

1937

Present : Soertsz J.

NAIR *v.* ALEXANDER *et al.*

773—P. C. Matale, 17,582.

Omnibus—Maximum weight allowed in terms of regulation—Three tons—Actual weight at the time less—Contravention of rule—Motor Car Ordinance, No. 20 of 1927, regulation 4.

The driver and the owner of an omnibus were charged with a breach of regulation 4 of the regulations made under sections 6 and 58 of the Motor Car Ordinance, No. 2 of 1927, which provided as follows: "The tare of the motor car together with the weight of the maximum number of passengers and the maximum load, if any, which it is licensed to carry, shall not in any case exceed the weight specified" which was three tons.

The omnibus in question was carrying a load which was actually less than three tons at the time.

Held, that the test to be applied was not the actual weight of the omnibus at any particular time but its maximum weight calculated in terms of the regulation.

Brantha v. Pereira (29 N. L. R. 38) followed.

Where the licensing authority had made an endorsement on the licence to the following effect "load to be reduced on restricted roads",—

Held, that the licensing authority had no power to permit what is inconsistent with the law.

A PPEAL from a conviction by the Police Magistrate of Matale.

M. F. S. Pulle, C.C., for the complainant, appellant.

C. E. S. Pereira, for the accused, respondent.

Cur. adv. vult.

June 14, 1937. SOERTSZ J.—

The first accused is the driver and the second accused is the owner of an omnibus bearing No. E 724. They were charged with a breach of regulation 4 of the regulations made under sections 6 and 58 of Ordinance No. 20 of 1927, and published in the *Government Gazette* of March 13,

1936. That regulation is in these terms—"The high ways outside Colombo specified in Schedule B hereto are hereby declared to be suitable for all motor cars other than lorries, trailers, and six-wheeled motor cars, subject to the condition of restrictions contained in the first column of the said schedule and hereby imposed in respect of the use of any particular highway thereof provided that—

(1) The tare of the motor car together with the weight of the maximum number of passengers and the maximum load, if any, which it is licensed to carry, shall not in any case exceed the weight specified in the corresponding entry in the second column of the said schedule ; and (2) the maximum axle load does not exceed three tons.

The highway in question in this case is that section of the Kandy, Matale, Dambulla road that lies beyond the 31st milepost and the Nalanda-oya bridge. The weight given for this section in the corresponding entry in column two is three tons. In terms of the concluding part of the regulation, that weight of three tons is the weight of the tare of the omnibus plus the weight of the maximum number of passengers and the maximum load, if any, which it is licensed to carry.

The facts of this case are that this omnibus was, on the occasion with which we are concerned, on the Dambulla side of the 31st milepost. In it there were 20 persons including the driver and the conductor. The tare of the omnibus is 1 ton 17 cwt. 1 qr. It is licensed to carry 19 passengers and the driver and conductor and goods up to 480 pounds and 2 gallons of petrol on the hood, or alternatively to carry up to 3,142 lb. and 6 passengers and the driver and the conductor. So that when this omnibus is being used for the conveyance of more than 6 passengers, it is capable of carrying 21 persons plus 480 lb. plus 2 gallons of petrol. Section 63 (1) of the Ordinance No. 20 of 1927 says that each person shall in the case of hiring cars, be deemed to weigh 120 lb. Therefore, the maximum weight is $21 \times 120 + 480$ lb. + the weight of 2 gallons of petrol, i.e., $2,520 + 480 = 3,000$ + the weight of the petrol. Add the tare and the result is 3 tons 4 cwt. 4 lb. + 2 gallons of petrol. In the alternative case, the maximum weight of the omnibus is $8 \times 120 + 3,142$ lb. + the weight of 2 gallons of petrol, i.e., $4,102$ lb. + 2 gallons of petrol or 1 ton 15 cwt. 2 qr. 14 lb. Add the tare and the result is 3 tons 13 cwt. 3 qr. 14 lb. plus the weight of the petrol. In both cases, therefore, the maximum weight is well over the prescribed 3 tons. But it is contended that inasmuch as this omnibus was carrying *on this occasion* less than 3 tons, there was no breach of the regulation. A similar contention was put forward in the case *Brantha v. Pereira*¹ but Dalton J. rejected it observing that if the actual weight was intended, it would have been very easy to say so. I am in respectful agreement with this view. This case was relied upon by the prosecution in the Court below and in regard to it, the Magistrate said, "on the authority of the case reported in 29 N. L. R. 38, the accused will be guilty of an offence but the accused pleaded that the licence issued was subject to special conditions inscribed on the reverse side of the licence D 1 'load to be reduced on restricted roads'", and he upheld the contention. In my opinion, this

¹ 8 C. L. Rec. 41 ; (1926) 29 N. L. R. 38.

is an impossible view as the law stands at present. It amounts to holding that it is possible to license persons to break the law. Not even a licensing authority has the power to do that. The law is clear that the test is not the actual weight of the omnibus at any particular time, but its maximum weight calculated in the manner indicated. The words of the regulation are unequivocal, "the tare of the motor car together with the *maximum* number of passengers and the *maximum* load if any". The purpose of the words "if any" is not quite clear unless those words have been inserted to meet a possible case of a hiring car being licensed for carrying passengers only. But it is quite clear that so far as passengers and the load come into question, it is the maximum number and the maximum load and not the actual number and the actual load that the legislature contemplated. I was strongly addressed in regard to the hardship that this interpretation entails so far as owners of omnibuses are concerned. Perhaps it is a hardship that they should have to maintain relays of omnibuses to suit the exigencies of the route on which they plied their omnibuses but that is a matter for the legislature. It is beyond my control. I am concerned with interpreting the law as it is. I would however add, if it will avail the accused at all, that the licensing authority appears to have interpreted this regulation in the way in which they the accused ask it to be interpreted, for there is the endorsement on the licence "load to be reduced on restricted roads" implying thereby that an omnibus of which the maximum attainable load is over 3 tons can keep within the law by discarding goods or passengers to the requisite extent when the 3-ton limit of road is reached. But as I have already held, however reasonable this view may be, it is inconsistent with the law as it is. While I am on this point the words of Dalton J. in the case I have referred to, occur to me "if effect can be given to the argument advanced . . . , the provision would be unworkable without a large body of traffic inspectors along the road continually checking the number of passengers entering and leaving the vehicles". I notice that in regard to this particular route, Kandy, Matale, Nalanda, Dambulla up to 31st milepost, the allowed weight is 5 tons "with the exception of the Katugastota bridge on which the maximum weight allowed is 3 tons". This, at first sight, may appear to support the case for the accused, but as a matter of fact, it refutes that case by providing a very limited exception. And in the case of that exception, the inconvenience emphasised in the passage I have just cited from the judgment of Dalton J. will hardly apply, for an inspector stationed at that particular point will suffice for the enforcement of that exception.

I am, therefore, of opinion that the accused are guilty and that the order of the Magistrate is wrong. I set aside the order and convict the accused on the charges laid against them. In regard to sentence, in my opinion, this is a case for nominal sentence. The licensing authority has misled the accused into the commission of this offence by making the endorsement he made on the licence. Moreover, the accused have plied this omnibus on this route for a long time without this question being raised. I would therefore, order each accused to pay a fine of one rupee, in default one day's simple imprisonment.

Set aside.