

1943

Present : de Kretser J.

BLUE LINE, GREEN LINE, RED LINE, Appellants, and
THE COMMISSIONER OF TRANSPORT, Respondent.

IN THE MATTER OF CASES STATED TO THE SUPREME COURT

Nos. 3,106 AND 3,107 AND Nos. 3,108, 3,110, 3,111, 3,113

AND 3,115 BY THE TRIBUNAL OF APPEAL IN TERMS

OF THE MOTOR CAR ORDINANCE.

*Omnibus Service Licence—Case stated on law and facts—Form of case stated—
Discretion of Commissioner—Powers of Supreme Court—Ordinance
No. 47 of 1942.*

The object of providing in the Omnibus Service Licensing Ordinance, No. 47 of 1942, for a case stated on the law as well on the facts to the Supreme Court is to enable the Court to review the whole case when the matter comes up before it.

The party stating the case should submit to the Supreme Court the exact point to be decided in concise form together with the necessary documents.

The Ordinance has left to the discretion of the Commissioner the order in which the various routes should be taken up for consideration. The Supreme Court will not interfere unless it is satisfied that the discretion of the Commissioner has not been exercised to the best possible advantage.

THIS was a case stated to the Supreme Court by the Tribunal of Appeal in terms of the Motor Car Ordinance and the Omnibus Service Licensing Ordinance.

M^r. T. de S. Amerasekere, K.C. (with him M. M. Kumarakulasingham), for Green Line.

H. V. Perera, K.C. (with him D. D. Athulathmudali and H. W. Jayewardene), for Blue Line.

L. A. Rajapakse, for Red Line.

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

Cur. adv. vult.

June 15, 1943. DE KRETZER J.—

The matter now before this Court comes on a number of cases stated under the Motor Car Ordinance. The appeals concern three Companies known as the Blue Line, the Green Line, and the Red Line. Their cases seem to have been presented and considered by the Commissioner of Transport at the same time, and to have been considered by the Tribunal of Appeal together, and the President of the Tribunal suggests that they should be heard together by this Court and they have been so heard since their claims are so interwoven that it is difficult to decide one case without the other. I may say at this stage that what is alleged to be a "case stated" comes before this Court in a most unsatisfactory shape. It is not the first time I have had this experience, with regard to matters coming up under the Motor Car Ordinance, and but for the urgency which I understand there is with regard to the disposal of these cases, I should have either rejected the cases stated or at least have postponed them condemning the party concerned in costs. The Ordinance makes it the duty of the party desiring a case to be stated to supply the necessary documents for consideration by this Court. The President in what he calls, the case stated, refers expressly to various other proceedings which he terms annexures, and which he expressly states form part of the case stated, and the appellant in each case has been content to supply this Court merely with the statement prepared by the President without the annexures. The result is that while Counsel have in their possession a quantity of material, the Court is dependent on the good offices of Counsel for perusal of documents which ought to be in the files before this Court. If the appellant was not furnished with the proper copy then it was his business to see that the proper copies were supplied to him. It does not seem to be a matter of extra expenses merely, for parties seem to be quite willing to spend considerable sums of money over the litigation, but it

seems to be due to the extremely casual way in which the Proctors responsible deal with their affairs. I do not believe they intend to be disrespectful to this Court but that is really what it amounts to. I have had the greatest difficulty in understanding the case stated, and I am taking the opportunity of delivering my order at once because my mind is clear on what I should do and it would be satisfactory to have any accidental error on my part corrected by Counsel who are present.

Ordinance No. 47 of 1942, which is to be read along with the main Motor Car Ordinance, provides for a case to be stated on law as well as on facts. I am not clear as to what exactly is meant by a case stated on facts, but it seems to me that just as it was intended that the Commissioner's decision should be open to review by the Tribunal of Appeal in every respect—*vide* section 50 of the main Ordinance—so in the same way this Court should be able to review the whole case when the matter came before it through the medium of a case stated.

The Commissioner took up for consideration applications for road service licences dealing with a triangular portion of the Island, the base of the triangle being the road from Colombo to Puttalam, the two arms of it meeting at the apex of Kurunegala and consisting of the roads from Colombo to Kurunegala *via* Alawwa and Polgahawela, and Puttalam to Kurunegala. He had the applicants before him and also their legal representatives and from the outset they were abundant in the suggestions they made to him, but the main routes presented no trouble. Accordingly Colombo to Puttalam was granted to the Blue Line; Puttalam to Kurunegala to the Green Line, and Kurunegala to Colombo to the Red Line. The subsequent difficulties which confronted the Commissioner were due to the fact that no provision had been made in the Ordinance directing the Commissioner as to the order in which he should take up licences for consideration. The Minister for Local Administration, purporting to act under section 18 of the new Ordinance, has made two regulations which were duly published in the *Gazette* of December 29, 1942. The first regulation directed the Commissioner of Transport, when he had before him applications with regard to a particular highway, to give prior consideration to the application which covered the largest extent of the highway. The second regulation required him to give priority to what has been classified previously as main routes. It will be seen that the Minister's order contemplates that there may be many highways, not necessarily the many highways which radiate from Colombo, but even beyond. At a given point the highway may be different, although it may be connected at that point with another highway and so permit of a continuous journey. The Commissioner in dealing with the three routes I have already mentioned was dealing with the main routes. Next came the question of subsidiary routes. Now in the classification which had been made under section 57 of the main Ordinance, routes had been classed as subsidiary to main routes. Subsidiary in other words seems to have meant auxiliary. Accordingly Giriulla to Colombo was subsidiary to the main route from Colombo to Puttalam, while the route from Giriulla to Kurunegala was subsidiary to Colombo *via* Alawwa to Kurunegala.

Portions of a main route were also classified as subsidiary. For instance, Colombo to Ja-ela was a subsidiary route and Ja-ela to Giriulla was also a subsidiary route. Ja-ela to Giriulla might be considered a feeder route and Colombo to Ja-ela as being of minor importance, but both would be auxiliary to the Colombo to Puttalam route. Section 57 of the main Ordinance has been repealed by the new Ordinance and there is no justification at present for classification of routes.

It is possible to go from Ja-ela to Kurunegala on one continuous journey, but in the classification Ja-ela to Kurunegala has not been taken as one route. Instead, a division had been made at the point Giriulla. Giriulla, I am informed by all parties, is rather a biggish town. Apparently the idea here was that one service ran from Giriulla to Kurunegala, the capital of the North-Western Province, conveying passengers from Giriulla to Kurunegala and *vice versa*. The service from Giriulla to Ja-ela and then to Colombo would cater for passengers desiring to go in the opposite direction. The Blue Line has for many years run a service between Colombo and Kurunegala *via* Ja-ela and Giriulla. The Green Line had no buses running between Ja-ela and Giriulla, but it did have buses running between Kochchikade and Kurunegala *via* Giriulla. Mr. Amerasekere for the Green Line stated that at some stage the permanent Commissioner of Transport (who was not the officer who dealt with this matter subsequently) had persuaded him not to put in an application for the section Colombo to Kochchikade. Mr. Amerasekere is absent at the moment and Mr. Fernando, Crown Counsel, thinks that he corrected himself later and said that it was the Director of Transport who so persuaded his clients. We are not concerned with these pour-parlers and it is rather difficult to understand how they took place. If the Commissioner of Transport was preparing the way by solving difficulties ahead it would be one matter. If, however, the likely applicant was feeling his way with the Commissioner the matter would bear another aspect, and the latter procedure would be quite improper. It would be inadvisable for the Commissioner of Transport, who exercises *quasi-judicial* functions, to allow anybody to inveigle him into an undesirable situation. I have no reason to believe that any such thing really took place. The Green Line probably realised that it would have no chance against the Blue Line in the event of a competition under the new Ordinance. When the subsidiary lines came up for consideration, the Green Line seems to have urged that the Commissioner should first take up the line from Madampe to Kurunegala, while the Blue Line urged him to take up the line from Ja-ela to Kurunegala. In my opinion the matter as to which line should be taken up is one which is designedly left under the Ordinance to the discretion of the Commissioner. There would be so many applications for licences that it would be impossible to lay down the rules definitely fixing the lines of his action. The Minister made an attempt but as this case shows he did not cover the whole ground. Perhaps it would have been a better attempt on his part if he had directed the Commissioner in the first instance to deal with main routes and then in dealing with the main routes to deal with the route subsidiary to that route. There would have been some kind of classification of a main route and its subsidiaries. But whether such a classification

would have served the interests of the public is another question and the Ordinance makes it clear that the interests of the public are of paramount importance. It seems to me that the Ordinance designedly left the matter entirely in the discretion of the Commissioner. It did not intend him to use that discretion capriciously, but to deal with the matter in the best possible way. The Ordinance was introducing very drastic changes—many people were bound to be hurt—and the Ordinance merely left it to the Commissioner to deal with each situation to the best of his ability. It was probably because it was felt that however wisely he acted he might still make some error, an error which he himself might later realise and regret, that it was provided that the party might bring his grievance even before this Court. I think it is quite clear that this Court should not interfere unless it saw that the discretion of the Commissioner had not been exercised to the best possible advantage. The Commissioner in dealing with the three conflicting claims with which we are now concerned seems to have given the legal representatives the fullest possible hearing; he seems to have called in the advice of the expert on motor transport who is at present in the Island, and he seems to have approached each problem from as many points of view as possible. In deciding the claims of the two lines I have mentioned previously, he decided to see on which route the larger number of buses ran. The line from Ja-ela to Kurunegala seemed to be the more important line and accordingly he decided to take that up first. There is no reason to hold that he was wrong in making this decision. Regarding this section, Colombo to Kurunegala *via* Ja-ela, there was only one applicant, namely, the Blue Line, and as a result the provisions of Rule I did not apply. He therefore granted the licence to the Blue Line. As a matter of fact even if he had taken into consideration the number of buses run by the two competing lines from Colombo to Kurunegala, the Blue Line would have the majority. There is no reason therefore to doubt the wisdom of his choice and the grant of the licence to the Blue Line. The Green Line was now affected, for it was interested in the section of about 20 miles lying between Giriulla and Kurunegala. Section 7 of the new Ordinance enunciates the main principle underlying it. The Commissioner was required to so regulate the issue of licences as to secure that different persons were not authorised to provide regular omnibus services on the same section of the highway.

There is provision made to deal with the case where the needs of the public required that more than one service should be maintained.

The Commissioner next took up the line from Madampe to Kurunegala. The section between Narammala and Kurunegala of about 10 miles was now covered by the licence which was to be issued to the Blue Line, and if section 7 were strictly applied, the Green Line could not be allowed to maintain a regular omnibus service over this section of the highway. The Commissioner accordingly granted the Green Line a licence only between Madampe and Narammala. The Green Line appeals against this decision, which has been upheld by the Tribunal of Appeal. The grounds urged are that the Green Line has a contract to carry mails between Madampe and Kurunegala and it would not be able now to do it, if the service be terminated at Narammala. The Commissioner, as far as

I know, and certainly the Tribunal of Appeal, seems to have thought it was a mere matter of compensation. The carriage of mails is on contract, the public are very vitally interested in a regular mail service and the conveyance of His Majesty's mails is always considered as being of the highest importance. It seems to me that this was a matter which should have called for greater attention on the part of the Commissioner and the Board of Appeal. The Commissioner seems to have gone on one view only, namely, that having granted a licence to the Blue Line, he should not grant a licence to the Green Line. There is another matter which requires consideration, and that is that the Green Line has its Headquarters at Kurunegala and if it was stopped short at Narammala, it would be put to the expense of having new quarters built at Narammala. There was also the fact that Kurunegala, as the capital of the Province, is a place of importance and that passengers along the Madampe line would in all probability desire to go to Kurunegala and would be put to considerable inconvenience if they could go as far as Narammala and there take their chance of travelling by a 'bus coming from Ja-ela. They might have to wait for a considerable length of time and they might find that there was no accommodation in the 'bus when it did arrive. The distance is only 10 miles and perhaps they might be able to find their way to Kurunegala in some other manner, but there can be no doubt they would be seriously inconvenienced.

The rule laid down in section 7 is not an absolute rule. It created a state of affairs which is ordinarily not to be tolerated, namely, it created monopolies but that was a matter which had been deliberately done by the Legislature in view of conditions as they existed. Now, was it possible for the Commissioner to have dealt with this problem in a manner other than that he has employed? It is suggested by Crown Counsel on his behalf, and also by Counsel for the respondent, that he must have considered other matters. But if he did consider other matters he has not said so on the occasion when he had the opportunity of giving his reasons. The only reason he has given is the one which I have stated before. It seems to me that this was a case to which the proviso to section 7 might well have been applied. I was told during the argument that the line from Madampe to Kurunegala runs through sparsely populated country. If that be so, the gain to the Green Line and the loss to the Blue Line from passenger traffic is likely to be of very little value. Any possible conflict between them of an undesirable character, of which there has been no indication in the proceedings, might be avoided by the Commissioner fixing a time table for each company and this might add to the convenience of the travelling public, small as it may be. There was another alternative open to the Commissioner and that is he might have issued a licence to the Green Line from Madampe to Kurunegala with the condition that they should not take in or drop passengers between Narammala and Kurunegala. This would avoid the competition which section 7 desired to prevent. Mr. Perera states at this stage that the question of carrying mails affects many lines and has not been considered on other occasions. As far as I understand, the question was not raised on other occasions. Besides, it is not the only ground I have stated. The case of a whole line being

taken away is not as bad as one when a part is taken away. Each of the contestants seems to have endeavoured to deal his opponent a knock-out blow. There was no suggestion of the section from Narammala to Kurunegala being run by both parties. In fact each was insisting on his line being taken up in order that he might use exactly the same argument against his opponent. The result is that the Commissioner probably did not give his mind to anything more than the actual contest strenuously fought before him. He did not apply his mind to section 4 which required him to consider relevant matters. In my view the proper order to make in this case is that the Commissioner should now re-consider his decision in the light of the observations I have made and if he can grant the Green Line the section between Narammala and Kurunegala as well without serious prejudice to the public interests, then he should so grant it, with or without the condition that they should run non-stop from Narammala to Kurunegala.

In regard to the appeal of the Green Line that they should have been allowed the line from Kochchikade to Kurunegala and that this should not have been given to the Blue Line, I see no reason to interfere with the decision both of the Commissioner and of the Tribunal of Appeal, while on this point I may state that Mr. Perera for the Blue Line took exception to the status of the Green Line. It appears that at the time the application was made for licences, the Company had not been formed. No exception was taken before the Commissioner. An objection was taken before the Tribunal of Appeal only on the third day of the hearing. By that time the company had been formed and the Tribunal of Appeal decided in the circumstances of the present case that the objection should not be considered. In my opinion that decision was right. This does not mean that the matter is not one of importance. It may be of considerable importance on other occasions and the Commissioner would be well advised to make sure that persons putting themselves forward are representing companies which are actually in existence. Mr. Perera did not press the other appeals of the Blue Line.

There remains now for consideration the case of the Red Line. The Tribunal of Appeal seems to have formed the opinion that if there was no alliance between the Red and the Green Lines, there was such a strong bond of sympathy between them that they were two persons who spoke as one. Counsel have been at pains to remove this impression. It does not matter really whether they are in sympathy with each other or not. It appears that the true position is that while both of them, having their termini at Kurunegala, have conflicting interests, they are both hostile to the Blue Line and the Blue Line to them, and they are more likely to accommodate each other than the Blue Line to accommodate either of them. The Red Line used to run a service from Colombo to Kurunegala branching off at Paşyala and running *via* Giriulla and Narammala. That was classified as a subsidiary line, subsidiary to the main line from Colombo to Kurunegala *via* Alawwa. The Commissioner, in view of the fact that he had allowed Giriulla to Kurunegala to the Blue Line, refused to grant a licence to the Red Line beyond Giriulla. He, however, permitted them services from

Giriulla to Alawwa and from Narammala to Polgahawela. The claims of the Red Line are put on these grounds, namely, that the route from Colombo to Kurunegala *via* Giriulla was substantially the same as their other route. I do not think that contention is sound. The second contention is that they have been using that section for a long time; as far as I understand, so has the Blue Line. One of them has got to suffer and there is no reason why it should be one rather than the other. The third argument is put on the footing that the public would be inconvenienced by reason of the fact that passengers would have to get down at Giriulla and wait for the chance of travelling by a Blue Line omnibus. Finally it is suggested that if the whole section should not be allowed them, they might be allowed the section between Giriulla and Narammala, for that would allow them to arrange for the Green Line to carry their passengers to Wariyapola, to which place they had at one time a service. Similar arrangement would be made with regard to passengers going to Kuliypitiya. With reference to the last argument, the Red Line may run to Narammala along the Kandy route and there transfer the passengers to the Green Line, whether the passengers were going to Wariyapola or Kuliypitiya. Besides, the Red Line had allowed the Green Line to enter its area and to establish its own line from the Colombo-Kandy road to Wariyapola and Kuliypitiya. With regard to the convenience of the passengers, anybody at Colombo desiring to go to Kurunegala can choose either the route given to the Blue Line or that given to the Red Line. The only persons who might possibly want the service between Pasyala and Kurunegala would be those having business either at Giriulla or Narammala, and as the Red Company has lines running to both these places such passengers could easily get there. I do not see on the material before me that the public would in any way be inconvenienced. I therefore do not see any reason for allowing the appeal of the Red Line.

The nett result is that all the appeals fail except that of the Green Line in respect of Madampe to Kurunegala. There are three sets of appellants. The fee paid by them for a case stated will not be remitted, even though the case has not been stated in such a way as to bring before this Court the actual matter which has to be decided. It is desirable that the person stating the case, not the person requiring a case to be stated, but the person stating the case, should at some stage bring before this Court in a concise form the exact point to be stated. With regard to the costs of the Commissioner, I think his costs should be paid by the Blue Line and the Red Line, but I hope that he will not recover costs considering that this is a matter of considerable difficulty and arises on the application of a difficult Ordinance. I fix these costs in each case at Rs. 150. With regard to the costs between the contestants, the Blue and the Green Lines will bear their own costs—the Red Line must pay the costs of the Blue Line, which I fix at Rs. 525.