

1987 August 26

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS CONSTANTINIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMUNICATIONS AND WORKS,

Respondent.

(Case No. 232/80).

5 *Motor transport — The Motor Transport Regulation Law 16/64 — Sections 7 and 8 — Failure to renew a licence for a bus, which expired in August 1974 — Application made in 1979 for a licence in respect of the same bus and for the same area — Correctly treated as new application — Therefore, fact that area in question was adequately served by the then existing licences could have been taken into consideration.*

Administrative Law — General principles — Licences — Abstinance from making use of — Effect.

10 *Constitutional Law — Right to property — Constitution, Art. 23 — Exercise of right may be made subject to restrictions imposed by Law — The Motor Transport Regulation Law 16/64 is such a law.*

Constitutional Law — Right to exercise a profession — Constitution, Art. 25 — Exercise of right may be made subject to restrictions imposed by Law — The Motor Transport Regulation Law 16/64 is such a law.

15 *Administrative Law — Proper Administration — Whether applicant for a road service licence for a bus should be informed that a bus company for the area in question is about to be formed — Question answered in the negative.*

20 *The applicant is the owner of a bus, which until the 17.8.74 had a road service licence to circulate in the urban area of Limassol. The applicant failed to renew such licence, which, therefore, expired on 17.8.74.*

The applicant left Cyprus as he was detrimentally affected by the Turkish invasion. In 1978 he returned to Cyprus. On 15.1.79 he applied for a licence for his said bus. The Licensing Authority rejected the application on the

ground that the Limassol Urban Buses Company could serve adequately the needs of the urban area of Limassol. The applicant filed a hierarchical recourse to the respondent Minister. The Minister dismissed the recourse, because the urban transport area of Limassol was adequately served by the then existing licensed buses

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Hence this recourse

Held, *dismissing the recourse* (1) Road service licences are issued under sections 7 and 8 of Law 16/64. In the circumstances the Licensing Authority correctly treated applicant's licence as having expired and his application as an application for a new licence. It follows that the applicant had to satisfy the necessary prerequisites of section 8 and, therefore, it was within the discretion of the Licensing Authority and the respondent Minister to take into consideration the fact that the needs of the area in question were satisfied by the existing licensed buses

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(2) There has been no infringement of either Article 23 or Article 25 of the Constitution, because the exercise of the rights safeguarded thereunder are subject to restrictions or conditions imposed by law and Law 16/64 is such a law

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(3) Applicant's complaint that his application was purposely delayed in order to give time to the Limassol Urban Buses Company to be instituted and that proper administration demanded that applicant should have been informed about the institution of such company so as to enable him to participate in it, cannot be accepted. Indeed, the company was formed before applicant's application and, in any event, neither the Law nor proper administration required such information to be given to the applicant.

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*Recourse dismissed
No order as to costs*

Cases referred to

Kaminaros v Republic (1971) 3 C L R 445,

Christodoulou v Republic (1972) 3 C L R 290,

K E M. (TAXI) Ltd v Republic (1976) 3 C L R 285,

Decision 1711/52 of the Greek Council of State

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Recourse.

Recourse against the decision of the respondent whereby applicant's hierarchical recourse against the refusal of the Licensing Authority to grant applicant a road service licence in respect of his omnibus was dismissed.

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A.S. Angelides, for the applicant.

Cl. Antoniadēs, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

5 DEMETRIADES J. read the following judgment. By his present
recourse the applicant prays for the annulment of the decision of
the respondent Minister of Communications and Works, dated the
6th June, 1980, which was communicated to him on the 10th
10 June, 1980, and by means of which his hierarchical recourse in
respect of a road service licence for an omnibus (hereinafter
referred to as «the bus») was dismissed.

The applicant is the owner of the bus under Registration No.
TAE 590 which was until 1974 licensed to circulate in the urban
area of Limassol on specified routes for the transportation of
15 pupils to their schools and workers to the Phassouri Plantations
and the Loel Ltd. factory. It was also licensed to transport people
for swimming at the Lady's Mile Beach.

The last road service licence (hereinafter referred to as the
«licence») renewed for the bus was the one under No. 11455/73
20 and this covered the period 7th November, 1973 to 17th August,
1974. After the Turkish invasion, as his work was detrimentally
affected, the applicant left Cyprus and took up employment in the
Arab countries. In 1978 the applicant gave up his work for health
reasons and returned to Cyprus.

25 On his return to Cyprus the applicant applied twice to the
Licensing Authority for the grant to him of a licence for his bus on
the same conditions on which his previous licence had been
issued. Both applications of his were turned down for the reasons
that appear in the relevant documents which are to be found in the
30 file of the administration which is before me.

On the 15th January, 1979, the applicant applied again for a
licence for his bus. On the 14th April, 1979, the Licensing
Authority, after considering his application, dismissed it because it
was found, on the material before it, that the Limassol Urban
35 Buses Company could serve adequately the needs of the urban
transport area of Limassol. Against this decision, which was
communicated to the applicant on the 7th May, 1979, he filed a
hierarchical recourse to the Minister of Communications and
Works.

On the 10th June, 1979, the applicant was informed that the Minister, after considering all the relevant material placed before him and in the light of the legislation in force, had reached the conclusion that the issue to the applicant of a licence for his bus was not justified, because the urban transport area of Limassol was adequately and satisfactorily served by the then existing licensed buses. 5

Against the decision of the Minister the applicant filed the present recourse.

Counsel for the applicant submitted that the respondent wrongly treated the application of the applicant as one for the issue to him of a new licence since the bus was in fact a licensed one; that the original licence issued for the applicant's bus never ceased to exist and that what the respondent had to decide was what the conditions for the running of the bus, and the fees prescribed by the Law, were to be. He further argued that in case it was found that the respondent was under the Law entitled to treat the application of the applicant as a new one for the issue to him of a licence then the Law is unconstitutional as it contravenes Articles 23, 25 and 28 of the Constitution and/or that the sub 10
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judice decision was ultra vires the provisions of the Law.

Road service licences are issued under the provisions of sections 7 and 8 of the Motor Transport (Regulation) Law, 1964 (Law 16/1964), and the legal position regarding the issue of such licences has been expounded in a number of cases decided by the Supreme Court (*see Kaminaros v. The Republic*, (1971) 3 C.L.R. 445, 448, 449; *Christodoulou v. The Republic*, (1972) 3 C.L.R. 290, 292, 293 and *K.E.M. (TAXI) Ltd. v. The Republic*, (1976) 3 C.L.R. 285, 291). 25

Having considered the particular circumstances of the present case, namely the failure of the applicant to renew the licence of his bus for a considerable long time and that as a result, the Licensing Authority had, during the time the said licence was not renewed, to make other arrangements to meet the needs of the people that were using the applicant's bus and, further, that such arrangements could not be made conditional on whether and when the applicant was to return and have his licence renewed, I find that the Licensing Authority had rightly treated the old licence as having expired and that the applicant's application was for the grant to him of a new licence, in which case he had to satisfy them 30
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that the necessary prerequisites, under the provisions of section 8 of Law 16/64, were, at the time of the consideration of the application, existent.

5 In Kyriacopoulos on Greek Administrative Law, 4th ed., Vol. B, p. 402, it is stated that the non usage for a long time of a certain licence renders it non operative and in footnote 36 reference is made to the decision of the Council of State in Greece No. 1711/52 where it was held that the abstinence from making use of a licence brings about its implied abrogation.

10 Therefore, it was within the discretion of the Licensing Authority, in deciding on his said application, and in applying the provisions of the relevant legislation, to take into account the fact that the road transport needs of the Limassol urban area were at the time adequately served by the existing licensed buses of the
15 Limassol Urban Buses Company which was registered as such in 1978, and such fact was also legitimately taken into consideration by the Minister of Communications and Works in deciding the hierarchical recourse before him.

20 Regarding the constitutional aspect of the case I do not agree with counsel for the applicant that Articles 23 and 25 have been infringed in the present case, because the exercise of the rights safeguarded by means of the said Articles of the Constitution is subject to the conditions or restrictions provided by Law, in this case Law 16/64, and his allegation that the applicant is the victim
25 of unequal treatment is, also, dismissed because it has not been substantiated.

Counsel for the applicant had, also, contended that the sub
30 justice decision was reached in excess or abuse of powers, under a misconception of the facts and the law and that it is not duly reasoned.

The reasoning of the sub justice decision is contained adequately in the body of the decision itself but may also be supplemented from the material in the relevant administrative file. On the material placed before the respondent he was perfectly
35 justified to reach the sub justice decision and there is nothing to suggest that he has acted under a misconception of the facts of the case or the law, nor do I agree that he had acted in excess or abuse of his powers.

Lastly, I will refer briefly to the allegations of the applicant that

the sub judge decision was delayed in purpose in order to give time to the Limassol Urban Buses Company to be instituted and dismiss thereafter his said application and to his complaint that he was not informed by the respondent about the institution of the Company so as to have the opportunity to participate himself, 5
contrary to the rules of proper administration.

Counsel for the respondent had stated in his written address that the said Company was registered on the 23rd June, 1978, under Registration No. 11175, that is before the 15th January, 1979, 10
when the relevant application of the applicant was submitted to the Licensing Authority. I am not convinced that anything affecting prejudicially the rights of the applicant was done on purpose in the present case with the participation of the respondent. I am of the view that the Licensing Authority and the respondent Minister 15
were not duty bound to inform the applicant about the formation of the Company either under the provisions of the Law or even the rules of proper administration.

In view of all the foregoing the present recourse fails and it is dismissed accordingly, but with no order as to its costs.

Recourse dismissed. 20

No order as to costs.