

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

FRIXOS KAMINAROS AND ANOTHER,
Applicants,
and
THE REPUBLIC OF CYPRUS, THROUGH
THE PERMITS AUTHORITY,
Respondent.

FRIXOS
KAMINAROS
AND ANOTHER
v.
REPUBLIC
(THE PERMITS
AUTHORITY)

(Case No. 360/70).

Road Service Licence—Issued under the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964)—Change in the ownership of the vehicle (bus) concerned—Such road service licence does not relate separately to either the specific person to whom it is issued or to the specific vehicle in respect of which it is issued—Consequently on a change of ownership of the vehicle the licence lapses and a new one has to be applied for—Cf. sections 7 and 8 of the said Law No. 16 of 1964.

Motor Transport—Bus—Road service licence—Change of ownership of the vehicle concerned—Licence then lapses etc.—See supra.

In this case the Court held that a road service licence issued under the Motor Transport (Regulation) Law, 1964 (Law No. 16/64) does not relate to the owner apart from the vehicle or to the vehicle apart from its owner ; and that, therefore, if there is a change of ownership such licence lapses and a new one has to be applied for.

The salient facts of this case are briefly as follows :—

Originally, the applicants were the owners of two buses and were issued in respect thereof with road service licences under the said Law No. 16 of 1964 in relation to a certain route in the Limassol urban area. Then in 1967, the applicants transferred these two buses to a company (the interested party in these proceedings). In 1969 the two buses in question were transferred back to the applicants, whereupon they applied to the respondent for the transfer back to them of the road service licences which they had possessed before their afore-

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mentioned deal, in 1967, with the said company. The respondent rejected this application and it is against this decision that the applicants filed this recourse.

Dismissing the recourse, the Court :

Held, (1) Whether and how a licence relates to a person or thing is a matter to be determined by construing the provisions of the relevant legislation ; see for example, in relation to licences for vehicles, Kyriacopoulos on Greek Administrative Law, 4th ed. Vol. ' B ' p. 350 (foot-note 29), the decision of the Greek Council of State in Case No. 856/1957, as well as the decisions of the said Council in Cases No. 396/1963 and 798/1963 (reported in the Law Tribune—" Νομικὸν Βῆμα " 1963, pp. 813-814).

(2) As it is to be derived from the whole of our own legislation (see, especially, sections 7 and 8 of the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964)) the legal position regarding road service licences issued under the said Law appears to be that such road service licence does not relate separately to either the specific person to whom it is issued or to the specific vehicle in respect of which it is issued and that, therefore, if there is a change in the ownership of the vehicle concerned the licence lapses and a new one has to be applied for.

(3) It follows that when the two buses concerned were transferred, in 1967, by the applicants to the company—the interested party—the road service licences which had been issued earlier to the applicants in respect of these buses, lapsed ; consequently, it was not at all possible for the respondent to accede to the request of the applicants to transfer back to them such licences in 1969 after the said buses were transferred back to them by the company.

Recourse dismissed.

Cases referred to :

The Decisions of the Greek Council of State in Cases : No. 856/1957 (see Kyriacopoulos on the Greek Administrative Law 4th ed. Vol. B, p. 350 (foot-note 29) ; Nos. 396/1963 and 798/1963 reported in the Law Tribune " Νομικὸν Βῆμα " 1963, pp. 813-814.

Recourse.

Recourse against the decision of the respondent refusing to sanction the retransfer of the road service licences issued to applicants in respect of their buses Reg. Nos. TAD. 115 and TBF. 91.

L. Clerides, for the applicants.

V. Aristodemou, Counsel of the Republic, for the respondent.

A. Dikigoropoulos, for the Interested Party.

Cur. adv. vult.

The following judgment was delivered by :—

TRIANTAFYLLIDES, P. : By the end of the hearing of this recourse the applicants were claiming the following remedy :

A declaration that the decision of the respondent—the licensing authority created for the purposes of the Motor Transport (Regulation) Law, 1964 (16/64)—“ not to sanction the retransfer of the road permits issued to applicants in respect of their buses Reg. Nos. TAD115 and TBF91 ” is null and void.

A claim for another remedy, *viz.* the annulment of the refusal of the respondent to issue to the applicants road service licences (*i.e.* road permits), in respect of the afore-said buses, was rightly abandoned by learned counsel for the applicants, during the course of the hearing, because against such refusal there has been filed, and is pending, a later recourse, No. 162/71.

I do not think that it is necessary to set out in detail, in this judgment, the whole history of the events which led to the present proceedings. It is sufficient to state that, originally, the applicants were the owners of the buses in question and were issued in respect thereof with road service licences, under Law 16/64, in relation to a certain route in the Limassol urban area. Then in 1967, it was agreed between the applicants and a company—Messrs. E. Kyriacou & Sons Ltd., an interested party in these proceedings—to transfer to the company the two buses and the said licences.

Irrespective of what it was agreed between the applicants and the company, and of anything that was done as a result thereof, it is quite clear, on the basis of the material placed before me in these proceedings, that, after the buses con-

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cerned were registered in the name of the company, there were issued by the respondent, to the company, in August 1967 (see *exhibits* 10 and 11), *new* road service licences in respect of such buses, in relation to the same route in the Limassol urban area.

In 1969, the two buses were transferred back by the company to the applicants ; this took place pursuant to an order made in Civil Action No. 980/68 (in the District Court of Limassol) which was instituted by the applicants against the company, on the basis of their aforesaid agreement in 1967 ; judgment was given in that action on the 27th December, 1968 ; an appeal which was made by the applicants against such judgment (No. 4789) was later withdrawn (see *exhibit* 7).

After the buses were registered once again in their names, the applicants applied to the respondent for the transfer back to them of the road service licences which they had possessed before their aforementioned deal, in 1967, with the company.

There ensued a quite lengthy process of examination by the respondent of the said request of the applicants : The matter was repeatedly examined ; and whenever the applicants' request was rejected a recourse was filed which was withdrawn after an undertaking was given on behalf of the respondent for a re-examination of the matter (see the files of recourses Nos. 171/69 and 75/70, *exhibits* 3 and 4).

Eventually, the respondent decided, once again, on the 19th September, 1970, to refuse the aforesaid request of the applicants and its decision was communicated by letter dated the 1st October, 1970.

In reaching this decision, which is attacked in this case, the respondent took a lot of factors into account, including, *inter alia*, legal advice, given to it by the Attorney-General of the Republic, to the effect that a road service licence, which is issued under Law 16/64, does not relate separately to either the specific person to whom it is issued or to the specific vehicle in respect of which it is issued and that, therefore, if there is a change in the ownership of the vehicle concerned the licence lapses and a new one has to be applied for (see paragraph (b) of the advice) ; and, indeed, counsel for the applicants stated that he was in agreement, too, with the contents of the said paragraph (b).

Whether and how a licence relates to a person or thing is a matter to be decided by construing the provisions of the

relevant legislation ; see, for example, in relation to licences for vehicles, Kyriacopoulos on Greek Administrative Law, 4th ed., vol. B., p. 350 (footnote 29), the decision of the Greek Council of State in Case 856/1957, as well as the decisions of the said Council in Cases 396/1963 and 798/1963 (reported in the Law Tribune—Νομικὸν Βῆμα—1963, pp. 813-814).

As is to be derived from the whole of our own relevant legislation (see, especially, sections 7 and 8 of Law 16/64) the legal position regarding road services licences issued under Law 16/64 appears to be that which is stated in the aforementioned paragraph (b) of the advice given by the Attorney-General.

It follows that when the buses concerned were transferred, in 1967, by the applicants to the company—the interested party—the road service licences which had been issued earlier to the applicants, in respect of these buses, lapsed ; therefore, it was not at all possible for the respondent to accede to the request of the applicants to transfer back to them such licences in 1969, after the buses were transferred back to them by the company.

It is correct that in taking its said decision the respondent took into account other factors too, such as the outcome of the already mentioned civil action between the applicants and the company ; but, even if I were to assume—without deciding to that effect—that the respondent should not have done so, again this recourse would have to fail because the *sub judice* decision of the respondent was the only one that it could lawfully have been taken in the circumstances.

Having reached this conclusion I have to hold, without it being necessary to decide any other of the issues which were raised in these proceedings, that the *sub judice* decision of the respondent cannot be interfered with and that this recourse has, therefore, to be dismissed.

The question of the refusal of the respondent to grant to the applicants *new* road service licences remains open to be decided in Recourse 162/71, which, as stated, is pending before the Court.

In the light of all relevant considerations I am not prepared to make any order as to the costs of the present recourse.

*Application dismissed ;
no order as to costs.*

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