

1985 June 6

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS KALOGIROU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF COMMUNICATIONS
AND WORKS,
2. THE PERMITS AUTHORITY,

Respondents.

(Case No. 43/80).

Motor transport—Carrier “A” licence—Refusal to issue—Hierarchical recourse to Minister—Who dismissed the recourse after carrying out a new inquiry and making an investigation into all the allegations put forward by the applicant—
5 *—No misconception of fact which could render the exercise of his discretion defective—Motor Transport Regulation Law, 1964 (Law 16/64).*

The applicant challenged the decision of the respondents by means of which his application to re-register his vehicle under registration No. BC 143 as a carrier “A” with its base at Ayia Varvara village was dismissed. The respondent Minister dealt with the application upon a hierarchical recourse against the decision of the Permits Authority-respondent 2; and on his instructions a new inquiry was carried out and the District Transport Controller made an investigation into all the allegations put forward by the applicant at the hearing before the Minister.

On the sole ground, that of misconception of facts:

Held, that the decision, under the provisions of the Law, rested with the Minister; that it is clear that in

reaching his decision he had before him all facts disclosed both as a result of the inquiry carried out on his instructions by the competent officer of his Ministry and also from other quarters relating both to the needs of the area and to the services supplied by the existing carriers authorized to operate in the area and this Court has not been persuaded that in reaching his decision he laboured either under any misconception of facts which could render the exercise of his discretion in any way defective, or that the decision he reached was not reasonably open to him having regard to the material before him; and that, accordingly, the recourse must fail.

Application dismissed.

Recourse.

Recourse against the decision of the respondents whereby applicant's application to re-register his vehicle under Reg. No. BC 143 as a carrier "A" was dismissed.

D. Papachysostomou, for the applicant.

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

Cur. adv. vult.

L. LOIZOU J. read the following judgment. The applicant by this recourse challenges the validity of the decisions of the respondents by which his application to re-register his vehicle under registration No. BC 143 as a carrier "A" with its base at Ayia Varvara village was dismissed. The applicant was since 1967 the owner of this vehicle which was licensed as carrier "A" and was based at Ayia Varvara village.

The licence of the above vehicle expired on the 10th April, 1969, and was not renewed. The registration of the vehicle was cancelled on the 31st March, 1972, as no circulation licence had been taken out in respect thereof for a period of three years.

On the 30th October, 1972, the applicant applied for the re-registration of his vehicle as a carrier "A" and his application was eventually dismissed on the 26th June,

1973 on the ground that the needs of the village were adequately served by the existing vehicles licensed as carriers "A".

5 The applicant filed a recourse against the above decision as a result of which the Licensing Authority reconsidered its decision on the 31st May, 1974, and again dismissed the application for the same reason.

10 Over three years later the applicant applied again, on the 11th November, 1977, for the re-issue of the licence to his vehicle and the Licensing Authority at its meeting of the 13th December, 1977, decided that it could not consider the application because no new material, since their previous decision on this matter, was produced. The applicant appealed to the Minister who by his decision of 15 the 28th July, 1978, directed that in view of the fact that more than three years had elapsed since the previous application, the application should be remitted to the Licensing Authority and that it should be treated as a new application and a decision be taken on the merits of the 20 case.

As a result a new inquiry was carried out, and after the Licensing Authority reconsidered the case in the light, inter alia, of the report of the District Transport Controller of Nicosia decided on the 30th January, 1979, to dismiss 25 the application on the ground that the needs of the village were sufficiently served by the existing carriers "A" which were based at the village and whose owners due to insufficient work in the village had to look for work elsewhere.

30 On the 27th February, 1979, the applicant filed a hierarchical recourse against the above decision to the Minister. A hearing took place before the Minister on the 31st July, 1979, in the course of which counsel for the applicant referred in great detail to the facts of the case and its history going as far back as 1974 stressing in particular 35 the number of carriers "A" at the village, the area of their operation and the nature of the work each of them was engaged in; to the needs of a quarry and a brick factory in the area and to the fact that the owner of the latter was related to the applicant and was prepared to employ him; 40 that the existing carriers had no objection to the issue of

a licence for applicant's vehicle; to the increase of the population and the consequent increase of the needs of the village etc.

On the instructions of the Minister a new inquiry was carried out in October, 1979, and the District Transport Controller made an investigation into all the allegations put forward by the applicant at the hearing before him. According to the report prepared by him there were only four carriers "A" based at Ayia Varvara but the village was also served by another five carriers which were based elsewhere but their owners were residing at the village. He also found that the needs of the village had not in fact increased and as to the quarry and the brick or ceramic factory that the owners of the other vehicles had stated that they were willing to serve their needs if asked and further mentions in his report that the owner of the factory stated that he was prepared to employ the applicant if a licence was issued to him.

The Minister then, with all the material before him, issued his decision on the 14th December, 1979, rejecting the recourse on the ground that the needs of Ayia Varvara village were adequately served by the licensed carriers "A" of the village and the surrounding area. The decision of the Minister was communicated to the applicant by letter dated 28th December, 1979.

As a result the present recourse was filed.

In the course of the hearing counsel for the applicant based his case on only one ground, that of misconception of facts. He submitted that there was misconception firstly in that whereas it is stated in red 12 of exhibit 5 that there were four licensed vehicles based at Ayia Varvara it appears from reds 56-55 of exhibit 4 that there were six; secondly, that there were statements before the respondents contained in reds 53-52 of exhibit 4 and reds 4 and 5 in exhibit 5 to the effect that more carriers "A" were needed and, lastly that as it appeared from the report of the Transport Controller dated 7th November, 1978, contained in reds 84-83 of exhibit 4 two or three unauthorized vehicles were operating in the area of Ayia Varvara.

With regard to the first instance of misconception put

forward by counsel for applicant it should be pointed out that reds 56-55 in exhibit 4 relate to the position as it was in 1974 while reds 13-11 in exhibit 5 relate to the position as it was in 1979, the time when the sub judge decision was taken. Furthermore it is stated by the Transport Controller (red 13 in exhibit 5) that the carriers were originally seven but their number was reduced after 1974 to four and also under paragraph 1 of the same red number he states that in the village of Ayia Varvara there were at the relevant time four carriers "A" in circulation and goes on to give the registration number of each vehicle.

In the above circumstances I fail to see that there was any misconception of fact as submitted by counsel and I, therefore, find no substance in this part of his submission.

As to the second instance of misconception alleged by learned counsel the statement referred to by him at reds 53-52 in exhibit 4 were made in 1974 for the purpose of another application of the applicant and related to the position as it was then but quite independently of this certain of these statements were, in the course of the inquiry carried out by the Transport Controller, withdrawn (blues 84-83 in exhibit 4).

As to reds 4 and 5 in exhibit 5 which are statements made on behalf of the quarry and brick factory to the effect that more carriers "A" were needed, leaving aside the fact that one of them, that made on the part of the quarry, was later withdrawn by the owners of the quarry as having been made without their authority, these formed part of the inquiry carried out on his instructions by the Transport Controller and were before the Minister when he took his decision and, therefore, any possibility of any misconception must be excluded. The Minister indeed was not bound to rely on these statements. His duty was to carry out the necessary inquiry which he did and it was within his discretion to evaluate the situation and arrive at his conclusion in a manner compatible with the Law and good administration. Therefore, also, this part of the submission of counsel cannot be sustained.

Coming now to the last instance which counsel contended amounted to a misconception i.e. that there were certain

unauthorized carriers operating or even based at Ayia Varvara. It is clear from the material on record that these licensed carriers had their base either at Nicosia or certain villages under occupation or villages near Ayia Varvara as shown in red 12 of exhibit 5. The fact that they changed their base without notifying the Licensing Authority may possibly amount to a breach of the conditions in their licence which constituted an offence under s. 10(5)(c) of Law 16/64 but once all these facts were before the Minister it cannot be said that there was any misconception of facts.

The decision, under the provisions of the Law, rested with the Minister. It is clear that in reaching his decision he had before him all facts disclosed both as a result of the inquiry carried out on his instructions by the competent officer of his Ministry and also from other quarters relating both to the needs of the area and to the services supplied by the existing carriers authorized to operate in the area and I have not been persuaded that in reaching his decision he laboured either under any misconception of facts which could render the exercise of his discretion in any way defective, or that the decision he reached was not reasonably open to him having regard to the material before him.

In the light of all the above I must hold that the applicant has failed to make a case that the sub judice decision could be in any way faulted on the ground raised and argued.

In the result this recourse fails and it is hereby dismissed. There will be no order as to costs.

*Recourse dismissed.
No order as to costs.*