

[TRIANTAFYLLOIDES, J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

CYPRUS TRANSPORT CO. LTD.,

Applicants.

and

THE REPUBLIC OF CYPRUS, THROUGH

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

Respondent.

(Case No. 222/65).

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Motor Transport—Road Service Licences—The Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964), sections 4, 6, 8 (1) and (2), (a)–(d), and 17—Decision of the respondent licensing Authority refusing to applicants road service licences applied for under the said Law—Relevant legislation, particularly section 8 (1) and 2 (a)–(d) not properly applied—In that the sub judice refusal was taken under a misconception of law, viz. that the applicants were not eligible, in law, to be granted the licences applied for—Because they had not been providing transport services on the date the said Law came into operation—Decision of the respondent Authority, refusing on that ground the road service licences in question, declared null and void—As having been reached contrary to law and in abuse and excess of powers.

Administrative Law—Article 146 of the Constitution—Recourse thereunder—Act or decision taken contrary to law and in abuse and excess of powers in the sense of paragraph 1 of Article 146—Decision taken under a misconception of law—See under Motor Transport above.

Administrative Law—Recourse under Article 146 of the Constitution—Administrative Review—Section 6 of the said Law No. 16 of 1964 (supra) providing for an administrative redress by way of an appeal to the Minister of Interior against a decision of the licensing Authority under section 4 of the same Law—Such appeal is not a prerequisite for the filing of a

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recourse under Article 146 of the Constitution—Therefore such recourse lies notwithstanding that the applicant failed to resort to the appeal to the Minister as aforesaid.

Administrative Law—Decision taken under a misconception of law—Decision contrary to law—Abuse or excess of power—Article 146, paragraph 1, of the Constitution—See above under Motor Transport, Administrative Law.

Statutes—Construction—Object and reasons of a Bill which became Law—Due regard should be paid to—But the Court will rely, first and foremost, on the text of the statute as promulgated—Because it is such text only which does constitute the result of the exercise of legislative power vested in the House of Representatives.

Public Law—Threats—Emanating on the part of anybody appearing before a public body—Most unacceptable as being incompatible with every notion of Law and Order.

Law and Order—See under Public Law above.

In this case the applicants seek, in effect, a declaration annulling the decision of the respondent Authority refusing to them road service licence (commonly described as "circulation permits") in respect of twenty of their buses destined for the purpose of operating bus services, in the Limassol Town Area. The respondent Authority is the licensing Authority set up under section 4 of Law No. 16 of 1964 (*supra*). On the 1st November, 1965, the respondent Authority decided, *inter alia*, to refuse all the applications of the applicants in this case for road service licences in respect of Limassol, on the ground that it was convinced that the applicants had not been providing transport services on the 19th November, 1964, when the said Law No. 16 of 1964 came into operation.

The relevant parts of Law No. 16 of 1964 are sub-sections (1) and (2) which are fully set out in the judgment of the Court. It is to be noted that the applicants failed to seek, under section 6 of the said Law, administrative redress in respect of the aforesaid refusal of the respondent Authority to grant them the licences applied for. Sub-section (1) of section 6 provides :

"6(1). Subject to the right of recourse to the Supreme Constitutional Court, any decision of the licensing

authority under this Law shall be subject to appeal to the Minister (of Interior), who may, with the advice of the Board, make such order on such appeal as he may think fit".

In declaring the *sub judice* decision of the respondent Authority *null and void*, the learned Justice :—

Held, (1) (a) I have been referred to the Objects and Reasons of the Bill which became eventually Law 16 of 1964 (*supra*) as well as to the legislative history of such Bill. I have paid due regard to everything that has been stated in relation to the object of section 8 of Law 16 of 1964 and of that Law as a whole, but I must make it quite clear that I am relying first and foremost on the text of section 8 and of Law 16 of 1964 in general, as promulgated in the *Official Gazette*, because it is such text only which does constitute the result of the exercise of the legislative power vested in the House of Representatives. (See also *The Mayor of Famagusta and Petrides*, 4 R.S.C.C. 71, at p. 76).

(b) With the above in mind it has to be determined whether or not the respondent Authority, in applying the relevant provisions of section 8, and particularly of sub-section (2) thereof (*supra*), could properly and lawfully take the view that such provisions, *not only entitle to priority, in respect of road service licences for Limassol, persons who were on the material date, already providing in good faith and for a reasonably long time transport facilities in Limassol, but, furthermore, lay down that anybody who was not so providing transport facilities is not eligible in law to be granted a road service licence in respect of Limassol in any case.*

(2) (a) There is nothing making it possible for the Court to hold that section 8 or any other provision of the said Law No. 16 of 1964 (*supra*) prevents, by operation of law, the Authority from granting a licence to any person who was not, on the material date, providing in good faith and for a reasonably long time transport facilities a given route.

(b) Whether or not granting to such person a licence, in preference to and instead of someone who has been providing facilities as aforesaid, may, in a given case, amount to an abuse of powers on the part of the Authority, is another matter altogether.

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(3) (a) With the material before me, I have reached the conclusion that the Authority has acted in this case under the legal misconception that applicants were not eligible, in law, to be granted the licences applied for, or any licences at all, unless on the material date they had been providing in good faith and for a reasonably long time transport facilities in Limassol.

Therefore, the relevant legislation *viz.* Law 16 of 1964, and especially section 8 thereof (*supra*), have not been properly applied to this matter, and the *sub judice* decision of the Authority was taken, consequently, contrary to Law and in abuse and excess of powers.

(b) It follows that such decision is hereby declared *null and void* and of no effect whatsoever.

(4) (a) With regard to the issue raised in his pleadings by counsel for the respondents to the effect that this recourse does not lie in view of the fact that the applicants have not appealed first to the Minister of Interior, in this matter, under section 6 of the said Law No. 16 of 1964 :

In my view counsel for the respondents has correctly not raised at the hearing the aforesaid issue, because bearing in mind the context of the said section 6 as well as the judgments in the cases *Pelides and the Republic* 3 R.S.C.C. 10, *Rallis and the Greek Communal Chamber*, 5 R.S.C.C. 11 and *PEO and the Board of Films Censors and another* (1965) 3 C.L.R. 27 I am of the opinion that a prior appeal under section 6 is not a prerequisite for the filing of a recourse to this Court under Article 146 of the Constitution.

(b) The issue is, however, relevant to the question of costs. Therefore, the failure of the applicants to seek administrative redress in this case by means of an appeal to the Minister under section 6, is in my judgment sufficient reason for not awarding them costs.

*Application granted as against
the Permits Authority. No order
as to costs.*

Per curiam : On the 12th November, 1965, there appeared before the respondent Authority, on behalf of those opposing the grant of licences to the applicants, the General Secretary of the Pancyprian Union of

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Professional Motorists (P.E.E.A.), who said that if any licences were to be granted to applicants this would have most serious consequences and "threatened" drastic measures on the part of the said Union, not excluding a general strike of its members.

Let me observe here and now that, in my opinion, "threats" emanating on the part of anybody appearing before a public body, such as the respondent Authority, is a thing which is most unacceptable, as being entirely incompatible with every notion of Law and Order.

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Cases referred to :

The Mayor of Famagusta and Petrides, 4 R.S.C.C. 71,
at p. 76 ;

Pelides and the Republic, 3 R.S.C.C. 10 ;

Rallis and The Greek Communal Chamber, 5 R.S.S.C. 11 ;

PEO and The Board of Films Censors and another (1965)
3 C.L.R. 27.

Recourse.

Recourse against the decision of the Respondent refusing to Applicants road service licences in respect of 20 of their buses.

A. Emilianides with E. Emilianides, for the Applicants.

K. Talarides, Counsel of the Republic, for the Respondents.

Chr. Demetriades, for the Interested Party, "Pharos"
Company Ltd.

L. Demetriades, for the Interested Party, Efstathios
Kyriacou & Sons Ltd.

Cur. adv. vult.

The following Judgment was delivered by:—

TRIANTAFYLLIDES, J.: In this Case the Applicants seek, in effect, a declaration annulling the decision of the Respondent Authority refusing to Applicants road service licences (commonly described as "circulation permits") in respect of 20 of their buses destined for the purpose of operating bus services in the Limassol Town Area (hereinafter described as "Limassol").

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The Respondent Authority (which in these proceedings has been described as the "Permits Authority") is the licencing authority set up under section 4 of the Motor Transport (Regulation) Law, 1964 (Law 16/64), which has come into operation on the 19th November, 1964 (see Not. 4883 in Supplement No.3 to the official Gazette of the 12th November, 1964).

The licences in question were applied for by Applicants in January, 1965, under the provisions of the said Law (see applications, *exhibit 19*).

The relevant facts are shortly as follows:—

After a study of the problem of bus routes in Limassol, the Respondent Authority called a meeting of owners of buses and of representatives of Limassol authorities in order to discuss the problem further. This meeting took place on the 17th August, 1965 (see minutes *exhibit 4*); though, as stated above, the Applicants had applied for 20 licences they were not invited to attend such meeting.

Eventually, on the 1st November, 1965, the Authority decided, *inter alia*, to refuse all the applications of Applicants for road service licences in respect of Limassol, on the ground that it was convinced that Applicants had not been providing services in Limassol on the 19th November, 1964, when Law 16/64 came into operation. (See minutes *exhibit 5*).

On the 8th November, 1965, the Applicants wrote to the Authority (see *exhibit 6*) wanting to know why they had not been granted the licences applied for; they put also before the Authority signed statements and other material by means of which it was sought to establish that Applicants had been providing transport facilities in Limassol at the material time (see *exhibits 7, 8 and 9*).

As a result, on the 9th November, 1965, the Authority sought the advice of the Attorney-General of the Republic in the matter. It is stated, in the relevant minute to the Attorney-General (see *exhibit 10*) that the only applications for licences which had not been granted were those of the Applicants, because on the 19th November, 1964, Applicants were not operating bus services in Limassol; it was asked of the Attorney-General to advise whether the material produced to the Authority by Applicants, to the effect that

they had, indeed, been operating bus services in Limassol, could be accepted by the Authority for the purpose of granting accordingly licences to Applicants, notwithstanding other official information to the contrary.

On the same day, the 9th November, 1965 the Attorney-General advised that the material placed by Applicants before the Authority could be taken into consideration (see *exhibit 11*).

Then, on the 10th November, 1965, the Authority carried out an investigation in Limassol, obtaining statements from various persons (see *exhibit 12*), including, inter alia, the Chairman of the Municipal Commission of Limassol and members of the police force in Limassol.

On the 11th November, 1965, the Authority applied again for advice to the Attorney-General (see *exhibit 13*), placing before him the information it had received on the issue of whether or not Applicants had been operating bus services in Limassol in the past, and asking what course the Authority could follow in the matter. The Attorney-General replied at once to the Authority (see *exhibit 15*) stating that the evidential weight of the relevant material was a matter for the Authority, and not for himself.

On the same day, the 11th November, the Authority, having considered the material before it, and having heard two of the Directors of Applicants, felt convinced that Applicants had been operating in Limassol bus services "for certain periods" in the past and decided in principle to grant a limited number of licences to Applicants for bus routes in Limassol. (See minutes, *exhibit 16*).

Then, at a continuation of its meeting, on the 12th November, 1965, the Authority heard the views of those opposing the granting of licences to Applicants. In particular, there appeared before the Authority on the 12th November, 1965, on behalf of those opposing the grant of licences to Applicants, the General Secretary of the Pancyprian Union of Professional Motorists (P.E.E.A.), Mr. G. Toumazis, who said that if any licences were to be granted to Applicants this would have most serious consequences and "threatened" drastic measures on the part of P.E.E.A., not excluding a general strike of its members. (See minutes *exhibit 16*).

Let me observe here and now that, in my opinion, "threats", emanating on the part of anybody appearing before a public

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body, such as the Authority, is a thing which is most unacceptable, as being entirely incompatible with every notion of Law and Order.

On the 16th November, 1965, the Authority met once again and decided that in accordance with the relevant provisions of Law 16/64 it could not grant licences to Applicants, because, in spite of all the evidence adduced, there did not exist convincing proof that Applicants were operating transport services in Limassol on the 19th November, 1964, when Law 16/64 came into operation, (see exhibit 17). This is the decision of the Respondent Authority challenged by the present recourse, which was filed on the 22nd November, 1965.

Messrs. "Pharos" Company Ltd., of Limassol and Efstathios Kyriacou and Sons Ltd., of Limassol, have applied, in these proceedings, for leave to take part herein as Interested Parties, and it has been directed, on the 10th February, 1966, that they were to be allowed to do so; they have done so through counsel.

During the course of the hearing of this recourse it became clear that two were, really, the main issues arising for determination:—

First, whether or not the Authority has correctly based its sub judice decision mainly on the ground that there was no convincing proof that on the 19th November, 1964, Applicants were operating bus services in Limassol.

Secondly, whether or not the Authority, in reaching its conclusion of fact involved in the first issue, above, was labouring under a misconception as to the true facts.

After hearing counsel for the parties this Court has directed that the aforesaid first issue should be dealt with first and that during the examination of such issue any relevant point, relating to the application of section 8 of Law 16/64 and to the validity in Law of the reasoning of the Respondent Authority which led it to take the decision challenged by this recourse, might be raised.

The Court, having heard counsel on the said issue, reserved its decision thereon and it is proposed now to give it by means of this Judgment.

The relevant parts of section 8 of Law 16/64 are subsections (1) and (2) thereof which read as follows:—

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“8 (1) The licensing authority may at its discretion grant a road service licence or impose such conditions as the licensing authority may deem fit in the circumstances:

Provided that where a public service vehicle in respect of which a road service licence has been granted is put out of circulation, the owner thereof shall be entitled to receive, subject to the provisions of this or of any other relevant Law, a road service licence in respect of any vehicle with which he proposes to replace such public service vehicle.

(2) In exercising such discretion the licensing authority shall have regard to the following matters:—

- (a) the suitability of the route on which a service may be provided under the licence;
- (b) the extent, if any, to which the needs of the proposed routes or any of them are adequately served;
- (c) the extent to which the proposed service is necessary or desirable in the public interest;
- (d) the needs of the area as a whole in relation to traffic (including the provision of adequate, suitable and efficient services, the elimination of unnecessary services and the provision of unremunerative services) and the co-ordination of all forms of passenger transport, and shall take into consideration any representations which may be made by persons who, on the date of the coming into operation of this Part of this Law, were already providing in good faith and for a reasonably long time transport facilities along or near to the route in question or any part thereof”.

Much argument has been advanced by counsel for Respondent and the Interested Parties that the object of section 8—especially when it is read together also with other provisions of Law 16/64, such as section 17—is to protect the vested rights of those who, on the date of the coming into operation of Part III of Law 16/64, “were already providing in good faith and for a reasonably long time transport facilities along or near to” the routes concerned. In this connection the Court has been referred to the Objects and Reasons of the Bill which became eventually Law 16/64, as well as to the legislative history of such Bill (see *exhibits* 21 and 22).

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I have paid due regard to everything that has been stated to, and placed before, this Court in relation to the object of section 8 of Law 16/64, and of Law 16/64 as a whole, but I must make it clear that I am relying, first and foremost, on the text of section 8, and of Law 16/64 in general, as promulgated in the official Gazette, because it is such text only which does constitute the result of the exercise of the legislative power vested in the House of Representatives. (See also *The Mayor Famagusta and Petrides* 4 R.S.C.C. p. 71 at p. 76).

With the above in mind it has to be determined whether or not the Authority, in applying the relevant provisions of section 8, and particularly of sub-section 2 thereof, could properly and lawfully take the view that such provisions, not only entitle to priority, in respect of road service licences for Limassol, persons who were, on the material date, already providing in good faith and for a reasonably long time transport facilities in Limassol, but, furthermore, lay down that anybody, who was not so providing transport facilities, is not *eligible* in law to be granted a road service licence in respect of Limassol, in any case.

There is no doubt that those who were, on the material date, providing in good faith and for a reasonably long time transport facilities in Limassol, are persons whose representations had to be taken into consideration by the Authority in deciding on the granting of licences for Limassol; and I am quite prepared to hold, also, that they are persons who might be accorded by the Authority, in the proper exercise of its discretion, and other things being equal, priority treatment as against other applicants for licences for Limassol who have not been providing transport facilities as aforesaid.

But, there is nothing making it possible for the Court to hold that section 8—or any other provision of Law 16/64, either—prevents, *by operation of law*, the Authority from granting a licence to any person who was not, on the material date, providing in good faith and for a reasonably long time transport facilities along a certain route; whether or not granting to such a person a licence, *in preference to and instead* of someone, who has been providing facilities as aforesaid, may, in a given case, amount to an abuse of powers on the part of the Authority, is another matter altogether. It is a matter of the correct exercise of the relevant discretion, and not of law, the exclusion, in a proper case, of persons

not already providing, on the material date, in good faith and for a reasonably long time transport facilities along a certain route.

Now, what has happened in the present Case?

Having perused all relevant material before me, including *exhibits* 5, 10, 13, 16 and 17, and bearing in mind the whole course of action taken by the Authority in this matter, I have reached the conclusion that the Authority has acted in this Case under the legal misconception that Applicants were not eligible, *in law*, to be granted the licences applied for, or any licences at all, unless on the material date they had been providing in good faith and for a reasonably long time transport facilities in Limassol.

It is noteworthy that, as it appears from the material before the Court, the Authority granted licences to all persons who had applied for licences in respect of Limassol, except the Applicants (see particularly *exhibit* 10); and the applications of Applicants were refused only because on the material date they were not providing transport facilities in Limassol (see in particular *exhibits* 5, 10 and 17). All that the Authority appears to have been constantly considering was whether it had been established that Applicants were providing transport facilities in Limassol, on the material date, like others, so as to proceed to grant to them licences, also; and once it was not convinced on this score it treated Applicants as not being entitled at all to any licences in respect of Limassol (See in particular *exhibits* 10, 13, 16, 17). At no time does the question appear to have arisen of the number of licences to be granted for Limassol being limited, and not large enough to accommodate all applicants, including the Applicants in this Case, and, therefore, having to give priority to those who were providing transport facilities on the material date; it cannot, thus, be said that the test, of whether or not Applicants were providing, on the material date, transport facilities, was relied upon by the Authority, in the present Case, merely as a guide to priorities, and not as a legal prerequisite for entitlement to licences.

In the circumstances, I am of the view that the *sub judice* decision of the Authority has been reached mainly under a misconception of law; the relevant legislation, Law 16/64, and especially section 8 thereof, has not been properly applied to this matter, and the said decision was taken, consequently, contrary to law and in abuse and excess of powers.

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It is hereby declared, accordingly, that such decision is null and void and of no effect whatsoever; the Authority has now to reconsider the relevant applications of Applicants, in the light of this Judgment. This, of course, does not mean, also, at all, that Applicants are entitled *in any case* to be granted the licences for which they have applied, or any licences; they are only entitled in law to have their applications for licences be duly considered on their merits; it is up to the Authority to decide, in a proper exercise of its descretion, whether or not to grant any licences for Limassol to Applicants.

In this Case, it is not necessary any longer to decide, one way or the other, the second of the aforesaid issues, viz. the question of fact as to whether or not the Authority correctly reached the conclusion that the Applicants, on the material date, were not providing in Limassol, in good faith and reasonably long, transport facilities. I leave such issue entirely open, because, also, it is still up to the Authority, on reconsidering the applications of Applicants, and in the light of any further material to be placed before it, to decide such factual issue either in the same way as it has decided it in the past, or otherwise. In any case such factual issue could only be relevant, as held earlier, for the purpose of determining priorities among applicants for licences.

Before concluding this Judgment I would like to observe that counsel for Respondent has not, at the hearing, argued the legal issue, raised by his pleading, to the effect that this recourse does not lie in view of the fact that Applicants have not appealed first to the Minister of Interior, in this matter, under section 6 of Law 16/64.

The relevant part of the said section 6 reads as follows:-

“6. (1) Subject to the right of recourse to the Supreme Constitutional Court, any decision of the licensing authority under this Law shall be subject to appeal to the Minister who may, with the advice of the Board, make such order on such appeal as he may think fit.”

In my view counsel for Respondent has correctly not raised at the hearing the aforesaid issue, because bearing in mind the context of such section 6, as well as the judgments in the cases of *Pelides and The Republic* (3 R.S.C.C. p.10) *Rallis and The Greek Communal Chamber* (5 R.S.C.C. p. 11) and *PEO and The Board of Films Censors and another* ((1965)

3 C.L.R. p. 27), I am of the opinion that a prior appeal under section 6 is not a prerequisite for the filing of a recourse to this Court under Article 146.

In the result, this recourse succeeds, to the extent stated already in this Judgment, against the Republic through the Respondent Authority. It fails, however, in so far as it is aimed at the Republic through the Minister of Interior, because the Minister has not taken any action in the sub judice matter.

Regarding costs I have decided not to make any order as to costs, in view, inter alia, of the fact that administrative redress has not first been sought by means of an appeal under section 6, as above; such an appeal was not a prerequisite for the filing of this recourse, but failure to resort to it is relevant to the question of costs in such recourse.

*Application succeeds against the
Permits Authority; and it fails,
against the Minister of Interior.
Order for costs as aforesaid.*

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