1956 *Present :* Gratiaen, J., and Sansoni, J.

D. S. ATTYGALLE AND COMPANY, LTD., Petitioner,
and THE COMMISSIONER OF MOTOR TRAFFIC *et al*,
Respondents

S. C. 867—In the matter of an appeal to the Supreme Court from the decision of the Transport Appeals Tribunal in terms of section 212 of the Motor Traffic Act No. 14 of 1951

Lorry—Public carrier's permit—One ground for granting it—Motor Traffic Act No. 14 of 1951, ss. 89 (1) (b), 90 (3) (b).

Any person, who held a licence of the requisite character immediately before the specified date, is duly qualified under section 89 (1) (b) of the Motor Traffic Act to apply for a permit authorising "long distance carriage" of goods by lorry. Failure to satisfy the Commissioner that he regularly (if at all) made use of that licence during the relevant period does not divest him of his statutory qualifications to receive a permit.

APPEAL from a decision of the Transport Appeals Tribunal in terms of section 212 of the Motor Traffic Act.

H. V. Perera, Q.C., with *Izadeen Mohamed* and *Carl Jayasinghe*, for the petitioner.

H. L. de Silva, Crown Counsel, for the 1st respondent.

No appearance for the 2nd respondent.

Cur. adv. vult.

March 2, 1956. GRATIAEN, J.—

The petitioner, which is a Company with limited liability, was at all material times empowered to carry on the business of carrying goods for hire. Shortly after the Motor Traffic Act No. 14 of 1951 came into operation, the Company applied to the Commissioner for a public carrier's permit under section 89 (1) (*b*), authorising the use of two lorries in the Uva Province and along the route "Badulla to Colombo via Ratnapura and Avissawella". The second respondent objected to the issue of a permit on the following grounds :

(1) that the Company was not qualified to make an application under section 89 (1) (*b*) because it was not, immediately prior to December 31st 1949, "the holder of a licence authorising the use of lorries for substantially the same purposes and in substantially the same area of operation ;"

(2) that the Company had, in the alternative, not operated in the said area during the relevant period and was therefore not "the holder of a licence" within the meaning of section 89 (1) (*b*) ;

(3) that there were already suitable transport facilities to meet the requirements of the area.

The General Manager of Railways also objected to the Company's application on the first ground enumerated above, but later withdrew his objection on being satisfied that the Company did in fact hold licences "for the same area and payload".

After inquiry, the Commissioner made an order on 24th April 1952 allowing the Company's application. He held as a fact that the Company did hold licences prior to December 31st 1949 for two lorries for the same purposes and payload and within the same area, and therefore possessed the necessary qualifications to apply for a public carrier's permit. He was also satisfied that, having obtained similar licences for 1950 and 1951, the Company had during these latter years carried on a considerable transport business within the area. He rejected the 2nd respondent's evidence that the Company was a "new comer" and that the area was already adequately served by other carriers of goods.

The 2nd respondent appealed to the Transport Appeals Tribunal against the order, his main complaint being that the Commissioner's inquiry was irregular in that he had been refused permission to scrutinise

certain documents relied on by the Company in support of its application. He also contended, as a matter of law, that the Company was in any event not qualified to apply for a permit under section 89 (1) (*b*) without proof that, besides holding licences for its lorries for the period terminating on December 31st 1949, it had in fact "operated the area regularly during that particular period."

On January 11th 1953, the Tribunal, without giving its ruling as to the qualifications necessary to make an application under section 89 (1) (*b*), held that the Commissioner was wrong in refusing to allow the 2nd respondent to inspect certain documents. The Tribunal accordingly directed the Commissioner (*i*) to hold a fresh inquiry and to admit any further evidence which the parties might place before him, and (*ii*) thereafter to make his recommendations as to whether the Tribunal, in the exercise of its appellate jurisdiction, ought to make order allowing or refusing the Company's application.

The fresh inquiry before the Commissioner commenced on September 19th 1953 and was not concluded until October 2nd 1954. In due course the communicated to the Tribunal his findings of fact upon the evidence led before him, and made alternative recommendations as to how in his opinion the Company's application should be disposed of. His findings of fact, which bind the Tribunal and this Court, were to the following effect :

(1) that the Company did hold, for the period terminating 31st December 1949 and also for the years 1950 and 1951, licences of the description specified in section 89 (1) (*b*) ;

(2) that the Company had not used its lorries in the area in 1949, but that it had done so in 1950 and in 1951 and had thereby "provided a much-needed service to the public" in the carriage of goods generally and of vegetables in particular. He rejected the 2nd respondent's contention that the area was already "adequately and well served" in either of those respects.

Having recorded these findings of fact, upon which he was specially competent to reach a decision, the Commissioner made alternative recommendations to the Tribunal. He recommended that if, *as a matter of law*, an applicant was disentitled to a permit under section 89 (1) (*b*) unless he had in fact provided during the year 1949 a service for "substantially the same purposes and in substantially the same area," the Company's application under that section should be refused ; in that event he proposed that the appellant should be granted a permit under section 89 (1) (*a*) for the carriage of vegetables between the Welimada area and Colombo. On the other hand he recommended that if, *as a matter of law*, the mere possession of a licence prior to December 31st 1949 constituted a sufficient qualification to apply for a permit under section 89 (1) (*b*), the Company's application ought to be granted in view of his other findings of fact which I have already summarised.

The argument in appeal against the Commissioner's original order dated 24th April 1952 was resumed on March 26th 1955. On this occasion the Tribunal made an order refusing the Company a permit

under section 89 (1) (*b*) but adopting the Commissioner's alternative recommendation for the grant of a permit under section 89 (1) (*a*) restricted to the carriage of vegetables from the Welimada area to Colombo. The Company claims that the Tribunal was not justified in interfering with the Commissioner's discretion to grant a permit under section 89 (1) (*b*) authorising the carriage of goods generally within the area and along the route specified in the Commissioner's order dated April 24th 1952.

The Tribunal admittedly had no jurisdiction to set aside the Commissioner's order in favour of the Company except on a question of law, and in my opinion, the only justification for substituting an order for a restricted permit under section 89 (1) (*a*) in the present case would have been :

either (1) that the Company was disentitled in law to a permit under section 89 (1) (*b*)

or (2) that the Commissioner, in exercising his discretion in favour of the Company, had either disregarded the factors which he ought to have taken into consideration before reaching his decision, or been influenced by irrelevant and extraneous considerations.

With regard to the question of law, I take the view that any person who in fact held a licence of the requisite character immediately before the specified date was duly qualified under section 89 (1) (*b*) to apply for a permit authorising "long distance carriage" of goods by lorry. Failure to satisfy the Commissioner that he had regularly (if at all) made use of that licence during the relevant period did not divest him of his statutory qualifications to receive a permit : on the other hand, it certainly constituted "previous conduct in the capacity of a carrier of goods"—within the meaning of section 90 (3) (*b*) of the Act—which ought to be taken into account by the Commissioner in exercising his discretion whether to allow or refuse the permit applied for.

In the present case, the terms of the Commissioner's original order and of his subsequent "recommendations" makes it clear that this factor was given due weight by him ; he was satisfied, however, that it was counter-balanced by other important considerations such as (1) the interests of the public generally, (2) the circumstance that the area was inadequately served and (3) that the Company had regularly and efficiently "provided a much-needed service" in 1950 and 1951. Accordingly the Tribunal was not justified in deciding, "as a matter of law", that the Commissioner's order dated 24th April 1952 ought to be quashed or varied on appeal. The order of the Tribunal must therefore be set aside and the Commissioner's original order granting the Company a public carrier's permit under section 89 (1) (*b*) in respect of lorries Nos. CY 170 and CN 8829 should be restored. Let the Registrar now remit the case to the Tribunal for appropriate action under section 211 (6). The 2nd respondent must pay the Company's costs of this appeal which I would fix at Rs. 525.

SANSONI, J.—I agree.

Order set aside.