

1950

Present : Gunasekara J.

EDWIN PERERA, Appellant, and WEERAKKODY  
(S. I. Police), Respondent

*S. C. 1,284—M. C. Colombo, S. 24,231*

*Motor Car Ordinance—Route of lorry between two termini—No particular highway mentioned in licence—Use of lorry not restricted to the shortest of the several highways between the termini—Distinction between "route" and "highway"—Ordinance No. 45 of 1938, Sections 54 (1) and (2), 116 (2), 153.*

Where the route specified for a lorry is defined solely by reference to its terminal points and the licence does not show that the authority which specified the route intended that the lorry should travel only along a particular highway or highways, between the terminal points, it is not a breach of section 116 (2) of the Motor Car Ordinance to use the lorry on any one of several highways between the termini, although such highway does not lie in the shortest practicable route between the termini.

**A**PPPEAL from a judgment of the Magistrate's Court, Colombo.

*S. C. E. Rodrigo*, for accused appellant.

*A. E. Keuneman*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

July 25, 1950. GUNASEKARA J.—

The appellant was charged with having committed a breach of section 116 (2) of the Motor Car Ordinance, No. 45 of 1938, punishable under section 158, by driving a lorry on a highway outside the area of operation specified in the licence for that lorry. He was convicted after trial and sentenced to a fine of Rs. 50 or one month's simple imprisonment in default of payment of the fine.

The area of operation specified in the licence was "Kegalla-Kandy-Nuwara Eliya Districts and route Kegalla to Colombo". The appellant was found driving the lorry at Kaduwela on the Low Level Road from Avissawella to Colombo, which is outside the districts of Kegalla, Kandy and Nuwara Eliya. The question is whether it is outside the "route Kegalla to Colombo".

It is contended for the Crown that the appellant was allowed no choice of highways between the termini of the specified route but was restricted to those lying in the shortest practicable route between Kegalla and Colombo. The appellant admitted in evidence that the distance between these places is 42 miles along the Kandy Road and 60 along the road that he took. It is contended on his behalf, however, that he was entitled to drive the lorry along the Low Level Road because, although the licence specified a route it did not specify any particular highways to be followed in travelling between the termini of the route; and his counsel relies on the distinction drawn between the terms "highway" and "route" in *The Kelani Valley Motor Transit Co., Ltd. v. The Colombo-Ratnapura Omnibus Co., Ltd.*<sup>1</sup>

<sup>1</sup> (1946) 47 N. L. R. 271.

In that case the Judicial Committee of the Privy Council said :

“ 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 . . . . The Commissioner has to work out the routes on which a public transport service is to be provided, and in doing so 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 ”.

The distinction is clearly recognized in section 54 (1) of the Ordinance, which provides with regard to omnibus licences that the licensing authority shall specify (a) the approved route or routes, (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. There is no ground for giving to the word “ route ” a different meaning in sub-section (2) of the same section, where it requires the licensing authority to specify on a lorry licence the approved area of operation and the additional service or services, if any, which may be provided under that licence and the route or routes to be followed for the purposes of each such service. It is open to the appropriate authority to define the route by reference to the roads which may be traversed or by reference to intermediate points as well as to the terminal points of the route. In the present case the route has been defined solely by reference to its terminal points and it seems to me that the appellant's contention must prevail. There is nothing on the licence to show that the authority which specified the route intended that the lorry should travel between the terminal points only along a particular highway or highways. I set aside the conviction and sentence and I acquit the appellant.

*Appeal allowed.*

1950

*Present : Swan J.*

WLJEGOONEWARDENE, Petitioner, and KULARATNE,  
Respondent

*S. C. 552—Application for a Writ of Quo Warranto on M. A. Don  
Kularatne*

*Writ of quo warranto—Undue delay in making the application—Ground for refusal  
of writ.*

Where a defeated candidate in a village committee election applied for a writ of *quo warranto* when a period of five months had elapsed from the date of the election—

*Held*, that there was unreasonable delay in making the application and, in the absence of lawful excuse for the delay, the application should be refused.