

1943

Present : Hearne J.

GALLE OMNIBUS CO., LTD., Appellants, and *THE COMMISSIONER OF MOTOR TRANSPORT, et al.*, Respondents.

CASE STATED UNDER MOTOR CAR ORDINANCE, No. 45 OF 1938—No. 434.

Motor Omnibus Licensing Ordinance, No. 47 of 1942, section 7—Application for licences for same section of highway—Section common to the route—Grant obnoxious to provisions of Ordinance.

On December 11, 1942, the appellant Omnibus Company applied for a road service licence in respect of the Colombo-Panadure route.

On December 20, 1942, the respondents who were holders of a licence for the Colombo-Panadure-Galle route made a similar application.

Held, that the grant of the licence to the appellants in respect of the Colombo-Panadure route would be obnoxious to the provisions of section 7 of the Motor Omnibus Licensing Ordinance.

THIS was a case stated to the Supreme Court by the Tribunal of Appeal under the Motor Car Ordinance.

R. L. Pereira, K.C. (with him *E. A. de Silva*), for the appellants.

Walter Jayawardene, C.C., for the first respondent.

H. V. Perera, K.C. (with him *Ananda Pereira*), for the second respondents.

Cur. adv. vult.

December 15, 1943. HEARNE J.—

In appeals 3,183 to 3,190 the appellants are the Colombo Galle Omnibus Co., Ltd., the first respondent is the Commissioner of Motor Transport and the second respondents are the South Western Bus Co., Ltd. The facts are common to all the appeals. I shall, therefore, consider only one of them.

On December 11, 1942, the appellants applied for a road service licence in respect of the Colombo to Panadure route. On December 20, 1942, the second respondents made a similar application. On July 27, 1943, the Commissioner granted the application of the latter. At that time they were the holders of a licence for the Colombo to Galle route. The appellants unsuccessfully appealed to a Tribunal of Appeal constituted under the Motor Car Ordinance who have now stated a case for the opinion of this Court.

The case has not been stated with precision but the point of law involved is a simple one. It concerns the interpretation that is to be placed on section 7 of Ordinance No. 47 of 1942.

The section provides that the issue of road service licences shall be regulated so as to secure that different persons are not authorised to provide regular services on the *same section* by any highway. The proviso, however, states that the Commissioner may issue licences to two or more persons authorising the provision of services involving the use of the *same section*, if that section is common to the routes to be used but does not constitute *the whole* or major portion of *any such route*.

The two *routes* in question are (a) the Colombo-Galle route which is the same as the Colombo-Panadure-Galle route and (b) the Colombo-Panadure route. The common *section* is Colombo-Panadure, and that *section* is the *whole* of one of the routes, viz., the Colombo-Panadure route.

If the Commissioner had granted a licence to the appellants in respect of the Colombo-Panadure route he would have disregarded the provisions of section 7.

Difficulty was apparently also felt in regard to the meaning of the word "regular". It was thought that it meant "legal". Here it was argued that it meant "adequate". It means regular as opposed to occasional. Contrast section 3 (c) with section 3 (d) of Ordinance No. 47 of 1942 and section 5 (1) with section 5 (2) of the same Ordinance.

The appellants will pay the costs of the first respondent (one set of costs for all the appeals) and of the second respondents (similarly one set of costs for all the appeals).

Appeal dismissed.
