

[IN THE PRIVY COUNCIL.]

1946 Present : Lord Wright, Lord du Parc and Sir John  
Beaumont.

THE KELANI VALLEY MOTOR TRANSIT CO., LTD.,  
Appellant, and THE COLOMBO RATNAPURA  
OMNIBUS CO., LTD., Respondent.

*Privy Council Appeal No. 90 of 1945.*

*Omnibus Service Licences—Contest between two companies for exclusive licence on a particular route—Method of calculation of licences already held by the rival companies—Distinction between “highway” and “route”—Omnibus Service Licensing Ordinance, No. 47 of 1942, Schedule I.*

When considering which of two companies was entitled, under the First Schedule to the Omnibus Service Licensing Ordinance (No. 47 of 1942), to an Exclusive Road Service Licence on the route Colombo to Ratnapura it was the duty of the Commissioner of Motor Transport to give preference to the company which already held, at the material date, the greater number of licences authorising the use of omnibuses on the route Colombo to Ratnapura. The only licences to be reckoned were those confined to the route Colombo to Ratnapura, and licences covering the whole of that route and also some further distances beyond Colombo or Ratnapura or both could not be taken into account.

“Route” and “highway” in the Motor Car Ordinances of 1938 and 1942 are not synonymous terms. A “highway” is the physical track along which an omnibus runs, whilst a “route” is an abstract conception of a line of travel between one terminus and another, and something distinct from the highway traversed. It is of the essence of a route for which a licence is granted that it should run from one terminus to another.

**A**PPPEAL by special leave from a judgment of the Supreme Court. The judgment of the Supreme Court is reported in (1943) 44 N.L.R. 352.

*D. N. Pritt, K.C., and Stanley de Zoysa, for the appellant.*

*Cyril Radcliffe, K.C., L. M. D. de Silva, K.C., and R. K. Handoo, for the respondent.*

May 7, 1946. SIR JOHN BEAUMONT.—

This is an appeal by special leave from the judgment of the Supreme Court of Ceylon dated June 21, 1943, reversing a majority decision of the Tribunal of Appeal constituted under the Motor Car Ordinance, No. 45 of 1938, which had affirmed an order of the Commissioner of Motor Transport dated January 13, 1943, granting to the appellant and refusing the respondent an Exclusive Road Service Licence under the Omnibus Service Licensing Ordinance, No. 47 of 1942, for the route from Colombo to Ratnapura.

The question at issue is whether the appellant or the respondent at the material date held the greater number of licences authorising the use of omnibuses on the route Colombo to Ratnapura, and the answer to that question depends upon whether the only licences to be reckoned under the relevant legislation are those confined to the route Colombo to Ratnapura as the respondent contends, or whether licences covering the whole of that route and also some further distances beyond Colombo or Ratnapura or both are to be reckoned, as the appellant contends.

To determine this question it is necessary to notice the relevant provisions of the Motor Car Ordinance, No. 45 of 1938, (hereinafter referred to as "the Original Ordinance") and the Omnibus Service Licensing Ordinance, No. 47 of 1942, (hereinafter referred to as "the amending Ordinance"). In the first schedule to the latter Ordinance occur the actual words which have to be construed. The original Ordinance so far as relevant contains the following provisions. Section 29 (1) provides that no person shall possess or use a motor car for which a licence is not in force. Section 43 (2) (a) provides that every applicant for a licence for an omnibus shall specify in his application particulars of the route or routes on which it is proposed to provide a service under the licence. Under section 45 (1) (a) every licensing authority shall forward to the Commissioner every application received by that authority for a licence for an omnibus, together with a recommendation upon the application. Under section 47, the Commissioner in deciding whether an application for a licence for an omnibus should be granted or refused, has to consider amongst other things whether by reason of the length of the proposed route or routes or the extent of the area covered thereby, the service under the licence will be efficient and likely to provide adequately for the needs of the public. Under section 48 (1) where, upon an application for a licence for an omnibus, the Commissioner decides that the licence should be granted, he has to determine the route or routes in respect of which licences may be issued. Section 50 provides for an appeal from a decision of the Commissioner to the Tribunal of Appeal of which the constitution and powers are defined by the Ordinance. Under section 52 the Commissioner is required to communicate to each licensing authority his decision upon applications made to him. Section 54 (1) is important and is in the following terms: "Every licensing authority shall specify on every licence for an omnibus issued by that authority—(a) the approved route or routes on which that omnibus may ply or stand for hire, and the number, if any, assigned to each route under section 57, (b) the two places which shall be the termini of each such route, and (c) the highway

or the several highways to be followed by the omnibus in proceeding from one terminus to the other". Under section 57 (1) the Commissioner may classify and number, in such manner as may be convenient, the approved routes in respect of which licences for omnibuses are issued, and he is required to publish in the *Gazette* a list of the routes so classified and numbered. Section 116 makes it an offence for an omnibus to ply or stand for hire on any route other than an approved route specified on the licence of that omnibus or which, starting from one terminus of an approved route fails to complete a journey along that route to the other terminus, except as therein mentioned. It may be noticed also that form 12, which is the form of application for a licence for an omnibus, requires the application to state the route for which the licence is required, giving the two termini of the route and intermediate highways proposed to be followed, and the form of licence to be granted, which is form 18, states that the omnibus licence is to be used only on the specified route from one place to another.

It will be observed that the scheme of the original ordinance was to license particular omnibuses to be used on specified routes. It would appear that that system led to undesirable competition, and under the amending Ordinance a system was introduced of licensing particular routes and assigning each route to a particular owner.

Under section 2 (1) of the amending Ordinance it is provided that no omnibus shall, after the date specified, be used on any highway for the conveyance of passengers for fee or reward, except under the authority of Road Service Licences issued by the Commissioner of Motor Transport under the Ordinance. Under section 3 (1) (a) every application for Road Service Licences shall be made to the Commissioner in such form as he may provide and has to contain (a) particulars of the route or routes on which it is proposed to provide the service. Section 4 specifies the matters to be considered by the Commissioner on application for Road Service Licences, and amongst other things he is required to have regard to—(1) the suitability of the route or routes on which it is proposed to provide a service under the licence, (2) the extent to which the needs of the proposed route or routes are already adequately served, and (3) the needs of the area as a whole in relation to traffic. Section 5 provides that 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. Section 6 deals with the conditions which the Commissioner may attach to road service licences. Condition (e) provides that, in a case where licences are issued to different persons in respect of the same section of a highway or where any route or part thereof lies within the administrative limits of any local authority, passengers shall not be taken up or shall not be set down except at specified points or between specified points. Section 7 (1) provides "The issue of road service licences under this Ordinance shall be so regulated by the Commissioner as to secure that different persons are not authorised to provide regular omnibus services on the same section of any highway: Provided, however, that the Commissioner may, where he considers it necessary so to do

having regard to the needs and convenience of the public, 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 (a) 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". Section 13 regulates appeals from the Commissioner to the Tribunal of Appeal, and section 18 directs that the provisions set out in the first schedule to the Ordinance shall apply in relation to the consideration by the Commissioner of applications for road service licences to come into force on or before January 1, 1943, in relation to the issue of any such licence.

The first paragraph of the First Schedule so far as material, is in the following terms :—

" 1. In the event of applications being made by two or more persons for road service licences to come into force on or before January 1, 1943, in respect of the same route or of routes which are substantially the same, the Commissioner shall, subject to the provisions of section 4 of the Ordinance, observe the following order of preference in deciding which application should be granted :—

- (i.) Firstly, an application from a company or partnership comprising the holders of all the licences for the time being in force under the Motor Car Ordinance, No. 45 of 1938, authorising the use of omnibuses on such route or on a route substantially the same as such route, or from a company or partnership which, or an individual who, has acquired the interests of the holders of all such licences.
- (ii.) Secondly, an application from a company or partnership comprising the holders of the majority of the licences referred to in sub-paragraph (i.), or from a company or partnership which, or an individual who, has acquired the interests of the holders of the majority of such licences".

The second paragraph deals with compensation to be paid by a successful applicant to an unsuccessful rival, and this paragraph has been amended to meet the position under the judgment of the Supreme Court in this case. Their Lordships agree with the view of the Supreme Court that the provisions for compensation do not affect the question involved in this case, and they need not be discussed.

Both the appellant and the respondent made applications for road service licences for the route Colombo to Ratnapura, and on January 13, 1943, the Commissioner of Motor Transport decided that in accordance with the provisions of the First Schedule to the amending Ordinance, the appellant was entitled to the licence. It is not disputed that the respondent at the date of application had the greater number of licences confined to the route Colombo to Ratnapura, but if licences covering that route and extending beyond it were taken into account, the appellant had the greater number. On appeal to the Tribunal of Appeal that

Tribunal on February 28, 1943, by a majority of 2 to 1, upheld the decision of the Commissioner. On the application of the parties, a case was stated by the Tribunal of Appeal to the Supreme Court and the case was heard on June 21, 1943, by Mr. Justice de Kretser, who overruled the decision of the Tribunal of Appeal, and held the respondent to be entitled to the licence. From that decision this appeal is brought.

The difference of opinion between the expert authorities in Ceylon shows that the question at issue is not free from doubt, but it lies within a narrow compass and does not admit of elaborate discussion. It was agreed before the Tribunal, and in the Supreme Court, that the question really turned on whether the appellant could take into account for the purpose of the First Schedule to the amending Ordinance, six omnibuses which had been licensed for the route Panadura to Badulla *via* Colombo and the low level road, since those omnibuses turned the scale between the parties. 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 route as the route Colombo to Ratnapura, and this has never been the appellant's case. His case is that a licence for an omnibus on the route Panadura to Badulla is a licence authorising the use of the omnibus on the route Colombo to Ratnapura since the whole of that route is covered by the licence in respect of the longer route. If "route" has the same meaning as "highway" in the Ordinances this argument must prevail, since admittedly an omnibus running on the highway from Panadura to Badulla will pass over the whole of the highway between Colombo and Ratnapura, but in their Lordships' opinion it is impossible to say that "route" and "highway" in the two Ordinances are synonymus terms. In both Ordinances, particularly in section 54 of the original Ordinance and section 7 of the amending Ordinance, the two words are used, and certainly not interchangeably. A "highway" is the physical track along which an omnibus runs, whilst a "route" appears to their Lordships to be an abstract conception of a line of travel between one terminus and another, and to be something distinct from the highway traversed. If the Commissioner of Transport numbers routes, as he may do under section 57, he is hardly likely to assign the same number to the route Colombo to Ratnapura as to the route Panadura to Badulla. The Commissioner has to work out the routes on which a public transport service is to be provided, and in so doing he may have to specify the highway to be followed by the route since there may be alternative roads leading from one terminus to another, but that does not make the route and highway the same. In their Lordships' view it is of the essence of a route for which a licence is granted that it should run from one terminus to another. That will ensure a service between the two termini, and may also provide, though with less certainty, a service for the use of intermediate places. But as Mr. Justice de Kretser pointed out, theoretically, at any rate, an omnibus running from Panadura to Badulla may be full when it reaches Colombo or Ratnapura, and will not necessarily provide a service for either of those places. As counsel on both sides admitted, it is possible

for a person of ingenuity to suggest anomalies, and even hardships, which may arise whichever construction is placed upon the First Schedule to the amending Ordinance, but such considerations cannot govern the question of construction if the words are clear.

For these reasons, which are substantially those which appealed to Mr. Justice de Kretser, their Lordships think that the decision of the Supreme Court was right.

Their Lordships will therefore humbly advise His Majesty that this appeal be dismissed with costs.

*Appeal dismissed.*

