[IN THE PRIVY COUNCIL]

1952 *Present :* **Lord Porter, Lord Reid, Lord Asquith of Bishopstone and Sir Lionel Leach**

PERADENIYA SERVICE BUS CO., LTD., Appellants, *and* SRI LANKA OMNIBUS CO., LTD., Respondents

PRIVY COUNCIL APPEAL No. 20 OF 1951

S. C. Application No. 28—Case stated under section 4 of the Motor Car Ordinance, No. 45 of 1938

Omnibus Service Licensing Ordinance, No. 47 of 1942, ss. 4, 6, 7—Motor Car Ordinance, No. 45 of 1938, s. 4 (6) (a) (b)—Issue of route licence—Factors to be considered —Case stated—May be sent back for amendment if necessary—Signature of Chairman alone sufficient.

Appellants, who were a Company holding a licence to run an omnibus service along a certain route, applied for a licence in respect of a further half mile between a terminus of their route and a point which fell on the route along which the respondent Company was operating an omnibus service. As against the respondent Company's competing claim to a licence along a route which would include the same half mile of road, it was proved that there was a public necessity for an omnibus service along the half mile in question and that the granting of a licence to the appellants would mean no overlapping of services, but merely the extension of their existing route to cover a small gap.

Held, that the appellants had the better claim to a licence, especially having regard to the provisions of section 7 of the Omnibus Service Licensing Ordinance of 1942.

Held further : (i) When a case stated by a Tribunal of Appeal under the Motor Car Ordinance, No. 45 of 1938, and the Omnibus Service Licensing Ordinance, No. 47 of 1942, is open to criticism from the point of view of draftsmanship, any defects therein may be remedied by sending it back to the Tribunal for amendment.

(ii) The fact that a case stated is signed only by the chairman, and not by all the members, of the Tribunal of Appeal is not a ground for its rejection.

(iii) It does not follow that because a person or a company is the sole applicant for a road service licence it should be granted. Other factors have to be considered, namely, those referred to in section 4 of the Ordinance of 1942.

APPEAL by special leave from a judgment of the Supreme Court which is reported in (*1949*) *51 N. L. R. 233*.

Stephen Chapman, for the appellants.

No appearance for the respondents.

Cur. adv. vult.

June 23, 1952. [*Delivered by* SIR LIONEL LEACH]—

The appellants appeal by special leave from a judgment of the Supreme Court of Ceylon, dated the 5th December, 1949, rejecting an appeal, by way of case stated, from a Tribunal of Appeal constituted under the Motor

Car Ordinance, No. 45 of 1938, and the Omnibus Service Licensing Ordinance, No. 47 of 1942. The parties are motor omnibus companies operating in Ceylon and the appeal relates to the refusal of a road service licence applied for by the appellants. The respondents have not appeared and consequently their Lordships have not had the advantage of hearing counsel on their behalf, but they have been taken through the whole of the printed record and the questions which arise have been very clearly stated by the appellants' counsel.

Ordinance No. 45 of 1938 was passed by the Ceylon Legislature to amend and consolidate the law relating to motor cars and governed the use of omnibuses on highways in Ceylon until the passing of Ordinance No. 47 of 1942, which introduced an entirely new system with regard to the issue of licences. Under the earlier Ordinance the system was to license vehicles and this enabled different owners to run omnibuses for hire on the same route. It is said that this led to wasteful running, unnecessary overlapping of services and unhealthy competition. Under the later Ordinance the licence gave the licensee the exclusive right to provide an omnibus service for a particular route.

The issue of licences is placed in the hands of the Commissioner of Motor Transport, who in deciding whether an application for a road service licence should be granted or refused, in approving under section 5 the route or routes covered by a licence and in exercising his discretion as to the conditions to be attached under section 6 to a licence is required by section 4 of the Ordinance of 1942 to have regard to the following matters:—(i) The suitability of the route or routes on which it is proposed to provide a service under the licence; (ii) the extent, if any, to which the needs of the proposed route or routes or any such route are already adequately served; (iii) the needs of the area as a whole in relation to traffic (including the provision of adequate, suitable and efficient services and the provision of unremunerative services) and the co-ordination of all forms of passenger transport; (iv) the financial position of the applicant, in so far as it may affect the efficient operation of the proposed service; (v) the question whether any provision of any other written law prescribing a speed limit is likely to be contravened; and (vi) such other matters as the Commissioner may deem relevant. He is also required to take into consideration any representations made to him by persons who are already providing transport facilities along or near to the proposed route or routes or any part thereof, or by any local authority within the administrative limits of which a proposed route or part thereof is situate ; provided, however, that he must not, on the ground of any such representations, refuse an application for a road service licence or attach thereto a condition, except after notice to the applicant and consideration of any such matters as may be urged by the applicant in support of his application.

Section 6 gives wide powers to the Commissioner to impose conditions with respect to the matters mentioned in section 4 and generally for securing the safety and convenience of the public.

Section 7 (1) enacts that the issue of road service licences 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, subject, however, to the proviso 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, and (*b*) the principal purpose for which each such licence is being issued is to authorise the provision of a service substantially different from the services to be provided under the other licence or licences."

An appeal lies from a decision of the Commissioner to a Tribunal of Appeal, whose decision is declared to be final, subject to the proviso that the appellant or the Commissioner may apply to the Tribunal to state a case for the opinion of the Supreme Court. Under section 4 (6) (*a*) of the Ordinance of 1938 it is the duty of the Tribunal, if a question of law is involved, to state a case accordingly. The Ordinance of 1942 amended this provision by extending it to a question of a fact as well as of law.

At all times material to the appeal the respondents have held a licence to run an omnibus service along the main road from Kandy to Colombo. Some four miles from Kandy on the way to Colombo the road passes a point known as Peradeniya Bridge and nearly three miles further on a place known as Embilmeegama, or Pilimatalawa. The appellants hold a licence to run a service along the main Kandy-Colombo road as far as Peradeniya Bridge, at which point their route diverges to the south to Daulagala. At Daulagala the appellants' route branches. One arm runs north-west to a point within half a mile of Embilmeegama and the other arm continues south to Watadeniya. The distances are taken from the map at page 3 of the record.

On the 11th April, 1947, the appellants applied for a licence to run an omnibus service from Embilmeegama to Kandy via Daulagala and Peradeniya Bridge. They already held a licence for this route, except for a half a mile, the distance from their existing terminus north-west of Daulagala to Embilmeegama, and therefore the application was really one seeking permission to close this small gap and link Daulagala with the main Kandy-Colombo road. The Commissioner caused notice of the application to be given to the respondents, who, in addition to raising objections to it being granted, filed an application for a licence for the route from Kandy to Embilmeegama and then south to Daulagala.

After an inquiry at which the parties were represented by counsel, the Commissioner rejected both applications. As communicated to the appellants the Commissioner's decision was this:—" I see no real necessity for this route that is now applied. There is a bus running from Kadugannawa to Kandy through Pilimatalawa and another running from Daulagala to Kandy through Peradeniya Jn. If any people wish to get to Daulagala from Pilimatalawa they can easily walk the half mile." Kadugannawa is on the main Kandy-Colombo road some three miles from Pilimatalawa (Embilmeegama), in the direction of Colombo.

Both parties appealed to the Tribunal of Appeal. The respondents' appeal was apparently dismissed on the ground that their petition did not state any grounds for the appeal. The appellants' appeal was also dismissed, but here the order was in these terms:—

"1. We think there should be bus services leaving no gap since it is often necessary to convey sick folk. That is to say we are not prepared to dismiss this appeal on the ground stated by the Commissioner.

"2. But the respondent has a bus service running on the main road half a mile away and the extension sought by appellant will affect his custom. The respondent probably has as good a claim to extend his service part of the way from Embilmeegama junction to Deliwala as appellant has to extend it towards Embilmeegama. We dismiss appellant's appeal."

Deliwala is half-way between Embilmeegama and Daulagala. The order makes it quite clear that the Tribunal considered that there was a necessity for an omnibus service to cover the gap between the appellants' terminus and Embilmeegama, but it refused to allow the appellants' appeal because it was of the opinion that the extension sought by the appellants would be detrimental to the respondents, who had an equal claim for the extension of their service as the appellants had for the extension of their service.

Being dissatisfied with the decision of the Tribunal the appellants applied to it to state a case for the opinion of the Supreme Court. It did so and in the case submitted said that the points for decision were:— (i) Whether the Tribunal was entitled to consider any counterclaim after the respondents' appeal had been dismissed; (ii) whether it was not bound to grant the application of the appellants as the only applicants in the field; and (iii) whether the Tribunal was not bound to set aside the Commissioner's order and allow the appeal on the grounds stated in paragraph 10 (A) to (D) of appellants' application, or whether the needs of the public are or are not best served by the decision as it stands, under which all parties may make fresh applications and call further evidence. In paragraph 10 of their application the appellants set out at length the questions arising in the case and as these were incorporated in the third question put by the Tribunal the case stated really covered the whole of the ground. It is also to be noted that the Tribunal directed the Commissioner to forward to the Supreme Court the complete record, including the documents produced at the inquiry held by him.

In the Supreme Court the matter came before Basnayake J., who considered that the case stated was open to objection, because it had not been signed by all the members of the Tribunal, but by the chairman alone, it did not set forth the facts, and the questions on which the opinion of the Court was asked did not arise on the case stated. After proceeding to outline what he considered should be the procedure by which Tribunals of Appeal should be guided, the learned Judge concluded with the statement that the form in which the case had been sent up prevented him from expressing his opinion on the specific questions raised and the result was that the appellants found themselves "stated out of Court".

While the case as stated is undoubtedly open to criticism from the point of view of draftsmanship, any defects could have been easily remedied by sending it back to the Tribunal for amendment, which would certainly have been a better course to take than leaving the parties to start all over again in fresh proceedings before the Commissioner. Their Lordships are, however of the opinion that the case stated was not so defective as to make it impossible for the Supreme Court to answer the questions raised and that answers should have been given. The whole of the record was before the Court and the essential facts lay within a very narrow compass.

Their Lordships do not consider that the fact that the case stated was signed only by the chairman of the Tribunal is a ground for its rejection. The chairman signed on behalf of the Tribunal and neither Ordinance contains a direction that all members shall sign. The only direction given is in section 4 (6) (*b*) of the Ordinance of 1938 which says that the party requiring the stated case shall transmit it, " when stated and signed " to the Supreme Court. It would be carrying technicality beyond reasonable limits to hold that in a case of this nature and in such circumstances the signature of the chairman was insufficient.

The position which the Supreme Court had to consider presented no difficulty. There was no omnibus service over the half mile of road between the appellants' terminus and the junction with the main Kandy-Colombo road at Embilmeegama, but there was a public necessity for such a service, as the Tribunal had in effect found in its order in the appeal from the Commissioner. Each party had applied for a licence to run omnibuses over this small distance of unserved road. They were both before the Court, the appellants as applicants for a road licence and the respondents in opposition to the grant. The granting of a licence to the appellants would mean no overlapping of services, but merely the extension of their existing route to cover a small gap. On the other hand a grant of a licence to the respondents would mean that they would be allowed to run omnibuses over some three miles of road under licence to the appellants, who were apparently maintaining an adequate service thereon.

On these facts their Lordships consider that there is no room for doubt that the appellants have the better claim to a licence, especially having regard to the provisions of section 7 of the Ordinance of 1942. Their application for a licence should therefore have been granted. It does not follow that because a person or a company is the sole applicant for a road service licence it should be granted. Other factors have to be considered, namely those referred to in section 4 of the Ordinance of 1942, but taking everything into consideration their Lordships are of opinion that the Supreme Court should have answered the reference in the sense indicated.

Their Lordships will humbly advise Her Majesty that the appeal should be allowed and the appellants' application for a licence be granted and that the Supreme Court be directed to take all necessary steps to give effect to this decision, leaving it to the proper authority to decide the conditions to be inserted in the licence. The respondents must pay the costs of the appeal.

Appeal allowed.