1951 *Present:* **Nagalingam J.**

EBERT SILVA OMNIBUS CO., TLD., appellant, *and* HIGH LEVEL ROAD BUS Co., Ltd. *et al.*, Respondents.

S. C. 394—Case stated under the Motor Car Ordinance, No. 45 of 1938—Tribunal of Appeal No. 6,532

Omnibus Service Licensing Ordinance, No. 47 of 1942—Application for route licence—Refusal—Proviso to section 4—Strict compliance necessary.

Where, in an application for a road service licence, the Commissioner received representations from a local authority inducing him to take the view that the application should be refused—

Held, that under the proviso to section 4 of the Omnibus Service Licensing Ordinance the Commissioner should, before refusing an application, (*a*) give notice to the applicant and (*b*) consider any matters that the applicant wishes to urge in support of his application.

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

N. M. de Silva, for the appellant.

C. Thiagalingam, K.C., with *C. E. Jayewardene*, for the 1st respondent.

Cur. adv. vult.

[1] *(1948) 50 N. L. R. 248.*

October 16, 1951. NAGALINGAM J.—

This is a case stated under section 4 (6) of the Motor Car Ordinance. No. 45 of 1938, for the opinion of this Court. The appellant applied to the Commissioner of Motor Transport for a licence to ply buses on the route Thimbirigasyaya to Fort *via* Hyde Park Corner, Union Place and Darley Road. In view of the arguments addressed to me I think it is desirable that the entire text of the letter of the Commissioner to the appellant should be set out :—

" I have refused your application dated 8.10.49, for a road service licence to provide a regular service of omnibuses on the route mentioned above as it is not recommended by the local authority as it is neither suitable nor safe for other users of this route. "

The first question debated is whether the ground of refusal was that the local authority had not recommended the application for the reason that the route was neither suitable nor safe for other users of the route, as contended for by the appellant, or whether the refusal by the Commissioner was based upon two grounds, firstly that the application was not recommended by the local authority and secondly that the route was neither suitable nor safe for other users of this route, as urged by the first respondent and as would appear to have been adopted by the Tribunal of Appeal.

The letter may be rather difficult of grammatical construction, but if the Commissioner intended to base his refusal upon two independent grounds as suggested by the first respondent I cannot help but think that he would have expressed himself in a manner which would have left no room for argument, especially as he need have only interposed a conjunction between the words " authority " and " as " in his letter. It seems to me that the appellant's construction is the more sound one that the refusal was based only on one ground, namely, the lack of support to the application by the local authority and that that lack on the part of the local authority was due to the circumstance that the route mentioned by the appellant was one which would be rendered unsuitable and unsafe for other users of the route if the appellant's application was granted.

In this view of the matter, the question that needs an answer is the first one in the case, and that is whether the Commissioner was " entitled to decide the application without an *ad hoc* inquiry and without hearing evidence, if any, from appellants ". There can be only one answer to this question in view of the imperative nature of the requirement set out in the proviso to section 4 of the Omnibus Service Licensing Ordinance, No. 47 of 1942. The proviso requires that the Commissioner should not make any decision refusing an application on the ground of any representation made to him *inter alia* by a local authority except after notice to the applicant and consideration of any such matters as may before a date to be specified in the notice be urged by the applicant in support of his application.

The language of the proviso indicates that it is incumbent upon the Commissioner, where he has received representations from a local authority inducing him to take the view that an application for a road service

licence should be refused, that he should, before finally deciding upon refusing the application, (*a*) give notice to the applicant and (*b*) consider any matters that may be urged by the applicant in support of his application. If the Commissioner fails to notice the applicant and thereby deprives the applicant of his right to urge such matters as he may deem necessary to place before the Commissioner in support of his application, there is clearly a violation of the proviso of the Ordinance, and any decision or refusal, therefore, must be regarded as having been made illegally and contrary to law.

It would therefore follow that the order of the Commissioner in this case refusing the application of the appellant on the ground of certain representations made to him by the local authority without the appellant having been given an opportunity of being heard in support of his application and of refuting if necessary the validity of the representation made by the local authority is bad in law and cannot be sustained.

I am therefore of opinion that the order of the Commissioner and that of the Tribunal affirming the decision of the Commissioner are both bad and should be set aside. The proceedings should be remitted to the Commissioner with a direction that he should comply with the terms of the proviso to section 4 of the Omnibus Service Licensing Ordinance before making, if at all, any final decision refusing the appellant's application.

In view of the answer to the first question stated, the other questions need not be answered.

The first respondent will pay to the appellant the costs of argument in this Court and the appellant will also be entitled to a refund of any fee paid by him under paragraph (*a*) of sub-section (6) of section 4 of the Motor Car Ordinance.

Order set aside.