

1987 May 8
(LORIS J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

«ARISTODEMOS» REAL ESTATE AGENCY LTD ,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE REVIEW LICENSING AUTHORITY,

Respondent

(Case No 710/85)

Motor transport — The Motor Transport Regulation Law 9/82 — Section 5(9) — Cars hired without a driver — Applicant must convince the Licensing Authority that he is carrying or intends to carry the transport business as his main occupation

- 5 *Administrative Law — General principles — Administrative act — The four necessary steps in the making of such an act — Photades and Co v The Republic, 1964 C L R 102 at 112 adopted*

Reasoning of an administrative act — May be supplemented from the material in the file — May be laconic, if it clearly conveys the reason of the decision

- 10 The applicant company was mainly involved in the purchase and sale of immovable property throughout Cyprus and the rental to tourists of furnished holiday apartments. The applicants applied to the Licensing Authority for a permit in respect of nine cars «hired without a driver». The application was turned down and, as a result, the applicants filed a hierarchical recourse to the
15 Permits Review Authority. The recourse was eventually dismissed. Hence the present recourse. Its gist revolves round the provisions of section 5(9) of Law 9/82.

- 20 *Held, dismissing the recourse* (1) It is clear from the provisions of section 5(9) of Law 9/82 that an applicant has to convince the Licensing Authority that he is carrying or intends to carry out the business of transportation as his main occupation.

- 25 (2) In this case it is clear that the respondent authority drew its attention to the aforesaid provision of the law and applying the law to the facts, as they found them, they refused the grant of a licence. The sub judice decision was reasonably open to them.

(3) *The reasoning of a decision may be supplemented from the material in the file. A laconic reasoning is sufficient, if it clearly conveys the reason of the decision. In this case applicants' complaint that the sub judice decision was not duly reasoned is untenable.*

Recourse dismissed. 5
No order as to costs.

Cases referred to:

Photades and Co v. The Republic, 1964 C.L.R. 102,

Vasos Eliades Limited v. The Republic (1976) 3 C.L.R. 293;

Petrides v. The Republic (1983) 3 C.L.R. 216. 10

Recourse.

Recourse against the decision of the respondent affirming the decision of the Licensing Authority to refuse the granting to the applicants licences to own and manage nine cars «hired without a driver». 15

S.A. Karapatakis, for the applicant.

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

Cur. adv. vult.

LORIS J. read the following judgment. The applicants, a limited company, impugn by means of the present recourse the decision of the respondent Permits Review Licensing Authority (set up in virtue of s. 2 of Law 84/84) dated 9.5.85, - communicated to the applicant on 21.6.85 - given on a hierarchical recourse to it from a decision of the Licensing Authority dated 27.12.84, whereby the respondent Review Authority affirming the decision of the Licensing Authority refused the granting to the applicant licences to own and manage nine cars «hired without a driver» commonly known as «Z» cars. 20 25

The facts of the present case are briefly as follows: On 25.11.83 the applicant, applied to the Licensing Authority for the granting to him of licences for 9 «Z» cars. The Licensing Authority considered the aforesaid application and decided on 27.12.84 to refuse the grant of the licences applied for, communicating its said decision to the applicants by letter dated 9.1.85 (Appendix 5 to the opposition). 30 35

The applicant on 24.1.85 filed a hierarchical recourse to the

respondent Review Authority attacking the said decision of the Licensing Authority.

5 The hierarchical recourse was heard by the Respondent on 6.4.85, 17.4.85 and 9.5.85 (vide Appendices 7, 8, 9 of the opposition); on the last hearing the Respondent Authority decided to dismiss the hierarchical recourse; its said decision was communicated to the applicant by letter dated 21.6.85 (vide Appendix 16 to the opposition).

10 The applicant, feeling aggrieved, filed the present recourse, alleging that the sub judice decision is contrary to the provisions of the relevant law, the same was taken in abuse or in excess of power and that the respondent acted under a misconception as to the facts; that the decision was reached contrary to the rules of fair administration, and lastly that the decision is not duly reasoned.

15 The respondent authority in its opposition maintains that the sub judice decision was reached after due enquiry, on the basis of all relevant facts and circumstances and under and in accordance with the relevant laws and regulations, the principles of administrative law, and lastly that same is duly reasoned.

20 As stated by the learned President of this Court in the cases of *Photiades & Co. v. The Republic*, 1964 C.L.R. 102 at p. 112:

25 «It need hardly be stressed that an administrative authority has a duty to make the reasonably necessary inquiry for the purposes of ascertaining the correct facts to which the relevant legislation is to be applied. The ascertainment of the true factual situation is one of the four necessary steps in the making of an administrative act, as follows: the study and, if necessary, interpretation of the relevant legal provisions; ascertainment of the correct facts; application of the law to the facts; and decision on the course of action. (Vide «The Law of Administrative Acts» by Stasinopoulos (1951) p. 249).

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35 In the case under consideration the gist of the present recourse revolves round the provisions of s. 5(9) of Law 9/82. It is true ss. 5(3) and 5(6) enable the Licensing Authority to exercise its discretion in granting road use licences for vehicles without a driver, i.e. «Z» cars. This discretionary power, however, is not only limited by the provisions of s. 10(1) & (2) but also by the provisions

of s. 5(9) which, translated into English, reads as follows:

«No road service licence shall be granted in respect of any public service vehicle for the carrying out of any public service for which such a vehicle is required by virtue of the provisions of this Law, unless the owner thereof convinces the Licensing Authority that he is carrying on or intends to carry out the transport business as his main occupation.»

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It is clear from the provisions of the above subsection that the applicant has to convince the Licensing Authority that he is carrying on or intends to carry out the business of transportation as his *main* occupation.

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It is abundantly clear that the respondent authority drew its particular attention to the said provision of the law and applying the law to the facts, as they found them, they refused to grant the licences applied for.

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What were these facts appears sufficiently from the material before the respondent and in particular those contained in appendices 10, 11, 12, 13, 14, and, furthermore, from the minutes of the hearing of the hierarchical recourse (appendices 7, 8 and 9). It is clear from the material in the file that the applicants describe their occupation as «real estate agency», and when requested at the hearing of the hierarchical recourse (appendix 7 of the opposition) to state their business, gave in writing inter alia, a document addressed to the respondents in which the company's business activities were described; (appendix 10 attached to the opposition). It is clear from this description that the applicant company was mainly involved in the purchase and sale of immovable property throughout Cyprus and the rental to tourists of furnished holiday apartments, although it appears therefrom as well, that the applicants who did not own any «Z» cars, sought the grant of such licences for the purpose which was incidental to their above-mentioned business.

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In the circumstances, and in view of the provisions of s. 5(9) of Law 9/82 it was reasonably open to the respondent authority to reach the sub judice decision.

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Coming now to the question of reasoning: As stated time and again, every material factor need not be mentioned in the decision itself and the decision may be supplemented from the material contained in the file. (*Vasos Eliades Limited v. The Republic*,

(1976) 3 C.L.R. 293). Likewise, a laconic reasoning will not be held defective if it clearly conveys the reason of the decision (*Petrides v. The Republic*, (1983) 3 C.L.R. 216). In the case under consideration there is ample material in the file to show that the
5 decision was taken after a proper inquiry and that the facts were correctly ascertained and that the legal provisions pertaining to the subject-matter decision were properly taken into consideration and applied to the facts. The reasoning conveys to the applicant the reason why his hierarchical recourse was refused, and on the
10 other hand, it enables a proper judicial scrutiny in view of the material in the file.

In the circumstances, the present recourse is doomed to failure and it is, accordingly, dismissed; let there be no order as to its costs.

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*Recourse dismissed.**No order as to costs.*