

1947

Present : Nagalingam A.J.

PANADURE MOTOR TRANSIT CO., LTD., Petitioner, and  
T. W. ROBERTS *et. al.*, Respondents.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF PROHIBITION ON  
T. W. ROBERTS OF GALLE AND THREE OTHERS.

*Omnibus Service Licensing Ordinance, No. 47 of 1942, Schedule I., para. 2(a)—  
Interpretation of—Right of persons to compensation for the loss of only  
a section of a route licence held by them—Meaning of words “highways”,  
“comprise”, “include”—Writ of Prohibition—Stage at which  
application may be made.*

Prior to the coming into operation of the Omnibus Service Licensing Ordinance, No. 47 of 1942, the fourth respondent was the holder of a licence under the Motor Car Ordinance, No. 45 of 1938, authorising the use of omnibuses on the route Bandaragama to Colombo *via* Pokunuwita Junction. After the coming into operation of the Omnibus Service Licensing Ordinance the petitioner company was granted the licence to ply omnibuses for hire on the route from Panadure to Horana *via* Bandaragama and Pokunuwita Junction.

In an application for the issue of a Writ of Prohibition against the first, second and third respondents, who were constituted a Tribunal of Appeal under the Motor Car Ordinance of 1938, from proceeding further with an application made to them for compensation for loss of route rights as a result of the petitioner company having been granted a road service licence to run omnibuses on a route covering a section of the fourth respondent's route—

Held, that, on the proper interpretation of paragraph 2 (a) of the special provisions set out in the first schedule to the Omnibus Service Licensing Ordinance as amended by Ordinance No. 57 of 1943, the fourth respondent could not be regarded as the holder of a licence for an omnibus in respect of a route which comprised or included the same highways or substantially the same highways as those covered by the route for which the road service licence was issued to the petitioner company.

Held, further, that an application for a Writ of Prohibition may be made as soon as an issue is raised which it is beyond the province of the Tribunal of limited jurisdiction to determine.

**A**PPPLICATION for the issue of a Writ of Prohibition.

*H. V. Perera, K.C.* (with him *D. W. Fernando*), for the petitioner.

*S. E. J. Fernando*, for the fourth respondent.

*Cur. adv. vult.*

February 6, 1947. NAGALINGAM A.J.—

This is an application for the issue of a Writ of Prohibition against the first, second and third respondents who are constituted a Tribunal of Appeal under the Motor Car Ordinance, No. 45 of 1938, from proceeding further with an application made to them by the fourth respondent for compensation for loss of certain route rights as a result of the petitioner company having been granted a road service licence to run omnibuses on a route covering the fourth respondent's route.

The facts which give rise to the present application are not in dispute and may be briefly stated as follows: Prior to the coming into operation of the Omnibus Service Licensing Ordinance, No. 47 of 1942, the fourth respondent was the holder of a licence under the Motor Car Ordinance,

No. 45 of 1938, authorising the use of omnibuses on the route Bandaragama to Colombo *via* Pokunuwita Junction. The route is indicated in black in the sketch P1. After the coming into operation of the Omnibus Service Licensing Ordinance the petitioner company was granted the licence to ply omnibuses for hire on the route from Panadure to Horana *via* Bandaragama and Pokunuwita Junction after the petitioner company had delivered to the Commissioner of Motor Transport a written undertaking in terms of paragraph 2 (c) of the special provisions set out in the first schedule to the Omnibus Service Licensing Ordinance that the petitioner company would pay compensation to every person who would be entitled to claim compensation in terms of paragraph 2 (a) thereof.

Provision is made in paragraph 3 of the said special provisions for the Tribunal of Appeal to determine the amount of compensation payable to an applicant entitled to compensation in terms thereof. The fourth respondent made an application to the Tribunal of Appeal on December 11, 1944, to have the compensation payable to him determined. The petitioner company appeared before the Tribunal and contested its jurisdiction to proceed with the application on the ground that as the applicant (the fourth respondent) was not a person who was entitled to claim compensation by virtue of the special provisions already referred to, the Tribunal could not enter upon a determination of the quantum alleged to be payable to him. After inquiry the Tribunal by a majority opinion held that the applicant was one who was entitled to compensation in terms of the special provisions and set down for further hearing the question of assessment of compensation payable. The petitioner company in these circumstances applies to this court for a Writ of Prohibition.

The determination of the question as to whether a Writ of Prohibition should issue or not centres round the proper construction that should be placed upon paragraph 2 (a) of the special provisions referred to as amended by Ordinance No. 57 of 1943, and in particular upon the amendment itself. Divested of all that is immaterial for the purpose of the present discussion the question is whether the fourth respondent is a person who was the holder of a licence under the Motor Car Licensing Ordinance, No. 45 of 1938, for an omnibus in respect of a route which comprised or included the same highways or substantially the same highways as those covered by the route for which the road service licence has been issued to the petitioner company.

It would be best first of all to ascertain what are the highways which are covered by the route for which the road service licence has been issued to the petitioner company, for it is in relation to those highways that the rights of the fourth respondent are created and referred to.

A highway would be any public road, that is to say, any road over which the King's subjects would have the right to pass and repass without let or hindrance; a public road leading from one town to another may be spoken of as a highway or may be dismembered into several highways according to the considerations one would wish to apply. If different sections of a road bear different names it may be described as consisting of several highways bearing the different names, or if a road runs through

areas of different local authorities, then, based upon the sections of the road that fall within particular local authorities, each of these sections may be termed a separate highway.

The sketch filed of record depicts the public road from Panadure to Horana as consisting of three separate sections (1) from Panadure to Bandaragama, (2) from Bandaragama to Pokunuwita Junction and (3) from Pokunuwita Junction to Horana. If we treat each of these sections as a highway, then the highways covered by the route for which the road service licence has been issued to the petitioner are the highways (a) Panadure to Bandaragama, (b) Bandaragama to Pokunuwita Junction and (c) Pokunuwita Junction to Horana.

Let us now see what are the highways covered by the route licence that had been issued to the fourth respondent. Turning to the sketch again, one may for the sake of convenience designate the route over which the fourth respondent had a licence to run his omnibuses as consisting of the two highways (1) Bandaragama to Pokunuwita Junction and (2) Pokunuwita Junction to Colombo. The question may then be formulated as follows: Does the route over the highways (1) Bandaragama to Pokunuwita Junction, (2) Pokunuwita Junction to Colombo comprise or include the same highways as (1) Panadure to Bandaragama, (2) Bandaragama to Pokunuwita Junction and (3) Pokunuwita Junction to Horana? It may be useful at this stage to determine the precise meaning to be attached to the phrases "comprised the same highways" or "included the same highways". When one speaks, for instance, of a plan comprising the same lots as those described in a deed, one intends to convey that the plan embodies all the lots that are described in the deed and nothing more and nothing less. In other words, there is an identity of the lots depicted in the plan and the lots described in the deed. Again, when one speaks of a plan including the same lots as those described in a deed, the meaning conveyed is that the plan depicts not only all the lots described in the deed but something more. The answer, then, to the question whether the route over the highways (1) Bandaragama to Pokunuwita Junction and (2) Pokunuwita Junction to Colombo comprises the same highways as (1) Panadure to Bandaragama, (2) Bandaragama to Pokunuwita Junction and (3) Pokunuwita Junction to Horana must clearly be in the negative, as it is obvious that there is no identity of the highways in the two cases. Can it be said that the route over the highways (1) Bandaragama to Pokunuwita Junction and (2) Pokunuwita Junction to Colombo include the same highways as (1) Panadure to Bandaragama, (2) Bandaragama to Pokunuwita Junction and (3) Pokunuwita Junction to Horana? The answer, again, clearly is that it does not. If, however, the qualifying adjective "same" of the word "highways" is ignored and regarded as non-existent, and the question framed: "Does the route over the highways (1) Bandaragama to Pokunuwita Junction and (2) Pokunuwita Junction to Colombo comprise or include the highways (1) Panadure to Bandaragama, (2) Bandaragama to Pokunuwita and (3) Pokunuwita to Horana?" then it will be equally clear that the answer would be that the route does include the highway Bandaragama to Pokunuwita Junction. It seems to me that the failure to take into consideration the existence of the

adjective "same" has resulted in the contention being put forward that the loss of a section of the route entitles an applicant to claim compensation.

It has been said that the object of the amendment was to enlarge the rights of applicants who have lost route licences as a result of exclusive road service licences being granted to others over routes on which the applicants had operated. But in fact the amendment has enlarged the rights but not to the extent to which the fourth respondent's counsel has argued the Legislature has extended those rights. The effect of the amendment is not only to give relief to persons who held route licences over an identical route over which the new road service licence is granted but also to those who held licence for a route much longer and covering only in part the route over which the new licence is issued. For instance, had the fourth respondent held a route licence from Panadure to Ratnapura and the petitioner company had thereafter been issued the road service licence from Panadure to Horana, then it could be said that the route licence held by the fourth respondent included the same highways as those over which the new licence was issued to the petitioner company, and though he would not have been entitled to claim, prior to the amendment, any compensation, he would by virtue of the amendment be enabled to prefer a proper and just claim. Assuming, however, that it was the intention of the Legislature, for which there is no warrant, to compensate persons for the loss of only a section of a route licence held by them, the Legislature has certainly made use of no language from which such an intention could be gathered. Where the words of an enactment are clear and admit of no ambiguity, it would be fallacious to import into them a meaning which is not deducible from the words used.

It has also been urged that the construction now placed would lead to the result that where a person held a route licence, say from Panadure to Ratnapura, and two other persons are granted road service licences to operate between Panadure and Horana, and Horana and Ratnapura respectively, the first mentioned person would not be entitled to claim compensation from either of the two last named. But that is not so, for on the construction now placed the person first named would be entitled to claim compensation from each of the two last-named persons as his road licence certainly included the same highways over which the new route licences are issued.

The situation, then, in which the fourth respondent finds himself is different. His route licence did not cover the same highways as those over which the road service licence has been issued to the petitioner, although it did cover one of the highways. If it was the intention of the Legislature to include the case of a person in the position of the fourth respondent, the Legislature may very well have added the words "or any part thereof" after the words "the same highways" in the amendment.

There remains for consideration the question whether the highways (1) Bandaragama to Pokunuwita Junction and (2) Pokunuwita Junction to Colombo are substantially the same as the highways (1) Panadure to Bandaragama, (2) Bandaragama to Pokunuwita Junction and (3) Pokunuwita Junction to Horana. It is quite impossible to say that they

are. See the case of *The Kelani Valley Motor Transit Co., Ltd., v. The Colombo-Ratnapura Omnibus Co., Ltd.*,<sup>2</sup> where the Privy Council adopted a similar view. I am therefore of opinion that the 4th respondent is not a person to whom compensation would be payable within the meaning of paragraph (2) (a) of the special provisions enacted in the first schedule to the Omnibus Service Licensing Ordinance.

Learned Counsel for the fourth respondent also took a point that inasmuch as the Tribunal had not proceeded to adjudicate upon the compensation payable and as the Tribunal may never be moved thereto by the 4th respondent the application to this Court for the writ is premature. I cannot agree with this contention. It is clear law, as stated by Shortt on *Informations, Mandamus and Prohibition* at page 453, that—

“The application may be made as soon as an issue is raised which it is beyond the province of the Tribunal of limited jurisdiction to determine.”

In this case by order of the Tribunal the matter of compensation has been set down for determination by it, and if the petitioner Company delayed to make this application to this court till after the Tribunal had determined the amount of compensation, the petitioner Company may be met by the plea that having submitted to the jurisdiction of the Tribunal it was not competent to it to apply for a writ at that stage. I would therefore reject this contention.

Another argument advanced on behalf of the fourth respondent is that in view of the general terms in which the undertaking given by the petitioner company to the Commissioner for Motor Transport is framed the fourth respondent is entitled independently of the provisions of paragraph 2 (a) of the special regulations to claim compensation. The undertaking is as follows:—

“We the undersigned, The Panadure Motor Transit Co. (Western, Sabaragamuwa and Uva), Ltd., do hereby in terms of section 2c of the First Schedule of Ordinance No. 47 of 1942, undertake and agree to pay compensation to every person possessing an omnibus licensed on our Bus Routes who do not consent to join the said Company.”

It would be observed that the undertaking expressly states that it is given in terms of paragraph 2 (c) of the special provisions. Now, sub-paragraph (c) of paragraph 2 expressly enacts that the applicant for a road service licence should enter into a written undertaking to pay compensation to every person referred to in sub-paragraph (a) thereof. It follows, therefore, that the undertaking is not to pay compensation to every person in general but only to those persons who claim to come within the ambit of sub-paragraph (a) of paragraph 2. I do not therefore think that there is any merit in this contention either; but assuming for a moment, though not conceding, that it is sound, the right of the fourth respondent would then be to sue the petitioner in the ordinary Civil Courts that would have jurisdiction to entertain the claim, but he

<sup>1</sup> (1946) 47 N. L. R. 271.

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certainly cannot invoke the provisions of the Omnibus Service Licensing Ordinance to take the matter of his claim for compensation before the Special Tribunal appointed thereunder.

In view of the conclusions I have reached, I would direct that a Writ of Prohibition do issue against each of the respondents prohibiting them from proceeding further in regard to the application for compensation made by the fourth respondent to the first, second and third respondents. I make no order as to costs against the first, second and third respondents but the fourth respondent will pay to the petitioner the costs of this application.

*Application allowed.*

