

(1988)

1988 March 31

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELEFThERIOS THEOPHANOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE REVIEW LICENSING AUTHORITY,

Respondents.

(Case No. 55/87).

General principles of administrative law—Records and minutes of proceedings and meetings—The need to keep such records and minutes in order to enable the Court to exercise Judicial control—In this case there is complete absence of minutes of what transpired at a hearing before the respondents of a hierarchical recourse against the refusal to grant to the applicant a licence for a rural taxi—Court unable to exercise its Judicial control—Sub judice decision, whereby such hierarchical recourse was dismissed, annulled.

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

Sub judice decision annulled.

Costs against respondent.

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Recourse.

Recourse against the dismissal of applicant's hierarchical recourse against the decision of the Licensing Authority rejecting applicant's application for a rural taxi licence.

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

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G. Frangou (Mrs), for the respondent.

Cur.adv.vult.

SAVVIDES J. read the following judgment. The applicant seeks a declaration of the Court that the decision of the respondent, communicated to him by letter dated 28.11.1986, by which his hierarchical recourse against the decision of the Licensing Authority rejecting his application for a rural taxi licence was dismissed, is null and void and of no legal effect.

The applicant applied on 27.4.1984, for a licence for a rural taxi, to be stationed at Alona village. The Director of the Department of Road Transport wrote a letter to the Chief of Police requesting to know about the profession of the applicant, his place of business and whether he was a suitable person for the grant of a rural taxi licence, the population of the village and whether the existing licensed rural taxi was circulating regularly for serving the needs of the public. The Chief of Police replied by letter dated 21.6.1984, stating that the applicant works as a butcher in the village, which has about 900 inhabitants, that he is a suitable person and that although the licensed rural taxi circulates regularly, its owner and driver is more than 77 years old. The Transport Controller in his report dated 17.8.1984 stated the grounds in support of the applicant's application (which were mainly to the effect that the inhabitants of the village did not trust the owner of the existing rural taxi, on account of his age and the condition of his car and were not using the taxi for this reason) and that both the owner of the existing licensed rural taxi and the owner of a licensed rural bus objected to the granting of the licence applied for (Blue 62 in the file of the case, which is Exhibit 1 before the Court).

The Licensing Authority at its meeting dated 4th September, 1984, rejected the applicant's application on the ground that the needs of the village were adequately served by the existing licensed rural taxi. The applicant appealed on the 26th September, 1984, against the above decision of the Licensing Authority, stating that he will state the grounds of his appeal at the meeting with

the Minister (who was the proper authority for hearing hierarchical recourses at the time).

The Director-General of the Ministry of Communications and Works requested, by letter dated 11.10.1984, a statement of the history of the case from the Department of Road Transport. This was supplied on 16.10.1984, stating amongst others, that the village authorities were favouring the grant of the licence applied for (Blue 67).

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Some time in November, 1984, Law 84/84 was enacted, by the provisions of which the Review Licensing Authority was set up as the proper authority for hearing hierarchical recourses from the decision of the Licensing Authority.

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The next document in the file is the decision of the Review Licensing Authority dated 11th October, 1986, which is as follows (Blue 68):

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"The Review Licensing Authority having taken into consideration the law in force and all the circumstances of the case which were put before it and after considering all the material in the relevant files and all that has been said on the part of the applicant and the parties interested, decides to dismiss the recourse because the existing licensed rural taxi serves the needs of the village of Alona".

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The above decision was communicated to the applicant by letter dated 28th November, 1986, as a result of which the present recourse was filed. The application was based on the grounds that the sub judice decision was taken contrary to the provisions of the Law, without a due inquiry into the matter, under misconception of facts, in excess or abuse of powers and it is not duly reasoned.

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The recourse was originally also directed against the Minister of Communications and Works, but it was later withdrawn against this party as he has ceased to be the proper authority after the enactment of Law 84/84.

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Counsel for applicant argued that although it is stated in the sub judge decision that all material facts were taken into consideration, including the representations of the applicant, there is no record of the proceedings as to what was said by the applicant.
5 What was before the respondent was the file of the case (Exhibit 1) which included irrelevant and controversial material. He also argued that nothing is stated in the report of the Transport Controller as to the needs of the village and whether such needs were sufficiently served, and that the sub judge decision cannot be
10 supported by the material which was before the respondent.

From what I can deduce from the addresses of both counsel, a hearing must have taken place before the respondent in which the parties concerned expressed their views. There is nothing, however, in the file of the case as to such meeting or any record at all
15 as to what has been said.

It has been stressed time and again by this Court that administrative organs must keep proper records of their proceedings and minutes of their meetings so as to enable the court to exercise judicial control. In the present case there is complete lack of minutes or records, as a result of which this Court cannot exercise
20 its judicial control over the sub judge decision. It is not known what was actually said during the alleged hearing, what material was made available to the respondent and how this material was evaluated by it. For this reason I find that the sub judge decision
25 must be annulled.

In the result this recourse succeeds and the sub judge decision is hereby annulled with costs against the respondent.

*Sub judge decision annulled
with costs against respondent.*