

1971
Sept. 15

[STAVRINIDES, J.]

ANDREAS
PSALTIS
v.
REPUBLIC
(MINISTER OF
COMMUNI-
CATIONS
AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PSALTIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF COMMUNICATIONS,
2. THE CHAIRMAN OF LICENSING AUTHORITY,

Respondents.

(Case No. 18/68).

Road Transport—Road use licence—Road Transport (Regulation Law, 1964 (Law No. 16 of 1964)—Rejection of an application for a road use licence—Appeal to the Minister—Minister's decision affirming that of the Licensing Authority—Recourse—Not established that the bus line applied for was necessary—In the circumstances of this case respondent Authority was under no duty to enquire whether the bus line in question was desirable in the public interest—Section 8(1)(c) of the Law—The Respondent public authority could seek to ascertain facts by resorting to the services of another public authority, in this case to those of the local police—This course in no way contravenes the maxim “delegatus non potest delegare”—The principle of “right to be heard by the administration” not applicable to a decision such as the sub judice one involving no sanction whatsoever—Recourse dismissed.

Administrative Law—Right to be heard by the administration—The principle that a person interested in a matter pending before the administration for a decision is entitled to be personally heard by it before the decision is taken is one of a restricted scope, applying mainly to decisions involving a sanction.

Maxim “delegatus non potest delegare”—No rule of administrative law to the effect that it is wrong for a public authority to seek to ascertain facts through the services of another public authority—Such course in no way contravenes said maxim.

Road use licence—The Road Transport (Regulation) Law, 1964 (Law No. 16 of 1964)—See supra.

The facts sufficiently appear in the judgment of the Court, dismissing this recourse directed against the refusal of the respondents to grant the road use licence applied for under the Road Transport (Regulation) Law, 1964 (Law No. 16 of 1964).

1971
Sept. 15
—
ANDREAS
PSALTIS
v.
REPUBLIC
(MINISTER OF
COMMUNI-
CATIONS
AND ANOTHER)

Recourse.

Recourse against the decision of the respondent refusing to grant to applicant a road service licence for the route Ayios Amvrosios via Lefkoniko to Famagusta.

L. *Papaphilippou*, for the applicant.

L. *Loucaides*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment* was delivered by :—

STAVRINIDES, J. : On April 4, 1967, the applicant, who in his evidence described himself as “ a dealer in used motor vehicles and a public carrier ”, applied in writing to the Licensing Authority set up by s. 4 of the Road Transport (Regulation) Law, 1964 (hereafter “ the Law ”), for a road use licence in respect of a bus

“ which will circulate with Ayios Amvrosios as its base, as no other communication whatever exists.”

That application (*exhibit 1*) continues :

“ The inhabitants who have to travel to Famagusta are compelled to come via Nicosia or to get another line for Famagusta and they cannot transact their business on the same day, or to get some private vehicle *i.e.* a van to go and transact his (sic) business.”

By a letter of the following August 9 (*exhibit 2*) the Authority's Chairman informed the applicant that the Authority

“ had carefully examined his application but he regretted to say that it had been rejected because the inhabitants (of Ayios Amvrosios) transact business with Nicosia and not with Famagusta.”

On the following September 4 the applicant appealed in writing under s. 6 of the Law to the Minister of Communications and Works on the following grounds :

“ (a) Wrong approach to the matter by the Licensing Authority.

* For final judgment on appeal see (1973) 2 J.S.C. 210 to be reported in due course in (1972) 3 C.L.R.

- (b) The Licensing Authority wrongly decided that the inhabitants of the said village do not transact business with Famagusta.
- (c) The Licensing Authority did not appreciate the consideration of employment of labour of the village at Famagusta.
- (d) The decision of the Licensing Authority does not accord with the entire letter and spirit of the Law.
- (e) The reason of the said decision is not regarded as an adequate or lawful reason in accordance with the Law.
- (f) The decision of the Licensing Authority hampers the economic and social development of the Ayios Amvrosios area as a whole.
- (g) The said decision is contrary to the provisions of s. 8 (2) (a), (c) and (d) of the Law."

The appeal was dismissed by an order of the Minister dated December 29, 1967 (*exhibit* 5), which reads :

"The Minister having taken into consideration all the material before him, and also the opinion of the Road Transport Council, reached the following conclusions :

- (a) By his application to the Licensing Authority the applicant was asking for the grant of a road use licence in respect of a rural bus for the establishment of a road line on the route from Ayios Amvrosios, Kyrenia, to Famagusta via Lefkonico.
- (b) The Licensing Authority in the exercise of its discretion rightly refused the grant of a licence because no need justifying the establishment of such a road line exists.

For the above reasons the appeal is dismissed."

This application is for a

"declaration . . . that the decision of the respondents (meaning 'of the Minister') dated December 29, 1967, is unconstitutional, invalid and devoid of legal force "

and a

"declaration . . . that the applicant is entitled to the grant of a road use licence in respect of a rural bus for

the establishment of a road line on the route from Ayios Amvrosios, Kyrenia, to Famagusta via Lefkoniko."

It

"is based on the following grounds of law—

- (1) The respondents acted in excess of power.
- (2) The respondents' approach to the matter is wrong and/or the respondents acted under a misconception of fact.
- (3) The respondents did not appreciate the consideration of employment of labourers of the village at Famagusta.
- (4) The above decision does not accord with the entire letter and spirit of (the Law) and contravenes s. 8 (2) (a), (b) and (c) of (the Law).
- (5) The reasoning of the said decision is not an adequate or lawful reason in accordance with the Law.
- (6) The decision hampers the economic and social development of the village of Ayios Amvrosios."

It will be noted that although neither in the application to the Authority nor in the appeal to the Minister was it stated that the proposed route was via Lefkoniko, the Minister's decision (hereafter 'the subject decision') expressly describes the object of that application as being the establishment of a bus line from Ayios Amvrosios to Famagusta via that village. However, *nothing turns on that, it having appeared at the hearing before me that the proposed route was in fact via Lefkoniko.*

Evidence was given by one witness on each side : For the applicant, by himself ; and for the respondents by P.S. Stavros Dhanos, who since April, 1967, had been stationed at Ayios Amvrosios. The applicant's evidence may be summarised as follows : The bus line he sought to establish (hereafter 'the bus line') is necessary because there is a need for direct road communication between Ayios Amvrosios and the surrounding villages on the one hand and Famagusta on the other, which does not exist. There are three alternative routes between those places, all of which pass through Nicosia. The direct route is needed by workmen who are employed at Famagusta and villages in its vicinity ; also the inhabitants of the villages referred to "make purchases at Famagusta". He owned a bus in respect of which he had a licence for the carriage of passengers

1971
Sept. 15

—
ANDREAS
PSALTIS

v.
REPUBLIC
(MINISTER OF
COMMUNI-
CATIONS
AND ANOTHER)

from Harcha to Nicosia and back, " which he is sometimes asked to hire out on a weekly basis to someone who daily transports passengers and goods from Harcha to Famagusta and back ". At the time of testifying (June 7, 1968), he had been owning the bus for two months and he had been so hiring it out for four weeks. Asked by counsel for the respondents whether it was not the case that " the need for this additional means of transport arose only four weeks ago ", he said " No ". He claimed that " that way of using the bus had not been resorted to earlier because the method of using a bus had not been thought of until four weeks ago ". He agreed that there had never been a bus line between Ayios Amvrosios and Famagusta via Lefconico and that there had been no public protest over the lack of such a line ; but he said that " about 1½ years ago " (*i.e.* in or about January, 1967) there had been " direct " communication between those places " by private cars " carrying on payment, " almost daily ", three or four persons going to Famagusta " for odd jobs ". If the bus line were allowed to be established it would attract regular workmen as well, making up a total of about 25 passengers daily excepting Sundays.

On the other hand P.S. Dhanos's evidence is to the effect that no inconvenience is caused to the inhabitants of Ayios Amvrosios by the non-establishment of the bus line " because they transact their business at Nicosia ".

In support of his application to the Authority the applicant on July 10, or 11, 1967, sent to it a certificate of the former date (*exhibit* 4) whereby the mukhtar of Ayios Amvrosios " certifies " that

" there is no bus maintaining a line between Ayios Amvrosios and Famagusta and it is required for the convenience of the inhabitants."

Of this document it is enough to say that it is useless, if only because it merely states a conclusion without showing any factual foundation for it.

Thus the applicant's case rests on his own evidence. It will be noted that that evidence was directed at proving that the bus line was necessary ; no attempt was made by the applicant to prove, and there is nothing in his evidence to suggest, that it was " desirable " as distinct from necessary. The question then is, has the applicant's evidence established that the bus line was necessary ? The use of " private cars " to which he testified was, as already stated, " in or

about January, 1967". The application to the Authority was made about three months later, but I set no store by that. However, the fact that a journey in a private motor vehicle attracted "three or four" passengers—and that "almost daily"—does not establish a need for the bus line. In the first place, the applicant said that "the private cars" in question were twelve-seaters and therefore, if the passengers were no more than "three or four" that was not for lack of greater seating capacity but for lack of demand for more places. As regards the hiring of the applicant's bus, this, according to his own evidence, was in May, 1968, i.e. six months after the subject decision. Apart from this, however, one must not lose sight of the fact that the applicant has a motive to try and make out a case, while P.S. Dhanos is not interested in the outcome of these proceedings.

All in all I am not satisfied that, whether at the time that the application to the Authority was made or decided, or when the subject decision was taken, there was any need for the bus line.

But counsel for the applicant in his final address argued that, in any case, it was the duty of the Authority in the first instance, and of the Minister on appeal to him, to inquire whether the bus line was "desirable in the public interest". Now it is true that

"The extent to which the proposed road line is necessary or desirable in the public interest"

is, by s. 8 (1) (c) of the Law, one of the matters to which the Authority must have regard in considering an application for a grant of a road use licence. But neither in the applicant's application to the Authority, nor in his appeal to the Minister, is there any mention of such desirability or indeed anything that might reasonably suggest reliance on such a matter. The same holds true of the summons by which the application to the Court has been made. Nor, as already stated, is there any evidence that such a consideration as desirability existed at the material time. In the circumstances the applicant cannot, in my judgment, attack the subject decision on the ground that it was taken without desirability having been considered.

The grounds of law set out in the application are widely, and indeed vaguely, framed. But at the hearing counsel for the applicant relied on the following two grounds of law and no other: (i) The Authority "delegated to the police the task of ascertaining the facts" and this was wrong; (ii) the applicant was not given a personal hearing by either

1971
Sept. 15
—
ANDREAS
PSALTIS
v.
REPUBLIC
(MINISTER OF
COMMUNI-
CATIONS
AND ANOTHER)

1971
Sept. 15
—
ANDREAS
PSALTIS
v.
REPUBLIC
(MINISTER OF
COMMUNI-
CATIONS
AND ANOTHER)

the Authority or the Road Transport Council and thus was not afforded an opportunity of refuting a certain allegation made against him in a police report relating to his application to the Authority. The first ground refers to the fact that, as P. S. Dhanos put it, "The Ayios Amvrosios police were asked their views regarding applicant's application to the Licensing Authority for a road use licence". However, nothing has been cited to show that there is any rule of administrative law to the effect that it was wrong for a public authority to seek to ascertain facts through the services of another public authority ; and I am not aware of any such rule. That being so and there being nothing in the Law to the contrary, I see nothing wrong in the Authority ascertaining the facts through the Ayios Amvrosios police. The issue here has been befogged by the use by counsel for the applicant of the word "delegated", suggesting that the maxim *delegatus non potest delegare* had been infringed, as if the Authority had been a *delegatus* within the meaning of that maxim, which is not the case.

Coming now to the second ground, the police reported to the effect that there was no need for the bus line and that the applicant's motive in applying for the licence in question lay in the fact that he was trafficking in road use licences ; and it is the latter statement that the applicant complains he was not given a chance of refuting. Actually, as appears from the foregoing, both the Authority's decision and the subject decision were based on a finding that the bus line was not necessary, not on any view as to the applicant's motive in seeking to obtain the licence. But I need not pursue that point, because the principle that a person interested in a matter pending before the administration for decision is entitled to be personally heard by it before the decision is taken is one of restricted scope, applying mainly to decisions involving a sanction ; it does not apply to a decision such as the one here in question.

For the above reasons the application must fail.

Counsel for the respondents claims no costs.

*Application dismissed
without costs.*