

[TRIANTAFYLLOIDES J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

CHRISTOFIS LEONIDA,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE PERMITS AUTHORITY,

Respondent.

(Case No. 208/65).

1965
Nov. 3, 6

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and

THE REPUBLIC
OF CYPRUS,
THROUGH

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Administrative Law—Motor Traffic—Decision of Respondent to suspend the licences of three buses of Applicant, by way of punishment, for continuous contraventions of the conditions of such licences—Filing of a recourse against decision and simultaneous application for a provisional order or for a short date of trial—Provisional order granted suspending effect of decision in so far as it relates to one of the buses, pending outcome of recourse.

By virtue of a decision of the Respondent authority the licenses of three buses of Applicant were suspended for a consecutive week each, by way of "punishment", for continuous contraventions of the conditions of such licenses.

The Applicant filed recourse against such decision on the 25th October, 1965, and simultaneously application for a provisional order for a short date of trial.

Held, I. In the light of all the material before me at this stage I have decided to grant a provisional order suspending the effect of the decision which is the subject matter of these proceedings and which is contained in a letter of the Respondent Authority dated 22nd October, 1965, in so far as it related to bus TAJ 91, pending the outcome of these proceedings.

II. There shall, also, be no order as to costs of this application, in view of the conduct of both parties.

III. When the pleadings are closed an early date of

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trial will be duly given to this Case in view of its nature, so as not to put off the remaining part of the punishment too long, should it be found that it is valid and it is to be given effect.

Provisional order in terms.

Application for Provisional Order.

Application for a provisional order or for a short date of trial of a recourse against the decision of the respondent suspending the licences of three buses of applicant for a consecutive week each by way of punishment.

A. Triantafyllides, for the applicant.

L.G. Loucaides, Counsel of the Republic, for the respondent.

Cur adv. vult.

The following Decision was delivered by:—

TRIANTAFYLLIDES, J.: In this Case the Applicant has applied on the 25th October, 1965, simultaneously with filing the recourse, for a provisional order or for a short date of trial.

As the relevant application is drafted, it does not specify verbatim the order that is required, but from the affidavit in support of this application it is obvious that what is being applied for is the suspension of the effect of the decision which is the subject-matter of these proceedings and which is contained in a letter of the Respondent Authority dated the 22nd October, 1965, (vide *exhibit 1*).

By virtue of such decision the licences of three buses of Applicant were suspended for a consecutive week each, by way of "punishment", as expressly stated in *exhibit 1*, for continuous contraventions of the conditions of such licences.

The application for a provisional order was fixed, at first, for mention on the 30th October, 1965.

In the meantime on the 25th October, 1965, Respondents had been requested by counsel for Applicant, by cable (*exhibit 2*) to postpone the effect of *exhibit 1* for a week, in view of the filing of this recourse and the application for a provisional order.

A reply was given to counsel on the 26th October, 1965, by a letter (vide *exhibit* 3) stating that it was decided not to grant the postponement, in view of the systematic contravention by Applicant of the terms of the licences for his buses.

On his part Applicant did not comply with *exhibit* 1, in respect, at any rate, of the first week of its effect, and has been accordingly summoned to appear before the Nicosia District Court; the matter has not yet been dealt with by such Court.

I have heard on the 3rd November, 1965, arguments on the issue of granting or refusing the provisional order.

Bearing in mind all that has been put forward, as well as the proper principles governing the matter, and bearing also in mind the particular facts and circumstances of this Case, I see no reason or possibility of interfering with the effect of *exhibit* 1 till 5 a.m. of Monday, the 8th November, 1965, i.e. until the end of the suspension of the licence of bus TAJ 298; such effect has practically been completed.

Regarding that part of the decision contained in *exhibit* 1 which has not already commenced taking effect i.e. which commences on the 8th November, 1965, in relation to the licence of bus TAJ 91, the matter is rather different, for the following reasons:

The action taken by the Respondent Authority by means of *exhibit* 1 is described, on the face of it, as "punishment" and I see no reason to regard it as being anything else.

I do not think that postponing the effect of such punishment until its validity has been determined—once such validity has been put in issue by these proceedings on grounds not *prima facie* frivolous—will seriously interfere with proper administration. Moreover, at the present stage of these proceedings, and subject to what will be submitted further, I have quite some doubts whether such punishment was validly imposed under the relevant provision.

In my view it would be to the interest of proper administration to postpone the further effect of an act, the validity of which is in doubt, in circumstances such as those of the present Case.

On the other hand though any damage suffered by Applicant as a result of *exhibit* 1 (should it eventually be found to

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be invalid) is possibly estimable in terms of money, such estimation would not be free of some difficulty in view of the nature of things, and there is no sufficient reason why the Respondents should be allowed to face an even larger claim for damages, should this recourse be decided against them, by allowing the unspent effect of *exhibit 1* to take effect, when such effect is not immediately necessary for purposes of proper administration.

What has made it difficult for me to grant provisional relief to Applicant, has been the fact that he refused to comply with *exhibit 1*, at any rate in respect of the first week of his punishment in relation to bus TAY 979.

No person is entitled while seeking redress before a Court to prejudge the issue himself and to act accordingly. I do not want to say anything more on the question of the conduct of Applicant in response to *exhibit 1*; it is the subject-matter of proceedings before the Nicosia District Court where it will be treated on its merits

Fortunately for Applicant I came eventually to the conclusion that his failure to comply with *exhibit 1* should not prevent me from according him any provisional relief to which he is entitled, because the Respondent Authority appears by *exhibit 3* to have also ignored, in a most regrettable manner, the factor of the proceedings before this Court. All that it was asked to do by means of *exhibit 2* was to postpone for a week only the effect of the punishment imposed on Applicant, so as to enable the matter to be looked into by this Court. It turned down this request by simply reiterating the same reasons which led to the imposition of such punishment, though, no doubt, the postponement of its effect for a week would not have jeopardized proper administration; these proceedings appear to have been ignored.

In the light of all the material before me at this stage I have decided to grant a provisional order suspending the effect of *exhibit 1*, in so far as it relates to bus TAJ 91, pending the outcome of these proceedings. There shall, also, be no order as to costs of this application, in view of the conduct of both parties.

When the pleadings are closed an early date of trial will be duly given to this Case in view of its nature, so as not to

put off the remaining part of the punishment too long, should it be found that it is valid and it is to be given effect.

*Provisional order in terms.
No order as to costs of this
application.*

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