1948 *Present :* **Nagalingam J.**

PERADENIYA SERVICE BUS CO., Applicant, *and*
COMMISSIONER OF MOTOR TRANSPORT, Respondent

S. C. 30—Case stated by Motor Tribunal of Appeal, No. 3,984, for the opinion of the Supreme Court

Omnibus Service Licensing Ordinance—Renewal of licence—Discretion to refuse—Compensation—Ordinance 47 of 1942—Sections 7, 13 and 14.

The operation of section 7 of the Omnibus Service Licensing Ordinance, No. 47 of 1942, is not confined to applications for the first issue of a road service licence but extends to applications for its renewal.

CASE stated by the Motor Tribunal of Appeal for the opinion of the Supreme Court.

F. A. Hayley, K.C., with *H. W. Jayewardene* and *S. Wijesinha*, for the applicant.

H. V. Perera, K.C., with *D. W. Fernando*, for the Kandy Tours Bus Co.

D. W. Fernando, for the Madduma Lanka Bus Co.

Cur. adv. vult.

October 28, 1948. NAGALINGAM J.—

This is a case stated by the Motor Tribunal of Appeal for the opinion of this court on the following questions :—

(1) Whether section 7 of the Omnibus Service Licensing Ordinance, No. 47 of 1942, applies to the applications for the renewal of a licence or to aplications in the nature of the renewal of a licence already granted under the said Ordinance.

(2) Whether the grant of an exclusive Road Service Licence and the payment of compensation are not complementary provisions of the Ordinance No. 47 of 1942.

(3) Whether the payment of compensation under the Ordinance is not limited to a licence holder prior to 1943.

(4) Whether in the absence of a provision for payment of compensation the provisions of section 7 of Ordinance No. 47 of 1942 apply to the case of a licence holder prior to 1943 who was granted an exclusive road service licence in 1943 and thereafter and did not in consequence claim compensation.

Although a wide field has been traversed at the argument, it seems to me that the points for determination lie within a narrow compass.

With the coming into operation of the Omnibus Service Licensing Ordinance, No. 47 of 1942, hereinafter referred to as the Ordinance, the applicant, the P. S. Bus Co., Ltd., was granted a licence to operate an omnibus service on the route between Kandy and Peradeniya Junction. The licence had been "renewed" periodically up to 31st March, 1946. The original application as well as the subsequent applications for renewal were objected to from time to time by the respondents, who are other companies operating omnibus services along the same section of the highway. The grounds of objection both to the original application and to the renewal applications were almost identical, and the objections were in each case overruled by the Commissioner of Motor Transport. But, when the applicant made his application for renewal for the period commencing 1st April, 1946, the respondents again preferred the same objections and on this occasion, unlike in former years, the Commissioner took a view adverse to the applicant and refused the application.

The contention advanced on behalf of the applicant is that once a licence is granted under the Omnibus Service Licensing Ordinance, the Commissioner has no discretion to refuse a renewal of it, or at any rate so long as no change occurs in regard to in the circumstances and facts on a consideration of which the original application was allowed. The argument is based not so much upon the existence of any positive provision of the Ordinance which gives a licence once issued the character of permanency or of semi-permanency, but is founded on arguments based upon considerations of hardship and injustice that would otherwise result if it be held that the several provisions in the Ordinance apply equally both to original applications for licences as well as to renewals. In particular, it is urged that section 7, which is the material section so far as the present controversy is concerned should be read so as to confine it in its operation to applications for the first issue of road service licences

made either prior to 1st January, 1943, in respect of routes that carried a road service anterior to that date or subsequent to the 1st January, 1943, in respect of routes not previously served by any services.

The argument has been put forward that an analysis of the various provisions of the Ordinance reveals that the Legislature has been at pains to make provision for compensating persons who held licences under the Motor Car Ordinance, No. 45 of 1938, prior to January, 1943, but to whom licences were not issued on the coming into operation of the Omnibus Service Licensing Ordinance. There can be little doubt that the First Schedule to the Ordinance under which alone compensation is claimable is limited to persons who were compelled to go off the road on 1st January, 1943, as a result of the non-issue of licences to them. The effect, therefore, of the issue of a road service licence to the applicant in January, 1943, and the subsequent refusal to issue one in April, 1946, is unquestionably to deprive the applicant of any right to compensation which he may have said to have possessed under the Ordinance.

It is stated that the applicant has made a large outlay of capital since January, 1943, in the certain hope that the licence would be continued to be issued to it year after year without a break, and that not only great hardship but what would amount to positive injustice would be done to it by the subsequent refusal of the licence. On behalf of the respondents, however, it was urged that the applicant in fact is one who would not have been entitled to claim compensation under the First Schedule to the Ordinance even if in fact his application had been refused in January, 1943. It is, however, unnecessary to decide this question for present purposes.

Assuming, however, that the applicant would suffer irreparably serious pecuniary loss, the question is whether such a consideration should govern one in interpreting the words of a statute. Two cases, *Salmon v. Duncombe*[1] and *Rex v. Vasey*[2] have been relied upon as supporting an answer in the affirmative. Those are cases which are clearly distinguishable. In the former case, Lord Hobhouse in delivering the judgment of the Privy Council said :—

> " It is, however, a very serious matter to hold that when the main object of a statute is clear it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance o law. It may be necessary for a court of justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity or absolute intractability of the language used."

In the latter case, Lord Alverstone, citing the following passage from Maxwell[3] :

> " Where the language of a statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence."

[1] *(1905) 2 K. B. 748.* [2] *(1886) 11 A. C. 627.*
[3] *Interpretation of Statutes, 3rd ed. p. 319.*

observed :—

> " This case is a good instance of the principle that the manifest intention of a statute must not be defeated by a too literal adhesion to its precise language. "

In this case it is difficult to say that the object of the statute would be defeated or even that hardship not intended by the legislature would be imposed on the applicant if a construction of the statute be adopted other than that contended for on his behalf. That the Legislature has not made provision for payment of compensation to each and every person who would have had to go off the road by the refusal of a licence prior to January, 1943, has been held by this Court. See the case of *Panadure Motor Transit Co., Ltd., v. T. W. Roberts et. al.* [1]. In fact in construing the provisions of this very Ordinance Sir John Beaumont in delivering the opinion of the Privy Council in the case of *Kelani Valley Motor Transit Co., Ltd. v. Colombo-Ratnapura Omnibus Co., Ltd.*[2] remarked :

> " 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 Amendment Ordinance but such considerations cannot govern the question of construction if the words are clear ".

I might go further and say that in this instance the construction contended for on behalf of the applicant would doubtless tend to violate and render nugatory other provisions of the Ordinance.

Section 13 (2) of the Ordinance permits an appeal from a decision of the Commissioner refusing an application for the renewal of a licence, and in section 14 thereof which prescribes the powers of a tribunal of appeal, the tribunal is empowered under sub-section (2) thereof to make order on appeal granting a renewal licence to the appellant. Then follows a provision which is decisive of the question in controversy between the parties. Sub-section (3) of section 14 expressly enacts that where a tribunal of appeal makes order that a licence should be issued to an appellant the tribunal should " for the purpose of such determination have regard to the provisions of sections 4 to 7 of this Ordinance." It is therefore manifest that in considering the question whether a renewal should be granted to an appellant to whom the Commissioner has refused the renewal, the tribunal of appeal must have regard *inter alia* to the provisions of section 7 and therefore to the consideration that different persons are not authorised to provide omnibus services on the same section of any highway.

That the Legislature, therefore, intended that even on a renewal of a licence the Tribunal should have regard to all factors which would have had a bearing, if one accepted for a moment the contention of the applicant, at least on the issue of a first licence is indisputable. Is it then to be supposed that the Legislature intended that the Tribunal should in reversing the decision of the Commissioner and granting a renewal of a licence take notice of factors which the Commissioner himself was not to consider ? I do not think so, for to do so would be to

[1] *(1947) 48 N. L. R. 82.* [2] *(1946) 47 N. L. R. 271.*

attribute to the Legislature the formulation of a wholly untenable and inconsistent method of approach for the tribunal in deciding an appeal based upon grounds which the Commissioner could himself not have taken into consideration in making his order. It may be asked why the Legislature has not specifically indicated, as in the case of the tribunal, that a Commissioner himself should take into consideration the very grounds upon which he could have granted a first licence in disposing of an application for a renewal. The obvious answer to that is that the Legislature has proceeded on the footing that section 7 as enacted is not limited to the issue of a first licence only, but to all licences which may be issued from time to time, and that a Commissioner would therefore take into consideration all the factors enumerated including those in section 7 in considering an application for a renewal of a licence as well, and therefore no further provision was deemed necessary.

Counsel for the applicant found himself in a difficulty in construing the provisions of the sub-sections of section 14. He, however, sought to meet this difficulty by suggesting that as section 14 was of a general character and dealt with a number of eventualities, the draftsman, when he came to frame sub-section (3,) unwittingly made that sub-section apply even to the case of a refusal of renewal by the Commissioner under section 13 (2). It is neither a satisfactory nor a proper method of construing a statute to ignore deliberately a particular part of the statute for no reason other than that it does not sustain a particular construction, especially where another construction gives full effect to all parts of the statute without one being under the necessity of having to reject any.

I am therefore of opinion that the answers to the first, third and fourth questions should be in the affirmative and that the answer to the second question, if it is confined to cases of road licences granted prior to 1943, and falling within the scope of the first schedule, is also in the affirmative, but in all other cases is in the negative.

The applicant will pay to the respondents the costs of this argument.