings is a Savusavu Operator. They operate within Savusavu. They operate from Wailevu Tunuloa to Savusavu. Dalip Chand and Son Limited and Northern Buses operate from Labasa to Savusavu. The expected route is one from Wailevu Tunuloa to Labasa via Savusavu.

Encroachment might be an issue in this matter if Dalip Chand and Northern Buses start operating trips from Wailevu Tunuloa. The Tribunal notes that Vishnu Holding's currently is the sole operator in Wailevu Tunuloa. The population size and allowing competition in that area are issues for consideration. LTA also needs to consider the timing of the trip from Savusavu to Labasa, after it arrives from Wailevu Tunuloa. Whether it would affect other operators when one is given the route. LTA needs to deal with these issues carefully and with clarity. It would help LTA if they deal with each separate issue under a particular heading. LTA needs to have a heading in their deliberations where they deal with Regulation 5 (1) (b), composite timetable and encroachment and properly evaluate all the matters under it and then record its findings.

(e) Special bonding with villagers and travelling public.

The issues before LTA like the EOI are issues to be dealt with according to the Laws and Regulations. The issue of special bonding with villagers and travelling public are emotive and irrelevant considerations by the LTA. This is not a requirement of the Regulations. LTA must refrain from making such irrelevant and emotive remarks.

(f) Did not properly consider the applications as expression of interest.

The deliberations of LTA does not show proper consideration of the applications. The Tribunal's perusal of the records show LTA being biased towards Vishnu Holdings. LTA took into consideration irrelevant and emotive factors.

The record does not show proper analysis by LTA of the applications. There were 3 applications that LTA needed to analyse. LTA needed to deal with the

applications by having regard to the Regulations and this was not properly done.

(g) QAMS.

Quality Assurance Maintenance System (QAMS) is an initiative of LTA to ensure that the transportation sector provides safe service. It is critical that such measures are in place so that LTA maintains a consistent and sustainable standard and compliance system.

The Tribunal is informed that comprehensive QAMS inspection is carried out by the LTA's Standards and Engineering Department, with a checklist that covers over 30 different areas. It deals with the documentation part of the maintenance carried out by the bus companies. According to LTA, QAMS is a "rigorous" inspection of all documentation related to a bus company's vehicle checks and maintenance programme. It includes inspections of facilities, and ensuring that bus operators maintain a daily safety inspection checklist for all buses, a defect reporting register checklist and a maintenance register.

The QAMS inspection is also critical to bus companies when renewing their Road Route License (RRL), which is granted for 10 years and allows a particular bus company to operate a specific route. Whenever a bus company renews the RRL, a QAMS inspection also takes place, which may coincide with their annual fleet inspection. It is mandatory to achieve 100% in each phase of the QAMS checklist before moving on to the next.

The Tribunal has noted that Dalip Chand and Son Limited and Rajendra Deo Prasad T/a Northern Buses had qualified for QAMS phase 2 accreditation. Vishnu Holdings Limited had not qualified for QAMS Phase 2 Accreditation. The LTA in its deliberations stated that Vishnu Holdings "are just lacking on the administrative matters." The details are not specified. Administrative matters could include a number of things, might be related to safety aspects.

If it is safety, it cannot be compromised. LTA should not have rushed in to issue the RRL without complete compliance.

The Tribunal also noted that in the decision LTA noted that administrative compliance can be fixed in a short period. However these were not part of the record of the deliberations.

Conclusion

The manner in which LTA went about dealing with the matter is of grave concern to the Tribunal. The way in which LTA dealt with the EOI showed that LTA had made up its mind to grant the RRL to Vishnu Holdings. The EOI was just a formality. The deliberations and the manner in which the decision was reached show clear bias and favouritism towards Vishnu Holdings Limited.

The Tribunal has noted its concern in this matter. LTA must take heed of it. The LTA Board has all the material relating to the matter. LTA should make its decision after considering all the applications. Upon reviewing the applications. LTA should draw up a table to compare the information of the parties. Composite timetable, encroachment and all other relevant issues should be part of the deliberations. The deliberations need to be under relevant heads.

Following the deliberations LTA must give clear reasons for its decision. It should be based on the Regulations. In this matter the deliberations seemed to be mainly about Vishnu Holdings and other parties were rarely considered. The deliberations should be recorded verbatim. Comparisons should be made. Why one operator is preferred over the other must be recorded. This will show the manner in which LTA reached its decision. If all these are done complaints of unfairness and favouritism will be eliminated.

It would help the LTA Board and Management if the Judgement is read and issues raised herein taken on-board.

For the reasons given herein the appeal succeeds. The Tribunal sets aside the decision of the LTA and seeks that the LTA take on board the issues raised by the Tribunal and then make a decision on the EOI that was submitted to it, by the parties.

Tribunal Order

- (a) The Appeal succeeds.
- (b) The decision of LTA contained in letter dated 4th September 2018 granting road route licence (RRL) for Wailevu Tunuloa/Savusavu/Labasa to Vishnu Holdings Limited is set aside.
- (c) The LTA Board is directed to deal with the matter taking on board the Tribunal's concern's and suggestions.
- (d) The Tribunal orders, LTA to pay each party costs. It is summarily assessed as \$500.00. The costs are to be paid within 30 days.
- (e) The Tribunal orders LTA to pay Tribunal Costs. This is summarily assessed as \$500.00. This cost must be paid within 30 days. The Tribunal

will review this cost due to it at its sitting
in Suva on 21st August 2020.



Chaitanya Lakshman

Land Transport Appeals Tribunal

10th day of July 2020

