

1985 November 9

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

1. GEORGHIOS MICHAEL,
2. PANIKKOS MICHAEL,
3. SPYROS MICHAEL,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PERMITS AUTHORITY AND/OR  
THE MINISTER OF COMMUNICATIONS AND  
WORKS,

*Respondents.*

(Case No. 149/77).

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*The Motor Transport (Regulation) Law, 1964—S. 8—The Minister of Communications and Works enjoys a wide discretion in the exercise of the powers vested in him by the said law.*

*Administrative Law—This Court will not substitute its discretion with that of the administrative organ concerned.* 5

The applicants are brothers and professional motorists. They are the owners of motor buses FB 750 and HS 141 which had been licensed as public service vehicles. In November 1974 the applicants applied to the Licensing Authority for a licence to carry on contract by the said buses labourers and personnel of various shipping agencies from the old Limassol port to the new one. 10

The said route was being daily served by the Limassol urban buses routes 18, 19 and 22 starting at 6 a.m. and finishing at 6 p.m., the buses travelling at intervals of twenty minutes. It appears that the need for such transport arose when ships arrived at the new port and the 15

number of labourers ranged on such occasions between 40-60. There was also on occasions need to use transport late in the evening.

5 The Licensing Authority at its meeting of the 7.2.75 decided not to grant the licence applied for. The applicants asked for re-examination of their application. At its meeting of the 13.1.76 the Licensing Authority granted the licence applied for. This decision was challenged by a hierarchical recourse made to the respondent Minister by Efsthios Kyriacou and Sons Ltd. The Minister came to the conclusion that the transportation of the said labourers and personnel "be carried out by the Limassol urban buses serving routes 18, 19 and 22" and directed the Licensing Authority to annul the licence it gave to the applicants' buses and invite those carrying urban routes 18, 19 and 22 to make, if necessary, any arrangements (increase of the frequency of their buses, change and/or extension of the time table etc.) in a way that full service will be offered as regards the transportation of the said labourers and personnel from the old to the new port.

Hence the present recourse.

*Held*, dismissing the recourse,

1. The Minister enjoys a wide discretion in exercise of the powers vested in him by the relevant provisions of the Motor Transport (Regulation) Law, 1964.

2. In the circumstances of this case it was reasonably open to the Minister to reach the sub judice decision. This Court will not substitute its own discretion with that of the administrative organ concerned. Subsection 2 of section 8 of the said law aims to provide suitable and efficient service and not an absolute one. If throughout the day from 6 a.m. to 6 p.m. such service is provided that is a sufficient reason for the sub judice decision.

*Recourse dismissed.*

*No order as to costs.*

Cases referred to:

*Efstathios Kyriakou and Sons Ltd. and Others v. The Republic* (1970) 3 C.L.R. 106;

*Tsouloftas and Others v. The Republic* (1980) 3 C.L.R. 426.

**Recourse.**

Recourse against the decision of the respondent Minister of Communications and Works whereby the decision of the Licensing Authority to grant applicants licences in respect of their vehicles FB 750 and HS 141 to carry passengers on contract was annulled. 5

*E. Efstathiou*, for the applicants.

*M. Tsiappa (Mrs.)*, for the respondents. 10

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. This recourse was taken over by me in December 1983, when directions for written addresses were made and was fixed for oral clarifications and evidence, on the 11th February 1984. On that day an adjournment was applied for as the applicants were, as stated, considering to withdraw same. Later, however, it was decided to be proceeded with and the filing of the written addresses was completed on the 2nd November 1985, when all relevant documents were produced as exhibits and judgment was reserved. 15 20

By it the applicants seek a declaration of the Court that the decision of the respondent Minister of Communications and Works, dated 22nd February 1977, is null and void and of no effect whatsoever. This decision, to the full text of which reference will be made later in this judgment, was issued by the respondent Minister in pursuance of a hierarchical recourse made to him by Messrs E. Kyriacou and Sons Ltd., under the provisions of the Motor Transport (Regulation) Laws 1964-1975, as then in force, against a decision of the respondent Licensing Authority, dated the 13th July, 1976 (Appendix 19) by which the applicants were granted licences in respect of their vehicles under Registration No. FB 750 and HS 141, to carry passengers on contract. 25 30 35

The applicants are brothers and professional motorists. They are the owners of the aforementioned omnibuses which

were already licensed as public service vehicles and they were at the time engaged in carrying passengers on contract from Limassol to Akrotiri and Episkopi, (Appendix 5). In November 1974, they applied to the Licensing Authority for a licence to carry on contract labourers and personnel of various shipping agencies from the old Limassol port to the new one.

The said route was being daily served by the Limassol Urban Buses routes 18, 19 and 22, starting at 6.00 a.m. and finishing at 6:00 p.m., the buses travelling at intervals of twenty minutes. It appears that the need for such transport arose when ships arrived at the new Limassol port and the number of labourers on such occasions ranged between 40 - 60. There was also on occasions need to use transport late in the evening. A report dated the 20th November, 1974, was prepared by the Department of Inland Transport (Appendix 7). A further report dated 14th January, 1975, was prepared by the Limassol District Transport Inspector, (Appendix 8). By letter dated the 21st January 1975 (Appendix 9), the Limassol Urban Buses Consortium objected to the granting of the licences applied for, stating therein their readiness to take the appropriate steps in order to serve any passengers not fully served by their existing hours of work. The Licensing Authority examined the said applications at its meeting of the 7th February 1975, and concluded that the needs of the route in question were adequately served by the licensed urban buses and refused to grant to the applicants the licences applied for as it appears from the relevant minute of that meeting (Appendix 10).

The applicants sought re-examination of their applications and the Licensing Authority invited the parties concerned to make their representations. The view points of the various conflicting interests are set out in Appendices 14 and 15. Eventually the Licensing Authority at its meeting of the 1st June, 1976, decided to instruct the Limassol District Transport Inspector to inquire whether the applicants still wished to obtain all the licences, whether they had any contracts with the shipping agencies and whether there were any labourers working in the evenings and facing transportation problems. In pursuance thereof the

said Inspector submitted a report dated 28th June, 1976, (Appendix 18) stating therein that the granting of the licences was still sought, that the applicants had existing contracts with the various Companies whose labourers had to work late in the evening when there were no urban buses in operation. 5

At its meeting of the 13th January, 1976, the Licensing Authority as shown in Appendix 19, decided after taking into consideration the existence of the contracts between the applicants and the relevant companies, and the last Transport Inspector's Report hereinabove referred to, to grant the licences applied for to the applicants on account, as it put it, of the unsatisfactory bus service regarding the said labourers. 10

As regards the said decision a hierarchical recourse was made to the respondent Minister by Efstathios Kyriakou and Sons Ltd., (Appendix 21) and the Minister's decision the subject matter of this recourse (Appendix 1) reads as follows: 15

"Having taken into account all material before me and the representations of all concerned, I have come to the conclusion that the transportation of the labourers and the personnel of various Shipping Agencies from the old to the new port of Limassol, be carried out by Limassol Urban Buses serving routes No. 18, 19 and 22 and consequently it is not expedient the granting of licences for the carrying out of the said transportation by buses on contract. 20 25

2. For all the above the aforesaid recourse is accepted and the Licensing Authority is directed to: 30

- (a) Annul the licences granted to buses under No. FB 750 and HS 141 of Messrs. Georghiou, Spyrou, Panikou, Michael, and,
- (b) Invite those carrying out the urban routes under No. 18, 19 and 22 to make, if necessary, any arrangements (increase of the frequency of their buses, change and or extension of the time table of their functioning etc), in a way that full 35

service will be offered as regards the transportation of the labourers and the staff of the various Shipping Agencies from the old to the new port of Limassol.”

5 It is the case for the applicants that the sub judice decision was reached under a misconception of fact and contrary to Law and in abuse and excess of power. It was argued that the respondent Minister did not take into consideration and/or duly so, the needs of the labourers and  
10 the personnel of the Shipping Agencies, the time suitable for their transportation, and the fact that they were not served otherwise and/or by the urban buses, that he acted contrary to section 8(2) of the Motor Transport (Regulation) Law, 1964 and that he ignored and/or did not take  
15 sufficiently into consideration the criteria laid down therein.

On the other hand counsel for the respondents has argued that the respondent Minister had before him all relevant facts which he duly considered and balanced in deciding as he did. The fact that on certain occasions some  
20 of the labourers concerned might be in need of transportation, late in the evening and that the applicants had entered into contracts with the labourers' employers for the former's transportation, were not sufficient factors when  
25 balanced with other relevant ones to justify the grant of the licences applied for and also in view of the fact that the route in question was being served by licensed urban buses which were at all times willing to extend their hours of work for serving those working late in the evening and  
30 were in fact invited by the Minister's decision to make all necessary arrangements for such service. It was urged that the Minister's decision was reasonably open to him and that the Court should not interfere with it.

35 Section 8 of the Law in so far as relevant reads as follows:

“8. (1) The licensing authority may at its discretion grant a road service licence or impose such conditions as the licensing authority may deem fit in the circumstances:

(2) 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;
- (b) the extent, if any, to which the needs of the proposed routes or any of them are adequately served; 5
- (c) the extent to which the proposed service is necessary or desirable in the public interest;
- (d) the needs of the area as a whole in relation to traffic (including the provision of adequate suitable and efficient service, the elimination of unnecessary services and the provision of unremunerative services) and the co-ordination of all forms of passenger transport. 10 15

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." 20

Section 8 and its various provisions have come under judicial consideration and construction in a number of cases to which I need not refer as the issue before me in the present recourse is whether the Minister's discretion was exercised properly in the circumstances. In this respect reference may be made to the case of *Efstathios Kyriakou and Sons Ltd., and others v. The Republic*, (1970) 3 C.L.R. 106, at p. 116 where Triantafyllides J., as he then was, pointed out that "the Minister enjoys a wide discretion in exercise of the powers vested in him by the relevant provisions of the Law". 25 30

This position has been adopted and constantly followed since then. The latest of the cases where it is referred with approval is that of *Andreas Tsouloftas and Others v. The Republic* (1980) 3 C.L.R. 426 at pp. 431-432, who went on to say that the test by which we must judge the validity 35

of the decision is the same with that applicable to the Licensing Authority.

5 In the present case having considered the facts and circumstances in their totality and the relevant provisions of the Law, including the general principles of Administrative Law, I have come to the conclusion that it was reasonably open to the Minister to arrive at the sub judice decision he did.

10 The fact that there might be necessitated, on occasions, certain adjustments or that there might be at times the need for a late evening service, was not, in examining as it appears the pros and cons, a ground for the respondent Minister not to allow the recourse made to him.

15 What is aimed at, by the criteria laid down in subsection 2 of section 8, hereinabove set out, is to provide adequate suitable and efficient service and not an absolute one, the elimination of unnecessary services and the co-ordination of all forms of passenger transport. If throughout the day from 6.00 a.m. to 6:00 p.m. such service is provided, as  
20 it appeared in the circumstances of the present case, that to my mind is sufficient reason for the respondent Minister to refuse the granting of a licence to the applicants to carry in addition to that service passengers on contract merely because on occasions in the evenings there may be  
25 the need to provide some kind of transport. Moreover the possibility of improving existing transport arrangements could not operate against the legality of the sub judice decision.

30 As it has been said repeatedly, this Court will not substitute its own discretion with that of the administrative organ concerned and there are no reasons justifying my interference with the exercise of the relevant administrative discretion.

35 For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

*Recourse dismissed.  
No order as to costs.*