

1987 February 16

(SAVVIDES, J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANICOS NICOLAOU,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE REVIEW LICENSING AUTHORITY,

*Respondent*

*(Case No 709/85)*

*Motor Transport—The Motor Transport Regulation Laws 1982-1984, section 5(9)—Hiring of cars without a driver—Application for a licence for, refused on ground that applicant did not intend to carry on the business of hiring cars without a driver as his main occupation—In the circumstances sub judice decision reasonably open to the respondent Authority*

*Administrative Law—Discretion of Administration, exercise of—Judicial control—Principles applicable*

The applicant is a Cypriot living with his family in England. On the 10 12 84 the applicant submitted applications for the grant of licences for cars hired without a driver in relation to 20 vehicles. The Licensing Authority dismissed the application on the ground that the needs of Cyprus in «Z» cars are satisfied by the existing number of licences.

As a result the applicant filed a hierarchical recourse to the respondent Authority. The respondent Authority dismissed the said recourse on the ground that «it has not been satisfied that the applicant intends to carry out the business of hiring cars without a driver as his main occupation and in consequence he does not satisfy the prerequisites of section 5, sub-section (9) of the Law». Hence the present recourse.

It should be noted that in the course of the hearing of the hierarchical recourse applicant's counsel stated that the applicant could only afford to buy 6 or 7 cars.

Held, *dismissing the recourse* (1) This Court does not substitute its own discretion to that of the appropriate administrative organ. What this Court has to examine is whether the discretion was properly exercised and whether in the circumstances it was reasonably open to the organ concerned to take its decision.

(2) The relevant provision of the law is section 5(9) of the Motor Transport Regulation Laws 1982-1984. The question is whether the applicant satisfied the Authority that he was a person falling within the provisions of sub-section 9 of section 5.

(3) Bearing in mind the statements by applicant's counsel before the respondents and the fact that applicant was not a repatriated Cypriot, the Court came to the conclusion that the sub judice decision was reasonably open to the respondents. 5

*Recourse dismissed.*  
*£50 costs in favour of respondents.* 10

**Recourse.**

Recourse against the dismissal of applicant's hierarchical recourse against the refusal of the Licensing Authority to issue licences to the applicant in respect of 20 cars to be hired without a driver. 15

*S. A. Karapatakis*, for the applicant.

*M. Tsiappa (Mrs.)*, for the respondent.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. The applicant by this recourse prays for the following relief: 20

A. A declaration of the Court that the act and/or decision of the respondent communicated to the applicant by letter dated the 2nd July, 1985 whereby his hierarchical recourse against the decision of the Licensing Authority to refuse the issue to him of licences in respect of 20 cars to be hired without a driver (2 cars), was dismissed and the refusal to grant the said licences to him are null and void and of no legal effect. 25

The grounds of law advanced by his counsel in support of the application are that the sub judice decision is not duly reasoned, it was taken under a misconception of fact, in the wrong exercise and abuse of the respondent's discretionary power, contrary to the rules of good administration and/or natural justice and that it is illegal. 30

The facts of the case are as follows:

The applicant is a Cypriot living with his family in England and 35

working there as an employee in a factory. Till 1974 when he left for England, he was employed at the Cyprus Transport Control Office. On the 10th December, 1984 the applicant submitted applications for the grant of licences for cars hired without a driver  
5 in relation to 20 vehicles.

A report was prepared by the District Transport Controller containing details about the applicant. The Licensing Authority having taken into consideration all the facts and circumstances relating to the applications, decided at its meeting of the 12th  
10 February, 1985, to refuse the grant of the licences applied for on the ground that the needs of Cyprus in «Z» cars are satisfied by the existing number of licences, and informed the applicant accordingly, by letter dated the 22nd February, 1985.

The applicant on the 8th March, 1985 filed a hierarchical recourse to the Licensing Review Authority against the decision of  
15 the Licensing Authority.

The Respondent Licensing Review Authority met on the 23rd April, 1985 and after having heard what was said by counsel on behalf of the applicant, decided, on the 24th May, 1985 to dismiss  
20 the said recourse. The decision of the respondent was communicated to the applicant by letter dated the 2nd July, 1985.

The sub judge decision reads as follows:

«The Licensing Review Authority having studied all material from the relevant files and everything that was said by  
25 the applicant's advocate, decides to dismiss the recourse as it has not been satisfied that the applicant intends to carry out the business of hiring cars without a driver as his main occupation and in consequence he does not satisfy the prerequisites of section 5, sub-section (9) of the Law.»

By his written address counsel for applicant expounded on his contentions that the sub judge decision was vague and/or defective, that there was a misconception of fact and that the respondent acted in excess of its powers. He contended that under  
30 the provisions of the relevant law licences should be granted to  
35 persons who are engaged or intend to be engaged in the transport business as their main occupation and that the applicant had such an intention and the transport business was in fact the only business in which he had experience and the respondent wrongly

refused the said licences on the ground that the applicant did not satisfy the provisions of the law

Counsel for the respondent by her written address contended that the sub judge decision was issued in the exercise of the statutory powers with which the respondent was vested and that the hierarchical recourse is not a judicial proceeding in any sense nor is it intended to review the correctness of decisions of the hierarchically subordinate organ, but is a second tier in the decision-taking process designed to eliminate mistakes as well as abuse of authority by subordinates Both organs in the hierarchy are charged with the same duty to promote the objects of the law by the application of its provisions in particular cases

What the Court has to consider, counsel submitted, is whether it was reasonably open to the respondent, in view of the provisions of the law and the material before it to reach the sub judge decision In her submission, it was reasonably open both to the Licensing Authority and the respondent in dealing with the hierarchical recourse, in the light of the material before them and the statements made by applicant's counsel, to come to the conclusion that the applicant did not satisfy the prerequisites set up in section 5(9) of the law, that is, that he did not propose to carry on the business of hiring vehicles without a driver as his main profession

It has been repeatedly stressed that this court when dealing with the exercise of discretion by an organ in which a discretion is vested, has to examine whether such discretion was properly exercised and whether in the circumstances of a particular case it was reasonably open to the organ concerned to take its decision. This Court is not to substitute its own discretion to that of the appropriate organ

Beang in mind the above principles, the question which poses for consideration before me is whether it was reasonably open to the respondent to decide, as it did Counsel for applicant contended that prior to the Turkish invasion, though the applicant was a civil servant, he had a number of «Z» cars which were registered in the name of his father, who lived in Kyrenia and who was engaged in the hiring of such cars After the Turkish invasion the applicant left for England and his father sold the licences for the «Z» cars at £50 - each, thus, in fact trading such licences

In answering the questions put to his counsel at the hearing before the respondent at which the applicant was not present, his counsel stated on his behalf, that the applicant was living in London, working in a factory there, his family was living with him in London and that although he was applying for 20 licences he could only afford buying six or seven cars

The relevant Law is the Motor Transport Regulation Laws, 1982-1984 Sub-section (9) of section 5 provides as follows

«(9) Ουδεμία άδεια οδικής χρήσεως θα χορηγηται αναφορικώς προς οιονδήποτε όχημα δημοσίας χρήσεως προς εκτέλεσιν οιασδήποτε οδικης χρήσεως δι' ην απαιτείται τοιούτον οχημα δύναμει των διατάξεων του παρόντος Νόμου, εκτος εάν ο ιδιοκτήτης τούτου πείση την αρχην αδειών ότι μετέρχεται ή προτίθεται όπως μετέλθη την μεταφορικήν επιχείρησιν ως κυριον αυτού επάγγελμα».

(«No road use licence will be issued in respect of any public vehicle for effecting any road use for which such vehicle is required under the provisions of this Law, unless its owner persuades the licensing authority that he professes or proposes to profess the transport business as his main occupation»)

The question is whether the applicant satisfied the Authority that he was a person falling within the provisions of sub-section (9)

Bearing in mind the statements made concerning the applicant, by his counsel, and the fact that at the material time the applicant was not a repatriated Cypriot intending to start a business of self-drive cars as his main business, but was residing in England with his family and working there since 1974 when he settled in London, I have come to the conclusion that it was reasonably open to the respondent to decide as it did and I find no reason to interfere with its decision

The recourse is, therefore, dismissed with £50 - costs in favour of the respondent Any previous orders for costs are hereby set aside

*Recourse dismissed  
Applicant to pay £50 - costs*