1943 *Present* : **de Kretser J.**

NORTH-WESTERN BLUE LINE COMPANY, Appellant, *and*
K. B. L. PERERA, Respondent.

IN THE MATTER OF A CASE STATED TO THE SUPREME COURT (No. 3,089) IN TERMS OF THE MOTOR CAR ORDINANCE AND THE OMNIBUS SERVICE LICENSING ORDINANCE.

Omnibus Service Licences—Applications to run omnibus service on a definite route—Contest between two companies—Method of calculation of bus licences held by the rival companies—Omnibus Service Licensing Ordinance, No. 47 of 1942, ss. 4 (b) and 6 (1) (e).

In considering applications for licences to run omnibus services on a route between two termini, the licences covering those points only should be taken into account in deciding which of two companies held the majority of licences.

Licences on the authority of which omnibuses could be used on that section of the highway and the highway beyond the two termini should not be taken into consideration.

THIS was a case stated to the Supreme Court by the Tribunal of Appeal under section 6 (*a*) of the Motor Car Ordinance, No. 45 of 1938, as amended by the Omnibus Service Licensing Ordinance, No. 47 of 1942.

The facts appear from the judgment.

R. L. Pereira, K.C. (with him *J. E. M. Obeyesekere*), for appellants.

H. V. Perera, K.C. (with him *D. W. Fernando* and *Stanley de Zoysa*), for respondents.

T. S. Fernando, C.C., for the Commissioner of Transport.

Cur. adv. vult.

June 21, 1943. DE KRETSER J.—

The case stated for the opinion of this Court arises from the following facts. The Kelani Valley Motor Transit Company, whom I shall call the *respondents*, and the Colombo-Ratnapura Omnibus Company, whom I shall call the *appellants*, are the parties concerned. The Commissioner took up for consideration applications for road service licences between Colombo and Ratnapura, and in dealing with them guided himself as he is required to do by Ordinance No. 47 of 1942, by the rules laid down in the first schedule to that Ordinance.

The question is whether he correctly interpreted the relevant rule.

At the hearing the debate was mainly regarding the meaning of the word "route", incidentally bringing in the meaning of the expressions "same route or routes which are substantially the same", and "licence . . . . authorising the use of omnibuses on such route or on routes substantially the same as such route".

The appellants contended that "route" meant the route under consideration, and that was Colombo to Ratnapura, and licences covering those two points only should be considered in deciding which of them held the majority of the licences, while the respondents contended that "route" only meant the highway between the two points mentioned and the licences to be taken into account were those under the authority of which omnibuses could be used on that section of the highway and should include all licences which related to that section and the highway beyond the termini.

Between Colombo and Ratnapura the appellants held eleven licences and the respondents only six.

Between Colombo and points beyond Ratnapura, but still in the Ratnapura District, the appellants held seven and respondents seven.

The respondents, however, held six licences from Panadura to Badulla *via* Colombo and Ratnapura, and from Panadure to points in the Ratnapura District beyond Ratnapura four licences. While, therefore, the respondents were in a minority regarding the first two classes, they held the majority of the licences when all four classes were taken into

the reckoning. Even if the buses from Panadure to the Ratnapura District were taken into account, still the respondents were in a minority and the contest therefore raged round the six omnibuses which went as far as Badulla.

From the above statement it will be clear that consistency of argument necessarily means either the inclusion or the exclusion of the last three classes, and that it is incorrect to discuss the matter on concessions "for the sake of argument".

Ordinance No. 47 of 1942 made certain drastic changes in the existing law and it is necessary to ascertain, if possible, the principles underlying the alterations, and to do that a brief review of the history of the law is both useful and necessary. It is necessary also to bear in mind that the Ordinance is to be read and construed as one with the Motor Car Ordinance, No. 45 of 1938, as amended by section 22 of the new Ordinance.

Briefly then, the earlier Ordinance insisted that applicants for licences should not only notify the routes on which they proposed to establish services but also specify the termini of such routes, and it was made obligatory on licences on pain of penalty to complete the run between the points specified except for reasons which were named, such as a mechanical breakdown. One would imagine that if an applicant said that he proposed to run his omnibus between Colombo and Ratnapura he had already specified the termini and that insistence on his naming them was superfluous. It was intended, however, to cure an existing evil which caused inconvenience to the public, whose interests were of paramount importance, and it was sought to prevent a licensee from abbreviating the service for which he had a licence on the pretext that he could stop or start from any point within the ambit of his licence. The requirement that he should continue to specify the route as he did before was not meaningless but was only intended to fix down the licensee to the obligation to run his omnibus between the points specified. "The route", therefore, continued to mean "the run" or "the service" and, even it if did not, it now came to mean the run between the points specified. That is, the words had a particular significance and did not mean merely the highway between the points named. As if to emphasise this, the Ordinance used the word "highway" in various sections as I shall show later. An applicant for a licence did not, when he named the route, mean to apply for permission to use the highway but he was naming the limits of the service he proposed to maintain, that is to say, he was designating the nature of his service to the public. Under the old Ordinance, which I shall call the main Ordinance, there could, however, be many services by different parties on the same route and the same party might run his omnibuses on different routes. This led to many ugly situations of which the public and the Courts are only too well aware. The new Ordinance sought to remedy this evil by limiting the services on any particular route and even establishing monopolies, if possible, the monopolist compensating the rival who was eliminated. Vested interests had always been recognized, and under the main Ordinance the powers of the Commissioner were considerably fettered. It was desired probably to enlarge his discretionary powers (and he has been given very large powers

under the new Ordinance) but it was necessary to curb autocratic action on his part and to allay the fears of vested interests and so rules were made for his guidance which served at least to veil his powers.

It was made possible for a company or individual to acquire existing licences on a particular route and then when the time came the Commissioner would give preference to the company or individual who held all or the majority of the licences on that route. The licences were those in force before January 1, 1943, and as licences were annual that meant licences for 1942.

In guiding himself, however, the rules which were given in schedule I were subordinate to the directions given in section 4, which amply safeguarded the interests of the travelling public and in clause VI of sub-section (*a*) gave the Commissioner very large powers in the words "such other matters as the Commissioner may deem relevant", *i.e.*, relevant chiefly to safeguarding the interests of the public.

Section 18 (2) gave the Minister for Local Administration extremely wide residuary powers, and he was empowered by amendment of the first schedule to "resolve any matter of doubt or difficulty which may arise in connection with the first issue of road service licences under this Ordinance." He did in fact attempt to solve a preliminary difficulty and apparently was confronted with another as a result. The Ordinance does not specify the order in which the Commissioner should take up the various routes for consideration. To my mind it did not, because it was left to the Commissioner to exercise his discretion in the matter. He was expected to take up the more important services first. The main highways ran in about six directions and only sections of each were of major importance. To work the Ordinance to his satisfaction he might make any start that would suit his purpose best. If the Commissioner's interpretation of the rule—with which the majority of the Tribunal of Appeal agreed—were correct, then it might make a great difference.

To take the present claimants, if the Commissioner took up the route from Colombo to Avissawella the appellants would score an easy victory. If he then took up Colombo to Ratnapura, section 7 of the new Ordinance might involve him in difficulty, for section 7 (1) directed him to "so regulate the issue of licences as to secure that different persons are not authorised to provide regular omnibus services on the same section of the highway".

Note that the words are not "*on the same route*" but "*on the same section of the highway*". He was given power in a proviso to deal with a case where the needs of the public demanded services by more than one person but this power was strictly limited by the condition that he could exercise it only if the section of the highway did not constitute the whole or major part of "any such route", *and* provided the principal purposes of the services licensed were substantially different.

It was agreed that the distance from Colombo to Ratnapura is 56 miles and from Colombo to Avissawella 30 miles, and that Colombo to Avissawella was the major part of the route Colombo to Ratnapura. I do not say that I agree with this interpretation of the word "major" but merely state that Counsel agreed that that was its meaning. It would seem to

follow that competition could not be allowed between Colombo and Avissawella, which was the same section of the highway, and licences from Colombo to Ratnapura could only be issued to a rival on condition that no service was provided between Colombo and Avissawella, the condition being imposed under section 6. Conversely if the Colombo to Ratnapura route were first considered the applicants for licences between Colombo and Avissawella might have to be denied them later. Besides difficulties might arise regarding the assessment of compensation.

Now, under section 57 of the main Ordinance the Commissioner was empowered to classify and number routes and he had then to publish such lists in the *Gazette*. The Commissioner drew up a list classifying certain routes as main routes, others as subsidiary, and others as local, and this list was published in *Gazette* No. 8,413 of November 18, 1938. The proclamation was for general information and related to licences for 1939, and purported to state the "principles" which had been adopted. When the question arose as to the order in which he should take up routes for consideration under the new Ordinance, the Minister purporting to act under section 18 directed that he should first take up what had been classified as main routes. The regulation made by him was published in the *Gazette* No. 9,057 of December 29, 1942. Colombo to Ratnapura was a main route; Ratnapura to Bandarawela and Bandarawela to Badulla were subsidiary routes. But at a conference (between whom is not stated) held on December 31, 1942, the Minister made the following minute, which was not published in the *Gazette* :—

> "At a conference held on December 31, 1942, the Hon. the Minister informed the Commissioner of Transport that the order of December 26, 1942, published in *Gazette* No. 9,057 of December 27, 1942, should not be considered as affecting the definition of routes or routes which are substantially the same in interpretation of these words in the first schedule to Ordinance No. 47 of 1942, and should not be taken into consideration."

Mr. H. V. Perera expressly stated that he did not argue that the fact that Colombo to Ratnapura was classified as a main route affected the question under consideration but he gave me the impression of adroitly suggesting that it should affect the question. He was right in stating that it had no bearing on this appeal. It is interesting to note that the Minister in the order he published gave another direction also, viz., that the Commissioner should first dispose of applications for the entirety or major portion of a highway before dealing with those affecting a minor portion of *such* highway. I give the order in full so that its force may be noticed.

"1A. Notwithstanding anything in paragraph 1 of this schedule, the Commissioner shall—

(*a*) dispose of each of the applications for the licence to provide an omnibus service along the entirety or the major section of a highway, before deciding to grant or refuse any application for a licence to provide an omnibus service on a route which consists of or includes a part or a minor section of such highway ;

(*b*) dispose of applications for the licence to provide an omnibus service on any route heretofore classified by the Commissioner as a main route, before deciding to grant or refuse any application for a licence to provide an omnibus service on any route heretofore classified by him as a route subsidiary to that main route."

Mr. R. L. Pereira devoted much energy to urging that the route Colombo to Badulla was not substantially the same as the route Colombo to Ratnapura, and that if it were, then Colombo to Avissawella was substantially the same as Colombo to Ratnapura and the licences for the shorter section should be counted, whereupon the appellant would win.

Mr. H. V. Perera did not contend that the route Colombo to Badulla was substantially the same as Colombo to Ratnapura. He correctly stated that it was not. It is equally clear that Colombo to Avissawella is not substantially the same route as Colombo to Ratnapura.

Mr. H. V. Perera's *one* contention was that licences from Colombo to Badulla were licences "authorising" "the use of omnibuses" on the Colombo-Ratnapura route, *route* meaning nothing more than *highway*. He emphasised the difference in language between the main provision of the first rule—"licences . . . . *in respect of* the same route"—and that in sub-section (1) and he went so far as to say that the phrase "in respect of a route" "catches up the whole concept of a licence" and therefore a licence *in respect of* Colombo to Ratnapura is not the same as one in respect of Colombo-Badulla.

To my mind the difference in phraseology does not make any difference. It is always dangerous to guide oneself solely by a difference in phraseology. One needs to know much more. The context may show that the difference is immaterial. Every licence "in respect of a route" does authorise the use of that omnibus on that route, and a licence authorising the use of an omnibus on a route is a licence of that omnibus in respect of that route. A licence authorises, and it must be in respect of some matter, in respect of a vehicle or of a commodity and in respect of routes, or hours, or other matters.

Mr. Perera's argument really depends on the assumption that "route" and "highway" are the same not only in ordinary language but in the Ordinance also. If it be not so his whole argument fails. I shall, however, look at the question from other points of view as well.

What is important is to consider the main provision of rule 1. It deals with applications for licences for road services in respect of the *same* route or of routes which are substantially the same. It may well have said "licences authorising the use of omnibuses on the same route, &c." It is the *route* which is the subject of consideration and the application must be for that route, that is the route taken up for consideration. Mr. H. V. Perera conceded that much. Having then sorted out the applications and decided on the route to be considered, the next step is merely a counting of licences already held for *such* route. That is all the rule means, in my opinion. There is no justification for taking into the reckoning any licences not limited to that route. A licence in respect of Colombo to Badulla is not an authority to use the omnibus on the Colombo-Ratnapura *route* though it may use the highway between these points: it is conceded that it is not in respect of Colombo to Ratnapura,

not in respect of the same route or one substantially the same, in brief the two licences are not identical. The argument that the greater includes the less is fallacious. The longer highway may include the shorter but the routes are quite distinct and separate things, and the circumstance that the services use the same highway does not make one part of the other. In brief I hold that the word "route" does not mean highway.

Mr. H. V. Perera argued that the word "only" would have come after the words "such route" if it was intended to limit the licences as indicated by me. The addition of the word "only" would have eliminated discussion perhaps, as would the addition of the words "or of routes of which it is a part", but I do not think the addition of these words necessary in order to gather the meaning of the Legislature. One cannot ignore the words "such route". What is that? Clearly the route taken up for consideration, and what does rule 1 say? It refers to applications in respect of the *same route.* The route being considered is, therefore, a fixed thing and the licences to be considered must authorise the use of omnibuses on this fixed section, that and no more and no less. Too much emphasis should not be laid on the word *use* or the word *on.* The licence was not intended to authorise the use of an empty omnibus nor was it concerned with collecting a road tax : it was intended to provide a *service* and emphasis was laid on the termini of the route. The service was between the termini and the Commissioner would consider the main service, viz., that indicated by the termini, and would not consider the wayside stopping-places which would be purely subsidiary matters.

The words "authorising the use of omnibuses" would therefore mean "authorising an omnibus service" and the service authorised would be, in the respondents' case, Colombo to Badulla and not Colombo to Ratnapura. Theoretically at least it is possible to contemplate 'bus after 'bus going past Ratnapura with a full complement of passengers from Colombo to Badulla, and while Badulla would be served Ratnapura might have no service at all. The primary service provided by the respondent would be for travellers to Badulla, and travellers to Ratnapura would only be taken if there were room. The more it is purely a service to Badulla the better would the public be served and probably the more would respondent benefit. It is one of the relevant matters which the Commissioner might consider under section 4.

It seems to me also that the whole scheme of the Ordinance might be involved in chaos if Mr. H. V. Perera's contention were upheld. As the Ordinance now reads, I think the draftsman, if he used colloquial language, might have said—"If you have more than one application for licences for a particular route, the routes being those at present in existence, give the licence to the person who has all or the greater number of licences for that route, and compensate those who go out". If, however, respondents' contention be the true one, the Commissioner would have to consider all licences going past Ratnapura and even those for points *between* Colombo and Ratnapura, for those licensees might be affected when they did apply or rather when their applications were being considered.

If Mr. H. V. Perera's clients failed, would compensation have to be awarded for the service Colombo to Badulla as well, or would the Commissioner have to wait and see how the respondents acted regarding

Ratnapura to Badulla? He might have to wait and see how things turned out on other sections of the road between Colombo and Ratnapura. The result would be that he would not deal with a particular route but have to deal with all the connected routes at one time. Clearly this was not intended.

Again, would the respondents be entitled to vote, if I may so call it, when Colombo to Badulla, Colombo to Avissawella, Ratnapura to Badulla, &c., were being considered as one highway, and also vote when Colombo to Panadure was being considered?

The route was the route of the main Ordinance, *i.e.*, the route between certain termini, and a licence should not be considered as so many licences embodied in one document. In my opinion Mr. H. V. Perera's argument can be met by merely saying that there is no real difference between the phraseology in the different parts of rule 1, but I have considered it from all possible angles because it was so strenuously argued and such important issues are at stake.

Let us consider some of the sections of the new Ordinance. Section 2 says that when *a* licence has been issued specifying the *routes* on which a service is to be established, no omnibus shall be used on any *highway* included in such route except under the authority of that licence. At the very outset we have a clear distinction drawn between the route and the highway included in such route. Section 3 requires applicants for a road service licence to give particulars of the route or routes on which they propose to provide *a* service. It seems to me that a person proposing to establish a service between Colombo and Ratnapura and also between Ratnapura and Badulla would have to say so at one and the same time. The application being thus made the Commissioner cannot possibly take an application from Colombo to Badulla along with another application in respect of Colombo to Ratnapura for they would not be for the same route or substantially the same route. Licences for Colombo to Badulla would not come before him therefore. If he obeyed the Minister's direction he would have to take up the longer highway, *i.e.*, Colombo to Badulla, and having dealt with that then deal with Colombo to Ratnapura. Colombo to Badulla would thus be eliminated from consideration. It is interesting to note that the Minister seems to distinguish between *highways* and *routes*.

Section 4 (*b*) refers to "the proposed route or routes or any part thereof". It would seem that the route is an entity in itself and there may be a part of it. Section 6 (1) (*e*) refers to licences "in respect of the same section of a highway", not the same route or section of a route. Note also the words "in respect of" meaning nothing more than "authorising the use of omnibuses on".

By section 10 a licensee is authorised to operate an omnibus service on the route or routes specified in the licence. The section in the main Ordinance requiring an omnibus to proceed from terminus to terminus is repealed. All that a licensee is expected to do is to provide a service on the route for which he is licensed. If he could provide a service only for part of the route not only would that be a retrograde step but the

licence would say so. The service and the route is one and it was apparently considered unnecessary to require an omnibus to proceed to its termination provided the service was maintained.

Mr. R. L. Pereira referred me to *Gazette* No. 9,007 of September 16, 1942, which gives the reasons for the new Ordinance. It only confirms the view which I have taken independently of this proclamation.

Counsel sought to throw light on the matter now under consideration by propounding certain problems regarding the question of compensation and creating what seemed like unfair situations. I have considered these and other similar problems but I do not propose to go into them in detail. The time for considering such problems has not yet come. In my opinion they will never arise, *e.g.*, if appellant ran only one omnibus between Colombo and Ratnapura and respondent ten between Colombo and Badulla and both applied for licences from Colombo to Ratnapura, appellant might not succeed for two reasons, viz., (*a*) under section 4 the Commissioner might eliminate him as not providing a sufficient service ; and (*b*) respondent would limit some of his buses to the Colombo-Ratnapura route when making his application, *e.g.*, five to run on that route. It would then be not a case under rule 1 but a case under section 4.

In my opinion, therefore, the appellants succeed and are entitled to their costs which the contesting respondents will pay.

I have already ruled on the right of the respondents to appear and be heard, and having of their own choice taken up the contest they cannot complain if they are ordered to pay costs.

It might be wise to make amendments in the Ordinance which will make clear the position of parties like the respondent. Under the main Ordinance applicants for licences were not pitted against each other as violently as they are now. Provision was made for objections being heard by the Tribunal of Appeal but the section dealing with reference to this Court through the medium of a case stated was limited to questions of law only, whereas now questions of fact may be referred. The persons interested in the question of law and empowered to have it stated were the Commissioner or the unsuccessful applicant and the position still remains the same, but regarding respondents some doubt seems to exist as to whether " the other party " (of sections 4, 6, *e*) includes the contesting applicant. I understand the party objecting is always heard by the Tribunal of Appeal. It seems to follow that he should be heard by this Court too.

Appeal allowed.