

1985 June 25

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ALEXANDROS THEOFILOU,

Applicant,

v.

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

Respondent.

(Case No. 106/77).

5 *Motor Transport—Road use licence—Company—Grant of road use licence to, after finding that it has been serving the needs of the area before the enactment of the Motor Transport Regulation Law, 1964 (Law 16/64)—Company incorporated in 1976 and succeeding a general partnership—Though Company a different legal entity the same persons were behind the company and the partnership—No misconception of fact by finding as above—Section 8(1) of the Law as amended by section 5 of Law 45/71.*

10 *Motor transport—Road use licence—Grant of a new licence and extension of an existing one—Principles applicable—Respondent not required to give specific reasons for its refusal to grant a new licence because such reasons appear in the positive part of the decision extending an existing licence—No omission by respondents regarding the non-granting of a new licence as this constitutes a negative decision and not an omission.*

15

Motor Transport Regulation Law, 1964 (Law 16/64)—Section 8(2) of the Law—Not of a limited duration.

20 The applicant, a professional driver and holding a road service licence to operate a bus on the Larnaca—Arakapas route, applied on the 28th July 1975, for a road service licence in respect of a new bus to serve the route

Dierona—Limassol. The interested party, the Eteria Metaforon Dierona—Arakapas Ltd. on the 16th April, 1975, applied to the Licensing Authority for an extension of its road service licences in respect of its buses Reg. Nos. DP. 89 and BC. 424 to cover the route Dierona—Limassol. 5

The Licensing Authority at its meeting of the 20th February 1976, considered these applications and decided* to grant the extension to the licence applied for by the company in respect of its bus No. DP. 89, to take up and set down passengers from the village of Dierona, but decided to reject the application of the company in respect of its bus No. BC. 424 and the application of the applicant for a new road service licence. As against the decision of the Licensing Authority the applicant filed a recourse to the respondent Minister who decided that the Licensing Authority correctly granted to the Eteria Dierona—Arakapa, a licence to take up passengers from Dierona village, because the said company has been serving the said village with its buses long before the coming into force of the Motor Transport (Regulation) Law, 1964 (Law 16 of 1964). Hence this recourse by the applicant whereby it was contended: 10 15 20

- (a) That the Minister in considering that the company was serving the requirements of the area since and before 1964 was mistaken, because the company did not exist in 1964, having been incorporated on the 10th January 1976 and consequently his decision was based on a misconception of fact. 25
- (b) That the reasoning given by the respondent that the sub judge decision was reached in the light of the provisions of section 8(2)** of Law 16/64 that those already providing transport facilities along the route on the date of the coming into force of the Law should be taken into consideration, was wrong, because such provisions were of a transitional nature aiming to protect such persons during that period and could not possibly continue to have any effect twelve years later. 30 35

* The decision is quoted at p. 1358 post.

** Section 8(2) is quoted at pp. 1360-1361 post.

(c) That the reasoning given was wrong as the respondent authority stated that it reached its decision on the basis of the requirements of the route and such reasoning is not justified by the facts and circumstances which indicate that the requirements of the route were not in fact taken into consideration, because if on the one hand such requirements were fully served by the existing buses then the respondent authority was wrong to grant a licence to the interested party, and, if on the other hand, there existed need for a new licence, then such licence ought to have been granted to the applicant and not to the interested party.

(d) That the sub judge decision was entirely devoid of reasoning as far as the refusal or omission to grant the licence to the applicant since reasoning only exists as far as the decision to grant the licence to the interested party.

Held, (1) that a general partnership was registered on the 11th March, 1964, under the name of "Metaforiki Eteria Dierona-Arakapas", the buses of which were serving the area until 1976, when the "Metaforiki Eteria Dierona-Arakapas Ltd." was incorporated; and that though a different legal entity, it is clear from the files that behind the partnership and the company were in effect the same persons and this of course would not justify a finding of misconception of fact (see, also, *Peristeronopighi Transport Co. Ltd. v. Republic* (1967) 3 C.L.R. 451 at p. 458 and section 5 of Law 45/71 amending section 8(1) of Law 16/64).

(2) That nothing is contained in section 8(2) of Law 16/64 imposing a time limit either expressly or impliedly as regards the application of this section or indicating an intention that such provision is to be of a limited duration in order to justify the interpretation given to it by the applicant; that the section makes general provisions in respect of the exercise of the discretion of the Licensing Authority when granting, varying, suspending or revoking road service licences, and to give any different construction to it would not be justified.

(3) That the intention of the respondent Authority when

considering the extension of an existing licence or the granting of a new one must be to satisfy the transport needs of a particular area, but it must also, at the same time, have regard for those licences which are already in existence which must be safeguarded and protected; that the purpose when attempting to satisfy such requirements is not to create an overcrowding of buses on the existing routes or to take away the business of those who already possess licences; that, thus, where such needs have been established to be of a limited extent, the granting of a new licence might not be justified or reasonable, whereas the extension of an existing one might be so as in the present instance.

(4) That the sub judge decision to extend the licence of the interested party is duly reasoned and it is not required of the respondent authority to give specific reasons also as far as its refusal to grant to the applicant the licence applied for because such reasons are contained in the positive part of the decision; that there has not been an omission on the part of the respondent as regards the non-granting of a new licence to the applicant as this constitutes a negative decision and not an omission.

Application dismissed.

Cases referred to:

Peristeronopighi Transport Co. Ltd. v. Republic (1967) 3 C.L.R. 451 at p. 458.

Recourse.

Recourse against the decision of the respondent to grant to the interested party a road service licence in respect of bus No. D.P. 89 and against the refusal of the respondent to grant applicant a road service licence for a new bus to serve the Dierona-Limassol route.

A. Skordis, for the applicant.

A. Vladimirov, for the respondents.

A. Haviaras, for the interested party.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that:-

- 5 (a) The act and/or decision of the respondent Minister dated 16.10.1976, to grant a road service licence to a bus Reg. No. DP 89, of the Eteria Metaforon Dierona-Arakapas Ltd., to take up passengers from Dierona village, is null and void and of no legal effect whatsoever.
- 10 (b) The omission of the respondent Minister to grant the applicant a road service licence for a new bus to serve the Dierona-Limassol route is null and void and of no legal effect whatsoever.

15 Before proceeding any further I feel that I should say that this case was taken over by me on the 10th December, 1983, when directions for written addresses were made and the hearing was concluded on the 9th March, 1985.

20 The applicant who is a professional driver and holds a road service licence to operate a bus on the Larnaca-Arakapas route, applied on the 28th July 1975, for a road service licence in respect of a new bus to serve the route Dierona-Limassol.

25 The interested party, the Eteria Metaforon Dierona-Arakapas Ltd., on the 16th April, 1975, applied to the Licensing Authority for an extension of its road service licences in respect of its buses Reg. Nos. DP 89 and BC 424 to cover the route Dierona-Limassol.

30 The Licensing Authority at its meeting of the 20th February 1976, considered these applications and decided to grant the extension to the licence applied for by the company in respect of its bus No. DP 89, to take up and set down passengers from the village of Dierona, but decided to reject the application of the company in respect
35 of its bus No. BC 424 and the application of the applicant for a new road service licence.

As it appears in the Minutes of the meeting of the 20th

February 1976, (blues 124-123 of file 1, DP 89, exhibit 1), the Licensing Authority reached its decision:

“Having taken into consideration the transport requirements of Dierona village which until today is being served by two licensed buses, as also is the passenger traffic of the village on the basis of a recent survey. It has also taken into consideration the communication requirements of the area, which do not justify the licensing of a new bus. As regards the licence granted to bus Reg. No. DP 89 of the Eteria Metaforon Dierona-Arakapa, the Licensing Authority took into consideration the fact that the Company has been providing a bus service on the approved route for many years and especially before the date of the coming into force of Law 16 of 1964.”

On the 10th March, 1976, the applicant filed a hierarchical recourse before the Minister which was examined on the 16th December 1976, and dismissed. The relevant decision of the Minister which was communicated to the applicant on the 12th January 1977, stated as follows: (blue 146 of exhibit 1).

“Having taken into consideration all the facts before me and the representations of the parties concerned, I have come to the conclusion that the Licensing Authority correctly granted to the Eteria Dieronas-Arakapa, a licence to take up passengers from Dierona village, because the said company has been serving the said village with its buses long before the coming into force of the Motor Transport (Regulation) Law, 1964 Law 16 of 1964.”

Consequently the above recourse is dismissed.

As a result the applicant filed the present recourse which is based on the following grounds of Law.

- (a) The sub judice decision and/or act and/or omission was taken under a misconception of fact.
- (b) It is based on misconceived and/or defective and/or wrong reasoning.

(c) The act and/or decision and/or omission was taken in the wrong exercise of discretion and/or excess of power and/or contrary to section 8 of Law 16 of 1964 as amended.

5 The first argument of the applicant is that the Minister in considering that the company was serving the requirements of the area since and before 1964 was mistaken, because the company did not exist in 1964, having been
10 incorporated on the 10th January 1976; consequently it was argued, his decision was based on a misconception of fact.

It is correct that the company became a limited company in 1976, so strictly speaking it was not in existence when the Law and its relevant provisions came into force.
15 However, it transpires from the files which were at all relevant times before the respondent authority, that the buses of the "company" were serving the area well before 1964 and this is also confirmed by statements from the Police (blue 45 of exhibit 1 (a)), the Chairman of the Village
20 Commission (blue 47 of exhibit 1 (a)) and the applicant himself (blue 46 of exhibit 1(a)).

What also transpires from the files (see blues 43-49 of exhibit 1(a)) is that a general partnership was registered on the 11th March, 1964, under the name of "Metaforiki Eteria Dierona-Arakapas", the buses of which were serving
25 the area until 1976, when the "Metaforiki Eteria Dierona-Arakapas Ltd." was incorporated. Though a different legal entity, it is clear from the files that behind the partnership and the company were in effect the same persons and this
30 of course would not justify a finding of misconception of fact. Relevant is what is stated in the case of *Peristeronopighi Transport Co. Ltd., v. Republic* (1967) 3 C.L.R. 451 at p. 458:

35 "It is not in dispute, however, that the shareholders of the Applicant company are persons who as individuals were providing transport facilities in the past, in the sense of the above quoted provision in section 8(2) of Law 16/64; so, though in Law a company is a different person from its shareholders, I do think that
40 for the purposes of the proper application of section

8(2) of Law 16/64 the Applicant ought to have been treated as a group of persons whose representations ought to have been taken into consideration;"

Also section 5 of the Motor Transport (Regulation) (Amendment) Law 1971 (Law 45 of 1971) amending section 8(1) of Law 16 of 1964 by adding the following proviso to it, provides as follows:

5

"Provided further that when the holders of road service licences were to form a company in connection to the road use of the vehicles referred to in the licences, the company may, subject to the provisions of this or any other relevant Law and on the condition that by the formation of the Company there would not be any exploitation of the public or the public benefit would not otherwise be adversely affected, be granted road service licences in connection with such vehicles in substitution of the existing licences for such."

10

15

Having found that there is no misconception of fact, this ground of Law must fail.

The second ground of Law is that the sub judice decision is based on a defective and/or wrong reasoning in that,

20

The reasoning given by the respondent that the sub judice decision was reached in the light of the provisions of section 8(2), that those already providing transport facilities along the route on the date of the coming into force of the Law should be taken into consideration, was wrong, because such provisions were of a transitional nature aiming to protect such persons during that period and could not possibly continue to have any effect twelve years later.

25

30

The relevant provisions of section 8(2) are as follows:

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

.....

35

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.”

5 Nothing is contained in this section of the Law imposing a time limit either expressly or impliedly as regards the application of this section or indicating an intention that such provision is to be of a limited duration, in order to justify the interpretation given to it by the applicant. To
10 my mind, the section makes general provisions in respect of the exercise of the discretion of the Licensing Authority when granting, varying, suspending or revoking road service licences, and to give any different construction to it would not be justified.

15 It was also argued that the reasoning was wrong as the respondent authority stated that it reached its decision on the basis of the requirements of the route and such reasoning is not justified by the facts and circumstances which indicate that the requirements of the route were not in
20 fact taken into consideration, because, if on the one hand such requirements were fully served by the existing buses then the respondent authority was wrong to grant a licence to the interested party, and, if on the other hand, there existed need for a new licence, then such licence ought to have been granted to the applicant and not to
25 the interested party.

As it is clear from the files the requirements of the route were before the respondent before the sub judice decision was reached and according to the respondent these
30 requirements were such as to justify only the extension of the licence of one of the existing buses and not the granting of a licence to a new bus.

I have no doubt that the intention of the respondent Authority when considering the extension of an existing
35 licence or the granting of a new one must be to satisfy the transport needs of a particular area, but it must also, at the same time, have regard for those licences which are already in existence which must be safeguarded and protected. The purpose when attempting to satisfy such requirements is not to create an overcrowding of buses on
40 the existing routes or to take away the business of those

who already possess licences. Thus where such needs have been established to be of a limited extent, the granting of a new licence might not be justified or reasonable, whereas the extension of an existing one might be so, as in the present instance. 5

Finally, as regards this ground, it was argued that the sub judge decision is entirely devoid of reasoning as far as the refusal or omission to grant the licence to the applicant since reasoning only exists as far as the decision to grant the licence to the interested party. 10

This argument must also fail. The sub judge decision to extend the licence of the interested party is duly reasoned and it is not required of the respondent authority to give specific reasons also as far as its refusal to grant to the applicant the licence applied for because such reasons are contained in the positive part of the decision. I must also state at this stage that I do not consider that there has been an omission on the part of the respondent as regards the non-granting of a new licence to the applicant, as this constitutes a negative decision and not an omission. 15 20

The final ground of Law put forward by the applicant is that the respondents have exercised their discretion wrongly as the sub judge decision was reached for the wrong reasons.

As already stated above, the sub judge decision is fully justified and the reasons behind it were proper and correct; the respondents have thus exercised their discretion properly. Consequently the recourse must fail and it is hereby dismissed with no order as to costs. 25

Recourse dismissed. 30
No order as to costs.