

1985 July 6

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CYPRUS PHASSOURI PLANTATIONS CO. LTD.,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE REGISTRAR OF MOTOR VEHICLES,

Respondent.

(Case No. 157/79).

*Administrative Law—Motor vehicle not having a road service licence under section 10(2) of the Motor Transport (Regulation) Law 16/1964—Cannot be issued with a Motor Vehicle licence (circulation licence)—Regulation 75 and regulation 17(4) of the Motor Vehicles and Road Traffic Regulations, 1973** 5

On the 1.3.1979 the applicant company applied to the respondent for a motor vehicle licence (circulation licence) in respect of an articulated vehicle Reg. No. JB 198. It is not disputed that the said vehicle is a carrier. 10

The respondent informed the applicant company by letter dated 7.3.1979 that the application aforesaid cannot be examined "because you have not sent the road service licence".

As a result of this letter the present recourse was filed. Counsel for the applicant company argued that the issue of a motor vehicle licence is not dependent upon the possession of a "B" licence under the Motor Transport (Regulation) Law 16/1964. 15

Held, dismissing the recourse (1) The licences referred 20

*.These Regulations are quoted at p. 1562 post.

to in regulation 75 of the Motor Vehicles and Road Traffic Regulations, 1973 are on the basis of section 10(2) of Law 16/1964: (a) A Public Carrier's licence ("A" licence) and (b) Private Carrier's licence (licence "B").

5 (2) As the vehicle in question is a carrier, irrespective of whether it is a public or private carrier, it is subject to the aforesaid regulation 75 and must have a carrier's licence issued by the Licensing Authority before being issued with a motor vehicle licence.

10 (3) Since in this case the conditions of regulation 75 were not fulfilled, the respondent rightly refused to issue the licence requested.

Recourse dismissed.

No order as to costs.

15 **Recourse.**

Recourse against the refusal of the respondents to issue a circulation licence to applicants in respect of their motor vehicle under Reg. No. JB 198.

St. G. Mc Bride, for the applicant.

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

Cur. adv. vult.

25 A. LOIZOU J. read the following judgment. The applicant company by the present recourse seeks a declaration of the Court that:

(a) The omission of the respondent communicated to the applicants by the respondent's letter 214/7 dated 7.3.79 to examine the application of the applicant contained in the applicant's letter dated 1.3.79, ought not to have been made and that the circulation licence applied for ought to have been issued.

(b) The omission above complained of was an act/or decision and/or omission made in excess of and/or in abuse of powers vested in the respondent.

35 On the 1st March, 1979, the applicant company applied to the respondent Registrar of Motor Vehicles for a motor

vehicle licence (circulation licence) in respect of an articulated vehicle reg. No. JB 198. On the 7th March, 1979 (Attachment "G" to the applicant's address) the respondent Registrar informed the applicant company *inter alia*, as follows:

5

"Your application dated 15th December, 1979, for a motor vehicle licence Reg. No. JB 198, cannot be examined because you have not sent the road service licence."

As a result of this letter the applicant company filed the present recourse.

10

Though in the aforesaid reply of the respondent of the 7th March, 1979, the letter of the applicant is referred to as dated 15th December 1979, it is obvious that it is a mistake and it is equally obvious that he is referring to the letter of the applicant of the 1st March, 1979. On the 15th February, 1979, the applicant company had in fact applied for a private carrier's licence (a "B" licence) (Att. "H" of applicant's address) which was rejected on the 24th April 1979 (Att. "I" to applicant's address) because a previous application to that effect dated 6th February 1978, had already been rejected and was at the time of this subsequent application of the 15th February 1979 the subject matter of a recourse to the Court.

15

20

The background to the said recourse and the present one, so far as relevant, is briefly as follows:

25

The said vehicle had been purchased on the 21st December 1977 from its previous owners who operated it until then under a public carrier's licence "A". In order that the said transfer be effected, the applicant company was obliged to sign an acknowledgment to the Registrar of Motor Vehicles (attached to the opposition) to the effect that, on the basis of the provisions of the Motor Transport (Regulation) Law 1964 (Law 16 of 1964) a road service licence might not be granted in respect of the said vehicle. On the 10th January 1978, the applicant company applied to the Licensing Authority for a private carrier's licence "B" under section 10 of Law 16 of 1964 (Att. "A" to applicant's address) but such application was examined on the 20th June, 1978,

30

35

and was rejected in disregard of the findings of the District Transport Officer that the company was in need of this carrier. This decision which was communicated to the applicant by letter of 19th July, 1978 (Att. "B" to respondent's address), was, as already stated above, the subject matter of recourse No. 354/78, reported as *Cyprus Phasouri Plantations Co. Ltd. v. The Republic* (1979) 3 C.L.R. 169, as a result of which it was annulled on the 1st June, 1979 on the ground of wrong reasoning. The matter was consequently referred to the respondent authority for re-examination. It should be noted that the decision concerning this recourse was given after the sub judice decision and the filing of the present recourse.

Before proceeding further, I should say at this stage that the present case was taken over by me on the 31st October 1983 and was adjourned on the request of the respondents for the 3rd December 1983 and 14th January 1984. The opposition was filed on the 7th February 1984 whereupon instructions for written addresses were given and the case was concluded on the 6th October 1984.

It was argued on behalf of the applicant company that the issue of a motor vehicle licence is not dependent upon the possession of a "B" licence and consequently the refusal of the respondent is wrong in law because on the authority of the case of *Police v. Costandas and another*, 20 C.L.R. 82 a motor vehicle licence is required by regulation 16 of the Motor Vehicles and Road Traffic Regulations, 1973 (P. I. 159/73) irrespective of whether a motor vehicle is to be driven on a road or on private land. Also, it has been argued that a "B" licence is not a prerequisite to the issue of a circulation licence.

Secondly, according to the applicant company, the respondents wrongly refused to issue the "B" licence requested because at the time the application for this was presented, it was not accompanied by a circulation licence.

As it transpires from the facts the respondent did ask the applicant company for a "B" licence in order to issue the motor vehicle licence; but nowhere from the material before the Court does it appear that the Licensing Autho-

rity requested the applicant to produce a motor vehicle licence before considering any of their applications for a "B" licence. Moreover the applicant company was aware that the "B" licence might be refused having signed an acknowledgment to that effect. 5

In order to deal with this matter one must go to the relevant regulations.

Regulation 17(4) provides as follows:

"(4) No motor vehicle licence shall be issued unless the motor vehicle conforms in all respects to the conditions prescribed by these Regulations as to construction and equipment of motor vehicles and subject to the provisions of Regulation 75." 10

And regulation 75:

"75. Notwithstanding the provisions of these Regulations the Registrar shall not register any motor vehicle, nor shall he issue, grant or give any licence in connection with any motor vehicle which, under the Motor Transport (Regulation) Law, 1964 to 1972 or any other Law for the time being in force amending or substituted for the same and the Regulations made thereunder must have a licence issued under the said Laws or Regulations unless he is furnished with such a licence." 15 20

As correctly stated by the respondents, the licences referred to in the aforesaid regulation 75 are on the basis of section 10(2) of the Motor Transport (Regulation) Law, 1964 (Law 16 of 1964): 25

(a) Public carrier's licence ("A" licence) and

(b) private carrier's licence ("B" licence). 30

Since it is not disputed that the vehicle in question is a carrier, irrespective of whether it is a public or private carrier, it is subject to the aforesaid regulation 75 and must have a carrier's licence issued by the Licensing Authority before being issued with a motor vehicle licence by the respondent Registrar. Consequently since the conditions of 35

regulation 75 were not fulfilled, the respondent rightly refused to issue the licence requested.

I find therefore that the sub judice decision was correct, the recourse must thus fail and is hereby dismissed with no
5 order as to costs.

*Recourse dismissed with
no order as to costs.*