

1988 March 12

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

RODAFINIA IMPORTS - EXPORTS LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF COMMUNICATIONS AND WORKS,
2. THE CHAIRMAN OF THE REVIEW LICENSING
AUTHORITY,

Respondents.

(Case No. 688/85).

Motor transport—The Motor Transport Regulation Law 9/82, as amended by Law 84/84, section 5 (a)—Cars hired without a driver (Z cars)—An applicant should convince the authority that he is carrying on or intends to carry out the business of transportation as his main occupation.

- 5 *Reasoning of an administrative act—The decision itself need not state every material factor—The reasoning may be supplemented from the material in the file.*

The facts of this case sufficiently appear from the judgment of the Court.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

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Aristodemos Real Estate Agency Ltd. v. The Republic (1987) 3 C.L.R. 767;

Vassos Eliades Ltd v. The Republic (1976) 3 C.L.R. 293;

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

Recourse.

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Recourse against the dismissal of applicants' hierarchical recourse challenging the refusal of the Licensing Authority to grant to applicants licences to own and manage 8 cars hired without a driver.

L. Papaphilippou, for the applicants.

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M. Tsiappa (Mrs), for the respondents.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant company challenges by means of the present recourse, the decision of the respondent Review Licensing Authority, communicated to the applicant on 1.7.85, whereby the respondent Authority dismissed the hierarchical recourse of the applicant, refusing thereby, the grant to the Company, of licences to own and manage 8 cars "hired without a driver", commonly known as "Z" cars.

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The applicants initially applied, on 7 April 1984, to the Licensing Authority for the grant to them of licences for 8 "Z cars. Their

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said application was examined on 12 February 1985 and it was eventually refused; the said refusal was communicated to applicants on 22.2.85.

5 The applicants challenged the aforesaid decision of Licensing Authority by means of a hierarchical recourse filed on 14.3.85 with the Review Licensing Authority, a statutory body set up under section 2 of the Motor Transport (Regulation) (Amendment) Law, 1984 (Law 84/84).

10 The Review Licensing Authority after hearing the hierarchical recourse on 23 April 1985, decided at its meeting of 24 May, 1985 to dismiss same.

The sub-judice decision was communicated to the applicants by means of a letter dated 1 July, 1985, which reads as follows:

15 "Η Αναθεωρητική Αρχή Αδειών αφού μελέτησε όλα τα στοιχεία των σχετικών φακέλων και όλα όσα έχουν λεχθεί από μέρους του δικηγόρου της προσφευγούσης Εταιρείας, αποφασίζει να απορρίψει την προσφυγή γιατί η προσφεύγουσα Εταιρεία δεν πληροί τις προϋποθέσεις του άρθρου 5 εδάφιο 9 του Νόμου."

20 (English Translation:

"The Review Licensing Authority having considered all the material in the relevant files and all that have been said by counsel for the appellant company decides to dismiss the recourse because the appellant company does not satisfy the pre-
25 requisites of paragraph 9 of section 5 of the Law.")

The applicants, filed the present recourse alleging that the respondent failed to inquire into all the facts pertaining to this case, and it thus acted under a misconception as to material facts; furthermore it is maintained that the sub-judice decision is
30 contrary to the provisions of the relevant law and that same is not duly reasoned.

The respondent authority in its opposition maintains that the sub-judice decision was reached at after due inquiry of all relevant facts and circumstances, and proper application of all relevant laws and regulations issued thereunder; respondent further supports the sub judice decision rebutting the allegations of the applicants that same is not duly reasoned. 5

The main issue in the present case revolves on the construction of s.5(9) of Law 9/82 which reads:

"(9) Ουδεμία άδεια οδικής χρήσεως θα χορηγήται αναφορικώς προς οιονδήποτε όχημα δημοσίας χρήσεως προς εκτέλεσιν οιασδήποτε οδικής χρήσεως δι' ην απαιτείται τοιούτον όχημα δυνάμει των διατάξεων του παρόντος Νόμου, εκτός εάν ο ιδιοκτήτης τούτου πείση την αρχήν αδειών ότι μετέρχεται ή προτίθεται όπως μετέλθη την μεταφορικήν επιχείρησιν ως κύριον αυτού επάγγελμα." 10 15

(English Translation:

"(9) 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." 20

"It is clear from the provisions of the above sub-section 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" 25

(Vide *Aristodemos Real Estate Agency Ltd v. the Republic* (1987) 3 C.L.R. 767).

In their application to the Licensing Authority for the grant of the relevant licences (lodged under their business name Fantastic 30

Tours Agency') applicants describe their business as "Tourist activities in Cyprus and abroad"; at the hearing of their hierarchical recourse (vide Appendix 7 attached to the opposition) on being specifically questioned as to their main business, applicants admitted this to be that of "tourism" and not that of "transport".

As it transpires from the material before me, which was also before the respondent authority, the applicant was mainly engaged in the business of exporting fruits and importing agricultural machinery and equipment and it was engaged as well, in travel agency business under the business name Fantastic Tours Agency (vide Appendix 8 attached to the opposition). It is noteworthy in this connection that in their memorandum of association (appendix 8) the business of owning and managing cars without a driver is nowhere mentioned.

It is abundantly clear from the above that the applicants who were engaged in export-import business as well as Tourist activities in Cyprus and abroad, and did not own any "Z" cars, sought the grant of licences for such cars for a purpose which was incidental to part only of their above mentioned main business.

Having carefully gone through the material before me, I hold the view, that the respondent authority after carrying out a due inquiry and ascertaining the facts, applied correctly the law to the facts and reached at the sub-judice decision which in view of the material before me and the provisions of s. 5(9) of Law 9/82 was reasonably open to the respondent.

With regard to the complaint of alleged discriminatory treatment of the applicants, no material whatever was introduced in order to substantiate the complaint: same was quite vague and uncertain, and as such is doomed to failure.

Before concluding I feel duty bound to refer to reasoning: As repeatedly stated every material factor need not be mentioned in the decision itself and the decision may be supplemented from the material contained in the file (*Vassos Eliades Ltd., v. The Republic*

lic (1976) 3 C.L.R. 293). And a laconic reasoning will not be held defective if it clearly conveys the reasons of the decision (*Petrides v. The Republic* (1983) 3 C.L.R. 216). In the instant case the reasoning conveys to the applicant the reason of the refusal of his hierarchical recourse and at the same time coincides with the material in the file enabling thus proper judicial scrutiny. 5

In the result present recourse fails and is accordingly dismissed; no order as to costs.

Recourse dismissed.

No order as to costs. 10