

1983 February 10

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KEM (TAXI) LTD.,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE CHAIRMAN OF PERMITS AUTHORITY,

Respondent

(Case No. 50/80).

Motor transport—Road use licence—Existence of, does not constitute an authority to do anything else outside such licence—Road use licence for carriage of passengers on contract—Application for road use licence, in respect of same vehicles, for carriage of passengers on contract from other places within the same town—Call for the exercise of the discretionary powers of the respondent Authority under section 8(2) of the Motor Transport (Regulation) Laws—See, also, section 7(4)(e) of the Laws.

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On the 30th June 1979, the applicant Company, after competition, entered into a written agreement with the Chartered-house Estates Ltd., owners of the "POSEIDONIA" hotel for the transportation of their staff which works on a twenty-four hour shift basis.

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The applicant Company applied thereupon to the respondent Authority for the issue of a road use licence for three of their vehicles which have a capacity of 50 seats, 36 seats and 55 seats respectively, for the transport of the staff of the hotel "POSEIDONIA" from the various quarters of Limassol to it and vice-versa as a contract carriage. The said vehicles had a road service licence for the carriage of passengers on contract with regard to the British Sovereign Base Areas.

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The application of the applicant Company was examined by the Limassol District Transport Controller who referred

to the location of "POSEIDONIA" as being on the Limassol—
Nicosia trunk road within the urban transport traffic area
of Limassol and that it engages 135 employees on shifts and
that the work would be done in accordance with the relevant
contract.

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The respondent Authority then invited at its offices the
applicant Company and the urban Buses Company of Limassol
to make their representations, as well as other interested parties.
After examining their representations and all the material in
the file it rejected the applications by its subject decision* mainly
on the ground that "the route for which the licence is sought
by KEM (TAXI) for the transportation of the staff of the hotel
'POSEIDONIA' lies wholly within the urban traffic area of
Limassol which is served by the Limassol Bus Company. The
granting of such a licence to Company KEM (TAXI) LTD.
will offend the provisions of section 8(2)(b)(c) and 7(4)(e) of the
Motor Transport (Regulation) Laws" and on the ground that
"the Limassol Bus Company by a statement of its representative
undertakes the performance of this route by its licensed buses
which it can substantially arrange for this purpose".

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Upon a recourse by the applicant Company:

Held, that the existence of a road service licence does not
constitute an authority to do anything else outside such licence
and the submission that the function of the appropriate Author-
ity in such a case is only to regulate the terms of an existing
licence under section 8(4) of the Motor Transport (Regulation)
Laws cannot be upheld; that as in every other case the licensing
Authority has to exercise its discretion as provided by section
8 of the Law and in particular sub-section 2 thereof; that
although this Court does not subscribe to the view that there
was no question of a new licence being issued but only a variation
of the terms of the existing one, yet even if as a matter of admin-
istrative arrangement there would have been eventually one
licence issued covering both instances, namely giving effect
to the contract with the Sovereign Base Areas and to that of
the "POSEIDONIA" hotel, such an extension of the original
licence definitely called for the exercise of the Authority's dis-
cretionary powers and in so doing the Authority should have
regard to the matters set out in section 8** sub-section 2;

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* The subject decision is quoted in full at pp. 45-47 post.

** Section 8(2) is quoted at p. 49 post.

that this is in fact what the respondent Authority did and the reasons for its discretion are to be found in their decision.

(2) That the contention of the applicant that the respondent Authority ignored two basic factors which were within its knowledge, namely that the licence applied for was in respect of contract carriage and that the Limassol Bus Company had no licensed vehicles for the carrying out of such a contract carriage, is not substantiated by the contents of the subject decision the basis of which has been that such a licence could not be granted as it offended paragraphs (b), (c) of sub-section 2 of section 8, whereby the extent to which the needs of the proposed routes or any of them are adequately served and the extent to which the proposed service is necessary or desirable in the public interest had to and were duly taken into consideration; that in the circumstances the exercise of the respondent's discretion was properly made having clearly taken into consideration all necessary material and there appears to have been neither a misconception of Law nor a misconception of fact, nor anything to suggest that it took into consideration any extraneous matter; that it further took into consideration the provisions of section 7(4) paragraph (e) of the Law to the effect that no passenger who usually or as a rule travels at or about the time of the route will be included among the passengers of the vehicle from any part of the route; accordingly the recourse should fail.

Application dismissed.

Recourse.

Recourse against the decision of the respondent whereby he did not approve and/or refused and/or prohibited the use of three of applicants' vehicles as contract carriage for the transportation of the staff of "Poseidonia" hotel in Limassol to and from the said hotel.

A. Panayiotou, for the applicant.

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

P. Ioannides, for the interested party.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant Company seeks a declaration that the

act and/or decision of the respondent Authority, dated 8th January 1980, by which they did not approve, and/or refused and/or prohibited the use of their vehicles under Registration No. H.N. 431, A.Y. 553 and G.A. 681 as contract carriage
5 the transportation of the staff "POSEIDONIA" hotel in Limassol to and from the said hotel, is null and void and of no effect whatsoever.

On the 30th June 1979, the applicant Company, after competition, entered into a written agreement with the Charteredhouse
10 Estates Ltd., owners of the said hotel for the transportation of their staff which works on a twenty-four hour shift basis.

The applicant Company applied thereupon to the respondent Authority for the issue of a road use licence for their aforesaid vehicles which have a capacity of 50 seats, 36 seats and 55
15 seats respectively, for the transport of the staff of the hotel "POSEIDONIA" from the various quarters of Limassol to it and vice versa as a contract carriage. The said vehicles had a road service licence for the carriage of passengers on contract with regard to the British Sovereign Base Areas.

20 The application of the applicant Company was examined by the Limassol District Transport Controller who referred to the location of "POSEIDONIA" as being on the Limassol—Nicosia trunk road within the urban transport traffic area of Limassol and that it engages 135 employees on shifts and
25 that the work would be done in accordance with the relevant contract, copy of which has been produced as an exhibit, attached to the written address of counsel.

The respondent Authority then invited at its offices the applicant Company and the Urban Buses Company of
30 Limassol to make their representations, as well as other interested parties. After it examined their representations and all the material in the file it rejected the applications by its subject decision which was communicated to the applicant Company by letter dated the 15th January 1980, Appendix
35 "A", which reads as follows:

"I wish to refer to your applications dated 30th June 1979 for the grant of a licence to the public service buses under registration No. H.N. 431, A.Y.553 and G.A. 681 for the

transport of the staff of the "POSEIDONIA" hotel from the various quarters of Limassol to the hotel "POSEIDONIA" and I regret to inform you that the Licensing Authority at its meeting of the 8th January 1980 considered the applications and having taken into consideration the material in the files and the opinion of the Attorney-General of the Republic on the aforesaid subject, decided to reject the applications for the following reasons:-

(a) The three aforesaid vehicles after application by the Company KEM (TAXI) LTD were granted road-use licence on contract, dated 11th August 1976 for the carrying out of routes in accordance with contracts of the Company with the British Bases. The said licence was renewed from year to year and on the 27th September 1979 the Company KEM (TAXI) LTD by new applications asked the renewal of the said licences after it paid the prescribed fees on the same date and having attached the relevant contract with the Bases which was due to expire on the 2nd July 1980, with a right of extension by either side (see file HN 431 page 37).

In view of the aforesaid the granting of the licences applied for is contrary to the provisions of Section 7(5) of the Motor Transport (Regulation) consolidated Law, given that the licence for the transport of the personnel of "POSEIDONIA" hotel applied for is neither for the tour of touristic groups, nor transport of groups for excursions.

(b) The route for which the licence is sought by KEM (TAXI) for the transportation of the staff of the hotel "POSEIDONIA" lies wholly within the urban traffic area of Limassol which is served by the Limassol Bus Company. The granting of such a licence to Company KEM (TAXI) LTD will offend the provisions of Section 8(2)(b)(c) and 7(4)(e) of the aforesaid Laws.

(c) The Limassol Bus Company by a statement of its representative undertakes the performance of this route by its licensed buses which it can substantially arrange for this purpose. As far as the fees for which the representative of KEM (TAXI) LTD allege that they are unprofitable,

same can be fixed by the Licensing Authority after a study by the Inland Transport Department.

- 5 (d) The Licensing Authority arrived at its present decision exercising its discretionary power and after taking into consideration the public interest as the granting of the licence applied for would have as a result the disorganization of the already existing transport network which is intended to serve the public with reasonable controlled fares.”

10 By virtue of section 7(1) of the Law as amended “no public service vehicle shall be used for any service on any road unless it is licensed under the provisions of this Law and subject to the conditions of such licence.”

15 Subsection 4 of the same section regulates the licensing of public service vehicles for use as a contract carriage. This subsection 4 reads as follows:

“(4) Έν περιπτώσει άδειας όδικής χρήσεως δι’ όχημα πρός έκτέλεσιν μεταφορών επί συμβάσει θά ισχύωσιν αί κάτωθι διατάξεις

- (α) ή άδεια θά είναι έν τώ νενομισμένω τύπω·
- 20 (β) ή άδεια θά καθορίζη ότι αί διευθετήσεις διά την επί τó αύτό συνάντησιν τών έπιβατών δέν θά γίνωνται ύπό τοϋ κατόχου τής άδειας ή τοϋ ιδιοκτήτου ή τοϋ όδηγοϋ τοϋ όχήματος ή ύφ’ οίονδήποτε προσώπου λαμβάνοντος άμοιβήν διά τās διευθετήσεις ταύτας·
- 25 (γ) οϋδεμία γνωστοποίησις θά δίδεται πρός τó κοινόν έν σχέσει πρός την προτιθεμένην διαδρομήν ή τās γενομένης διευθετήσεις·
- (δ) άπαντες οί έπιβάται θά έπιβιβάζωνται έκ τής αύτης άφετηρίας ή πλείονων άφετηριών και θά μεταφέρωνται 30 είς τó αύτό τέρμα ή πλείονα τής διαδρομής ώς ήθελεν όρισθῆ ύπό τής άρχῆς άδειών·
- (ε) οϋδεις έπιβάτης όστις συνήθως ή κατά κανόνα ταξιδεύει κατά ή περι τόν χρόνον τής διαδρομής επί τής διαδρομής ταύτης θά περιλαμβάνηται μεταξύ τών έπιβατών ή 35 θά έπιβιβάζεται τοϋ όχήματος άπό οίονδήποτε μέρος κατά την διαδρομήν:

Νοεΐται ότι ή άρχή άδειών δύναται διά τής χορη-

γουμένης άδειάς να επιβάλη οίουσδήποτε άλλους όρους
θα έκρινε πρέπον υπό τας περιστάσεις”.

In English it reads:

“(4) In the case of a road service licence for vehicles for
the carrying out of transport as a contract carriage there 5
will apply the following provisions:

- (a) The licence shall be in the prescribed form;
- (b) The licence shall specify that the arrangements for the
meeting of passengers for the purpose will not be made 10
by the holder of the licence or the owner or the driver
of the vehicle or by any other person receiving re-
muneration for such arrangements.
- (c) No notification will be given to the public in relation
to the intended route or the arrangements made.
- (d) All the passengers will board from the same starting 15
point or more than one points and they will be carried
to the same terminal or more than one terminals of the
route as shall be specified by the licensing Authority.
- (e) No passenger, who usually or as a rule travels at or 20
about the time of the route on such route will be in-
cluded among the passengers or will board the vehicle
from any other place during the route:

Provided that the licensing authority may impose by
the licences granted such other conditions as it may 25
think proper in the circumstances”).

This amendment of the Law was introduced by section 4
paragraph (b) of amending Law 45 of 1971 which also introduced
a definition of vehicle for carriage on contract which is defined
as meaning a public service vehicle not carrying passengers at
separate fares per passenger. It is clear that this Law made a 30
radical change in this field and it is in this relation that the
grounds of law relied upon on behalf of the applicant company
have to be examined.

Reference may also be made to subsection 5 which provides
that vehicles for which there exist a road service licence may, in 35
addition, carry out carriage of passengers consisting of tourist
parties and parties of passengers on an excursion to a fixed

destination. It is clear therefore that the existence of a road service licence does not constitute an authority to do anything else outside such licence and the submission that the function of the appropriate Authority in such a case is only to regulate the terms of an existing licence under section 8 subsection 4 of the Law cannot be upheld. As in every other case the licensing Authority has to exercise its discretion as provided by section 8 of the Law and in particular subsection 2 thereof which sets out the criteria to which regard must be had in its exercise.

10 Section 8 subsection 2 reads as follows:

“In exercising such discretion the licensing Authority shall have regard to the following matters:-

- (a) the suitability of the route on which a service may be provided under the licence:
- 15 (b) the extent, if any, to which the needs of the proposed routes or any of them are adequately served;
- (c) the extent to which the proposed service is necessary or desirable in the public interest;
- 20 (d) the needs of the area as a whole in relation to traffic (including the provision of adequate, suitable and efficient services, the elimination of unnecessary services) and the provision of unremunerative services and the co-ordination of all forms of passenger transport”.

And section 8(6) reads as follows:

25 “The provisions of this section shall be so applied as to give all concerned equal opportunity of gain as far as possible.”

Although I do not subscribe to the view that there was no question of a new licence being issued but only a variation of the terms of the existing one, yet even if as a matter of administrative arrangement there would have been eventually one licence issued covering both instances, namely giving effect to the contract with the Sovereign Base Areas and to that with the “POSEIDONIA” hotel, such an extension of the original licence definitely called for the exercise of the Authority’s discretionary powers and in so doing the Authority should have

regard to the matters set out in section 8 subsection 2 herein-above set out.

This is in fact what the respondent Authority did and the reasons for its discretion are to be found in paragraphs (b) and (c) of their decision as embodied in Appendix A. 5

The contention of counsel for the applicant Company that the respondent Authority ignored two basic factors which were within its knowledge, namely that the licence applied for was in respect of contract carriage and that the Limassol Bus Company had no licensed vehicles for the carrying out of such a contract carriage, is not substantiated by the contents of the subject decision the basis of which has been that such a licence could not be granted as it offended paragraphs (b), (c) of subsection 2 of section 8, whereby the extent to which the needs of proposed routes or any of them are adequately served and the extent to which the proposed service is necessary or desirable in the public interest had to and were duly taken into consideration. This was obviously done on the basis of the material before them and after having heard the representations made on behalf of all having an interest in the matter and after having considered the prevailing conditions with regard to the route in question. 10 15 20

In the circumstances the exercise of its discretion was properly made having clearly taken into consideration all necessary material and there appears to have been neither a misconception of Law nor a misconception of fact, nor anything to suggest that it took into consideration any extraneous matter. It further took into consideration the provisions of section 7(4) paragraph (e) of the Law to the effect that no passenger who usually or as a rule travels at or about the time of the route will be included among the passengers of the vehicle from any part of the route. 25 30

This is so as obviously the existing services carried out by the Limassol Bus Company could adequately serve the staff of the "POSEIDONIA" hotel and would have been against public interest to take them away from them for the mere sake of multiplying the vehicles licensed to operate on that same route 35

at the expense of course of the existing ones and not on account of any new demands.

For all these reasons this recourse must fail and in the circumstances is hereby dismissed but in the circumstances there
5 will be no order as to costs.

Recourse dismissed. No order as to costs.