

1943

Present: Hearne J.

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

CASE STATED UNDER MOTOR CAR ORDINANCE, No. 45 OF 1938—No. 459.

Motor Omnibus Licensing Ordinance, No. 47 of 1942, section 13—Application for a licence—Claims of a holder for the route preferred—No right of appeal.

No appeal lies at the instance of an unsuccessful applicant for a licence for a road service in respect of a route for the first time when the claims of the holder of a licence for that route, who has applied for renewal, have been preferred.

THIS was a case stated for the Supreme Court by the Tribunal of Appeal under the Motor Car Ordinance, No. 45 of 1938.

R. L. Pereira, K.C. (with him *J. E. M. Obeyesekere*), for the appellants.

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

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

Cur. adv. vult.

December 15, 1943. HEARNE J.—

The appellants in appeals 3,205 to 3,229 are the Nagoda Omnibus Co., Ltd., the first respondent is the Commissioner of Motor Transport, and the second respondents are the North Western Blue Line Bus Co., Ltd. The facts are common to all the appeals.

The second respondents had been granted road service licences for 25 routes for the period January 1 to June 30, 1943, and, before the six months had expired, had applied for renewal of the said licences. The appellants applied for the issue to them for the first time of licences for the same 25 routes.

The Commissioner renewed the licences granted to the second respondents and disallowed the applications of the appellants who appealed to a Tribunal of Appeal constituted under the Motor Car Ordinance. Their appeals were dismissed on their merits.

In my opinion they should not have been entertained.

If the second respondents' application for renewal of the licences of which they were holders had been refused, they could have appealed under section 13 (2) of Ordinance No. 47 of 1942. If the appellants had been applicants for a road service licence in respect of a route on which a service was not already provided—and this is not such a case—they could have appealed from the refusal of their application under section 13 (3).

If the appellants and the second respondents had both been applicants for the first time for licences in respect of the same route, the unsuccessful applicants could have appealed under section 13 (1).

But there is, as I read the whole of section 13, no appeal at the instance of an unsuccessful applicant for a licence in respect of a route for the first time, when the claims of the holder of a licence for that route, who has applied for renewal, have been preferred.

The appellants must pay the costs of the first respondent (one set of costs in respect of all the appeals) and of the second respondents (similarly one set of costs in respect of all the appeals).

Appeal dismissed.

