

1982 October 25

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PAMPOS CHARALAMBOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMUNICATIONS AND WORKS,
Respondent.

(Case No. 324/80).

*Motor Transport—Road service licence—Public Carrier’s “A” Licence
—Recourse against refusal to grant—Sub judice decision taken
after a due inquiry without any misconception of fact or law
—And after taking into consideration matters set out in section
5 8(2) of the Motor Transport (Regulation) Law, 1964 (Law 16
of 1964 as amended)—No reason to interfere with the exercise
of the administrative discretion of the respondent.*

On the 14th November, 1979 the applicant applied to the
Licensing Authority for the grant to him of a Public Carrier’s
10 Licence for a new vehicle of the pick-up type for the needs of
the village of Sylikou and to be stationed there. In accordance
with the prescribed procedure a notice to that effect was posted
at conspicuous places of the village and objections were submitted
by the owners of two of the three holders of Public Carrier’s
15 Licence of the village. The application of the applicant was
then examined by the District Transport Control Officer who
reported* that the needs of Sylikou village were satisfactorily
served by the existing Carrier’s “A”. The Licensing Authority
considered the application and having taken into consideration
20 the material in the file refused same “as the village of Sylikou
is served fully by the existing Carrier’s ‘A’ of the village and
the area”.

* The report is quoted at p. 825 post.

The applicant then filed a hierarchical recourse to the respondent Minister under the provisions of section 6(1) of the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964), as amended by section 3 of Law No. 81 of 1972, and by his decision dated 21st July, 1980 the respondent Minister dismissed the appeal of the applicant, having come to the conclusion that the needs of Sylikou were served fully by the existing Licensed Carrier's "A" of the village and the area. Hence this recourse. 5

Held, that the subject decision was taken after a due and proper inquiry without any misconception of fact or law; that in the exercise of their discretion, both the Licensing Authority and the respondent Minister have, as it clearly emerges from the record, born into consideration the matters set out in subsection 2 of section 8 of Law 16/64 (as amended) having given due consideration also to the representations which were made by the persons who were already Licensed Carriers "A" in respect of the village of Sylikou; that in the circumstances, therefore, there is no room for this Court to interfere with the exercise of the administrative discretion and the recourse should fail and is hereby dismissed. 10 15 20

Application dismissed.

Recourse.

Recourse against the refusal of the respondent to grant applicant a Public Carrier's Licence "A" for a new vehicle up to 100 C.W.T. for the needs of Sylikou village. 25

S. Karapatakis, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act and/or decision of the respondent, Minister of Communications and Works, dated 15th July 1980, by which he refused to grant a Public Carrier's Licence 'A' for a new vehicle up to 100 C.W.T. for the needs of the village of Sylikou, is null and void and of no effect whatsoever. 30 35

On the 14th November 1979, the applicant applied to the Licensing Authority for the grant to him of a Public Carrier's

Licence for a new vehicle of the pick-up type for the needs of the village of Sylikou and to be stationed there. In accordance with the prescribed procedure a notice to that effect was posted at conspicuous places of the village and objections were submitted (exhibit 1-blue 56) by the owners of two of the three holders of Public Carrier's Licence of the village.

The application of the applicant was then examined by the District Transport Control Officer whose report (exhibit 1, blue 55), dated 27th December 1979, reads as follows:

10 "The applicant is a resident of Sylikou village, a farmer and driver by profession. The village of Sylikou is 21 miles away from Limassol and has 350 inhabitants. It is a wine-producing village and produces about 300,000 okes of grapes, a few fruit and almonds. In the village of Sylikou there appear to be three Licensed Public Carriers. These carriers 'A' of the village of Sylikou have sufficient work only during the period of the collection of grapes. The rest of the year the said Carriers 'A' circulate for the service of the needs of the public in other parts of the Limassol District on account of lack of work at Sylikou.

With regard to the aforesaid application the representatives of P.E.E.A. and S.E.A.K. object as the needs of the village of Sylikou are satisfactorily served by the existing Carriers 'A'."

25 The Licensing Authority considered the application and as it appears from its minutes of the 25th January 1980, (exhibit 1, blue 57), having taken into consideration the material in the file refused same "as the village of Sylikou is served fully by the existing Carriers 'A' of the village and the area."

30 The applicant then filed a hierarchical recourse to the respondent Minister under the provisions of section 6(1) of the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964), as amended by section 3 of Law No. 81 of 1972, but by his decision dated 21st July 1980 the respondent Minister dismissed the appeal of the applicant. His decision (Appendix A attached to the application) reads as follows:

35 "Having taken into consideration the existing legislation and all material which has been placed before me I have

come to the conclusion that the granting of the licence applied for is not justified as the needs of Sylikou are served fully by the existing Licensed Carriers 'A' of the village and the area.

2. For the aforesaid reasons the recourse is dismissed." 5

The grounds of Law relied upon by the applicant are the following:

(A) That the respondent Minister acted under a misconception of fact in the sense that he did not take into consideration the fact that the licence applied for by the applicant was in respect of a pick-up type of a vehicle intended to cover needs of the village of Sylikou which were different from those covered by the three existing Licensed Carriers 'A'. 10

(B) That the respondent did not carry a proper and due inquiry regarding the needs which the applicant intended to cover, and, 15

(C) That the prerequisites set out in section 8 subsection 2 of the Law were not duly taken into consideration by the respondent Minister.

It may be mentioned here that the Minister came to his decision after having given to the applicant the opportunity to address him through his advocate and after having heard the interested parties in addition to having before him all the relevant material that existed in the file. 20

Section 8(2) of the Law reads as follows:

"(2) In exercising such discretion the licensing authority shall have regard to the following matters:- 25

(a) the suitability of the route on which a service may be provided under the licence;

(b) the extent, if any, to which the needs of the proposed routes or any of them are adequately served; 30

(c) the extent to which the proposed service is necessary or desirable in the public interest;

(d) the needs of the area as a whole in relation to traffic (including the provision of adequate, suitable and

5 efficient services, the elimination of unnecessary services and the provision of unremunerative services) and the co-ordination of all forms of passenger transport, and shall take into consideration any representations which may be made by persons who, on the date of the coming into operation of this Part of this Law, were already providing in good faith and for a reasonably long time transport facilities along or near to the route in question or any part thereof.”

10 Having considered the totality of the material placed before me, I have come to the conclusion that none of the grounds relied upon on behalf of the applicant could succeed. It was clear that the subject decision was taken after a due and proper inquiry without any misconception of fact or Law. In the
15 exercise of their discretion, both the Licensing Authority and the respondent Minister have, as it clearly emerges from the record, born into consideration the matters set out in subsection 2 of section 8 hereinabove set out, having given due consideration also to the representations which were made by
20 the persons who were already Licensed Carriers ‘A’ in respect of the village of Sylikou.

In the circumstances therefore there is no room for me to interfere with the exercise of the administrative discretion and the recourse should fail and is hereby dismissed. There will
25 be, however, no order as to costs.

Recourse dismissed. No order as to costs.