1954 *Present :* **Sansoni J.**

K. T. N. DE SILVA, Appellant, *and* COMMISSIONER OF MOTOR TRAFFIC *et al.*, Respondents

S. C. 76—Motor Tribunal Appeal 213

Motor Traffic Act, No. 14 of 1951—Sections 88 (1) and 89 (1)—Lorry—Carriage of goods—Public carrier's permit —Effect of words " may be granted ".

The grant of a public carrier's permit under section 89 (1) (*b*) of the Motor Traffic Act is a matter which lies within the discretion of the Commissioner of Motor Traffic. The word " may " in that section has a permissive, and not a directory, meaning.

APPEAL under section 212 of the Motor Traffic Act.

Cyril E. S. Perera, Q.C., with *N. M. de Silva* and *C. O. S. Siriwardene*, for the appellant.

No appearance for the respondents.

Cur. adv. vult.

December 14, 1954. SANSONI J.—

This is an appeal against an order of the Transport Appeals Tribunal refusing the appellant a Public Carrier's Permit in respect of two lorries. These lorries were licensed under the Motor Car Ordinance No. 45 of 1938 for carrying goods. Section 88 (1) of the Motor Traffic Act No. 14 of 1951 reads :—

> (1) Where any two places are conveniently connected by railway, and the shortest distance by road between those places is not less than sixty miles, then, save as otherwise provided in section 89, no permit shall be granted—
>
> (*a*) authorising the carriage between those places ; or
>
> (*b*) authorising any carriage involving or necessitating the through carriage between those places,
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> of goods by lorry or by a succession of lorries.

Section 89 (1) however relaxes this stringent rule and provides—

> (1) Notwithstanding the provisions of section 88, a permit authorising any carriage of the description mentioned in that section (hereinafter referred to as "regulated long-distance carriage") may be granted—
>
> (*a*) in exceptional circumstances, on the ground that the Commissioner considers it expedient to grant a permit for the carriage of fresh fish, fresh fruit, fresh vegetables or other perishable or fragile articles, having regard to the delay and risk involved in, and the other disadvantages of, the carriage of such articles by railway ; or
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> (*b*) on the ground that the applicant for the permit is a person who, immediately prior to December 31, 1949, was the holder of a licence or licences authorising the use of a lorry or lorries for substantially the same purposes and in substantially the same area of operation as the purposes and the area, respectively, to which his application relates, so, however, that the permit which may be granted in any such case shall only authorise the use of the same lorry or lorries or other lorries of the same total pay-load ; or

(*c*) in exceptional circumstances, on the ground of strong economic justification ; or

(*d*) on the ground that the lorries are owned by the Government or any prescribed public authority.

Mr. Perera has pointed out, quite correctly I think, that if any meaning can be given to the word " purpose " in section 89 (1) (*b*) of the Act so far as a lorry is concerned, it is the purpose of carrying goods. Form 19 in the Second Schedule of the Motor Car Ordinance is the form of lorry licence which was in use at that time. It makes no distinction between a lorry which was licensed for the private use of the owner and one which was licensed to ply for hire. Therefore plying a lorry for hire and using it for one's business were not different purposes authorised by licences issued under the Motor Car Ordinance.

But the matter does not end there, for the difficult question that remains to be answered is whether section 89 (1) (*b*) vests a discretion in the Commissioner of Motor Traffic as to whether he would, under the circumstances detailed in sub-section (1), relax the prohibition against the grant of a public carrier's permit contained in section 88, or whether the words " may be granted " mean " shall be granted ". The former interpretation was adopted by the Tribunal, while Mr. Perera contended that the latter is the correct one. I think the view taken by the Tribunal is correct.

It is not always easy to decide whether the word " may " in a statute means " may " or " shall ". " There is no doubt that ' may ' in some instances, especially when the enactment relates to the exercise of judicial or administrative functions, has been construed to give a power to do the act, leaving no discretion as to the exercise of the power when the acts are such as to call for it "—per Blackburn J. in *Bell v. Crane* [1]. But there are also cases where the word is permissive and is used to vest a discretion in a particular authority. I think the principle has been very clearly explained in the case of *R. v. Mitchell* [2]. Ridley J. in that case said " If a right is given to a person and the word ' may ' is used in giving a power to someone in order to effectuate that right, it means that the person to whom the power is given is entitled to act and that he must so act, not because the statement says so—for it only says ' may '—but because it is his duty to act. In that sense it is true to say that the word ' may ' is equivalent to ' must ', but in any other sense I think it is untrue. As Lord Justice Cotton said (in *Nichols v. Baker* [3]) the word ' may ' never can mean ' must ' so long as the English language remains ; it is not that the word means ' must ' but owing to the circumstances in which it is used a duty is placed upon the person, and therefore sometimes it becomes equivalent to ' must ' ". Lord Coleridge J. said in the same case " It is quite clear that originally, apart from the surrounding circumstances, when the word ' may ' occurs in a statute it implies that the power is permissive and not imperative . . . . therefore we are remitted to the surrounding circumstances in order to discover whether or not the word ' may ' should be read as having a permissive meaning, or whether it should be read as having a directory meaning ".

[1] (*1873*) *8 Q. B. 481.* [2] (*1913*) *82 L. J. K. B. 153.*

[3] (*1890*) *59 L. J. Ch. 661.*

If one considers the matter in the light of these dicta one is first struck by the bearing sections 88 and 89 have on each other. The former section absolutely prohibits the grant of a permit when two places are conveniently connected by railway, the latter section authorises the grant, notwithstanding the provisions of section 88, under certain defined circumstances. It seems to me that the Commissioner, far from being under a duty, is merely given permission, to issue permits under the circumstances detailed in section 89 if he thought fit to do so. For instance, clause (*a*) cannot, by any method of reasoning, be said to vest a right in anybody : it is clearly intended only to enable the Commissioner to grant a permit in exceptional circumstances. Clause (*c*) similarly refers to other exceptional circumstances under which a discretion is given to the Commissioner to act. These considerations show that the words " may be granted " mean just what they say and cannot be construed as " shall be granted ". It is not possible to interpret them differently when clauses (*b*) and (*d*) are being considered, for the words must be given the same meaning throughout the section. I can see no indication of a right given to a person in the position of the appellant. The language of the sections seems to point in the opposite direction. For these reasons I consider that the order of the Tribunal is correct. The appeal is therefore dismissed.

Appeal dismissed.