insufficient evidence in regard to abetment to warrant the Judge from withdrawing the cases of the first, fourth, and seventh accused from the Jury. In these circumstances their convictions cannot stand.

In view of the decision we have reached, it is unnecessary to consider the application of the seventh accused to lead further evidence in this Court.

We set aside the conviction and sentences imposed on the first, fourth, and seventh accused. The conviction and sentence passed on the second accused are affirmed.

Convictions of first, fourth, and seventh accused set aside.

Conviction of second accused affirmed.

1949 *Present :* **Windham J.**

EBERT SILVA BUS CO., LTD., Petitioner, and HIGH LEVEL ROAD BUS CO., LTD., Respondent

S. C. 264—Application for a Writ of Certiorari *against the Motor Tribunal*

Writ of certiorari—*Omnibus Service Licensing Ordinance, No. 47 of 1942—Sections 5 (1), 13 (1), 14 (1) (b) and 14 (3)—Powers of Tribunal of Appeal—Meaning of words " route which is substantially the same "—Temporary diversion of route—Not illegal.*

In an appeal under section 13 (1) of the Omnibus Service Licensing Ordinance it is competent for the Tribunal of Appeal to require that while a road along which the prescribed route is to run is closed to traffic the route shall temporarily run along another road or roads. Such an order does not exceed the jurisdiction conferred on the Tribunal by section 14 (1) (*b*).

In determining whether one route is substantially the same as another route, slight divergencies are immaterial.

THIS was an application for a writ of *certiorari* to quash an order made by the Motor Tribunal of Appeal.

H. V. Perera, K.C., with *N. E. Weerasooria, K.C., D. D. Athulathmudali* and *W. D. Gunesekera*, for the petitioner.

C. Thiagalingam, with *Stanley de Zoysa* and *S. E. J. Fernando*, for the fifth respondent.

Cur. adv. vult.

October 20, 1949. WINDHAM J.—

This is an application for a writ of certiorari to quash an order made by the first three respondents, acting as a Tribunal of Appeal under section 14 of the Omnibus Service Licensing Ordinance, No. 47 of 1942. In that order the Tribunal had revoked a decision by the fourth respondent, the Commissioner of Motor Transport, to issue an exclusive road service licence to the petitioner company, and had directed that a licence should issue instead to the fifth respondent company, who are contesting this application.

The petitioner company had no right of appeal against the order of the Tribunal, since under the joint operation of section 4 (6) (*a*) of the Motor Car Ordinance, No. 45 of 1938 (as later amended) and section 13 (8) of the Omnibus Service Licensing Ordinance, No. 47 of 1942, the only persons having such a right of appeal, by way of case stated, are the Commissioner of Road Transport and the person upon whose appeal to the Tribunal against a refusal by the Commissioner to issue him a licence, the Tribunal's order was made, namely the fifth respondent company in the present case. The petitioner, however, applies for a writ of certiorari on the ground that, in making the order which it did, the Tribunal was acting in excess of the jurisdiction conferred on it by section 14 of the Ordinance No. 47 of 1942 in general, and section 14 (1) (*b*) in particular.

In support of the application it has been urged by learned counsel for the petitioner that the order of the Tribunal was irregular in a number of respects. In only one respect, however, is it seriously argued that there was an irregularity amounting to an exceeding by the Tribunal of its jurisdiction, and it is accordingly this irregularity alone which merits consideration in the present application. For it is sound law and is agreed by both parties that in respect of such an irregularity the remedy by way of certiorari would lie, whereas for an irregularity not amounting to an excess of jurisdiction it would not.

The original decision of the Commissioner of Road Transport in favour of the petitioner was dated 10th July, 1948, and was made under sections 4 and 5 of the Ordinance. The decision was in respect of an application by the petitioner under section 3 of the Ordinance to ply their bus service for passenger hire in Colombo on the route between Bambalapitiya and Maradana. The Commissioner decided to grant the licence to the petitioner after considering applications by a number of other bus companies to ply along the same route. The decision was in the following terms :—

"A service from Bambalapitiya to Maradana is essential in order to provide travelling facilities to the students of the University and the schools and to officers of government departments in the area. Ebert Silva Bus Co. are operating the section from Maradana to Union Place and from there to Colpetty. Although they have not applied for the identical route mentioned by me but from Maradana to Bambalapitiya *via* Turret Road, I consider that they are the most suitable to run a service on the route. I therefore allow them the route,

Bambalapitiya Railway Station to Maradana *via* New Buller s Road-Thurstan Road-Cambridge Place-Albert Crescent-Museum Road-Baptist Road and Dean's Road ".

In accordance with the objects of the Ordinance, expressed in section 7 in particular, the above road service licence was exclusive to the petitioner, no other bus company being permitted to ply along the same route. One of the unsuccessful applicants for the licence was the fifth respondent company, who appealed under section 13 to the Tribunal. The Tribunal heard the appeal and, acting or purporting to act under section 14 (1) (*b*), they made the order now sought to be quashed. It was dated 26th March, 1949, and was in the following terms :—

" We set aside the order granting this licence to Ebert Silva Company and direct that licence issue to H. L. Bus Company for the route as follows :—Junction of New Bullers Road and Main Coast Road through Thurstan Road and Darley Road and Mac Callum Road to the Pettah so long as Sutherland Road remains closed, but we direct that in the event of Sutherland Road being opened to traffic Maradana shall be the Eastern terminus of this route. We are agreed ".

Section 14 (1) of the Ordinance is in the following terms :—

" 14 (1) A Tribunal of Appeal may in the case of an appeal under section 13 (1) by an applicant for a licence—

(*a*) make order confirming the decision of the Commissioner ; or

(*b*) make order that a licence shall be issued to the applicant and that the licence, if any, issued to any other applicant in respect of the same route or of a route which is substantially the same shall be revoked with effect from a date specified in the order ".

The contention of the petitioner is that the Tribunal in making their order exceeded the jurisdiction conferred on them by section 14 (1) in that the route in respect of which the licence was issued to the fifth respondent in their order was not the same route, nor even substantially the same route, as that over which the Commissioner, in his decision of 10th July, 1948 (revoked by the Tribunal's order) had permitted the petitioner company to run their buses.

Now if the routes in respect of which the Commissioner's decision and the Tribunal's order were respectively made were not the same or substantially the same routes, then I think there can be no doubt that the Tribunal in making their order were acting in excess of jurisdiction. The sole point for determination, therefore, is whether they were substantially the same. The route laid down in the Commissioner's decision, which I will call route A, had as its southern terminus the Bambalapitiya Station, whereas the route laid down in the Tribunal's order, which I will call route B, commenced at the junction of New Buller's Road with the Galle Road. These two termini, however, are sufficiently close together not to prevent the two routes from being substantially the same,

nor is it argued that on that ground they are not substantially the same. From this southern terminus of route B, which lies on route A, the two routes are identical, running along New Buller's Road, Thurstan Road, Cambridge Place, Albert Crescent and Alexandra Place, up to the junction of Union Place with Turret Road. At this point route A runs north along Dean's Road and its northern terminus is where Dean's Road joins Maradana Road. Route B, instead of running up Dean's Road, turns west along a portion of Union Place and then runs north along Darley Road, as far as the point where McCallum Road runs into Darley Road from the west. This point lies west of and quite close to the northern terminus of route A, for Darley Road runs parallel to and not far west of Dean's Road, which forms the last stretch of route A. The road which connects this point with the northern (Maradana) terminus of route A is a short one, namely Sutherland Road. Turning now to the Tribunal's order, we find that "in the event of Sutherland Road being opened to traffic Maradana shall be the eastern terminus of this route". In brief, it is contemplated that, when Sutherland Road is re-opened, route B shall, in its final stretch, run eastward along that road to the same terminus as that of route A, namely Maradana. If this route to Maradana along the Sutherland Road is to be deemed to be the route prescribed in the Tribunal's order, then it must, in my view, be held to be substantially the same as route A. The only divergencies would be the slight one at the southern end of the routes, to which I have referred earlier, and the divergence from a point about two-thirds along the common route, from which route B runs along Darley Road parallel and close to route A whereas the latter runs along Dean's Road, and they meet again at their common terminus. Both routes are about three miles long.

A complication occurs, however, from the fact that the Tribunal's order prescribes that so long as Sutherland Road remains closed to traffic, route B shall, from the junction of Darley Road and Sutherland Road, turn west along McCallum Road, and thence to the Pettah, which would entail running westward along the full length of McCallum Road, then turning eastward and proceeding along Norris Road to the Pettah, to a terminus which is about three quarters of a mile from Maradana, though in the same general locality. If this route to the Pettah is to be considered as the route prescribed in the Tribunal's order, then I do not think it could properly be held to be even substantially the same as route A. The northern termini would be different; and though it might be said that, up to as far north as the point where route B turned west at McCallum Road, the two routes A and B were substantially the same, the long additional extension of route B along McCallum Road and to the Pettah *via* Norris Road would prevent them from being so. This extension is about two miles long.

It is argued that they would be substantially the same because, in effect, route B would comprise the whole of route A, plus a considerable portion more. But if one route is longer than another to a substantial degree, as route B would be greater than route A, they cannot properly be said to be substantially the same, even if for almost the whole of the course of the shorter one, route A, they run over the same highway.

This point was made clear in the Privy Council case of the *K. V. Motor Transit Co., Ltd. v. the Colombo-Ratnapura Omnibus Co., Ltd.*[1] (a case arising out of the same Ordinance as the present case) where Sir John Beaumont, at page 275, observed as follows :—" It appears that Panadura is some 16 miles along the coast to Colombo, thence from Colombo to Ratnapura is some 50 miles, and from Ratnapura to Badulla is a further 80 miles. It is obvious therefore that the route Panadura to Badulla is not the same or substantially the same as the route Colombo to Ratnapura, and this has never been the appellant's case ".

In my view however, the question whether the route *via* McCallum Road to the Pettah would have been substantially the same route as route A does not arise, upon a reasonable interpretation of the Tribunal's order. For I read that order as prescribing that the route for which the licence was substantially being issued was the route *via* Sutherland Road to Maradana. It seems clear from the wording of the order that the alternative route *via* McCallum Road to the Pettah was merely a temporary diversion of the substantial route, during such time as Sutherland Road remained closed to traffic. Sutherland Road was in fact re-opened to traffic within a few weeks after the making of the order, and the buses of the fifth respondent company thereupon ran along it to the Maradana terminus. The temporary diversion to the Pettah must in my view be regarded merely as a " modification or variation " such as a Commissioner is entitled to attach to his approval of a route under section 5 (1) of the Ordinance No. 47 of 1942, which reads as follows :—

> " 5 (1) In any case where the Commissioner decides to grant any application for a road service licence for a regular service, he shall specify in the licence the route or routes on which the service is to be provided under the licence, and may for such purpose approve, subject to such modifications or variations as he may consider necessary, the route or routes or any one or more of the routes proposed by the applicant ".

By virtue of section 14 (3) of the Ordinance, a Tribunal is entitled to have regard to sections 4 to 7 in making an order under section 14, and this must include the power to impose such modifications or variations as a Commissioner may impose under section 5.

It is I think reasonable, and within the presumed contemplation of the Ordinance, to interpret section 5 (1) so as to enable a Commissioner (and accordingly a Tribunal) to require that while a road along which the prescribed route is to run is closed to traffic the route shall run along another road or roads, for such temporary diversion of routes is clearly for the convenience of the public and must at times be necessary.

For these reasons I hold that the Tribunal did not act in excess of jurisdiction in making their order of the 28th March, 1949. The rule *nisi* is accordingly discharged, and the application dismissed with costs.

Application dismissed.

[1] *(1946) 47 N. L. R. 271.*