

1946

Present : Wijewardene J.

KODITUWAKKU, Petitioner, and THE TRIBUNAL OF APPEAL
et al., Respondents.

IN THE MATTER OF AN APPLICATION FOR A MANDATE IN THE NATURE
OF A WRIT OF MANDAMUS ON THE TRIBUNAL OF APPEAL
CONSTITUTED UNDER THE MOTOR CAR ORDINANCE, NO. 45 OF
1938, AND THE OMNIBUS SERVICE LICENSING ORDINANCE,
NO. 47 OF 1942. APPLICATION NO. 473/1946.

Omnibus Service Licensing Ordinance, No. 47 of 1942, Schedule I., paragraphs 2, 3—Application for exclusive road service licence—Scope of applicant's duty to pay compensation—Compensation not payable to a person who has "a pecuniary interest or share in the business"—Liability restricted to written undertaking given before the issue of licence.

¹ (1929) 1 King's Bench Division 1 at page 19.

² (1917) Appeal Cases 127.

³ (1930) 23 Butterworth's Workmen's Compensation Cases 460 at page 471.

A company which applied for an exclusive road service licence under the Omnibus Service Licensing Ordinance, No. 47 of 1942, entered into a written undertaking by which it agreed to pay compensation in terms of paragraph 2 (c) of the first Schedule of the Ordinance. K, the owner of two omnibuses, consented in writing to the issue of the licence and, further, undertook to take shares in the company to the value of his omnibuses and to transfer the omnibuses to the company.

Held, that K could not come under paragraph 2 (c) of the Schedule as a person who could claim the benefit of the written undertaking given by the company to pay compensation.

Held, further, that paragraph 2 (c) of the Schedule refers to a written undertaking in existence before the issue of the licence. Letters, therefore, written by the company to K, after the issue of the licence, adopting liability to pay compensation could not be regarded as "written undertakings".

THIS was an application for a mandate in the nature of a writ of *mandamus* against the Tribunal of Appeal constituted under the Motor Car Ordinance, No. 45 of 1938, and the Omnibus Service Licensing Ordinance, No. 47 of 1942.

N. E. Weerasooria, K.C. (with him *D. D. Athulathmudali*), in support.

Cur. adv. vult.

October 16, 1946. WIJEYWARDENE J.—

This is an application for a mandate in the nature of a Writ of *Mandamus* on the first respondent, the Tribunal of Appeal constituted under the Motor Car Ordinance, No. 45 of 1938, and the Omnibus Service Licensing Ordinance, No. 47 of 1942.

In his affidavit submitted to this Court, the petitioner stated—

- (a) that he was the owner of omnibuses B 2047 and X 7082 and that licences were issued to him to ply those vehicles for hire in 1942 along certain routes ;
- (b) that the second respondent was an applicant for Exclusive Road Service Licences in respect of those routes for 1943 ;
- (c) that the petitioner consented to the Exclusive Road Service Licences being issued to the second respondent " in consideration of an undertaking (a certified copy of which marked " A " is filed) given by the second respondent ".
- (d) that by certain letters of August and September, 1943, the second respondent " adopted his liability to pay compensation but disputed the quantity of compensation payable to him ".
- (e) that he applied to the first respondent for an order directing the second respondent to pay to him as compensation " such amounts as the first respondent may fix " but the first respondent held that it had no jurisdiction to entertain that application.

Though the affidavit stated that the petitioner was filing with the affidavit a copy of " the application and the proceedings " before the Tribunal of Appeal, I found among the papers only an uncertified copy of an order made by Dr. P. E. Pieris as Chairman of the Tribunal of Appeal. In the course of the argument before me the Counsel for the petitioner referred to an agreement mentioned in that order. It was

found that no copy of that agreement, certified or uncertified, had been filed in this Court and on the special application of Counsel I gave him an opportunity to produce a certified copy of that agreement which I have marked "Z". That document "Z" reads—

"We, the undersigned, The Galle Motor Bus Company, Limited, do hereby in terms of section 2c of the First Schedule of Ordinance No. 47 of 1942, undertake and agree to pay as compensation to every person possessing an Omnibus Licence on our Bus Routes who do not consent to join the said Company".

Section 18 of the Omnibus Service Licensing Ordinance makes the special provisions in the First Schedule to the Ordinance applicable to the issue of Road Service Licences. Paragraph 2 of that Schedule states that no Road Service Licence shall be issued upon an application (other than an application under paragraph 1 (1)) unless the Commissioner is satisfied:—

- (a) "that the applicant has paid compensation to every person who being for the time being the holder of a licence under the Motor Car Ordinance, No. 45 of 1938, authorising the use of an omnibus . . . has no pecuniary interest or share in the business proposed to be carried on by the applicant under the road service licence; or
- (b) that every person referred to in sub-paragraph (a) has given his written consent to the issue of the road service licence to the applicant; or
- (c) that the applicant has entered into a written undertaking by which he agrees to pay as compensation to every person referred to in sub-paragraph (a), to whom he has not already paid compensation or who has not consented to the issue of the licence to the applicant, such amount as may be determined by a Tribunal of Appeal constituted under the Motor Car Ordinance, No. 45 of 1938".

Now "undertaking" A referred to in the petitioner's affidavit reads as follows:—

"I, H. B. K. Kodituwakku of Baddegama, owner of Motor Omnibuses whose distinctive numbers are mentioned below, consent to the issue of the Exclusive Road Service Licence to the above Company, in terms of section 2 (b) of the First Schedule of Ordinance No. 47 of 1942. I undertake to take shares in the above Company to the value of my omnibuses mentioned below. And to transfer the said omnibuses to the said Company.

B 2047
X 7082

H. B. Kodituwakku,
December 26, 1942".

That document shows clearly that the petitioner was a person having "a pecuniary interest or a share in the business" (*vide* paragraph 2 (a) of Schedule) and had also consented in writing to the issue of the licence. He did not, therefore, come under paragraph 2 (c) of the Schedule as a person who could claim the benefit of a written undertaking like "Z" made by the applicant to pay compensation.

The letters " B ", " C " and " D " written after the issue of the Licence cannot be regarded as " written undertakings " contemplated in paragraph 2, as that paragraph refers to documents in existence before the issue of the licence.

The petitioner, therefore, was not entitled to make an application under paragraph 3 of that Schedule.

I refuse to issue notice on the Tribunal of Appeal and dismiss the application.

I wish to add that the Proctor who filed papers in this Court has not shown that amount of care which this Court has a right to expect from its practitioners.

Application dismissed.
