

1983 January 21

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KLEANTHIS SOTERIOU,

*Applicant,*

v.

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

*Respondent.*

(Case No. 24/81).

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*Motor transport—Road use licence—Amendment by licensing Authority—Hierarchical recourse to Minister—Decision of respondent Minister taken after a due inquiry and after taking into consideration all relevant material—Applicant given all opportunity to present his case—And had he felt that the appearance of an advocate was necessary for him he could apply for adjournment but he did not—No abuse or excess of power established—And respondent considered matter as a hierachically superior organ—Sub judice decision duly reasoned both as such and, also, its reasoning is supplemented by the material in the file.*

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The applicant was on the 31st August 1978 granted a temporary road service licence for his bus reg. No.J.F.262 on the route Nikitari-Vizakia-Potami-Evrychou for the transport of pupils. On the 13th July, 1979 the interested party was also granted a road service licence on the same route for his bus reg. No. CV. 996 which licence was renewed until the 2nd October 1980. On the 25th September 1980 the interested party submitted an application to the Licensing Authority for the renewal of his aforesaid temporary licence. On the 19th September 1980 the applicant by letter through his counsel objected to the renewal of the licence of the interested party and the Licensing Authority after hearing the representations of the applicant and the interested party as well as the Chairman of the Parents'

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Association of the Solea Gymnasium decided to amend the licences of the two vehicles as follows: "Motor vehicle JF262 to perform only the route Nikitari-Vizakia-Evrychou, for the transportation of pupils (temporary licence) and motor vehicle CV.996 to perform only the route Potami-Koutraphas-Ayios Theodoros-Evrychou, for the transport of pupils". As against this decision the interested party on the 13th December, 1980 made a hierarchical recourse to the respondent Minister who decided to ask the Licensing Authority to "amend the permits of the road service licences of motor-buses under registration Nos. CV.996 and JF.262 in such a manner with their owners to serve an equal number of passengers and proceeds after taking into consideration that one of the aforesaid two buses will serve also the pupils of Ayios Theodoros village"; and that "if the arrangement, which is mentioned in the previous paragraph cannot be achieved then the Licensing Authority is asked to grant a permit to motor bus under Registration No. CV.996, identical with its previous route, namely Nikitari-Potami-Vizakia-Evrychou".

Upon a recourse by the applicant it was mainly contended:

- (a) That the respondent Minister did not carry out a due inquiry into all the facts relevant to the movement of passengers and the capacity of both buses and that it did not take into consideration the fact that the travelling pupils are not sufficient to fill the bus of the applicant.
- (b) That the respondent acted contrary to the principles of good administration and/or the principles of natural justice inasmuch as he did not give to the applicant a copy of the recourse of the interested party and/or did not inform him the grounds of such administrative recourse. Also he did not give to the applicant sufficient time or opportunity to submit his objections or consult a lawyer and that he applied "the justice of Solomon" instead of deciding on the facts before him in accordance with the Law.
- (c) That the respondent Minister acted in excess or abuse of power because instead of examining and deciding

on the validity of the decision of the Licensing Authority appealed against, he ignored same and its reasoning and the facts on which it was based and acted as a first instance administrative organ and not as one on appeal and also that instead of construing the whole of the material in the file before him and base his decision therein he gave an arbitrary decision. 5

- (d) That the sub judice decision is not duly or sufficiently or, at all reasoned.

*Held*, (1) that the minutes of the hearing of the hierarchical recourse refer to every aspect of the case and it is apparent that all relevant material was placed before the Minister by all concerned; and that there can be, therefore, no valid contention that the respondent Minister failed in its duty to carry out a due inquiry, or that he did not take into consideration all relevant material; accordingly contention (a) should fail. 10  
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(2) That on the material that appears in the file contention (b) must also fail as the applicant appears from the record to have been fully aware of the nature and objects of the recourse and the purpose of the inquiry as every relevant matter was explained at the meeting, both by the Minister and the other parties present; that he was also asked questions and given the opportunity to present his case; that had he felt that the appearance of an advocate was necessary for him he might have applied for an adjournment; and there is nothing on record to show that he did so for any reason. 20  
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(3) That no abuse or excess of power has been established and the argument that the respondent did not consider the matter as a hierarchically superior organ examining the validity of a decision of a subordinate organ already issued, cannot stand; that it is clear from his very decision and the material in the file that the respondent Minister all along treated as the basis of his inquiry the decision issued in the first instance by the Licensing Authority; accordingly contention (c) should fail. 30

- (4) That the subject decision is duly reasoned, both as such 35

but also its reasoning is supplemented by the material in the file; accordingly contention (d) should fail.

*Application dismissed.*

### Recourse.

5 Recourse against the decision of the respondent whereby the road service licences of motor-bus C.V.996 belonging to the interested party and motor-bus J.F.262 belonging to applicant were amended.

*L. Papaphilippou*, for the applicant.

10 *Cl. Theodoulou (Mrs.)*, 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 that the act and/or  
15 decision of the respondent, dated 8th January 1981, by which the road service Licence of the motor-bus under Registration No. C.V.996 belonging to Marios Mesimeri, (hereinafter to be referred to as the interested party), and the motor-bus of the applicant under Registration No. J.F.262, was amended in  
20 a way that the two buses would serve equal number of passengers and proceeds and if that decision could not be implemented to grant a licence to bus C.V.996 on the route Nikitari-Vizakia-Potami-Evryhou, is null and void and of no effect whatsoever.

The applicant was granted on the 31st August 1978 a temporary road service licence for his said bus on the route Nikitari-Vizakia-Potami-Evryhou for the transport of pupils.  
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On the 13th July 1979 the interested party was also granted a road service licence on the same route for his aforesaid bus which licence was renewed until the 2nd October 1980. On  
30 the 25th September 1980 the interested party submitted an application to the Licensing Authority for the renewal of his aforesaid temporary licence. On the 19th September 1980 the applicant by letter through his counsel objected to the renewal of the licence of the interested party invoking a breach  
35 of contract by the predecessor of the interested party and on the 2nd October 1980 he submitted another objection additionally claiming that there had been a reduction of the transport needs of the said route.

On the 21st October 1980 the Licensing Authority heard the representations of the applicant and the interested party as well as the Chairman of the Parents' Association of the Solea Gymnasium and decided to amend the licences of the two vehicles as follows: "Motor vehicle J.F.262 to perform only the route Nikitari-Vizakia-Evryhou, for the transportation of pupils (temporary licence) and motor vehicle C.V.996 to perform only the route Potami-Koutraphas—Ayios Theodoros -Evryhou, for the transport of pupils". On the 27th November 1980 the aforesaid decision was communicated to the interested party, who on the 13th December 1980 made a hierarchical recourse against the said decision to the Minister of Communications and Works.

The hearing of the said recourse took place on the 3rd January 1981 before the respondent Minister, at which present were the interested party, as applicant, and the present applicant as interested party and both made their representations.

On the 8th January 1981 the Minister of Communications and Works having accepted the application of the interested party gave his decision, copy of which is appended to the application and it reads as follows:

"Having taken into consideration all the elements which were placed before me I have come to the conclusion that the Licensing Authority based its decision for the amendment of the route of motor-bus under registration C.V.996 on the number of travelling pupils.

2. For the aforesaid reason this recourse is allowed and the Licensing Authority is asked to amend the permits of the road service licences of motor-buses under Registration Nos. C.V.996 and J.F.262 in such a manner with their owners to serve an equal number of passengers and proceeds after taking into consideration that one of the aforesaid two buses will serve also the pupils of Ayios Theodoros village.

3. If the arrangement, which is mentioned in the previous paragraph cannot be achieved then the Licensing Authority is asked to grant a permit to motor-bus under Registration No. C.V.996, identical with its previous route, namely Nikitari-Potami-Vizakia-Evryhou".

The first ground of Law argued on behalf of the applicant is that the respondent Minister did not carry out a due inquiry into all the facts relevant to the movement of passengers and the capacity of both buses and that it did not take into consideration the fact that the travelling pupils are not sufficient to fill the bus of the applicant. In support of that contention counsel referred to the minutes of the Licensing Authority and the facts set out therein. He urged that the decision of the Licensing Authority was based on the representations of the interested parties and took into consideration the elements in the files, the capacity of both buses and the number of travelling pupils and that the decision of the Licensing Authority was a just one. As against the aforesaid he compared the decision of the respondent Minister and urged that its contents bear out this ground of Law.

The minutes of the hearing of the hierarchical recourse before the respondent Minister are to be found in exhibit 3. These minutes refer to every aspect of the case and it is apparent that all relevant material was placed before the Minister by all concerned the two vehicles, the number of passengers transported and the needs of the area.

There can be therefore no valid contention that the respondent Minister failed in his duty to carry out a due inquiry, or that he did not take into consideration all relevant material.

The second ground of law is that the respondent acted contrary to the principles of good administration and/or the principles of natural justice inasmuch as he did not give to the applicant a copy of the recourse of the interested party and/or did not inform him the grounds of such administrative recourse. Also he did not give to the applicant sufficient time or opportunity to submit his objections or consult a lawyer and that he applied "the justice of Solomon" instead of deciding on the facts before him in accordance with the Law.

The applicant claims to have received the letter of the Director-General of the Ministry one or two days before the 3rd January 1981 by which he was invited to attend before the respondent and make his representations with regard to the recourse of the interested party and that as he did not know the contents

and the object of the recourse he did not have the possibility to make the appropriate or any representation.

On the material that appears in the file this ground must also fail as the respondent appears from the record to have been fully aware of the nature and objects of the recourse and the purpose of the inquiry as every relevant matter was explained at the meeting, both by the Minister and the other parties present. He was also asked questions and given the opportunity to present his case. Had he felt that the appearance of an advocate was necessary for him he might have applied for an adjournment. There is nothing however on record to show that he did so for any reason.

The third ground of law is that the sub judice act or decision is vague as it cannot be implemented or its implementation be supervised. It appears that there was a discretion left to the Licensing Authority as to what to do in case it found that certain aspects of it could not be implemented in practice. The Licensing Authority took note of it as it appears from its minutes dated 8th January 1982 (exhibit 2, blue 152) where it is stated that after the Licensing Authority studied the second paragraph of the decision of the Minister. It is of the origin that same cannot be implemented and it complied with the third paragraph of the decision of the Minister as it appears also from the communication of the decision sent to the interested party (Blue 153 in exhibit 2). Therefore any aspect of it which could practically be implemented was put right by the Licensing Authority.

The fourth ground of Law relied upon on behalf of the applicant is that the respondent Minister acted in excess or abuse of power because instead of examining and deciding on the validity of the decision of the Licensing Authority appealed against, he ignored same and its reasoning and the facts on which it was based and acted as a first instance administrative organ and not as one on appeal and also that instead of construing the whole of the material in the file before him and base his decision therein he gave an arbitrary decision.

Along with this ground the fifth one may be considered which is that the sub judice decision is not duly or sufficiently or at all reasoned.

Neither of these grounds can succeed as no abuse or excess of power has been established and the argument that he did not consider the matter as a hierarchically superior organ examining the validity of a decision of a subordinate organ already issued, cannot stand. It is clear from his very decision and the material in the file (exhibit 3) that the respondent Minister all along treated as the basis of his inquiry the decision issued in the first instance by the Licensing Authority. Moreover the subject decision is duly reasoned, both as such but also its reasoning is supplemented by the material in the file.

For all the above reasons this recourse is dismissed but in the circumstances I make no order as to costs.

*Recourse dismissed. No order  
as to costs.*

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