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No.....

Supreme Court of Ceylon
Application No. 28 of 1949.

In the matter of a Case Stated
by the Tribunal of Motor Appeals
under Section 4 of the Motor Car
Ordinance No. 45 of 1938.

UNIVERSITY OF LONDON
M. C. S.
ADVANCED
STUDIES

IN THE PRIVY COUNCIL
ON AN APPEAL FROM THE SUPREME
COURT OF CEYLON

BETWEEN

PERADENIYA SERVICE BUS COMPANY, LIMITED,

No. 700, Peradeniya Road, Kandy.....*Petitioners-Appellants*

AND

SRI LANKA OMNIBUS COMPANY, LIMITED,

41 (1/6) Victoria Buildings, Norris Road, Colombo.....*Respondents*

RECORD
OF PROCEEDINGS

INDEX

Serial No.	Description of Document	Date	Page
1	Application of the P. S. Bus Co. Ltd.	11th April, 1947	1
	Sketch Map	—	3
	Time Table	—	4
	Fare Table	—	5
2	Letter from the Commissioner of Motor Transport to Respondents	4th July, 1947	6
3	Letter from the Respondents to Commissioner of Motor Transport	10th July, 1947	7
4	<i>Inquiry before the Commissioner of Motor Transport</i>	3rd February, 1948	8
5	Order of the Commissioner of Motor Transport	27th February, 1948	10
6	Sketch Map	—	11
7	Statement of appeal of the Petitioners-Appellants to the Tribunal of Appeal	3rd March, 1948	12
8	Order of the Tribunal of Appeal	21st August, 1948	13
9	Application of the Petitioners-Appellants for a case to be stated to the Supreme Court	30th September, 1948	14
10	Case stated by the Tribunal of Appeal	4th December, 1948	16
11	Motion	20th January, 1949	18
12	Judgment of the Supreme Court	5th December, 1949	19
13	Order of the Privy Council granting Special Leave to Appeal	25th April, 1950	23

**INSTITUTE OF ADVANCED
 LEGAL STUDIES,
 25, RUSSELL SQUARE,
 LONDON,
 W.C.1.**

31437

No.....

Supreme Court of Ceylon
Application No. 28 of 1949.

UNIVERSITY OF LONDON
In the matter of a Case Stated
by the Tribunal of Motor Appeals
under Section 4 of the Motor Car
Ordinance No. 45 of 1938. FINANCED

LEGAL STUDIES

IN THE PRIVY COUNCIL
ON AN APPEAL FROM THE SUPREME
COURT OF CEYLON

BETWEEN

PERADENIYA SERVICE BUS COMPANY, LIMITED,

No. 700, Peradeniya Road, Kandy.....*Petitioners-Appellants*

AND

SRI LANKA OMNIBUS COMPANY, LIMITED,

41 (1/6) Victoria Buildings, Norris Road, Colombo.....*Respondents*

RECORD OF PROCEEDINGS

Application of the P. S. Bus Co. Ltd.

No. 1
Application
of the P. S.
Bus Co. Ltd.
11-4-47

Form PSV I. (F*) 8/44

For use in C. M. T's Office only

Date received :

Licence and Service No.....

Serial No.....

OMNIBUS SERVICE LICENSING ORDINANCE, 1942

**APPLICATION FOR THE GRANT OF A ROAD SERVICE
LICENCE FOR A REGULAR SERVICE OF
OMNIBUSES OR MOTOR CABS.**

NOTES

(1) A separate application must be submitted in respect of each route.

(2) **EACH APPLICATION MUST BE ACCOMPANIED BY A MAP OR DIAGRAM OF THE ROUTE AND BY THE FOLLOWING SCHEDULES IN DUPLICATE:—**

- (a) The time table proposed.
(b) The fare table proposed.

If the service is to be limited to certain days of the week or month or to some particular period or periods this should be clearly indicated on the time table as well as in the answers on this form.

(3) The fee payable for a road service licence is Re. 1 for each month or part of a month for which the licence is expressed to have effect. Fees should not be sent with this form.

To THE COMMISSIONER OF MOTOR TRANSPORT,
P. O. Box 533, Colombo.

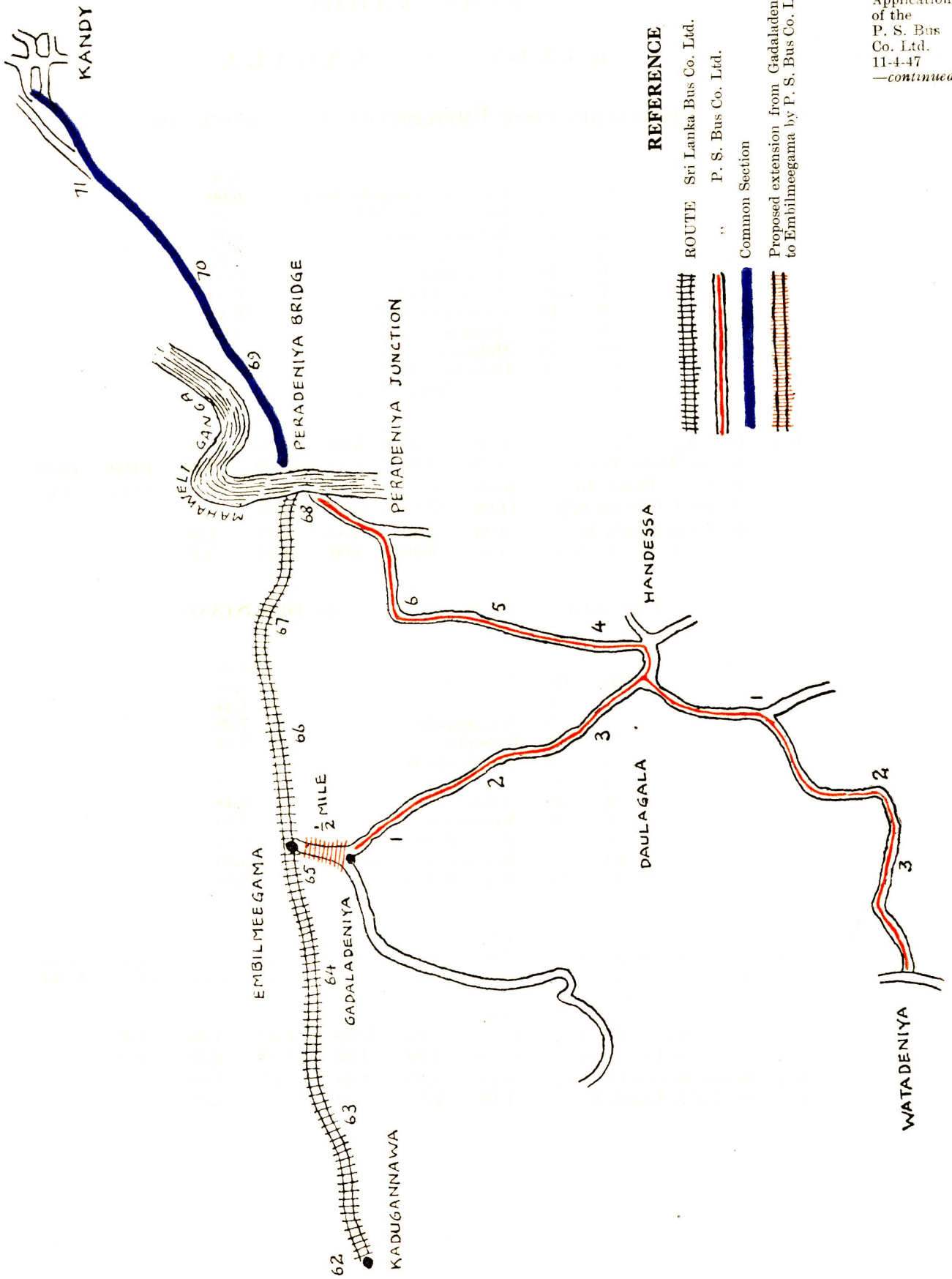
I, the undersigned, hereby apply for a licence to provide a road service, details of which are shown below and in the schedules attached, and I declare that to the best of my knowledge and belief the statements made herein are true and correct.

Usual Signature : Sgd. R. N. Samaravijaya

Full name of person signing : RAJAPAKSAGE NADORIS SAMARAVIJAYA
(IN BLOCK CAPITALS)Description : Secretary
(Manager, Secretary, Partner, &c., if making application on behalf of a Company, Partnership, &c.)On behalf of P. S. BUS CO. LTD.
(Only required in the case of a Company or Partnership.)Address : 700 Peradeniya Road,
Kandy

Date : 11th April 1947

QUESTION	ANSWER
1. Is the applicant (if not a Company) over 21 years of age?	Company
2. Description of route. (a) Terminal points of the route as a whole. (Terminal points must be specified precisely e.g., Bus Stand, Lotus Road, Colombo.) (b) Details of route sufficient to identify the roads to be traversed. (Names of towns and villages to be in BLOCK CAPITALS and the names of roads in towns to be given.) A map or diagram of the route should be supplied	Between Daulagala (Ambilmeegama Jn.) and Kandy Market Bus Stand DAULAGALA, HANDESSA, PERADENIYA JN. PERADENIYA BDGE. GETAMBE, MULGAMPOLA, KATUKELLE, RAILWAY APPROACH ROAD.
3. Name any part of the route applied for which is common to any route on which any other bus owner operates a bus service.	Between Peradeniya Junction and Kandy Market Bus Stand
4. Is this application for a service to be run every day throughout the year? If not, give particulars of the day or the week or the occasion on which, or periods during which, it is to be run.	To run every day throughout the year
5. (a) How many vehicles will normally be required to operate the service according to the proposed schedule? (b) How many vehicles do you own? (c) How many spare vehicles will be available for the operation of this service, if necessary?	(a) Five vehicles (b) 23 (c) One
6. What type or types of vehicle is it proposed to use for the operation of the service? (a) e.g., Bus, Motor Cab, Type of body, make, petrol or diesel. (b) Seating capacity of each vehicle.	(a) Buses Nelson Model and ordinary type petrol (b) Ranging from 22 to 32 Passengers.
7. State: (a) the monthly bus mileage represented by the time table submitted. (b) the amount of fuel required to cover this monthly mileage.	(a) 14,400 miles (b) (i.) petrol 1,440 gallons (ii) diesel oil — gals.



No. 1
Application
of the
P. S. Bus
Co. Ltd.
11-4-47
—continued

No. 1
Application
of the P. S.
Bus Co. Ltd.
11-4-47
—continued

TIME TABLE

KANDY—DAULAGALA

DEPARTURES FROM EMBILIMEEGAMA JN.—DAULAGALA

Mls.	Mts.	Embilimeegama Jn. Dau.	A.M.
2	9	Daulagala 2nd M.P.	6.00
4	18	Daulagala Spout	6.17
5	26	Naranwala	6.25
6	34	Hendeniya	6.35
7	39	Peradeniya Jn.	6.39
8	44	Peradeniya Bridge	6.44
9	48	Getambe	6.48
10	52	Mulgampola	6.52
11	56	High School	6.56
12	60	Kandy Market Bus Stand	7.00

Dep.—Daulagala Embil. Jn.	6.30	7.00	7.30	8.00	8.30	9.00	10.30
Arr.—Kandy Market Bus Std.	7.30	8.00	8.30	9.00	9.30	10.00	11.30
Dep.—Daulagala Embil. Jn.	10.00	10.45	11.15	11.45	12.15	12.45	1.15
Arr.—Market Bus Stand Kdy.	11.00	11.45	12.15	12.45	1.15	1.45	2.15
Dep.—Daulagala Embil. Jn.	2.00	2.30	3.00	3.45	4.30	—	—
Arr.—Kandy Market Bus Std.	3.00	3.30	4.00	4.45	5.30	—	—

DEPARTURES FROM KANDY MAR. BUS STAND

Mls.	Mts.	Kandy Market Bus Stand	A.M.
1	4	High School	7.20
2	9	Mulgampola	7.29
3	14	Getambe	7.34
4	18	Peradeniya Bridge	7.38
5	22	Peradeniya Jn.	7.42
6	28	Hendeniya	7.48
7	33	Naranwala	7.53
8½	42	Daulagala Spout	8.02
10	50	Daulagala 2nd M.P.	8.10
12	60	Daulagala Embil. Jn.	8.20

	A.M.						
Dep.—Kandy Market Bus Std.	7.45	8.15	8.45	9.15	10.00	10.30	11.00
Arr.—Daulagala Embil. Jn.	8.45	9.15	9.45	10.15	11.00	11.30	12.00

	P.M.						
Dep.—Kandy Market Bus Std.	11.30	12.00	12.30	1.00	1.30	2.00	2.30
Arr.—Daulagala Embil. Jn.	12.30	1.00	1.30	2.00	2.30	3.00	3.30
Dep.—Kandy Market Bus Std.	3.15	3.45	4.30	5.15	6.00	—	—
Arr.—Daulagala Embil. Jn.	4.15	4.45	5.30	6.15	7.00	—	—

FARE TABLE
KANDY—DAULAGALA

No. 1
Application
of the P. S.
Bus Co. Ltd.
11-4-47
—*continued*

Kandy	Kandy										
High School	5	High School									
Mulgampola	10	5	Mulgampola								
Getambe	10	10	5	Getambe							
Peradeniya Bdge	15	10	10	5	Peradeniya Bdge						
Peradeniya Jn.	15	15	10	10	5	Peradeniya Jn.					
Hendeniya	20	20	15	15	10	5	Hendeniya				
Naranwala	30	30	20	20	15	10	10	Naranwala			
Daulagala spout	35	35	25	25	20	15	15	10	Dau. Spt.		
Daulagala 2nd M.P.	35	35	30	30	25	20	20	15	10	Dau. 2. M.P.	
Daulagala ½ M.P.	40	40	35	35	30	25	25	20	15	10	Dau. ½ M.P.
Embilmeegama Jn.	40	40	35	35	30	25	25	20	15	10	5

CHILDREN'S FARES

Under 3 years of age if not occupying a seat. Free.

3 years of age but under 12 years—Half rate.

No. 2
Letter from
the Com-
missioner of
Motor Trans-
port to the
Respondents
4-7-47

No. 2

**Letter from the Commissioner of Motor Transport
to the Respondents**

No. R. 537
Colombo, 4th July, 1947.

Sirs,

ROUTE : KANDY—EMBILMEEGAMA JN.

M/s P. S. Bus Co. Ltd. have applied for a licence for an extension of the Kandy—Daulagala route up to Embilmeegama Jn., near the route you are at present serving. I shall be glad if you will let me know whether you have any representations to make.

If I do not hear from you within 15 days from today I shall take it that you have no representations to make.

I am, Sirs,
Your obedient servant,
Sgd. Illegibly
for Commissioner of Motor Transport.

M/s Sri Lanka Omnibus Co. Ltd.,
41 2/1 Victoria Buildings,
Norris Road,
Colombo.

No. 3

**Letter from the Respondents to the Commissioner of
Motor Transport**

No. 3
Letter from
the Res-
pondents to
the Com-
missioner
of Motor
Transport
10-7-47

SRI LANKA OMNIBUS CO. LTD.

Colombo, 10th July, 1947.

Ref. No. F/16

The Commissioner of Motor
Transport,
Colombo.

10 Sir,

ROUTE : KANDY—AMBILMEEGAMA JN.

With reference to your letter No. R. 537 of 4th July, 1947, we have to inform you that we object to the above application made by M/s P. S. Bus Co. Ltd., and to state that we will place our objections before you at the inquiry.

Yours faithfully,

SRI LANKA OMNIBUS CO. LTD.

Sgd. Illegibly

General Manager.

No. 4

Inquiry before the Commissioner of Motor Transport

3rd February, 1948.

Present :

Mr. N. E. Weerasooriya, K.C., with Mr. Wijetilleke for
P. S. Bus Co.

Mr. D. W. Fernando with Mr. D. F. J. Perera for Sri Lanka
Bus Co.

ROUTES: KANDY—DAULAGALA VIA PILIMATALAWA ETC.

APPLNS. NOS. NA. 896 & R. 537.

10

Mr. Weerasooriya: We go up to the half mile post from Pilimatalawa. We are only asking that we get the balance half mile from our Daulagala-Watadeniya service. The objection by the Sri Lanka is that we would be taking passengers who would be normally going from Daulagala to Kandy. There is a Cottage Hospital at Nalanda and a Rural Court at Daulagala and a Handessa Government School; there is a dispensary and a number of estates in that area. The only objection that can be taken by the Sri Lanka is that we are stealing their passengers. We will never interfere with their service. From Embilmeegama we want to take people to Daulagala Rural Court. We want only half a mile. We cannot possibly 20 interfere with their service. The only ground would be that we are taking passengers from Kadugannawa to Kandy at Pilimatalawa. They are asking 896 from Kandy to Daulagala *via* Pilimatalawa. They really want to get the passengers who go from Daulagala to Kandy. We already have provided that service. We are within half a mile of Pilimatalawa. What I say is they will be interfering with the whole of our service which goes from the 9th mile post to Daulagala. We will be taking only half a mile up to the Junction and it cannot be believed that anybody from Pilimatalawa Junction will take this 12 mile route whereas they can take a 6 mile route to Kandy.

30

Mr. Fernando: I understand now the position to be that the P. S. have a licence to operate a service from Kandy to the half mile post from Pilimatalawa. Originally in 1948 they had only a licence to Daulagala. My submission is that when their route Peradeniya Jn.—Kandy was refused on the ground that it contravened the provisions of Section 7 they were afraid that their route Daulagala—Kandy would be refused on the same ground and sought to extend their route from Daulagala to points along that route to Pilimatalawa Jn. First of all they obtained an extension to the second mile post from Pilimatalawa Jn. That extension was granted without any notice to us. It is no longer possible for me to revoke 40 that licence on the ground that no notice was given to me. It is hardly necessary for me to refer you to the Section under the Ordinance which

requires notice of these applications to be given to people who are operating in or about the proposed service. My submission is that on an application to extend the licence of the P. S. Bus Co. from Kandy to Daulagala to the 2nd mile post from Pilimatalawa I submit that the Sri Lanka Bus Co. should have been noticed and my representations recorded. If at that stage I was noticed the Sri Lanka would have made a concurrent application to operate from Daulagala to Kandy.

No. 4
Inquiry
before the
Commissioner of
Motor
Transport
3-2-48
—continued

Then they further extended their route to the half mile post from Pilimatalawa Jn. Again we were not noticed. Daulagala is $3\frac{1}{2}$ miles from Pilimatalawa Jn. Some part of the people on the Pilimatalawa-Daulagala route who desired to go to Kandy must have taken our buses prior to 1946. At least people living within half the distance would have taken the buses of the Sri Lanka Co. going to Kandy. That being so, we were providing a service up to about $3\frac{1}{2}$ miles and if a service was necessary on that section of the road we were entitled to make an application in as much as prior to 1946 we were providing that service to those people. We were denied that right. I understand the road was opened for bus traffic very recently. I resisted the application for any further extension. My friend says that he is trying to provide a rural service. I am instructed that at Daulagala there is a maternity home, and there is also a maternity home at Kotaligoda, $1\frac{1}{2}$ miles from the Pilimatalawa Jn. My friend is providing a service for people $3\frac{1}{2}$ miles away rather than for people who want to go to Kotaligoda which is only $1\frac{1}{2}$ miles away. My friend emphasised that he was taking people from Pilimatalawa to the Daulagala Rural Court. My instructions are that the Daulagala Court has no jurisdiction over the Pilimatalawa people. I am only asking you to verify these statements before you make up your mind. The Rural Court for people of Pilimatalawa is the Udunuwara Rural Court, which is at Siyambalagoda on the other side of the Kandy road. The real purpose of their application is this. The P. S. Bus Co. is running their service to Daulagala on the same fare. So passengers go to Daulagala and they go to the Pilimatalawa half mile post also for the same fare. Therefore I have no doubt that they would carry them a further half mile on the same fare.

The object of the Ordinance was to prevent rivalry and if you grant this application you would be disregarding the provisions of the Ordinance and providing for a rival.

Then with regard to our application. The Sri Lanka have applied for a service from Kandy to Daulagala *via* Pilimatalawa. Perhaps we would have been entitled to some point short of Daulagala if we had applied before those extensions were allowed. Now do the extensions stand in the way of granting me a licence? My submission is that they do not. I am now seeking to provide a cheaper service for the man at the half mile post and the man at the 2nd mile post to Kandy. The application I have asked for from Daulagala to Kandy does not contravene the provisions of Section 7. The distance from Daulagala to Pilimatalawa is $3\frac{1}{2}$ miles; they have 3 miles of that on their route from Gadaladeniya to Kandy. The

No. 4
Inquiry
before the
Commissioner of
Motor
Transport
3-2-48
—continued

total distance covered by that route from the $\frac{1}{2}$ mile post Pilimatalawa to Kandy is $11\frac{3}{4}$ miles. The route that we ask for is from Daulagala to Kandy. Daulagala to Embilmeegama is $3\frac{1}{2}$ miles and the distance from Pilimatalawa to Kandy is 7 miles, making $10\frac{1}{2}$ miles. The common section is from Daulagala to the half mile post; which is 3 miles. That common section is neither the major section of their route which is $11\frac{3}{4}$ miles; nor the major section of our route which is $10\frac{1}{2}$ miles. The only question is whether, on the merits, we are entitled to it. In your discretion you may grant us a route which is less than the route we have applied for. If you think that I should be granted a route to some point between Daulagala and Pilimatalawa that is in the exercise of your discretion. 10

Mr. Weerasooriya: Our route from Kandy to Peradeniya Jn. We already have a route from Kandy to Daulagala. In calculating the distance you have to add that also to our present service from the Kandy Market Jn. to Peradeniya Bridge. Then it becomes $11\frac{1}{2}$; they have about 7. My friend had only part of my route.

Appln. No. 820.

Mr. Weerasooriya: This is entirely within our service and the applicant is absent.

No. 5

20

Order of the Commissioner of Motor Transport

No. 5
Order of
the Commissioner of
Motor
Transport
27-2-48

My No. R. 537
Colombo, 27th February 1948.

Sirs,

**EXTENSION OF THE KANDY—DAULAGALA SERVICE
UP TO AMBILMEEGAMA.**

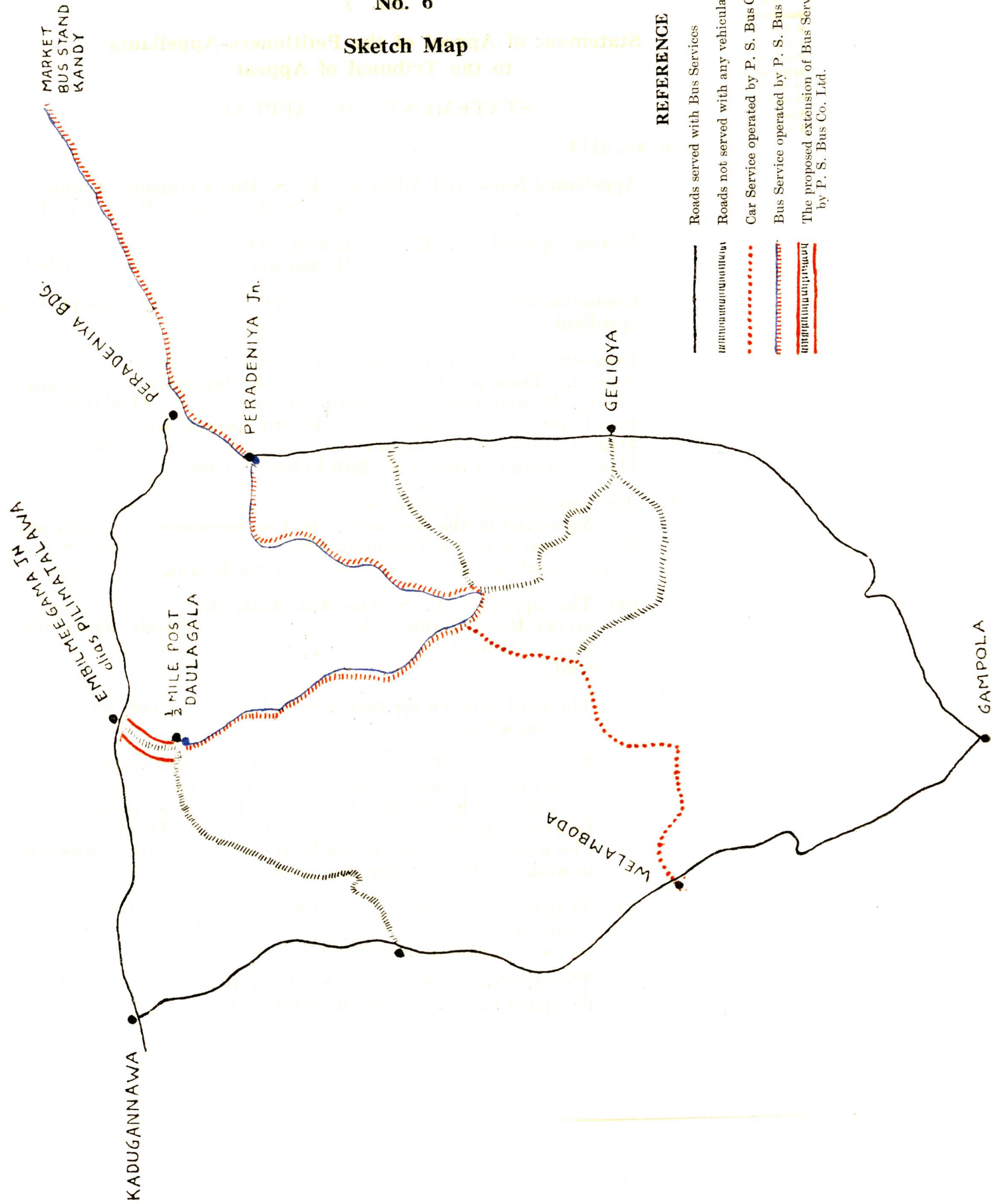
I have refused your application dated 11-4-47 for the extension of the Kandy—Daulagala service up to Embilmeegama. I give below my decision.

I am, Sirs,
Your obedient servant 30
Sgd. N. MOONESINGHE
Commissioner of Motor Transport.

Sgd. P. SANGARAPPILLAI
Transport & Administrative Assistant.
Messrs. P. S. Bus Co. Ltd.,
Kandy.

Decision: "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 40 walk the half mile".

Sketch Map



REFERENCE

- Roads served with Bus Services
- - - Roads not served with any vehicular conveyance
- Car Service operated by P. S. Bus Co.
- ==== Bus Service operated by P. S. Bus Co.
- ==== The proposed extension of Bus Service by P. S. Bus Co. Ltd.

No. 7

No. 7
Statement
of Appeal
of the
Petitioners-
Appellants
to the
Tribunal of
Appeal
8-3-48

**Statement of Appeal of the Petitioners-Appellants
to the Tribunal of Appeal**

STATEMENT OF APPEAL

Appeal No. 5114.

1. Appellant's Name and Address: P. S. Bus Company, Limited,
No. 700, Peradeniya Road, Kandy.
2. Licence applied for: R/537. Kandy—Daulagala
(Extension to Embilmeegama Jn.)
3. Commissioner's decision or order, and date of its receipt by 10
appellant:

Decision: "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." Date of receipt of decision—28th February 1948.

4. The abovenamed appellant states as follows:—
Aggrieved by the decision of the Commissioner the Applicant begs to appeal to the Tribunal of Appeal on the following among 20 other grounds which may be adduced at the hearing of this Appeal.
 - (a) The applicant P. S. Bus Co. Ltd., Kandy, is holding a licence R/537 to run a bus service from Kandy along the Daulagala road to a point half mile from the Kandy-Colombo road.
 - (b) The road between the two aforesaid points is not served by any bus service.
 - (c) People living in Embilmeegama and the surrounding areas are seriously inconvenienced as they have no transport from the Colombo-Kandy Road up to the half mile post on the 30 Daulagala Road and similarly people in the Daulagala area who want to get to the Colombo-Kandy road are compelled to walk the distance from the present halting place.
 - (d) That is contrary to the principle of progressive transport to compel passengers to walk from one point to another when a bus service can be introduced to serve these points.
 - (e) That the learned Commissioner has erred in taking the view that passengers can easily walk the half-mile.

- (f) That the object of the present application is merely to extend the present route to reach an important junction.
- (g) That objections to this application are frivolous and vexatious.
- (h) That the learned Commissioner has failed to take into consideration that people travelling to the Rural Courts at Handessa, Rate Mahatmaya's Office, the Cottage Hospital, Post Office, the ancient temples at Lankatilake, Gadaldeniya and Embekke, and the schools in the area are seriously inconvenienced.

No. 7
Statement
of Appeal
of the
Petitioners-
Appellants
to the
Tribunal of
Appeal
3-3-48
—continued

10

P. S. BUS COMPANY LTD.
Sgd. Illegibly
Secretary.

Date : 3rd March, 1948.

No. 8

Order of the Tribunal of Appeal

No. 8
Order of the
Tribunal of
Appeal
21-8-48

Appeal No. 5114.

Colombo 21st August 1948.

T. W. ROBERTS Esq. (*Chairman*)
L. H. DE ALWIS Esq.
STANLEY ALLES Esq.
COMMISSIONER.

20

Mr. Advocate N. E. Weerasooriya, K.C., with Advocates Mr. H. W. Jayawardene and Mr. P. Somatillekam instructed by Mr. H. R. U. Premachandra for the appellant.

Mr. Advocate D. W. Fernando, instructed by Mr. D. F. J. Perera for respondent.

ORDER :

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
30 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 has probably 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.

Sgd. T. W. ROBERTS
Chairman.

No. 9

No. 9
Application
by the
Petitioners-
Appellants
for a case
to be stated
to the
Supreme
Court
30-9-48

**Application by the Petitioners-Appellants for a case to be
stated to the Supreme Court**

IN THE MATTER OF AN APPLICATION FOR A CASE TO BE
STATED TO THE HONOURABLE THE SUPREME COURT
UNDER SECTION 4 (6) (A) OF THE MOTOR CAR
ORDINANCE No. 45 OF 1938 READ WITH SEC-
TION 13 OF ORDINANCE No. 47 OF 1942.

To:

- (1) T. W. ROBERTS Esquire, *Chairman*,
- (2) L. H. DE ALWIS Esquire, and
- (3) S. ALLES Esquire,

10

the Members of the Tribunal of Appeal constituted under Section 4 of Motor Car Ordinance No. 45 of 1938, to hear appeal No. 5114 of 21-8-48 of the P. S. Bus Company Limited re. application No. R. 537.

1. The P. S. Bus Company Limited were operating an omnibus service between the Kandy Market Stand and Gadaladeniya *via* Peradeniya Junction and Daulagala as more specifically set out in the plan attached hereto marked A.

2. The distance from Gadaladeniya to the point at which the Daula-20 gala road meets the Kandy road at Embilmeegama Junction is only half a mile.

3. No other bus company operates a service on the route served by this Company, or up to the Embilmeegama Junction.

4. (a) The P. S. Bus Company Limited made an application on 11th April 1947 to the Commissioner of Motor Transport for a route to Embilmeegama Junction from Kandy *via* Daulagala, thus seeking to fill up the half mile gap between the terminus of their route at Gadaladeniya and the Kandy road.

(b) On the Daulagala road are famous temples such as Gadala-30 deniya, Lankatilleke and Embekka to which large numbers of pilgrims go annually. There are also a hospital, Rural Court, Rate Mahatmaya's office and a Government School at Handessa to which many people go.

(c) This Company made the application so as to obviate the inconvenience the public had to undergo in having to walk the half mile gap referred to above in sun and rain after getting down from the appellant's buses at Gadaladeniya so as to take the long distance buses on the Kandy road and *vice versa*.

5. The Sri Lanka Omnibus Company Limited who operate services from Kadugannawa to Kandy and Colombo to Kandy objected to this⁴⁰ application but did not apply for the same route themselves.

6. The Commissioner of Motor Transport held an inquiry in the presence of both the P. S. Bus Company Limited and the Sri Lanka Omnibus Company Limited.

7. The Commissioner of Motor Transport by his order dated 27-2-48 refused the application of the P. S. Bus Company Limited on the ground that people could easily walk the half mile between the Embilmeegama Junction and Gadaladeniya where the P. S. Bus Company Limited starts its services to Kandy *via* Daulagala, and there was no necessity for such a service.

10 8. Being dissatisfied with the order of the Commissioner of Motor Transport the appellant appealed against the order to the Tribunal of Appeal.

9. The Tribunal of Appeal dismissed the appeal on the ground that the Sri Lanka Omnibus Company Limited may be prejudiced if the appellant had been granted the route he had applied for. But the Tribunal of Appeal has expressed in very clear terms that the half mile of road unserved by buses must be served.

10 20 10. Being aggrieved by the decision and order of the Tribunal of Appeal the appellant humbly begs of the Tribunal of Appeal to state a case to the Honourable the Supreme Court of the Dominion of Ceylon under the provisions of Section 4 of Ordinance No. 45 of 1938 read with Section 13 of Ordinance No. 47 of 1942 on the following questions of law and fact arising in this case :—

- (a) Whether the Tribunal of Appeal, once it was satisfied that the half mile between Embilmeegama Junction and Gadaladeniya should in the interests of the public be served by a bus service, should not have set aside the order of the Commissioner of Motor Transport refusing the appellant's application and have granted the route to the appellant.
- 30 (b) Whether it was correct for the Tribunal of Appeal to express an opinion as to the rights of parties not at issue with the appellant, and to consider the possible prejudice which may be caused to any objector who—
- (i) is not serving the same route; and
- (ii) has not made an application for the route; and
- (iii) has also failed to place any evidence of possible prejudice being caused by the grant of the route to the one and only applicant namely the appellant.
- 40 (c) Whether the interests of the public is the primary factor to be considered in the granting of an application of this nature and whether, if so, in the circumstances of this case the Tribunal ought

No. 9
Application
by the
Petitioners-
Appellants
for a case
to be stated
to the
Supreme
Court
30-9-48
—continued

No. 9
Application
by the
Petitioners-
Appellants
for a case
to be stated
to the
Supreme
Court
30-9-48
—continued

to have allowed the appellant Company's application in view of the fact—

- (i) that there was no other competing applicant; and
 - (ii) the appellant company was best able to serve the needs of the public.
- (d) Whether it is correct for the Tribunal of Appeal to take into consideration the supposed claims of the Sri Lanka Omnibus Company Limited not actually before the Tribunal but such claims as may be urged if and when the Sri Lanka Omnibus Company Limited may make an application in future to run services between Kandy and any point on the Embilmeegama-Daulagala Road.

Kandy, 30th September 1948.

P. S. BUS COMPANY LIMITED.

Sgd. P. G. W. SIRISENA

Managing Director.

P. S. BUS COMPANY LIMITED.

Sgd. V. SAMARASEKERA

Secretary.

No. 10
Case Stated
by the
Tribunal of
Appeal
4-12-48

No. 10

20

Case Stated by the Tribunal of Appeal

Appeal No. 5114.

Colombo, 4. 12. 48.

T. W. ROBERTS Esq. (*Chairman*)

L. H. DE ALWIS Esq.

S. ALLES, Esq.

COMMISSIONER

Appellant—P. S. Bus Co. Ltd. represented by Mr. H. W. Jayawardene (Advocate) files authority.

Respondent—Sri Lanka Omnibus Co. Ltd. represented by Mr. D. F. J. Perera (Proctor).

30

ORDER :

The appellant, viz. Peradeniya Service Bus Co. moves that a case be stated for decision in appeal: respondent agrees that a case be stated.

We agree and state the following case :—

1. The appellant company, the P. S. Bus Co., held a licence to ply buses from Kandy to Daulagala *via* Peradeniya, a distance of about 10 miles: it next obtained an extension of that route to a point midway between the 2nd and 3rd mile posts on the road from Daulagala to Embilmeegama on the main road, and thereafter obtained a further extension to a point $\frac{1}{2}$ mile distant from Embilmeegama. These extensions were decided without notice to the respondent, the Sri Lanka Bus Co., which holds the licences to run buses on the main road from Kandy to Embilmeegama and thence to Colombo. Appellant argues that no notice was necessary.

No. 10
Case Stated
by the
Tribunal of
Appeal
4-12-48
—continued

10 2. Finally, the appellant Co. applied for an extension from that $\frac{1}{2}$ mile post on to Embilmeegama. The respondent company also applied for a licence to run buses from Kandy *via* Embilmeegama to Daulagala. The Commissioner considered it to be wasteful competition to allow either company to run buses on that $\frac{1}{2}$ mile of road and dismissed the appellant's application on that ground. He dismissed respondent's application on various grounds and both appellant and respondent appealed.

3. Respondent's appeal has been dismissed by this Tribunal because it contained no statement of the grounds of appeal. Appellant's appeal has been dismissed on the grounds (1) that to grant appellant this licence
20 would encroach on the custom now enjoyed by respondent (2) that respondent has as good a claim to hold the licence in issue as the appellant. We disagree with the Commissioner's view that this $\frac{1}{2}$ mile should be left unserved, since we had in mind the needs of the sick and the aged as well as the general public.

4. The points for decision are (1) whether this Tribunal was entitled to consider any counterclaim after the respondent's appeal had been dismissed (2) whether it was not bound to grant the application of the appellant as the only applicant in the field (3) whether the Tribunal was
30 not bound to set aside the Commissioner's order and allow the appeal on the grounds stated in paragraph 10 (A to D) of appellant's present 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:

5. Let the Commissioner forward these proceedings with the present application and the proceedings at the previous hearing of this appeal and at his inquiry with all documents then produced.

Sgd. T. W. ROBERTS
Chairman.

No. 11
Motion
20-1-49

No. 11

Motion

The P. S. Bus Co., Ltd.,
700, Peradeniya Road,
Kandy,
20th January 1949.

The Registrar,
Supreme Court,
Colombo.

Sir,

10

MOTOR TRIBUNAL APPEAL NO. 5114. EXTENSION OF KANDY—DAULAGALA
ROUTE FROM GADALADENIYA TO EMBILMEEGAMA.

We forward herewith the case stated by the Motor Tribunal of Appeal under the provisions of Ordinance No. 45 of 1938 and Ordinance No. 47 of 1942 for the opinion of the Supreme Court in connection with the above appeal.

We have this day given notice to the Commissioner of Motor Transport as required by Section 4 (6c) of the Motor Car Ordinance. We have also given notice to Sri Lanka Omnibus Company Limited as they were noticed to appear before the Tribunal, although we do not concede that they have any status in this case.

Kindly acknowledge receipt hereof and enclosures.

Yours faithfully,
P. S. BUS COMPANY LIMITED,

Sgd. P. G. W. SIRISENA
Managing Director.

Sgd. Illegibly
Secretary.

Copy to: Sri Lanka Omnibus Co. Ltd.,
41 (1/6) Olcott Buildings,
Norris Road,
Colombo 11.

30

Judgment of the Supreme Court

CASE STATED UNDER SECTION 4 OF THE MOTOR CAR
ORDINANCE No. 45 OF 1938.

Application No. 28.

PERADENIYA SERVICE BUS CO.

vs

SRI LANKA OMNIBUS CO.

Present : BASNAYAKE, J.

10 *Counsel* : C. THIAGALINGAM with G. T. SAMARAWICKREME
for the Peradeniya Service Bus Company.

H. V. PERERA, K.C., with W. D. GUNASEKERA for
the Sri Lanka Omnibus Company.

Argued on : 5th September, 1949.

Decided on : 5th December, 1949.

BASNAYAKE, J.

This is a case stated by a Tribunal of Appeal under the Omnibus Service Licensing Ordinance No. 47 of 1942 (hereinafter referred to as the Omnibus Service Licensing Ordinance) on the application of the Peradeniya Service Bus Company Limited (hereinafter referred to as the applicant.)

It appears that the applicant had applied to the Commissioner of Motor Transport (hereinafter referred to as the Commissioner) for an extension of the route covered by its road service licence, by half a mile, from its present terminus to a point called Embilmeegama on the Kandy-Colombo road. A company known as the Sri Lanka Omnibus Company Limited which had a road service for the route from Kandy to Colombo had also applied for a road service licence from Kandy *via* Embilmeegama to Daulagala. The Commissioner refused the applications of both. Being
30 dissatisfied with his decision each of them appealed under section 13 (6) of the Omnibus Service Licensing Ordinance to a Tribunal of Appeal. The Tribunal appears to have dismissed the appeals of both the applicant and the Sri Lanka Omnibus Company.

The applicant thereupon made an application to the Tribunal, under section 13 (8) of the Omnibus Service Licensing Ordinance, to state a case for the opinion of this Court. The Tribunal accordingly stated the following case.

No. 12
Judgment of
the Supreme
Court
5-12-49
--continued

"1. The appellant company, the P. S. Bus Co., held a licence to ply buses from Kandy to Daulagala *via* Peradeniya, a distance of about 10 miles; it next obtained an extension of that route to a point midway between the 2nd and 3rd mile posts on the road from Daulagala to Embilmeegama on the main road, and thereafter obtained a further extension to a point $\frac{1}{2}$ mile distant from Embilmeegama. These extensions were decided without notice to the respondent, the Sri Lanka Bus Co., which holds the licenses to run buses on the main road from Kandy to Embilmeegama and thence to Colombo. Appellant argues that no notice was necessary.

"2. Finally, the appellant Co. applied for an extension from that $\frac{1}{2}$ mile post on to Embilmeegama. The respondent company also applied for a licence to run buses from Kandy *via* Embilmeegama to Daulagala. The Commissioner considered it to be wasteful competition to allow either company to run buses on that $\frac{1}{2}$ mile of road and dismissed the appellant's application on that ground. He dismissed respondent's application on various grounds and both appellant and respondent appealed.

"3. Respondent's appeal has been dismissed by this Tribunal because it contained no statement of the grounds of appeal. Appellant's appeal has been dismissed on the grounds (1) that to grant appellant this licence would encroach on the custom now enjoyed by respondent (2) that respondent has as good a claim to hold the licence in issue as the appellant. We disagree with the Commissioner's view that this $\frac{1}{2}$ mile should be left unserved, since we had in mind the needs of the sick and the aged as well as the general public.

4. The points for decision are (1) whether this Tribunal was entitled to consider any counterclaim after the respondent's appeal had been dismissed (2) whether it was not bound to grant the application of the appellant as the only applicant in the field (3) 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 appellant's present 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.

"5. Let the Commissioner forward these proceedings with the present application and the proceedings at previous hearing of this appeal and at his inquiry with all documents then produced."

The stated case is open to several objections. In the first place it is signed only by the member elected to be the Chairman of the sitting and not by all the members of the Tribunal. The statute¹ imposes the duty of stating a case on the tribunal and not, as some English statutes do, on the Chairman alone.

In the next place the stated case does not set forth the facts. Under the Omnibus Service Licensing Ordinance a party is entitled to make an

1. Section 4(6) (a) of the Motor Car Ordinance No. 45 of 1938.

application for a stated case on questions of both law and fact². The stated case should therefore set out in full the facts relied upon by each party to the hearing before the Tribunal and its findings on those facts.

No. 12
Judgment of
the Supreme
Court
5-12-49
—continued

Lastly the questions on which the opinion of this Court is asked do not arise on the stated case. Having applied for a road service licence under the Omnibus Service Licensing Ordinance the applicant was entitled to have his application considered both by the Commissioner and by the Tribunal of Appeal on its merits. Some of the considerations that should influence the decision of the Commissioner in dealing with an
10 application for a road service licence are set out in section 4 of the Omnibus Service Licensing Ordinance. It is proper for a Tribunal of Appeal to take into account those same considerations among others when dealing with an appeal.

It is not correct for the Tribunal to treat an appeal, as it appears to have been done in the case of the applicant's appeal, as a counter claim to another appeal, viz., the appeal of the Sri Lanka Omnibus Company. Nor should it regard itself bound to allow an appeal on the ground that the appellants are the sole applicants for a licence. A tribunal is not entitled to submit questions of policy nor is it entitled, as it appears to do in question
20 3, to shift the entire responsibility of deciding an appeal to this Court.

The instant case has impressed on me the necessity of laying down the procedure by which Tribunals acting under the Omnibus Service Licensing Ordinance should be guided. Under that Ordinance every application for a road service licence must be made to the Commissioner (section 3) who is empowered to grant or refuse it (section 4), after taking into consideration any such representations as may be made to him by persons who are already providing transport facilities along or near to the proposed route or any part thereof or by any local authority within the administrative limits of which any proposed route or part thereof is situated. Before refusing an
30 application for a road service licence on the ground of any representation made to him the Commissioner is required to notice the applicant in order that he may have an opportunity of being heard (section 4). Section 4 lays down certain matters which the Commissioner is bound to take into account in deciding whether to grant or refuse a road service licence. The functions of the Commissioner under section 4 are quasi-judicial. He is required to consider representations made to him by interested persons against an application and by the applicant in support of it. As section 13 gives the applicant a right of appeal against the decision of the Commissioner to a Tribunal of Appeal the Commissioner should maintain a record
40 of the material on which he bases his decision. That record should consist of the application for the road service licence, the representations, if any, made against the grant of the licence applied for, the matters urged by the applicant in support of his application, and any matters ascertained by the Commissioner on his own initiative. Although the Commissioner is not required to hear the parties *ad coram*, if he does give them an oral hearing,

2. Section 13 (8) of the Omnibus Service Licensing Ordinance.

No. 12
Judgment of
the Supreme
Court
5-12-49
—continued

he should keep a full record of the evidence given at such hearing. As the functions of the Commissioner under section 5 are quasi-judicial and particularly as there is a right of appeal to the Tribunal of Appeal, he should give reasons for his decision.

The rules³ which govern the proceedings before a Tribunal of Appeal provide that the Tribunal shall hear the parties who are given the right to be present and to be heard either in person or by representative. The hearing before the Tribunal of Appeal should, except where the Tribunal considers it necessary to call for evidence oral or documentary, be confined to the material in the record of the Commissioner. The Tribunal of Appeal should maintain a record of such evidence oral or documentary as it deems necessary to call for in the exercise of its powers⁴, and should give reasons for its decision. When the Tribunal states a case on an application for a stated case it should set out fully the facts on which it bases its decision, its findings thereon and its decision on the questions of law argued before it⁵. It should also state the questions on which the opinion of this Court is desired⁶. Questions of policy and hypothetical questions should not be put. Neither the Commissioner's record nor the record of the Tribunal need be sent up to this court unless the stated case invites reference to any statement of fact or any document therein. The official reports of the Income Tax cases of England contain excellent examples of cases stated under the Income Tax Acts on which cases stated under the Motor Car Ordinance No. 45 of 1938 and the Omnibus Service Licensing Ordinance can with advantage be modelled.

I wish to add that evidence adduced before quasi-judicial tribunals like the Commissioner or the Tribunal of Appeal should consist of oral statements or documents in writing which are made in the presence of or communicated to both parties before the Tribunal reaches its decision⁷.

In the instant case the form in which the case has been sent up prevents me from expressing my opinion on the specific questions raised. The result is that the applicant finds himself stated "out of court".⁸ I regret I can do nothing for him.

This is a case in which each party should bear his own costs.

Sgd. HEMA BASNAYAKE,
Puisne Justice.

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3. Regulations made under section 4 of the Motor Car Ordinance No. 45 of 1938.
 4. Regulations 11 of the regulations made under section 4 of the Motor Car Ordinance No. 45 of 1938.
 5. *Great Western Railway Co. v. Bater*, 8 Tax Cases 231 at 245 and 257.
 6. *Farmer v. Trustees of the late William Cotton*, 6 Tax Cases 600.
 7. *In Re Moxon*, (1945) 2 All E.R. 124 at 130.
 8. *The American Thread Co. v. Joyce*, 6 Tax Cases 21.

No. 13

Order of the Privy Council granting Special Leave to Appeal

AT THE COURT AT BUCKINGHAM PALACE

The 25th day of April, 1950

Present: THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. BARNES

LORD PAKENHAM

MR. TOMLINSON

No. 13
Order of the
Privy
Council
granting
Special
Leave to
Appeal
25-4-50

Whereas there was this day read at the Board a Report from the
Judicial Committee of the Privy Council dated the 29th day of March 1950
10 in the words following, viz :—

“Whereas by virtue of His late Majesty King Edward the Seventh's
Order in Council of the 18th day of October 1909 there was referred
unto this Committee a humble Petition of Peradeniya Service Bus
Company in the matter of an Appeal from the Supreme Court of
Ceylon between the Petitioners Appellants and Sri Lanka Omnibus
Company Respondents setting forth (amongst other matters): that
the Petitioners desire special leave to appeal from an Order of the
Supreme Court dated the 5th December 1949 dismissing their
Appeal by way of case stated from a decision dated the 21st August
20 1948 of a Tribunal of Appeal under the Omnibus Service Licensing
Ordinance No. 47 of 1942: that the Petitioners and the Respondents
are both omnibus operators in Ceylon and the routes for which they
held licences were as follows: The Respondents held a licence to
run a service along the main road from Kandy to Colombo which
road runs roughly due East and West and passes on its way West
from Kandy a point known as Peradeniya Bridge and later a place
called Embilimeegama and then on to Kadugannawa, Kegalla and
Colombo; the Petitioners held a licence to run a service along the
same main Kandy—Colombo road as far as Peradeniya Bridge at
30 which point their route diverged to the South to a place called
Daulagala which originally had been their terminus but on
subsequent applications the route had been extended so as to run
North West from Daulagala until it came back to within half a mile
of the Kandy—Colombo road South of Embilimeegama: that the
route apart from the section of the Kandy—Colombo road operated
in common covered two sides of a triangle having as base the
Kandy—Colombo road from Peradeniya Bridge to Embilimeegama
and as apex Daulagala (apart from the half mile gap): that on the
11th April 1947 the Petitioners submitted to the Commissioner of
40 Motor Transport their application for a licence to run an omnibus
service from Embilimeegama junction to Kandy via Daulagala and
Peradeniya Bridge: that the application was merely to close the
half mile gap and link up with the main Kandy—Colombo road:
that the Respondents objected and filed an application for a

No. 13
Order of the
Privy
Council
granting
Special
Leave to
Appeal
25-4-50
—continued

licence for the route from Kandy to Embilimeegama and then South into Daulagala: that on the 3rd February 1948 both applications were refused by the Commissioner: that the Petitioners and the Respondents both appealed to the Tribunal of Appeal: that the Respondents' Appeal was rejected on the ground that the petition of appeal did not give any ground of appeal: that the Tribunal of Appeal although satisfied that there was a need for a service over the half-mile gap dismissed the Petitioners' Appeal: that the Petitioners applied for a case to be stated to the Supreme Court on questions of law and fact: that on the 4th December 1948¹⁰ the Tribunal stated a case: that on the 5th December 1949 the Supreme Court held that the form in which the case had been stated prevented the Court from expressing an opinion on the specific questions raised and the Appeal was dismissed: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Order of the Supreme Court dated the 5th December 1949 or to make such further or other Order as to Your Majesty in Council may seem just:

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into considera-²⁰ tion and having heard Counsel in support thereof (no one appearing in opposition thereto) Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Order of the Supreme Court of Ceylon dated the 5th day of December 1949 upon despositing in the Registry of the Privy Council the sum of £400 as security for costs:

“AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an³⁰ authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioners of the usual fees for the same.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Govern- ment of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly. ⁴⁰

Sgd. E. C. E. LEADBITTER

No.....

Supreme Court of Ceylon
Application No. 28 of 1949

In the matter of a Case
Stated by the Tribunal
of Motor Appeals under
Section 4 of the Motor
Car Ordinance No. 45
of 1938.

In the Privy Council
on an Appeal from the Supreme Court of Ceylon

BETWEEN

PERADENIYA SERVICE BUS COMPANY, LIMITED,
No. 700, Peradeniya Road, Kandy.....*Petitioners-Appellants*

AND

SRI LANKA OMNIBUS COMPANY, LIMITED,
41 (1/6) Victoria Buildings, Norris Road, Colombo...*Respondents*

RECORD
OF PROCEEDINGS
