

1987 February 25

[SAWIDES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
JOINT INTERCAR AGENCY LTD ,

Applicant,

v

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

Respondents

(Case No 781/85)

Motor Transport—The Motor Transport Regulation Law 9/82 as amended by Law 84/84—Sections 4A and 5(9)—Cars hired without a driver—Finding that requirements of section 5(9) not satisfied—In the circumstances sub judice decision reasonably open to the respondent Authority

Constitutional Law—Equality—Constitution, Article 28—There can be no equality in illegality 5

The applicant challenged by means of a hierarchical recourse the decision of the Licensing Authority, whereby applicant's application for 10 licences for cars hired without a driver had been dismissed Applicant's representative stated before the Review Licensing Authority that applicant company 10
eversince its establishment was dealing with the purchase and sale of cars

The hierarchical recourse was dismissed on the ground that applicant did not satisfy the requirements of section 5(9)* of the Law As a result the present recourse was filed

In his address counsel for the applicant argued, inter alia that in various cases licences were granted to persons who did not have the transport business as their occupation, an indication, as he put it, that the Licensing Authority did not strictly follow the criteria laid down by the law, but applied other criteria 15

Held, dismissing the recourse (1) In the light of the material before it, it was reasonably open to the respondent Authority to reach the conclusion that the applicant did not satisfy the requirement of section 5(9) that it was carrying or intended to carry on the business of transport as its main occupation 20

(2) What emanates from the submission relating to various other cases in which a licence had been granted is that the Licensing Authority did not act 25

* Quoted at p 209 post

in compliance with the law. It is, however, well settled that there is no equality in illegality.

Recourse dismissed.

£70 costs in favour of respondents.

5 *Cases referred to:*

Proestou v. The Republic (1981) 3 C.L.R. 314;

Karayianni v. Educational Service Committee (1979) 3 C.L.R. 371;

Falas v. The Republic (1983) 3 C.L.R. 523;

Decisions 1118/54 and 1121/54 of the Greek Council of State.

10 **Recourse.**

Recourse against the dismissal of applicant's recourse against the decision of the Licensing Authority refusing to grant applicant 10 licences for cars hired without a driver (Z cars).

N. Neocleous, for the applicant.

15 *S. Matsas*, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant is a company of limited liability and carries on the business of a car dealer. On the 18th December, 1982 the applicant company
20 submitted an application to the Licensing Authority for the grant of 10 licences for cars hired without a driver (Z cars).

In the particulars set out in its application, it is mentioned that it was already the owner of one Z car under Registration ZLC 951.

25 The Licensing Authority having taken into consideration all the facts and circumstances relating to the application before it, decided, on the 9th January, 1985, to refuse the grant of the licences applied for.

30 The applicant on 24.1.1985 filed a hierarchical recourse against the decision of the Licensing Authority. The respondent Review Licensing Authority met on the 17th April, 1985 and heard the representative of the applicant, namely, Mr. Yiannakis Arghyrides, on the company's hierarchical recourse. In giving evidence before the respondent authority the representative of the applicant said that the only shareholders of the applicant company

were he and his wife, that the company was dealing with cars and maintained an office for the sale of second-hand cars. The business started in 1976 and it was converted to a company in 1979 and that its business ever since its establishment was the purchase and sale of cars. He also mentioned that at the material time when the recourse was being heard the company owned two Z cars which had been bought by the applicant. 5

On the basis of all the material before it and the evidence given on behalf of the applicant, the respondent decided to dismiss the applicant's recourse on the ground that the applicant did not satisfy the prerequisites of s.5(9) of the Law and informed the applicant accordingly by letter dated the 1st July, 1985. 10

As a result, the applicant filed the present recourse challenging the sub judice decision.

The legal grounds on which the recourse is based are briefly that the sub judice decision was taken in abuse and/or excess of power, it is not duly reasoned, the needs of the applicant were not taken into consideration, the respondent acted under a misconception of law and fact and that the sub judice decision was based on extraneous motives contrary to the principles of good administration and the service of transport. 15 20

By his written address counsel for the applicant argued that the respondent in this case satisfied the requirements of the law and that the Licensing Authority by refusing the said licences acted in contravention of the law. He further contended that the Licensing Authority granted licences to a number of person, a list of whom he gave, who, according to his allegation, did not have the transport business as their main occupation which is an indication that the Licensing Authority did not strictly follow the criteria provided by the law but applied other criteria. 25 30

Counsel for the respondent by his written address contended that on the basis of the material before the Licensing Authority and the respondent, the evidence given on behalf of the applicant in the course of the hierarchical recourse and the powers vested upon the Licensing Authority and the respondent by the law, the sub judice decision was reasonably open to them. 35

The Review Licensing Authority was set up under the provisions of the Motor Transport Regulation (Amendment) Law, 1984 (Law

84/ 84), section 4 of which repealed the previous section 4 of the Motor Transport Regulation Law, 1982 (Law 9/82) the principal law, whereby a hierarchical recourse could be made to the Minister of Communications and Works and substituted the
 5 Minister with the Review Licensing Authority, the powers of which, as a reviewing body, were defined under section 4A(1) of Law 84/84 Under sub-section (4) of section 4A the Licensing Authority after hearing a hierarchical recourse, can take any of the following decisions

- 10 (a) To affirm the challenged decision,
 (b) to annul the challenged decision,
 (c) to amend the challenged decision,
 (d) to proceed itself and issue a new decision substituting the challenged one,
 15 (e) to refer back the case to the Licensing Authority directing it to take certain action in the matter

Sub-section (9) of section 5 of Law 9/82, provides as follows

20 (9) Ουδεμία άδεια οδικής χρήσεως θα χορηγήται αναφορικώς προς οιονδηποτε όχημα δημοσίας χρήσεως προς εκτέλεσιν οιασδήποτε οδικής χρήσεως δι' ην απαιτείται τοιουτον οχημα δυνάμει των διατάξεων του παροντος Νόμου, εκτός εαν ο ιδιοκτήτης τούτου πειση την αρχήν αδειών ότι
 25 μετέρχεται ή προτίθεται όπως μετελθη την μεταφορικήν επιχείρησιν ως κύριον αυτου επαγγελμα.

30 («No road use licence will be granted in respect of any public use vehicle for performing any road use for which such vehicle is required in accordance with the provisions of this law, unless the owner of such vehicle satisfies the licensing authority that he carries or intends to carry on the transport business as his main occupation»)

The representative of the applicant in giving evidence before the Review Licensing Authority, stated that the applicant company was operating an office for the sale of second-hand cars
 35 since 1979 when it was established and took over the similar business of its representative which he was carrying on since 1976 The two licences for Z cars which it had at the maternal time had been purchased by the company from two other owners of Z cars

In the light of all the material before me and bearing in mind the provisions of sub-section (9) of section 5 of the Law, I find that it was reasonably open to the respondent to reach its decision that the applicant did not satisfy it that he was carrying or intended to carry on the business of transport as his main occupation. 5

Before concluding I shall deal briefly with the contention of counsel for applicant that similar licences were given to other persons or companies whose main occupation was not that of transport or hiring cars.

The facts of the relevant cases are not before me. What emanates from his address is that in all the said cases the Licensing Authority did not act in compliance with the law and adopted other criteria which were not in line with the provisions of the Law. 10

It is a well established principle of administrative law that there cannot be a complaint for discriminatory treatment in an unlawful act since there is no equality in this respect. (see the Conclusions from the Case Law of the Greek Council of State (1929-1959) pp.158, 182). Relevant in this respect are the cases of the Greek Council of State 1118, 1121/54. Also the cases of *Proestou v. Republic* (1981) 3 C.L.R. 314 at p.320; *Karayianni v. Educational Service Committee* (1979) 3 C.L.R. 371 at p.378, where other authorities on the point are also mentioned and *Falas v. Republic* (1983) 3 C.L.R. 523 at p.534. 15 20

In the light of my findings as above, this recourse fails and is hereby dismissed with £70.- costs in favour of the respondent. 25

*Recourse dismissed with
£70.- costs in favour of respondent.*