

1949

Present: Basnayake J.

KANDY TOWN BUS CO., LTD., Applicant, and COMMISSIONER OF MOTOR TRANSPORT *et al.*, Respondents

S. C. Application No. 29—Case stated under section 4 of the Motor Car Ordinance, No. 45 of 1938

Omnibus Service Licensing Ordinance, No. 47 of 1942—Application for road service licence—Rival applicants—Matters to be considered by Commissioner—Sections 4 and 7.

The applicant and the second respondent, who were holders of road service licences under the Omnibus Service Licensing Ordinance, applied for additional road service licences. The route sought to be taken by them overlapped the entirety of the route already taken by the applicant's existing road service between two points. It also overlapped a part, but not the greater part, of the route taken by the second respondent's existing road service, but only to the extent that the latter was already overlapped by the existing road service of the applicant.

Held, that, under section 7 of the Omnibus Service Licensing Ordinance, the applicant's application should be granted.

Obiter: (1) Applications for road service licences must be considered and decided by the Commissioner himself and not by an Assistant Commissioner.

(2) The decision of a Commissioner either to grant or refuse an application for a road service licence should, under section 4, be in the form of a reasoned document which states the conclusion as to the facts and as to the questions of law, if any, which have arisen for determination by him.

CASE stated under section 4 of the Motor Car Ordinance, No. 45 of 1938.

H. V. Perera, K.C., with *D. W. Fernando*, for the applicant.

D. Jansze, Crown Counsel, for the first respondent.

H. W. Jayewardene, for the second respondent.

Cur. adv. vult.

February 3, 1949. BASNAYAKE J.—

The applicant, the Kandy Town Bus Company Limited (hereinafter referred to as the applicant), and the 2nd respondent, the United Bus Company Limited (hereinafter referred to as the 2nd respondent), are the holders of road service licences under the Omnibus Service Licensing Ordinance, No. 47 of 1942. On 12th December, 1945, the applicant applied for an additional road service licence under the Omnibus Service Licensing Ordinance, No. 47 of 1942, to provide a road service between the Kandy Market Bus Stand and a point at the 5th Mile Post on the road to a place called Palkumbura along Ward Street, Trincomalie Street, Katugastota Road, Ranawana Road and Medawala Road *via* Mahaiyawa,

Mawilmada, Katugastota, Yatiwawala, Uduwawala, Kunnanoya and Conigoda. A part of the proposed route, viz., that from the Kandy Market Bus Stand to the junction of Katugastota and Kurunegala Roads, was common to a route for which there was already a road service licence in favour of the second respondent. Earlier, on 12th September, 1945, the second respondent had also applied for an additional road service licence to provide a road service between the King's Street Bus Stand at Kandy and a place called Medawala *via* Katugastota, Ranawana and Attaragama. A part of the route proposed by the second respondent was common to the whole of the Kandy-Katugastota road service of the appellant for which he already held a licence.

On March 9, 1946, Annex 5 was sent to the applicant. It is in the following terms :—

“ No. N. A. 138,
Colombo, 9th March, 1946.

Routes : Kandy Market Stand-Medawala Junction and Kandy Market Stand-5th Mile Post at Palkumbura.

Dear Sirs,

I have refused your applications for road service licences for the above routes and have allowed a road service licence to the United Bus Co., Ltd., for the route Kandy-Medawala *via* Ranawana.

Yours faithfully,

(Sgd) D. R. C. HANWELLA,
for Commissioner of Motor Transport.

Kandy Town Bus Co., Ltd.,
Kandy.”

That letter is not under the hand of the Commissioner but is signed by a person purporting to act on his behalf. It does not appear therefrom that the Commissioner himself has made the decision thereby conveyed. Applications for road service licences under the Omnibus Service Licensing Ordinance, No. 47 of 1942, must be considered and decided by the Commissioner himself as that Ordinance does not contain a provision similar to section 2 (2) of the Motor Car Ordinance, No. 45 of 1938, whereunder an Assistant Commissioner may, subject to the general directions of the Commissioner, exercise the powers and duties of the Commissioner under the latter Ordinance. The reasons for the Commissioner's refusal of the applicant's application are not contained in Annex 5, which in all probability is intended to be the notice of refusal contemplated in section 8 of the Omnibus Service Licensing Ordinance, No. 47 of 1942, nor do they appear to have been recorded elsewhere. In the case of decisions under section 4 of the Omnibus Service Licensing Ordinance, No. 47 of 1942, the Commissioner should state his reasons in view of the injunction to the Commissioner in section 4 (a) that in making his decision thereunder he should have regard to the matters enumerated therein. The decision

should be in the form of a reasoned document which states the conclusion as to the facts and as to the questions of law, if any, which have arisen for determination by the Commissioner. A statement of the reasons underlying the Commissioner's decision would not only materially assist the tribunal of appeal in the exercise of its appellate functions, but also help the appellant to formulate the grounds of appeal which he is required to state by regulation 5 of the regulations made under section 4 of the Motor Car Ordinance. The instant case offers a good example of the difficulties caused by the absence of such a statement. A bare refusal of the applicant's application as in Annex 5 gives no indication that the Commissioner has exercised his judgment with due regard to all matters he is required by the statute to consider.

Dissatisfied with the decision of the Commissioner the applicant appealed to the Tribunal of Appeal. Its decision is recorded with the same brevity as the Commissioner's. It reads: "We have carefully considered everything and have come to the conclusion that there is insufficient evidence to vary the decision of the Commissioner. Appeal dismissed".

Dissatisfied with the decision of the Tribunal of Appeal the applicant made application to it to state a case under section 4 (6) (a) of the Motor Car Ordinance, No. 45 of 1938. That section is made applicable to the Omnibus Service Licensing Ordinance, No. 47 of 1942, by section 13 (8) of that Ordinance subject to one important modification, viz., that an applicant for a case stated under the latter Ordinance is entitled to make an application to the Tribunal to state a case not only on a question of law but also on a question of fact. The applicant's application has not been sent up to this Court but the case stated which is set out below appears to raise both questions of law and fact.

"The appellant is the Kandy Town Bus Co. Ltd. It had applied (copy of application marked Annex 1) for a route starting from Palkumbura at the 5th Mile Post from Katugastota, leading down to the smaller bridge at Katugastota, then 200 yards to the larger bridge, over the Mahaveli-ganga, on to Trincomalie Street, up to the Market Bus Stand at Kandy (sketch Map marked Annex 2). There was before the Commissioner another application (copy of application marked Annex 3) by the United Bus Co. Ltd., covering the whole of that route and in addition a distance of about a mile from Medawala to Palkumbura (sketch Map marked Annex 4). After consideration the Commissioner allowed the latter application and rejected the former application (copy of the order of the Commissioner of Motor Transport marked Annex 5).

"2. Both the companies interested are operating buses in the district. For instance the Kandy Town Bus Co. Ltd., is operating from the smaller Katugastota bridge over the larger bridge, down Trincomalie Street, through Ward Street, and the market bus stand, up to Peradeniya. The United Bus Co. has routes along the Kurunegala route with subsidiary lines from Hedeniya through Medawala to Bokkawala, another subsidiary line from Arambakade through Horambawa to Bokkawala (sketch Map marked Annex 6).

“ 3. The only question which had to be decided was which of the applications should be allowed. From the point of view of the greater convenience of the public, the Commissioner arrived at a certain decision (Annex 5) and this Tribunal after listening to everything that had been urged (copy of the petition of appeal to the Tribunal marked Annex 7) saw no reason to differ from the order of the Commissioner (copy of order of Appeal Tribunal marked Annex 8).

“ 4. The only question that arises for the opinion of the Supreme Court is :—

Is the Tribunal of Appeal justified in upholding the decision of the Commissioner of Motor Transport ? ”

It does not appear from the stated case that any facts outside the documents annexed to it were before the Commissioner or the Tribunal of Appeal, for if there were they would have been stated.

It appears from Annex 6 that the route to be taken by the road services proposed by the applicant as well as by the second respondent overlaps the entirety of the route now taken by the applicant's existing road service between the Kandy Market Bus Stand and Katugastota. It also overlaps a part, but not the greater part, of the route taken by the second respondent's existing road service to Kurunegala and Bokkawala, but only to the extent that the latter is already overlapped by the existing road service of the applicant.

Section 7 of the Omnibus Service Licensing Ordinance, No. 47 of 1942, provides that the Commissioner may issue licences to two or more persons authorising the provision of regular omnibus services involving the use of the same section of a highway if, but only if, that section of the highway is common to the respective routes to be used for the purposes of the services to be provided under each of the licences, but does not constitute the whole or the major part of any such route. The issue of the road service licence to the second respondent for the new road service proposed by him is therefore contrary to the express direction contained in section 7.

In view of the above considerations I think the Tribunal of Appeal was not justified in upholding the decision of the Commissioner of Motor Transport. On the material before me I am of opinion that the applicant's application for a road service licence should be granted.

The applicant is declared entitled to the costs of the hearing in this Court.

Although the regulations do not, as observed by me in the case of *Fernando v. Paul E. Pieris and four others*¹, require the Tribunal to give its reasons, it is desirable that it should do so, especially in view of the fact that it is open to a party dissatisfied with its decision to require that a case be stated for the opinion of this Court not only on questions of law but also on questions of fact.

Application allowed.

¹ (1948) 37 C. L. W. 32.