

1987 September 26

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTIS HADJIMINAS,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE REVIEW PERMITS AUTHORITY,

Respondent

(Case No 460/86)

Motor transport — The Motor Transport Regulation Law 9/82 — Rural taxis — Grant of licence — Depends on needs of the particular community

Motor transport — The Motor Transport Regulation Law 84/84 — Permits Review Authority — Powers of

Administrative Law — General principles — A public body is not at liberty either to ignore its previous decisions bearing on the subject under review or to follow inconsistent courses — Motor transport — The Motor Transport Regulation Law 9/82 — Rural taxis — Decision that needs of an area require two additional taxis — As a result, a permit was granted to one of the candidates — Applicant's application postponed pending investigation as to his intended main occupation — Finally, his application turned down on ground that the area needed only one additional taxi — Authority should have first revoked their previous decision — Had they done so, applicant would have been one of the candidates for the one additional licence 5
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The applicant, a displaced person and an inhabitant of Paliometochi refugee housing estate, applied for a licence to run a rural taxi for the needs of such settlement 15

On 28 12 83 the Licensing Authority decided that the needs of the area warranted two additional taxis one for the village of Paliometochi and one for the aforesaid refugee settlement 20

As a result, the Authority granted a licence to one of the applicants, namely Mr HjiChrstofis, in respect of the village of Paliometochi, but postponed the taking of a decision on applicant's application, pending investigation of whether he intended to make taxi driving his main occupation

5 In the meantime, an appeal was lodged before the Permits Review Authority, against the decision to grant a permit to Mr HjiChnstofis. The Review Authority ordered investigation as to the needs of the area. As a result of such investigation the Inspector of Transport reported that such needs could be satisfied by only one additional taxi.

10 Relying on the said report, the Licensing Authority turned down applicant's application. In reaching this decision the Authority did not address their mind to their earlier decision nor did they seek to revoke it as a necessary prerequisite to the reassessment of the situation. Moreover they did not consider at all whether the additional taxi should be centred at the refugee settlement or at the village.

15 As applicant's appeal to the Permits Review Authority was dismissed, the applicant filed this recourse. It must be noted that the Permits Review Authority did not direct its attention to the inconsistent decisions of the subordinate body or clear the mist that clouded the latter's decision.

Held, annulling the sub judice decision (1) The law makes the grant of a licence for a rural taxi specifically dependent on the needs for taxi services of the particular community (section 9(3)(a) Law 9/82)

20 (2) Proceedings before the Permits Review Authority are not confined to review of the validity of the decision of the Licensing Authority, but extend to every aspect of the case touching on the propriety of the application.

25 (3) The sub judice decision should be annulled for misconception of facts defective reasoning and irregularity of the proceedings. A decision-making body operating in the domain of public law cannot ignore previous decisions bearing on the subject under review, nor is it at liberty to follow inconsistent courses.

30 (4) If the Licensing Authority were minded to revoke the decision to grant two additional licences, they ought to have revoked such decision first, provided that there existed good grounds for such revocation. Had they followed such course, it would have been obvious that the applicant was one of the candidates for the licence to be granted.

*Sub judice decision
annulled*

Cases referred to

35 *Tsouloftas v Republic* (1983) 3 C L R 326

Recourse.

Recourse against the dismissal by the respondent of applicant's appeal against the decision of the Licensing Authority whereby

applicant's application for a licence to run a rural taxi for the needs of the refugee housing estate at Paliometochos was dismissed.

S. Karapatakis, for the applicant.

M. Tsiappa (Mrs.), for the respondent

Cur. adv. vult. 5

PIKIS J. read the following judgment. Costis Hadjiminas, a displaced person, is an inhabitant of Paliometochos refugee housing estate situated near the village of Paliometochos. The village has a population of about 3,000 inhabitants and the nearby settlement a population of six hundred. Hadjiminas applied for a licence to run a rural taxi for the needs of the settlement. Concurrently, applications were made for the licensing of an additional rural taxi for the needs of Paliometochos until then served by only one taxi. 10

The Licensing Authority decided on 28th December, 1983, (appendix 3 to the opposition) that the needs of the area for taxi services warranted the licensing of two additional taxis, one for the village and one for the settlement. And they issued a permit to Mr. Hadjichristofis, one of the applicants for the provision of an additional taxi service for the village. Respecting Hadjiminas, the only applicant for the provision of a taxi service for the settlement, they postponed final decision pending an inquiry into his occupation, seemingly with a view to establishing whether he intended to make taxi driving his main occupation (s. 5(9), Law 9/82). The inquiry revealed that he did two jobs, cars salesman and in his spare time shoe repairer. Nothing on record appeared to contradict his declared intention to make taxi driving his main occupation if successful in his application for a licence. 15 20 25

In the meantime, an appeal had been taken against the decision to grant a permit to Mr. Hadjichristofis. The Permits Review Authority directed, in the course of the inquiry before it, a report on the needs of the wider Paliometochos area for additional taxi services. The Inspector of Transport who makes an assessment of those needs reported that only an additional taxi was required to satisfy the needs of the area. 35

Reverting to the proceedings before the Licensing Authority connected with the application of Hadjiminas, the Licensing Authority apparently relying on the aforementioned report of the Transport Inspector refused the application on the ground that there was no need for an additional taxi. In so holding, as can be gathered from the minutes of the proceedings before them and 40

their decision (appendix 13 to the opposition) they did not address their mind to their earlier decision nor did they seek to revoke it as a necessary prerequisite to the reassessment of the situation. More importantly, they did not consider at all whether the additional tax
5 should be centred at the refugee settlement or at the village. Their decision was founded, it appears, on the material placed before the Permits Review Authority, that is, in proceedings other than those pending before the body though not unconnected with them.

10 Then the applicant himself challenged the decision of the Licensing Authority by appealing to the Permits Review Authority. The appeal was dismissed for the same reasons as the application was. Hence, the present proceedings. The Permits Review
15 Authority did not direct its attention to the inconsistent decisions of the subordinate body or clear the mist that clouded its decision.

Before focusing attention on the grounds advanced in support of the recourse, two things must be noted (a) the law makes the grant of a licence for a rural taxi specifically dependent on the needs for
20 taxi services of the particular community (section 9(3)(a) Law 9/82); and (b) proceedings before the Permits Review Authority are not confined to review of the validity of the decision of the Licensing Authority but extend to every aspect of the case touching on the propriety of the application. (*A. Tsouloftas v. Republic of Cyprus**).

25 The decision is challenged before us as unreasoned or bad for defective reasoning, as founded on a misconception of the facts relevant to the needs of the area for taxi services and lastly for misapplication of the law to facts of the case.

30 Examination of the proceedings before the Permits Review Authority and the decision that followed confirms that they adopted the decision of the Licensing Authority for much the same reasons, notably absence of any need for the extension of taxi services in the wider Paliometochos area. They did not remedy and did not address their mind at all to the irregularities mentioned earlier, that
35 rendered the proceedings before the Licensing Authority vulnerable to be set aside for inconsistency and failure to appreciate the facts of the case in their proper perspective. They wholly overlooked, as the Licensing Authority had earlier done,

* (1983) 3 C.L.R. 326.

that the licence given to Mr. Hadjichristofis was granted in the context of the self same proceedings and that the applicant and Mr. Hadjichristofis were both competing for a licence to provide taxi services in the same area. Nor did they consider at all, assuming their decision to confine the extension to the provision of only one taxi, whether that taxi should be centred at the refugee settlement and not at Paliometochos village. Moreover, they did not direct their attention to the propriety of the course followed by the subordinate body to act on the report of the transport inspector notwithstanding the fact that it had not been produced before the Licensing Authority as such. 5 10

I have grave reservations whether it was at all open to them to follow that course though I withhold final pronouncement on this subject as the sub judice decision is liable to be set aside on other grounds. 15

At the end, I think there is no alternative but to annul the decision for misconception of facts, defective reasoning and irregularity of the proceedings. A decision making body operating in the domain of public law cannot ignore previous decisions bearing on the subject under review, nor is it at liberty to follow inconsistent courses. If the Licensing Authority were minded to revoke the decision to grant two additional licences for the satisfaction of the needs of the area for taxi services, they had to revoke that decision first before embarking on re-examination of the issue before them, provided always good grounds existed for the revocation of the first decision. Had they followed that course and had they revoked the first decision it would have become apparent that applicant would be a candidate for the allocation of the one licence for a rural taxi approved for the satisfaction of the needs of the area. 20 25 30

For the reasons indicated above, the decision is wholly annulled pursuant to the provisions of Article 146.4(b) of the Constitution and I so order.

*Sub judice decision
annulled.* 35