

~~C. 11162~~

22, 1951

No. **32** 1950

Supreme Court of Ceylon
Application No. 29 of 1948

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

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

BETWEEN

THE UNITED BUS COMPANY LIMITED

Katugastota Road, Kandy.....*Appellant*

AND

THE KANDY TOWN BUS COMPANY LIMITED

Peradeniya Road, Kandy.....*Respondent*

RECORD
OF PROCEEDINGS

INDEX

Serial No.	Description of Document	Date	Page
1	Case Stated by the Tribunal of Appeal for the opinion of the Supreme Court ...	23rd January, 1918 ...	1
	Motion	—	1
	Case Stated	—	2
	Annex 1 (Application of the Town Bus Co. Ltd.)	—	3
	(Time Table)	—	4
	(Fare Table)	—	5
	Annex 2 (Sketch Map of Town Bus Co. Ltd.)...	—	7
	Annex 3 (Application of the United Bus Co. Ltd.)	—	9
	(Time Table)	—	10
	(Fare Table)	—	10
	Annex 4 (Sketch Map of the United Bus Co. Ltd.)	—	11
	Annex 5 (Order of the Commissioner of Motor Transport)	—	13
	Annex 6 (Sketch Map showing routes of the United Bus Co. Ltd. and the Kandy Town Bus Co. Ltd.)	—	15
Annex 7 (Petition of Appeal of the Kandy Town Bus Co. Ltd. to the Tribunal of Appeal)	—	17	
Annex 8 (Order of the Tribunal of Appeal) ...	—	19	
2	Judgment of the Supreme Court ...	3rd February, 1949 ...	20
3	Order of the Privy Council granting special leave to appeal	25th November, 1949 ...	24

31359

No.....

Supreme Court of Ceylon
Application No. 29 of 1948

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

UNIVERSITY OF LONDON
W.C.1.
20 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

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

BETWEEN

THE UNITED BUS COMPANY LIMITED

Katugastota Road, Kandy.....*Appellant*

AND

THE KANDY TOWN BUS COMPANY LIMITED

Peradeniya Road, Kandy.....*Respondent*

RECORD
OF PROCEEDINGS

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

No. 1

Case Stated by the Tribunal of Appeal for the
Opinion of the Supreme Court.

No. 1
Case Stated
by the Tribu-
nal of Appeal
for the opini-
on of the Su-
preme Court
23-1-48

IN THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON.

(MOTION)

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

10

BETWEEN

The Kandy Town Bus Company Limited, 879
Peradeniya Road, Kandy.....*Applicant*

AND

1. The Commissioner of Motor Transport,
Colombo
2. The United Bus Company Limited, Katu-
gastota Road, Kandy.....*Respondents.*

I file my appointment as proctor for the Kandy Town Bus Company
Limited, the applicant abovenamed, together with the case stated by the
20 Tribunal of Motor Appeals under Section 4 of Ordinance No. 45 of 1938
and the annexures thereto marked 1 to 8 and move that Your Lordships'
Court may be pleased to accept same and to make such order on the case
stated as to Your Lordships' Court may seem meet and to grant the Appli-
cant all costs incurred in this behalf and such other and further relief not
specially prayed for as to Your Lordships' Court may seem meet.

Sgd. CYRIL R. DE ALWIS,

Colombo, 23rd January, 1948.

Proctor for Applicant.

(Case Stated)

No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court.
23-1-48
—continued

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

THE KANDY TOWN BUS Co. LTD.....*Appellant.*

vs.

THE COMMISSIONER OF MOTOR TRANSPORT
AND THE UNITED BUS Co. LTD.....*Respondents.*

The appellant is the Town Bus Co. Ltd. It had applied (copy of application marked Annex 1) for a route starting from Palkumbura at the 10 5th Mile Post from Katugastota, leading down to the smaller bridge at Katugastota, then 200 yards to the larger bridge, over the Mahaveli Ganga, on to Trincomalee Street, up to the Market Bus Stand at Kandy. (Sketch Map marked Annex 2). There was before the Commissioner another application (copy of application marked Annex 3) by the United Bus Co. Ltd. covering the whole of that route and in addition a distance of about a mile from Medawala to Palkumbura. (Sketch Map marked Annex 4). After consideration the Commissioner allowed the latter application and rejected the former application. (Copy of the order of the Commissioner of Motor Transport marked Annex 5). 20

2. Both the companies interested are operating buses in the district. For instance the Kandy Town Bus Co. Ltd. is operating from the smaller Katugastota bridge over the larger bridge, down Trincomalee Street, through Ward Street, and the Market Bus Stand, up to Peradeniya. The United Bus Co. has routes along the Kurunegala route with subsidiary lines from Hedeniya through Madawala to Bokkawala, another subsidiary line from Arambakade through Horambawa to Bokkawala. (Sketch Map marked Annex 6).

3. The only question which had to be decided was which of the applications should be allowed. From the point of view of greater convenience 30 of the public, the Commissioner arrived at a certain decision (Annex 5) and this Tribunal after listening to everything that had been urged (copy of the petition of appeal to the Tribunal marked Annex 7) saw no reason to differ from the order of the Commissioner. (Copy of order of Appeal Tribunal marked Annex 8).

4. The only question that arises for the opinion of the Supreme Court is—

Is the Tribunal of Appeal justified in upholding the decision of the Commissioner of Motor Transport.

Sgd. P. E. PEIRIS 40
Chairman

31st December, 1947.

(Annex 1)

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.

No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court
23-1-48
—continued

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. G. K. G. Appuhamy

Full Name of person signing: GAME KANKANANGE GILBERT APPUHAMY
(IN BLOCK CAPITALS)Description: Managing Secretary
(Manager, Secretary, Partner, &c., if making application on behalf of a Company, Partnership, &c.)On behalf of: THE KANDY TOWN BUS CO. LTD.
(Only required in the case of a Company or Partnership.)Address: No. 879, Peradeniya Road,
Kandy.

Date: 12th December, 1945.

QUESTION	ANSWER
1. Is the applicant (if not a Company) over 21 years of age?	A 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.)	Between Kandy Market Stand and 5th Mile Post at Palkumbura KANDY, MAHAIYAWA, MAWILMADA, KATUGASTOTA, YATIWAWALA, UDUWAWALA, KUNNANOYA, GONIGODA and PALKUMBURA. WARD STREET, TRINCOMALEE STREET, KATUGASTOTA ROAD, RANAWANA ROAD and MEDAWALA ROAD.
A map or diagram of the route should be supplied	
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 Kandy Market Stand and junction of Katugastota and Ranawana roads.
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.	Yes.
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) One bus (b) 17 buses and another 2 buses under construction (c) One bus
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) One ton buses—Petrol (b) 14 and 16
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) 3,011 miles (b) (i.) petrol 251 gallons (ii.) diesel oil Nil gals.

(Annex 1)
THE KANDY TOWN BUS COMPANY LIMITED.
TIME TABLE
KANDY—PALKUMBURA ROUTE

Mondays to Sundays

Miles Min.		DEPARTURE TIMES							Miles Min.										
		A.M.	A.M.	A.M.	P.M.	P.M.	P.M.			A.M.	A.M.	A.M.	P.M.	P.M.	P.M.				
—	—	Kandy Market Stand Dep.	6.00	8.20	10.40	1.00	3.30	5.40	—	—	Palkumbura	Dep.	7.00	9.20	11.50	2.10	4.30	6.50	
1½	8	Mahaiyawa	6.08	8.28	10.48	1.08	3.38	5.48	1	7	Gonigoda	..	7.07	9.27	11.57	2.17	4.37	6.57	
2½	13	Mawilmada	6.13	8.33	10.53	1.13	3.43	5.53	2	14	Kunnanoya	..	7.14	9.34	12.04	2.24	4.41	7.04	
3½	18	Katugastota	6.18	8.38	10.58	1.18	3.48	5.58	3	21	Uduwawala	..	7.21	9.41	12.11	2.31	4.51	7.11	
4½	25	Yatiwawala	6.25	8.45	11.05	1.25	3.55	6.05	4	28	Yatiwawala	..	7.28	9.48	12.18	2.38	4.58	7.18	
5½	32	Uduwawala	6.32	8.52	11.12	1.32	4.02	6.12	5	35	Katugastota	..	7.35	9.55	12.25	2.45	5.05	7.25	
6½	39	Kannanoya	6.39	8.59	11.19	1.39	4.09	6.19	6	40	Mawilmada	..	7.40	10.00	12.30	2.50	5.10	7.30	
7½	46	Gonigoda	6.46	9.06	11.26	1.46	4.16	6.26	7	45	Mahaiyawa	..	7.45	10.05	12.35	2.55	5.15	7.35	
8½	53	Palkumbura	Ari.	6.53	9.13	11.33	1.53	4.23	6.33	8½	53	Kandy Market Stand	Ari.	7.53	10.13	12.43	3.03	5.23	7.43

(Annex 1)
THE KANDY TOWN BUS COMPANY, LIMITED
FARE TABLE
KANDY—PALKUMBURA ROUTE

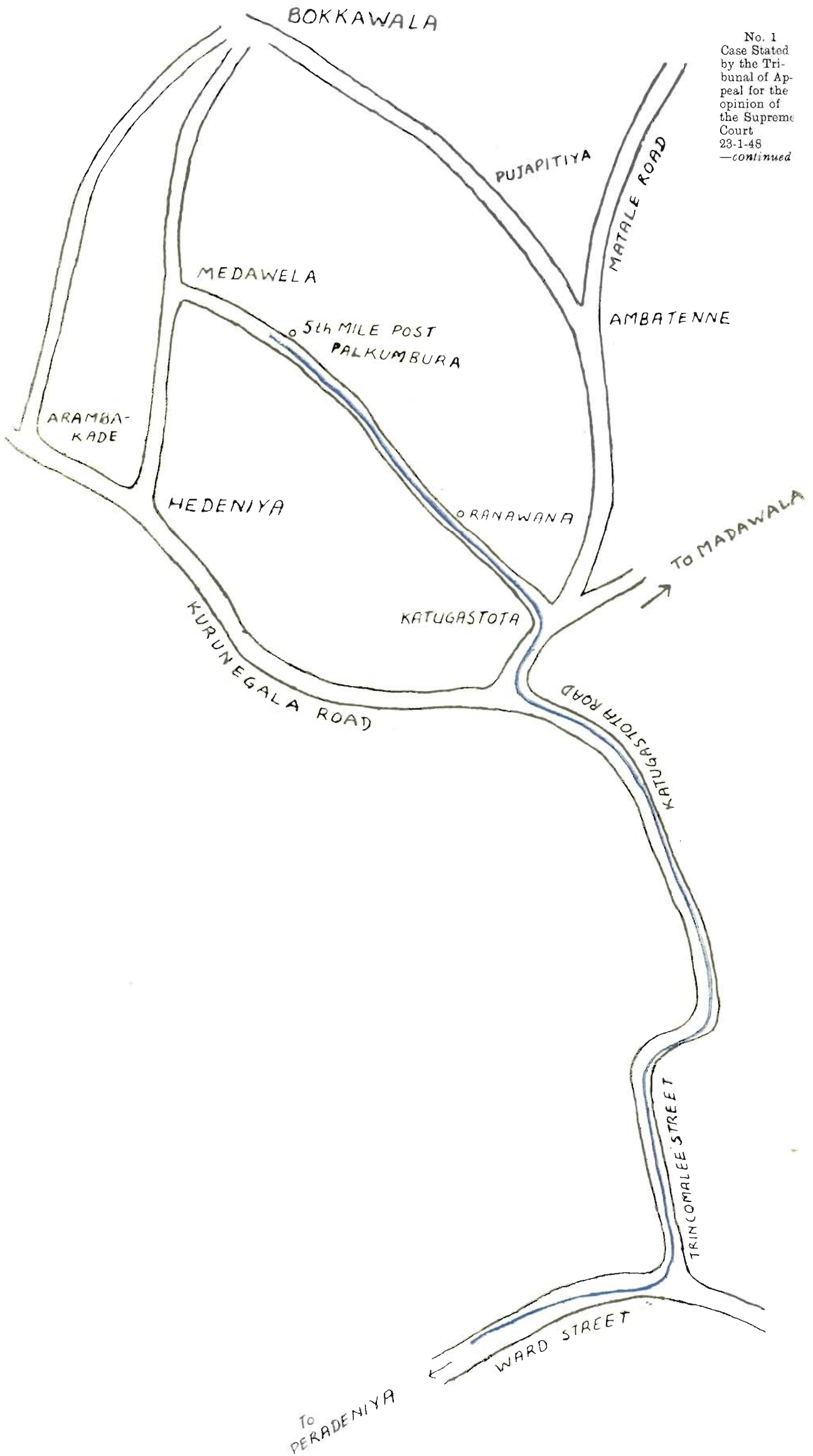
No.1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court
23-1-48
—*continued*

Kandy	Kandy								
Mahaiyawa	5	Mahaiyawa							
Mawilmada	10	5	Mawilmada						
Katugastota	15	10	5	Katugastota					
Yatiwawala	20	15	10	5	Yatiwawala				
Uduwawala	25	20	15	10	5	Uduwawala			
Kunnanoya	30	25	20	15	10	5	Kunnanoya		
Gonigoda	35	30	25	20	15	10	5	Gonigoda	
Palkumbura	40	35	30	25	20	15	10	5	Palkumbura

The figures in the squares represent the fare in cents.

(Annex 2)

No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court
23-1-48
—continued



(Annex 3)

Form PSV I. (F*) 8/44

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

Date received : 18-9-45

Licence and Service No. 449

Serial No. 1944

OMNIBUS SERVICE LICENSING ORDINANCE, 1942

APPLICATION FOR THE GRANT OF A ROAD SERVICE
LICENCE FOR A REGULAR SERVICE OF
OMNIBUSES OR MOTOR CABS.No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supremo
Court
23-1-48
—continued

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: D. S. Wijeyasinghe

Full Name of person signing: DON SIRIYAPALA WIJEYASINGHE
(IN BLOCK CAPITALS)Description: Managing Secretary
(Manager, Secretary, Partner, &c., if making application on behalf of a Company, Partnership, &c.)On behalf of: UNITED BUS CO. LTD.
(Only required in the case of a Company or Partnership.)

Address: 136, Mahaiyawa, Kandy.

Date: 12th September, 1945.

QUESTION	ANSWER
1. Is the applicant (if not a Company) over 21 years of age?	Yes
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 Kandy (King's Street Bus Stand) and Medawala (via Ranawana). KANDY, KATUGASTOTA, RANAWANA ATTARAGAMA, MEDAWALA.
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 Kandy and Katugastota
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.	(a) Yes (b) No (c) No (d) Yes (e) Yes Not on Sundays and Sinhalese New Year Day
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) ONE (b) 21 (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) Bus (b) 19 pgs.
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) 1296 (b) (i) petrol 120 gallons (ii) diesel oil 3040 gals.

No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court
23-1-48
—continued

		Medawala	7.00	10.00	2.30	Kandy	8.45	1.00	5.00
2	10	Attaragama	7.10	10.10	2.40	Ranawana	9.00	1.15	5.15
5	30	Ranawana	7.30	10.30	2.40	Attaragama	9.20	1.35	5.35
8½	45	Kandy	7.45	10.45	3.15	Medawala	9.30	1.45	5.45

Not on Sundays

FARE TABLE

Schedule No. 3
L. & Service No. 449
Serial No. 1944

KANDY—MEDAWELA

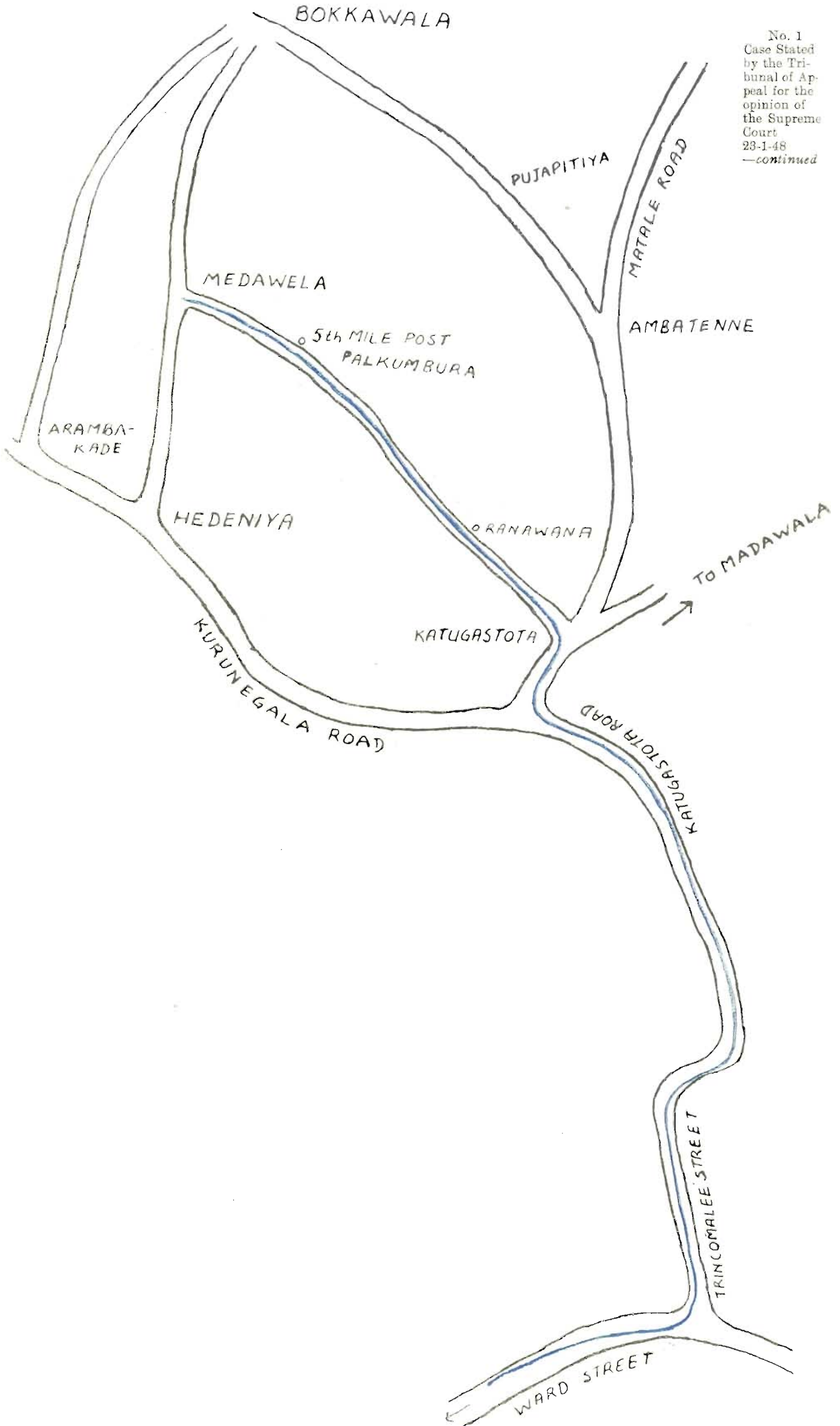
Kandy	Kandy		
Ranawana	15	Ranawana	
Attaragama	25	15	Attaragama
Medawela	35	25	10
			Medawela

CHILDREN'S FARE

Under 3 years of age if not occupying a seat — No charge

3 years of age but under 12 — Half Rate

(Annex 4)



No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court
23-1-48
—continued

(Annex 5)

No. N. A. 138
Colombo, 9th March, 1946

No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court
23-1-48
—continued

Dear Sirs,

ROUTES: KANDY MARKET STAND—MEDAWELA JUNCTION AND KANDY
MARKET STAND—5TH MILE POST AT PALKUMBURA

I have refused your application for road service licences for the
above routes and have allowed a road service licence to the United Bus
Co. Ltd., for the route—Kandy—Medawela via Ranawana.

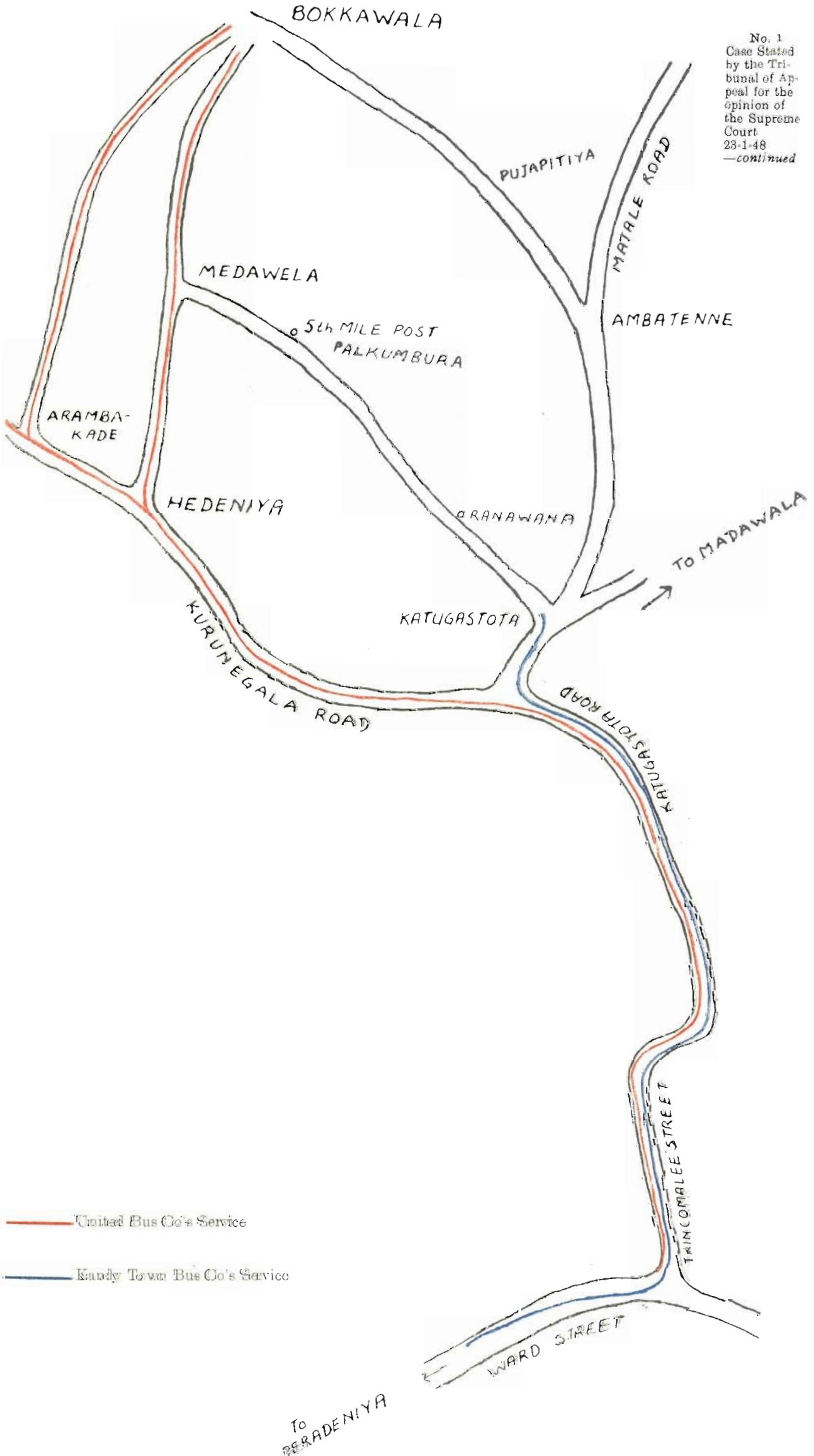
10

Yours faithfully,
Sgd. D. R. C. HANWELLA,
for Commissioner of Motor Transport.

Kandy Town Bus Co. Ltd.,
Kandy.

(Annex 6)

No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court
23-1-48
—continued



— United Bus Co's Service

— Kandy Town Bus Co's Service

(Annex 7)

STATEMENT OF APPEAL

No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court
23-1-48
—continued

1. (a) Distinctive No:
(b) Whether Omnibus or Lorry: Omnibus
2. Name or designation of Appellant: The Kandy Town Bus Com-
pany Limited.
3. Address of Appellant: 879, Peradeniya Road, Kandy.
4. (a) Date of decision of Commissioner: 9th March, 1946.
(b) Commissioner's Reference No: N.A. 138.
- 10 5. Date of Receipt of Commissioner's decision: 13th March, 1946.
6. (i) The appellant applied to the Commissioner of Motor Transport
for a route from the Kandy Bus Stand passed Katugastota
Bridge to a place known as Palkumbura demarcated in the
sketch filed herewith.
(ii) The appellant filed both applications with a view to securing
one or the other to invite the Commissioner whichever of the
routes he considered most suitable to be granted in the public
interest.
(iii) At present nobody is doing the service between Katugastota and
20 Madawala via Ranawana.
(iv) The appellant runs services from Katugastota through the Market
Stand Kandy Town to Peradeniya and Ampitiya. In the absence
of any other convenient means for people of Ranawana to come to
town, they walk up to the Katugastota Bus Stand and make
use of our services which have been established to serve the
people who travel in and out of the town from the various points
in the town and its outskirts. We have been established as a
Town Service on the invitation of the Chairman of the Municipal
Council for the purpose of taking the regular passengers in and
30 out of town from the outskirts of the town and from various
points in the town. We have serviced people of the outskirts of
the town and those within for over 10 years.
(v) The Commissioner has refused our application and granted a
road service licence to the United Bus Co. Ltd., to run a service
through our service from the Kandy Market Stand via Katugas-
tota and Ranawana to Medawala. By this grant the passengers
who used to walk up from the Ranawana Road to Katugastota and
take our service have been taken away from us and given exclu-
sively to a long distance Company which has been instituted to
40 service between Kurunegala and Kandy and other midway points

No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court
23-1-48
—continued

on that route and any detours from that route. The United Bus Co. Ltd., has among its detours a service from Kandy via Hedeniya passed Medawala to Bokkawala. People on the Ranawana route who are closer to Medawala walk up to Medawala and take their buses. People from Palkumbura along Ranawana Road walk up to Katugastota and take our buses. By the grant of the Commissioner, the United Bus Co. has been allowed to start a new kind of service outside their normal area and to carry passengers whom they are not now carrying and who are being carried by us.

- (vi) The decision of the Commissioner is against law and the weight of circumstances and consideration for traffic. 10
- (vii) The grant of the Commissioner is a violation of the spirit of the understanding on which we were invited to perform a Kandy Town Service by the Chairman of the Municipal Council on which understanding we curtailed our longdistance services and spent a sum of over Rs. 1 lakh to provide buses according to the specifications of the Chairman and adopting ourselves to all his conditions.
- (viii) The long distance companies were intended to do long distance bus services while the town services have been organised to serve the needs of the daily travellers to the town from its outskirts. 20
- (ix) If the long distance companies have obtained their monopoly rights for long distance route it is unfair that the Department of the Commissioner should allow them to evolve a new technique in asking for various short distance routes to cut into the profits of town services thereby making for uneconomic competition and making the position of town companies intolerable.
- (x) The authorities are allowing town bus services to come up for the convenience of travellers in and out of the town from their suburbs and such services should be protected from undue competition from long distance services after they have been set up by Government for the benefit of the public. 30
- (xi) The Kandy Town Bus Co. has only 3 routes in all so far and this is the fourth route it has asked for in order to make it convenient for the public who walk along Ranawana road to enable them to travel in buses in and out of the town. The grant of the Commissioner to another company of our route is tantamount to taking off a slice of our income and giving it to a long distance company which has a number of long and lucra-40
tive routes.

The above and other reason which Counsel for the hearing of this appeal will urge, we beg that the Tribunal will be pleased to revoke the road service licence granted to the United Bus Co. Ltd., and grant us a licence for the route applied for.

THE KANDY TOWN BUS COY. LTD.

Sgd.....

Managing Director.

(Annex 8)

22nd February, 1947

Dr. PAUL PEIRIS (*Chairman*)

W. S. DE SARAM, Esq.

M. A. S. MARIKAR, Esq.

AP. 3662

ORDER:

We have carefully considered everything and have come to the conclusion that there is insufficient evidence to vary the decision of the
10 Commissioner—Appeal dismissed.

Sgd. P. E. PEIRIS,
Chairman.

No. 1
Case Stated
by the Tri-
bunal of Ap-
peal for the
opinion of
the Supreme
Court
23-1-48
—continued

No. 2

No. 2
Judgment of
the Supreme
Court
3-2-49

Judgment of the Supreme Court

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

Appln. No. 29

THE KANDY TOWN BUS COMPANY LTD.....*Applicant.*

vs.

1. THE COMMISSIONER OF MOTOR TRANSPORT
2. THE UNITED BUS COMPANY LTD.....*Respondents.*

Present: BASNAYAKE, J. 10

Counsel: H. V. PERERA, K.C., with D. W. FERNANDO, for the
Applicant.

D. JANSZE, Crown Counsel for the 1st Respondent.

H. W. JAYAWARDENA for the 2nd Respondent.

Argued on: 30th June, 1948.

Decided on: 3rd February, 1949.

BASNAYAKE, J.

The applicant, the Kandy Town Bus Company Limited (hereinafter referred to as the applicant), and the second respondent, the United Bus Company Limited (hereinafter referred to as the second respondent), are the holders of road service licences under the Omnibus Service Licensing Ordinance No. 47 of 1942. On 12th December 1945 the applicant applied for an additional road service licence under the Omnibus Service Licensing Ordinance No. 47 of 1942, to provide a road service between the Kandy Market Bus Stand and a point at the 5th Mile Post on the road to a place called Palkumbura along Ward Street, Trincomalee Street, Katugastota Road, Ranawana Road and Medawala Road via Mahaiyawa, Mawilmada, Katugastota, Yatiwawala, Uduwawala, Kunnanoya and Gonigoda. A part of the proposed route, viz., that from the Kandy Market Bus Stand to the junction of Katugastota and Kurunegala Roads, was common to a route for which there was already a road service licence in favour of the second respondent. Earlier, on 12th September 1945, the second respondent had also applied for an additional road service licence to provide a road service between the King's Street Bus Stand at Kandy and a place called

Medawala via Katugastota, Ranawana, and Attaragama. A part of the route proposed by the second respondent was common to the whole of the Kandy—Katugastota road service of the appellant for which he already held a licence.

No. 2
Judgment of
the Supreme
Court
3-2-49
—continued

On 9th March 1946 Annex 5 was sent to the applicant. It is in the following terms:—

“No. N. A. 138

Colombo, 9th March, 1946.

10 ROUTES: KANDY MARKET STAND—MEDAWELA JUNCTION AND KANDY
MARKET STAND—6TH MILE POST AT PALKUMBURA

Dear Sirs,

I have refused your applications for road service licences for the above routes and have allowed a road service licence to the United Bus Co. Ltd., for the route Kandy—Medawela via Ranawana.

Yours faithfully,

Sgd. D. R. C. HANWELLA,
for Commissioner of Motor Transport.

Kandy Town Bus Co. Ltd.,
Kandy.”

20 That letter is not under the hand of the Commissioner but is signed by a person purporting to act on his behalf. It does not appear therefrom that the Commissioner himself has made the decision thereby conveyed. Applications for road service licences under the Omnibus Service Licensing Ordinance No. 47 of 1942 must be considered and decided by the Commissioner himself as that Ordinance does not contain a provision similar to section 2 (2) of the Motor Car Ordinance No. 45 of 1938 whereunder an Assistant Commissioner may subject to the general directions of the Commissioner exercise the powers and duties of the Commissioner under the latter Ordinance. The reasons for the Commissioner's refusal of the
30 applicant's application are not contained in Annex 5, which in all probability is intended to be the notice of refusal contemplated in section 8 of the Omnibus Service Licensing Ordinance No. 47 of 1942, nor do they appear to have been recorded elsewhere. In the case of decisions under section 4 of the Omnibus Service Licensing Ordinance No. 47 of 1942 the Commissioner should state his reasons in view of the injunction to the Commissioner in section 4 (a) that in making his decision thereunder he should have regard to the matters enumerated therein. The decision should be in the form of a reasoned document which states the conclusion as to the facts and as to the questions of law, if any, which have arisen for
40 determination by the Commissioner. A statement of the reasons underlying the Commissioner's decision would not only materially assist the tribunal

No. 2
 Judgment of
 the Supreme
 Court
 3-2-49
 —continued

of appeal in the exercise of its appellate functions, but also help the appellant to formulate the grounds of appeal which he is required to state by regulation 5 of the regulations made under section 4 of the Motor Car Ordinance. The instant case offers a good example of the difficulties caused by the absence of such a statement. A bare refusal of the applicant's application as in Annex 5 gives no indication that the Commissioner has exercised his judgment with due regard to all the matters he is required by the statute to consider.

Dissatisfied with the decision of the Commissioner the applicant appealed to the Tribunal of Appeal. Its decision is recorded with the same brevity as the Commissioner's. It reads: "We have carefully considered everything and have come to the conclusion that there is insufficient evidence to vary the decision of the Commissioner. Appeal dismissed."

Dissatisfied with the decision of the Tribunal of Appeal the applicant made application to it to state a case under section 4 (6) (a) of the Motor Car Ordinance No. 45 of 1938. That section is made applicable to the Omnibus Service Licensing Ordinance No. 47 of 1942 by section 13 (8) of that Ordinance subject to one important modification, viz., that an applicant for a case stated under the latter Ordinance is entitled to make an application to the Tribunal to state a case not only on a question of law but also on a question of fact. The applicant's application has not been sent up to this Court but the case stated which is set out below appears to raise both questions of law and fact.

"The appellant is the Kandy Town Bus Co. Ltd. It had applied (copy of application marked Annex 1) for a route starting from Palkumbura at the 5th Mile Post from Katugastota, leading down to the smaller bridge at Katugastota, then 200 yards to the larger bridge, over the Mahaweliganga, on to Trincomalee Street, up to the Market Bus Stand at Kandy (Sketch Map marked Annex 2). There was before the Commissioner another application (Copy of application marked Annex 3) by the United Bus Co. Ltd., covering the whole of that route and in addition a distance of about a mile from Medawala to Palkumbura (Sketch map marked Annex 4). After consideration the Commissioner allowed the latter application and rejected the former application (Copy of the order of the Commissioner of Motor Transport marked Annex 5).

"2. Both the companies interested are operating buses in the district. For instance the Kandy Town Bus Co. Ltd., is operating from the smaller Katugastota bridge over the larger bridge, down Trincomalee Street, through Ward Street, and the market bus stand, up to Peradeniya. The United Bus Co. has routes along the Kurunegala route with subsidiary lines from Hedeniya through Medawala to Bokkawala, another subsidiary line from Arambakade through Horambawa to Bokkawala (Sketch Map marked Annex 6).

"3. The only question which had to be decided was which of the applications should be allowed. From the point of view of the greater

convenience of the public, the Commissioner arrived at a certain decision (Annex 5) and this Tribunal after listening to everything that had been urged (copy of the petition of appeal to the Tribunal marked Annex 7) saw no reason to differ from the order of the Commissioner (Copy of order of Appeal Tribunal marked Annex 8).

No. 2
Judgment of
the Supreme
Court
3-2-49
—continued

“4. The only question that arises for the opinion of the Supreme Court is—

Is the Tribunal of Appeal justified in upholding the decision of the Commissioner of Motor Transport?”

10 It does not appear from the stated case that any facts outside the documents annexed to it were before the Commissioner or the Tribunal of Appeal, for if there were they would have been stated.

It appears from Annex 6 that the route to be taken by the road services proposed by the applicant as well as by the second respondent overlaps the entirety of the route now taken by the applicant's existing road service between the Kandy Market Bus Stand and Katugastota. It also overlaps a part, but not the greater part, of the route taken by the second respondent's existing road service to Kurunegala and Bokkawala, but only to the extent that the latter is already overlapped by the existing road service of
20 the applicant.

Section 7 of the Omnibus Service Licensing Ordinance No. 47 of 1942 provides that the Commissioner may 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, that section of the highway is common to the respective routes to be used for the purpose 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. The issue of the road service licence to the second respondent for the new road service proposed by him is therefore contrary to the express direction contained in section 7.

30 In view of the above considerations I think the Tribunal of Appeal was not justified in upholding the decision of the Commissioner of Motor Transport. On the material before me I am of opinion that the applicant's application for a road service licence should be granted.

The applicant is declared entitled to the costs of the hearing in this Court.

Although the regulations do not as observed by me in the case of *Fernando v. Paul E. Peiris and four others*,¹ require the Tribunal to give its reasons, it is desirable that it should do so, especially in view of the fact that it is open to a party dissatisfied with its decision to require that a case
40 be stated for the opinion of this Court not only on questions of law but also on questions of fact.

Sgd. HEMA BASNAYAKE,
Puisne Justice.

No. 3
Order of the
Privy
Council
granting
special leave
to appeal
25-11-49

Order of the Privy Council granting Special Leave to Appeal

AT THE COURT AT BUCKINGHAM PALACE

The 25th day of November, 1949

Present: THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT MR. TOM WILLIAMS

VISCOUNT HALL MAJOR MILNER

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 21st day of November, 1949 in the words following, viz:— 10

“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 The United Bus Company Limited in the matter of an Appeal from the Supreme Court of Ceylon between the Petitioners Appellants and the Kandy Town Bus Company Limited Respondents setting forth (amongst other matters): that the Petitioners pray for special leave to appeal from a judgment of the Supreme Court dated the 3rd February, 1949 reversing a decision of the Tribunal of Appeal (constituted under the Motor Car Ordinance No. 45 of 1938) dated the 22nd February, 20 1947 which affirmed a decision of the Commissioner of Motor Transport dated the 9th March, 1946 whereby the Petitioners' application (made under the Omnibus Service Licensing Ordinance No. 47 of 1942) for an exclusive road service licence to operate a regular service of omnibuses on a route connecting the town of Kandy with certain outlying regions was granted and a substantially similar application by the Respondents was refused: that the Petitioners submit (*inter alia*) that the judgment of the Supreme Court which was delivered more than seven months after the Appeal had been argued was arrived at *per incuriam* as a direct result of a 40 misapprehension of the extent of a road service licence already held by the Respondents and that the application by the Supreme Court of the provisions of Ordinance No. 47 of 1942 to the facts of this case was misconceived: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal against the judgment of the Supreme Court dated the 3rd February, 1949 or for further or other relief:

“The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition there- to 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 Judgment of the Supreme Court of Ceylon dated the 3rd day of February, 1949 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

No. 3
Order of the
Privy
Council
granting
special leave
to appeal
25-11-49
—continued

- 10 “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 an 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.

- 20 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.

Sgd. (Illegibly).

No.....

Supreme Court of Ceylon
Application No. 29 of 1948

In the matter of a Case
Stated by the Tribunal of
Motor Appeals under Sec-
tion 4 of Ordinance No. 45
of 1938.

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

BETWEEN

THE UNITED BUS COMPANY LIMITED,
Katugastota Road, Kandy.....*Appellant.*

AND

THE KANDY TOWN BUS COMPANY LIMITED
Peradeniya Road, Kandy.....*Respondent.*

RECORD
OF PROCEEDINGS

Printed by L. M. Lakshman Perera at The Associated Printers Ltd.,
Darley Road, Colombo 10, 1950