

1948

Present : Nagalingam J.

COMMISSIONER OF MOTOR TRANSPORT, Appellant,
and LANKA MATHA MOTOR TRANSIT CO., LTD.,
Respondent

CASE STATED FOR THE OPINION OF THE SUPREME COURT

Application No. 12, Appeal No. 3,849

Omnibus Licensing Ordinance—Providing services on same section of highway—Express service between two towns—Physical use of track—Not service—Ordinance No. 47 of 1942—Section 7.

Providing an omnibus service on a highway within the meaning of Section 7 of Ordinance No. 47 of 1942 connotes the picking up and setting down of passengers from and on it and is something apart from the physical use of the track constituting the highway. A Bus Company, therefore, that runs its buses express from one town to another does not provide a service on the section of the highway between those two towns.

CASE stated for the opinion of the Supreme Court.

H. W. R. Weerasooriya, Crown Counsel, with V. Tennekoon, Crown Counsel, for Commissioner of Motor Transport, appellant.

H. V. Perera, K.C., with D. W. Fernando, for Lanka Matha Motor Transit Company, respondent.

F. A. Hayley, K.C., with H. W. Jayewardene, for Kelani Valley Motor Transit Company, Ltd.

Stanley de Zoysa, with E. A. G. de Silva, for Panadure Motor Transit Company, Ltd., amici curiae.

Cur. adv. vult.

November 19, 1948. NAGALINGAM J.—

The applicant, the Lanka Matha Motor Transit Company, Limited, holds a licence to operate an omnibus service from Hettipola to Negombo via Dandegamuwa, Udubaddawa and Dankotuwa while the North Western Blue Line Bus Company, Limited, is authorised to operate a service from Negombo to Colombo apart from certain other services overlapping the route from Colombo to Negombo, namely, those from

Colombo to Pannala and Colombo to Kurunegala. As a result of the applicant's service terminating at Negombo passengers from Hettipola, Dandegamuwa, Udubaddawa and other places north of Dankotuwa have perforce to change buses at Negombo to get to Colombo. It is said and it has not been contraverted that passengers who travel on the applicant's line and who wish to get to Colombo are greatly inconvenienced not only in having to change buses, but in having to wait long hours to board buses at Negombo, which is said to be a heavy station in regard to traffic between Negombo and Colombo.

With a view, therefore, to provide a through service from Hettipola to Colombo the applicant made an application to the Commissioner of Motor Transport for a road service licence from Hettipola to Colombo. At the inquiry before the Commissioner the applicant modified his application to the extent that the licence was to be for a stage service from Hettipola to Dankotuwa and an express service thence to Colombo. The Commissioner did not see his way to allow the application, but the Tribunal of Appeal by a majority view directed the issue of a road service licence which was to be a stage service from Hettipola not to Dankotuwa but to Mawatagama and an express service from Mawatagama to Colombo.

The point for determination on this reference is whether the majority view of the Tribunal of Appeal is correct. It has been contended on behalf of the Commissioner of Motor Transport that the grant of the licence to the applicant is a violation of the provisions of section 7 (1) of the Omnibus Service Licensing Ordinance, No. 47 of 1942. The substantive provision of sub-section (1) enacts that the Commissioner should 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 any highway." That the licence applied for by the applicant is for a regular service is not challenged as the term "regular" in this section is used in a sense opposite to that of occasional or special.

Now, it is said that by the grant of the licence to the applicant both the applicant and the North-Western Blue Line Bus Company, Limited, are authorised to provide services on the same section of the highway from Negombo to Colombo, thus contravening the express provision of section 7. It is then argued that unless the applicant can show that his application falls within the ambit of the proviso to that section the application must fail and that in point of fact the application is not covered by the proviso itself. For, under the proviso it must be shown not only that the principal purpose for which each licence is issued is to authorise the provision of substantially different services, but also that the common section of the highway that is used by the two parties does not constitute the whole or major part of any of the routes in respect of which the licences are issued. It is pointed out that in this particular instance the highway from Negombo to Colombo constitutes the whole of the route in respect of one of the road service licences issued to the North-Western Blue Line Bus Company, Limited, and therefore the proviso does entitle the applicant to a licence.

The difficulty in this case is mainly caused by the employment of the phrase "involving the use of the same section of the highway" in the proviso, lending prominent support to the contention that the physical

use of the same section of the highway by two different parties is what is intended to be prevented by the legislature, and thus leading to a construction of the main provision of section 7, sub-section (1) by reference to the proviso.

In the main enactment of section 7, sub-section (1), the words "involving the use of" do not find a place and its object as revealed by the language used is to prevent that different persons do not *provide omnibus* services on the same section of the highway and not that different persons are not to use the same track. It neither contemplates nor provides for consequences arising from the physical use by two or more persons of the track which constitutes the highway. The proviso cannot be said to envisage a state of facts or circumstances or class of cases which do not fall within the scope of the main provision. When the proviso says, "That the Commissioner may . . . issue licences to two or more persons authorising the provision of regular omnibus services involving the use of the same section of the highway," I do not think it was intended to place undue stress upon the words "involving the use of" as referring to the physical use of the track which no doubt would be the sense one would attach to those words on a first reading of it. The proviso would however carry out its function most exactly if the words "involving the use of" were deleted from it and the word "on" was substituted in their place, so that the proviso read, "provided however that the Commissioner . . . may issue licences to two or more persons authorising the provision of regular omnibus services on the same section of a highway," for then the proviso would deal with facts, circumstances and cases which unquestionably would fall within the ambit of the main enactment and would prevent the illogical situation of a proviso being made to deal with a class of cases undoubtedly falling outside the main provision itself. As was said by Lord Macmillan in the case of *Madras and Southern Mahratta Railway Company Limited v. Bezwada Municipality*¹: "The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case."

It may be said that resort to omission of words which the legislature has taken pains to employ to convey its true meaning and intention and the incorporation of other words not so employed by it is not a satisfactory way of constructing a statute—though it must be remembered that the adoption of such a course is not altogether unknown in the realm of legal interpretation. It would however be possible to meet this criticism by pointing out that in the proviso the word "use" has been employed in truth not to convey the sense of the physical use of the track, but to the use referred to in the main provision, namely, the provision of a regular omnibus service. If so read the meaning of the proviso becomes equated to the sense brought out by the deletion and substitution of words as suggested above.

It is unnecessary however to pursue this matter further for as was also stated by Lord Macmillan in the case already cited that "Where . . . the language of the main enactment is clear and unambiguous a proviso can have no repercussion on the interpretation of the main enactment

¹ A. I. R. (1944) Privy Council 71.

“ The problem before me then resolves itself into a determination of what the main provision precisely means when it enjoins the Commissioner to see “ that different persons are not authorised to provide regular omnibus services on the same section of any highway ” and in particular what is intended to be conveyed by the phrase “ providing regular omnibus services on the same section of a highway.”

Strictly speaking a service on a highway may be said to be provided only if at all and every point on the highway passengers are allowed to be picked up or set down, for then there would be a complete and full service along or on the highway. In a town or city where halting places at which alone passengers are permitted to be picked up or set down are not too far apart, it may be not incorrect to say that in such a case too the service is provided on the highway. But, where the halting places are far apart, it may be a question whether a service is provided on the entirety of the section of the highway between any two of the halting places. Be this as it may, under the Ordinance even in such a case the service is regarded and termed a service on the highway based presumably on the fiction that the halting places are so located as to provide an adequate service on the sections of the highway between the several halting places having regard to the volume of traffic that can and need be handled on those sections of the highway.

To take an illustration, if for instance two towns situated ten miles apart are separated by a forest uninhabited by man and the highway ran through it, there would be no point in providing halting places on that section of the highway and yet it may not be incorrect to say that a service is provided on that section of the highway as well. On the other hand if an omnibus ran empty from one terminus to another along a highway though situated it may be in the midst of a thickly populated city, it is plain to see that it provides no service whatsoever on the highway or between the termini.

Now, a halting place is nothing more than a focal point on the highway for the convenience of passengers living in the vicinity of it, roughly speaking within a radius equal to a distance midway between it and the nearest halting place in either direction. If, therefore, an omnibus does not stop at one or more of the halting places on a highway, it is equally plain to see that it does not provide a service on the sections of the highway intended to be served by those halting places, for it neither picks up nor sets down passengers and does not serve the needs of the public at all—the very negation of the idea involved in the term “ service ”.

To take again another illustration, if an omnibus ran non-stop between Colombo and Kandy, it cannot be said to provide a service on the whole of the highway between the two towns—I say the whole of the highway because it may be possible to contend that sections of the highway close to the two towns are served thereby. But, if the service was operated from say Dehiwala *via* Colombo and Kandy to Katugastota there would then certainly be no service provided on the highway between Colombo and Kandy. It would however be correct to say that the service makes physical use of the highway between the two towns.

The conclusion I reach therefore is that providing an omnibus service on a highway necessarily connotes the picking up and setting down of passengers from and on it and is something apart from the physical use of the track constituting the highway; in other words an omnibus may make use of a highway without in any way providing a service on it.

By the restriction placed on the applicant that it should run its buses express from Mawatagama to Colombo, it is clear that the applicant does not provide a service on the section of the highway between Negombo and Colombo. In this view of the matter it is manifest that the application of the applicant does not fall within the class of cases contemplated in the main provision of section 7 of the Ordinance. No occasion therefore arises to pursue the problem raised on behalf of the Commissioner, namely, whether the case falls within the proviso, for such a question can only arise if the case does fall in the first instance within the main provision itself, which it does not.

I am therefore of the opinion that the order of the Motor Tribunal of Appeal directing the issue of a licence to the applicant is right. As the question is not free from difficulty, and affected the rights of several other companies, it cannot be said that the Commissioner was not justified in having a case stated to this Court. In these circumstances, the proper order to make in regard to costs is that each party should bear its own costs.

The Kelani Valley Motor Transit Company, Limited, and the Panadure Motor Transit Company, Limited, were allowed to intervene without objection on the part of counsel either for the applicant or the Commissioner of Motor Transport as they were interested in similar questions affecting licences already issued in their favour; their contention has been identical with that of the applicant's.

Order of Motor Tribunal of Appeal affirmed.
