

1945

Present: **Rose J.**

COMMISSIONER OF MOTOR TRANSPORT, Appellant, and
HIGH LEVEL ROAD BUS COMPANY, Respondent.

CASE STATED FOR THE OPINION OF THE SUPREME COURT UNDER SECTION 13 (8) OF THE OMNIBUS SERVICE LICENSING ORDINANCE, No. 47 1942.

Omnibus Service Licensing Ordinance, No. 47 of 1942, s. 7—Effect of section 7—Difference persons cannot run services on same section of highway.

The effect of section 7 (1) of the Omnibus Licensing Ordinance, No. 47 of 1942, is to prevent more than one person from providing regular Omnibus Services on the same section of any highway unless the provisoes to the sub-section are satisfied.

Colombo Omnibus Co., Ltd. v. The Commissioner of Motor Transport et al. (1943) 45 N. L. R. 67, followed.

THIS was a case stated for the opinion of the Supreme Court under section 13 (8) of the Omnibus Service Licensing Ordinance, No. 47 of 1942. The High Level Road Bus Co., Ltd. (the respondent) applied for a Road Service Licence in respect of a route which was described as follows:—"Between Kirillapone Bridge of the High Level Road and the Bus Stand, Pettah, Colombo". The details of the route were specified as "via Spinning and Weaving Mills, Havelock road, Eye Hospital, Darley road and Maradana". This part of the route was common to a route on which another omnibus owner, viz., the Gamini Bus Co., Ltd., operated omnibus services. Further, the service which was applied for, i.e., the "proposed route," was intended as an intermediate service to relieve the congestion in the existing Nugegoda to Colombo Service of the respondent.

The question that arose for the opinion of the Supreme Court was whether the Tribunal of Appeal constituted under Ordinance No. 47 of 1942 was justified in holding that the Commissioner of Transport had the authority in law and on the facts to issue the licence applied for. The Commissioner of Motor Transport, although he had refused the application of the respondent, stated to the Tribunal of Appeal that if he had the legal authority the licence applied for would have been issued by him.

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

C. Thiagalingam (with him *E. B. Wikramanayake*), for the High Level Road Bus Company, respondent.

U. A. Jayasundera (with him *Vernon Wijetunge*), for the Gamini Bus Company, party noticed.

Cur. adv. vult.

November 14, 1945. ROSE J.—

This matter concerns the interpretation of section 7 (1) of the Omnibus Licensing Ordinance, No. 47 of 1942. The point of law to be decided is a simple one and has already been considered by this Court. In *Galle Omnibus Company, Limited v. The Commissioner of Motor Transport and others*¹ Hearne J. considered the precise point which is formulated in the present stated case, and accepted the view of the law contended for by the present appellant.

Section 7 (1) reads as follows:—

“ The issue of road service licences under this Ordinance 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. Provided, however, 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.”

Counsel for the respondent contends that the words “ different persons ” should be interpreted to mean “ strangers ” or “ outsiders ” to the section of the highway in question and are not intended to refer to the various persons who are already operating over it. It seems to me, however, that the plain wording of the section supports the view taken by Hearne J. and the effect of the section is to prevent more than one person from providing regular Omnibus Services on the same section of any highway unless the provisoes to the sub-section are satisfied.

In the present case it appears that the two omnibus companies—which during the argument were for convenience sake designated the Red and Blue Lines respectively—operate services over routes which include in common the greater part of that section of the highway between the Eye Hospital, Cinnamon Gardens and the Kirillapone Bridge which constitutes the Proposed New Route for which the Commissioner’s approval was sought. Having regard to the view of the law which I have accepted it follows that in my opinion the Commissioner has no authority under the Ordinance to issue a road service licence for this Proposed Route either to the Red or to the Blue Line or indeed to any other applicant who

may come forward in the future. Counsel for the respondent urges that such a position is inconvenient to the public. If that is correct—and it may well be so—the matter can be remedied by a simple amendment of the Ordinance.

The respondent will pay to the appellant the cost of the proceedings in this Court and before the Tribunal of Appeal. The party noticed will have no costs.

Appeal allowed.

