1950 *Present:* **Pulle J.**

SAMSON PERERA *et al.*, Petitioners, and T. W. ROBERTS *et al.*, Respondents

*Applications Nos. 162 and 291 of 1949*

*Writs of certiorari and prohibition—Applications for road service licence—Matters to be considered by Commissioner—Appeals against decisions of the Commissioner—Omnibus Service Licensing Ordinance, No. 47 1942—Sections 4 (b), 7, 13 (3), 14, (2) and (3).*

A route licence was granted to A without prior notice to B who was already providing transport facilities near to the route covered by A's licence. The failure of the Commissioner of Motor Transport to inform B of A's application for the licence was undoubtedly contrary to the practice followed for departmental convenience. B, purporting to avail himself of the provisions of section 4 (b) of the Omnibus Service Licensing Ordinance, subsequently informed the Commissioner of certain grounds on which he objected to the granting of the licence to A and also made a formal application for the licence to be granted to him. The Commissioner, thereupon, without holding an inquiry, intimated to B that his application could not be granted as it was obnoxious to section 7 of the Ordinance.

*Held*, that the Commissioner of Motor Transport did not commit a breach of the provisions of section 4 (b) of the Omnibus Service Licensing Ordinance

*Held further*, that the right of appeal conferred by sub-section 3 of section 13 of the Ordinance was not available to B.

APPLICATIONS for *certiorari* and prohibition arising from an order of the Commissioner of Motor Transport.

*In Application 162—*

*H. V. Perera, K.C.*, with *Stanley de Zoysa* and *C. E. Jayewardene*, for the petitioner.

*N. E. Weerasooria, K.C.*, with *W. D. Gunasekera*, for the 5th respondent.

*In Application 291—*

*N. E. Weerasooria, K.C.*, with *W. D. Gunasekere*, for the petitioner.

*H. V. Perera, K.C.*, with *Stanley de Zoysa* and *C. E. Jayewardene*, for the respondent.

*Cur. adv. vult.*

November 7, 1950. PULLE J.—

These proceedings relate to two applications which were heard together. The first is an application for a writ of prohibition on the Tribunal of Appeal constituted for the purposes of hearing appeals under the Omnibus Service Licensing Ordinance, No. 47 of 1942. The petitioner

is one A. H. Samson Perera who at all times material to the proceedings was the holder of a licence to provide a service of motor cabs for a period of two years commencing May 27, 1948, from Morontuduwa to Horana. The 5th respondent to this application is one M. A. P. Fernando. The 1st, 2nd and 3rd respondents are the members of the Tribunal of Appeal and the 4th respondent the Commissioner of Motor Transport.

The second application is by the 5th respondent to the first application, M. A. P. Fernando. The main relief he seeks is a writ of certiorari quashing the decision of the Commissioner of Motor Transport granting the licence referred to above to A. H. Samson Perera.

For convenience I shall refer to A. H. Samson Perera as the " licence-holder " and to M. A. P. Fernando as the " objector ".

The facts in their chronological sequence are as follows. In the year 1946 an exclusive road service licence was granted to the Panadura Motor Transit Co., Ltd., to run a cab service on the route Horana-Morontuduwa. The objector was also an applicant for the same licence but he was unsuccessful. On May 6, 1948, the Panadura Motor Transit Company, by its Managing Director, applied to the Commissioner of Motor Transport for permission to " transfer " the cab service to the licence-holder. They also asked the Commissioner of Motor Transport to transfer to the licence-holder the omnibus service from Kalutara to Kesbewa and supported that request with a letter from the Managing Director of the South-Western Bus Company, Ltd. On May 27, 1948, a licence was granted to the licence-holder to provide a motor cab service for a period of two years commencing from that date. The objector's application for a writ of certiorari is to quash the licence. On June 17, 1948, the objector applied for a licence for the identical service and he was informed on October 4, 1948, that his application was refused as it was obnoxious to section 7 of the Omnibus Service Licensing Ordinance, No. 47 of 1942. The objector then appealed to the Tribunal of Appeal and at the hearing objection was taken by Counsel for the licence-holder that the Tribunal had no jurisdiction to entertain the appeal. The objection was overruled and the hearing of the appeal was put off for May 21, 1949. The licence-holder's application is that a writ be issued prohibiting the Tribunal of Appeal from proceeding with the appeal taken by the objector.

The grant of the licence to the licence-holder is attacked principally on the ground that the Commissioner of Motor Transport had failed to comply with section 4 (*b*) of the Ordinance which requires him to take into consideration representations by a person such as the objector who was already providing transport facilities near to the proposed route covered by the licence. The objector's argument is that the failure to comply with section 4 (*b*) vitiated the licence inasmuch as it was issued without jurisdiction by the Commissioner whose functions are of a quasi-judicial character and that the licence was, therefore, null and void. The licence-holder contends that the Commissioner had not committed a breach of section 4 (*b*) and that in the exercise of his functions in granting the licence he was acting purely in an administrative capacity and not in the performance of any quasi-judicial functions. In regard to the

later point it was held in the case of the *South-Western Bus Co., Ltd. v. Arumugam et al.*[1] that the granting of a licence by the Commissioner of Motor Transport is a judicial act subject to a writ of certiorari. I am content to follow this decision and the only question which falls to be determined on the application for a writ of certiorari is whether the Commissioner acted in contravention of section 4 (*b*). In order to decide this a further narration of facts is necessary.

According to the exhibit R 2 dated March 15, 1948, attached to the affidavit of the objector dated June 14, 1949, it would appear that when applications were received by the Commissioner for route licences the practice was to send notices of these applications to operators providing facilities along or near the proposed routes. By the document R 2 the objector was informed of the discontinuance of this practice and of a new practice by which the application would be published monthly in the *Government Gazette* of the last Friday of each month. It was left to any person who objected to a grant of any licence to address his representations to the Commissioner within the time stated in the notice. I would pause here to observe that there is no express provision in the Ordinance imposing on the Commissioner the duty of notifying anyone of the receipt of an application for a route licence.

In the *Government Gazette* of June 4, 1948, a notice was published by the Commissioner of Motor Transport giving particulars of applications for licences to ply omnibus or cab services. According to this notice the licence-holder had made two applications on May 11, 1948, one for an omnibus service and the other the cab service in question. The notice does not purport to be one made in compliance with any statutory direction and it reads:

> " With reference to section 4 (*b*) of the Omnibus Service Licensing Ordinance, No. 47 of 1942, a list of the applications for regular omnibus or cab service is published below for the information of persons who are already providing transport facilities along or near to the proposed route or any part thereof or for the information of any local authority within the administrative limits of which any proposed route or part thereof is situate ".

The next paragraph of the notice sets out the form in which representations may be made.

By his letter dated June 17, the objector informed the Commissioner of the grounds on which he objected to the granting of a licence to the licence-holder and also made a formal application for the licence to be granted to him. A letter of the same date, namely, June 17, was sent by an officer signing himself " for Commissioner Motor Transport " to the objector acknowledging the receipt of his application and stating that it would be published in the *Gazette* for the information of persons desiring to make representations against the grant of the application.

The objector's application was published in the *Gazette* of July 2, 1948, and thereupon the licence-holder by his letter of July 13 informed the Commissioner that he objected on the ground that he had already

[1] *(1947) 48 N. L. R. 385.*

been issued a licence for the same service. A copy of this letter was annexed to a communication by the Commissioner to the objector dated July 16, promising to fix the matter for inquiry in due course. No inquiry was held in spite of a specific request by the Proctor for the objector and on October 4, 1948, the Commissioner intimated to him that his application could not be granted as it was obnoxious to section 7 of the Ordinance.

It is difficult to withhold a measure of sympathy for the objector. Clearly he was one of the persons entitled to make representations under section 4 (*b*) and he was prevented from so doing owing to the uncoordinated handling of public business in the office of the Commissioner of Motor Transport. It is manifest that the officer who prepared the notice published in the *Gazette* of June 4, 1948, was unaware that on May 27, 1948, a licence had already been issued. No blame attaches personally to the Commissioner and it is not disputed that the licence was granted in good faith to the licence-holder. The crucial question I have to determine is whether in the events which have occurred it can be said that the Commissioner failed to comply with section 4 (*b*).

The section does no more than impose a duty in imperative terms on the Commissioner to take into consideration any representations as may be made to him by persons who are already providing transport facilities along or near to the proposed route. On a plain reading of the section and the evidence before me it cannot be said that the Commissioner failed in his duty. His department undoubtedly failed to adhere to the procedure which it had laid down for dealing with applications for route licences, but the question is whether in respect of any application a possible objector has a statutory right to insist that that procedure be followed. In the discharge of functions which a public officer is called upon to perform in terms of a statute he may, *ex cautela,* devise a procedure intended to benefit as large a class of people who might be affected by the exercise of his functions, but over and above the requirements of the statute under which he acts. I cannot, however, assent to the proposition that a person like the objector in this case has any legal right to the observance of a practice laid down for departmental convenience. The case of the objector is a hard one but I shall be doing violence to the language of section 4 (*b*) were I to hold that the Commissioner had committed a breach of its provisions. In my opinion the motion for certiorari fails and is dismissed with costs.

I come next to the application of the licence-holder for a writ of prohibition on the Tribunal of Appeal. Now the appeal taken by the objector is from the order refusing his application to provide a regular motor cab service on the Morontuduwa-Horana route. Under what provision of the Ordinance can the Tribunal entertain the appeal? Clearly it does not come within either sub-section 1 or sub-section 2 of section 13. Sub-section 3 of section 13 reads:

" In any case where an application has been made for a road service licence in respect of a route or routes on which a service is not already provided under any other licence, the applicant, if he is aggrieved by the decision of the Commissioner refusing the application may,

before the expiry of a period of ten days from the date of the service on him of notice of such refusal, appeal against the decision of the Commissioner to a Tribunal of Appeal''.

On behalf of the licence-holder it is argued that the right of appeal conferred by the sub-section quoted above is not one available to the objector. He made his application on June 17, 1948, whereas his rival was on this date actually providing a service on a licence dated May 27, 1948, so that the objector's application falls outside the language of sub-section 3 as it was made for a road service licence in respect of a route or routes on which a service was already provided under another licence. If it was the intention of the Legislature to confer a right of appeal on an unsuccessful applicant in any circumstances the words of qualification in the sub-section ought not to have found a place in it. If that was the intention it could have been expressed in plain language and I should further have expected specific provision to be made authorising the Tribunal to cancel or suspend a licence already granted upon such terms and conditions that the public would be provided with a service until the time that the successful appellant before the Tribunal would be able to put his own vehicles on the route. In my opinion there is nothing in sub-section 2 or 3 of section 14 which makes me doubt the correctness of the interpretation which I have placed on section 13 (3). Whatever remedy the objector might have resorted to for the purpose of obtaining a declaration that the licence issued to the licence-holder was void *ab initio*, the remedy by way of appeal to the Tribunal was not open to him.

The motion for prohibition is allowed with costs as against the 5th respondent.

*Motion for certiorari refused.*

*Motion for prohibition allowed.*