

1988 March 31

[SAVVIDES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS AGATHOCLEOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF COMMUNICATIONS
AND WORKS,
2. THE REVIEW LICENSING AUTHORITY,

Respondents.

(Case No. 82/87).

Motor transport—The Motor Transport Regulation Law 9/82, as amended by Law 84/84—Review Licensing Authority—Powers —Sections 4A(4) (d) and 4A (5)—Power to issue a new decision in substitution to the decision of the Licensing Authority—Power to take into consideration facts subsequent to the decision of the Licensing Authority.

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Due inquiry—Motor transport—The Motor Transport Regulation Law 9/82, as amended by Law 84/84—Rejection of application for a rural taxi licence on ground that area already adequately served—New facts subsequent to such decision by the Licensing Authority—Dismissal of hierarchical recourse after the lapse of about two years from the decision of the Licensing Authority—Having regard to the length of such interval and the emergence of new facts, the Review Licensing Authority ought to have called for a new report regarding the needs of the area—Sub judice decision annulled for lack of due inquiry.

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The facts of this case appear sufficiently in the Judgment of the Court.

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*Sub judice decision annulled.
No order as to costs.*

Recourse.

Recourse against the dismissal of applicant's hierarchical recourse against the refusal of the respondent to grant applicant three rural taxi licences for Akrotiri village.

5 *A. Papacharalambous with P. Angelides*, for the applicant.

L. Koursoumba (Mrs), for the respondents.

Cur. adv. vult.

10 SAVVIDES J. read the following judgment. The applicant challenges the decision of the Review Licensing Authority by which the hierarchical recourse which he filed against the refusal of the Licensing Authority to grant him three rural taxi licences for Akrotiri village was dismissed.

15 The applicant applied, on 28.6.1983, to the Licensing Authority, for rural taxi licences in respect of three new vehicles to be stationed at Akrotiri village. The Licensing Authority, at its meeting of 6.11.1984, rejected the application on the ground that the needs of the village were sufficiently served, both by the two existing rural taxis and other taxis stationed at the British Sovereign Base of Akrotiri which is very near the village of Akrotiri.

20 The applicant filed a hierarchical recourse against the decision of the Licensing Authority which was finally heard by the Review Licensing Authority established under the provisions of Law 84/84, which was enacted on the 16th November, 1984, on the 8th October and 6th December, 1986. The Review Licensing Authority, after hearing all parties concerned, that is the applicant, the other persons holding rural taxi licences at Akrotiri vil-
25 lage and those holding such licences in the Sovereign Base Area of Akrotiri, decided to dismiss the recourse of the applicant on the ground that the needs of the village are sufficiently served by the existing rural taxi licences. The applicant was informed accord-
30 ingly by letter dated 28th January, 1987, whereupon he filed the

present recourse, which is based on the following grounds of law:-

The sub judice decision was taken contrary to the provisions of the Law, there is lack of due inquiry, misconception of fact, excess or abuse of power and is not duly reasoned.

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Counsel for applicant argued by his written address that the Licensing Authority exercised its discretion wrongly in that it took into consideration extraneous factors, and that the second part of its reasoning to the effect that the needs of the village are also served by the urban taxis stationed at the British Sovereign Base of Akrotiri is wrong. He submitted that the existence of the urban taxis at the British Sovereign Base of Akrotiri should not have been taken into consideration and the Licensing Authority, should have considered only whether the existing rural taxis at Akrotiri village were sufficient to serve the needs both of the village and the Sovereign Base area of Akrotiri. He also argued that the finding of the respondent Review Licensing Authority that the needs of the village are sufficiently served by the existing rural taxis is not warranted by the material in the file from which it seems that the village has 800 and the British Sovereign Base area 12,000 inhabitants whose needs cannot be served by the existing licensed rural taxis.

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Counsel for the respondent argued that what is in issue is not the decision of the Licensing Authority but that of the Review Licensing Authority which in the exercise of the powers vested in it by section 4A(4) (d) of the Law, introduced by Law 84/84, issued a new decision after considering the case afresh and hearing all parties concerned.

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Before proceeding to consider the merits of the case, I wish to make certain clarifications regarding the factual aspect of the case.

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At the time when the Licensing Authority took its decision (6.11.1984) there were two rural licensed taxis at Akrotiri village and the Sovereign Base Area of Akrotiri was served by urban tax-

is and displaced taxis (no number is stated). By the time the hierarchical recourse was heard (two years later) the situation had changed. Thus there were, at that time (December 1986), three licensed rural taxis in Akrotiri village and the British Sovereign Base Area of Akrotiri was not served any longer by urban taxis, but by 6 licensed rural taxis. These facts were stated in evidence before the Review Licensing Authority. It is also clear that evidence was heard, during the hearing, to the effect that the rural taxis of the village serve also the needs of the Sovereign Base Area and vice versa.

The Law applicable in the present case is the Road Traffic Regulation Law, 1982, (Law No. 9/82) as amended by Law 84/84. Section 9 (3) provides as follows:-

"(3) Η αρχή αδειών εν τη ένασκήσει της διακριτικής αυτής εξουσίας δέον όπως λαμβάνη υπ' όψιν τα ακόλουθα:

(α) Όσον αφορά εις αστικά ταξί και αγροτικά ταξί:

(ι) την έκτασιν καθ' ην τυχόν αι ανάγκαι της οικείας αστικής τροχαίας περιοχής ή αγροτικής κοινότητας, αναλόγως της περιπτώσεως, εξυπηρετούνται επαρκώς.

(ιι) Τον βαθμόν εις τον οποίον είναι πιθανόν ότι ο αιτητής θα δύναται να παρέχη τας αιτουμένας μεταφορικής υπηρεσίας.

(ιιι) Την έκτασιν καθ' ην η σκοπούμενη οδική χρήσις είναι αναγκαία ή ευκαταία εν τω δημοσίω συμφέροντι.

(ιν) Τας ανάγκαις της περιοχής εν τω συνόλω της αναφορικώς προς την μεταφοράν επιβατών."

" (3) The licensing authority in the exercise of its discretionary power must take into consideration the following:

(a) With regard to urban taxis and rural taxis:

(i) the extent to which the needs of the urban road traffic area concerned or the rural community, as the case may be, are sufficiently served;

(ii) the degree to which it is possible that the applicant would be able to afford the transport services sought; 5

(iii) the extent to which the proposed road use is necessary or desirable in the public interest;

(iv) the needs of the area in its totality regarding transportation of passengers;)"

Section 4A (4) (d) of the Law, as set out in Law 84/84, gives the power to the Review Licensing Authority to issue a new decision in substitution of the one appealed from. 10

Also, section 4A(5) of the same Law, provides that the Review Licensing Authority, in issuing its decision, may take into consideration facts subsequent to the issue of the decision by the Licensing Authority. 15

As already stated, the Review Licensing Authority had before it the new situation when issuing its decision and, I find, in the circumstances, that in fact it has issued a new decision in substitution of the one appealed from. Although I would have agreed that in light of the material before it it was reasonably open to the Review Licensing Authority to reach the sub judice decision, nevertheless, having regard to the length of time that elapsed between the decision of the Licensing Authority and the hearing of the recourse by the Review Licensing Authority, about two years and taking into consideration that the situation had changed in the meantime, and, also, the allegation of counsel for applicant that the inhabitants of the village were not 800, this being the number of the voting inhabitants alone, but more, I have reached the conclusion that a due inquiry has not been carried out by the Review Licensing Authority. In my view, it was its duty, in the circumstances, to make a new inquiry and ask for a new report regard- 20 25 30

ing the needs of the area. For this reason I find that the sub judice decision must be annulled for lack of due inquiry.

In the result this recourse succeeds and the sub judice decision is hereby annulled with no order for costs.

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*Sub judice decision annulled.
No order as to costs.*