

1973
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SAVVAS
CHR. SPYROU
AND OTHERS
(No. 1)

v.

REPUBLIC
(LICENSING
AUTHORITY)

[TRIANAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

SAVVAS CHR. SPYROU AND OTHERS (No. 1),

Applicant's,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE LICENSING AUTHORITY,

Respondent.

(Cases Nos. 80/71, 96/71, 100/71, 145/71—147/71,
164/71, 166/71, 195/71, 196/71,
203/71—205/71).

Motor Transport—Carrier's licence—Vehicles imported into Cyprus as used vehicles after 1965—Refused a carrier's licence—Under Regulation 12A of the Motor Transport (Regulation) Regulations 1964-1967 (as amended)—Direction for case to be heard further on the proper interpretation to be given to the aforesaid Regulation 12A and on whether sub judice refusals can be upheld on the basis of a reasoning different from that given by the respondent Licensing Authority for such refusals— Cf. infra.

Administrative decisions—Reasoning—Legally defective reasoning—Open to an administrative judge to uphold validity of the sub judice decision on the basis of a lawful reasoning therefor even though such reasoning is different from that given by the respondent Authority for reaching such decisions; and even if such reasoning given by the respondent is legally defective—Directions for argument to be heard thereon—Cf. supra.

Recourse under Article 146 of the Constitution—Powers of the Court to uphold an administrative decision based on a legally defective reasoning, by substituting therefor a legally right reasoning.

By these recourses, which were heard together because of their common nature, the applicants challenge the validity of decisions of the respondent Licensing Authority refusing

them carriers' licences in respect of vehicles of theirs which were all imported into Cyprus, as used vehicles. after 1965 The licences were refused under Regulation 12A of the Motor Transport (Regulation) Regulations 1964 - 1967 Regulation 12A provides

"No road service licence for a bus and no public carrier's licence 'A' or private carrier's licence 'B' is issued under these Regulations for any *motor vehicle which is put into circulation* for the first time unless it is newly built and unused Provided "

The licences were refused by the respondent Licensing Authority on the ground that all the vehicles concerned *were not being put into circulation for the first time as goods vehicles* but had been put into circulation earlier as vehicles of a different nature, before their conversion into goods vehicles and, thus, they were not vehicles "newly built and unused" as provided by the said Regulation 12A (*supra*).

Held, (1) Since the respondent Authority took the view that all the vehicles in question were not then being put into circulation for the first time, it follows that the respondent could not refuse the carrier's licences applied for by the applicants, inasmuch as Regulation 12A (*supra*) is only applicable to vehicles which are put into circulation for the first time

(2)(A) On merely, this ground these recourses ought to succeed; and in view of this, in accordance with the relevant judicial practice, it would be unnecessary to pronounce on any other issue raised in the present proceedings (see in this connection, *inter alia*, the case of *Republic v. Lefcos Georghuades* (1972) 3 CLR 594, at pp 688 - 689, as well as the *Decisions of the Greek Council of State* Nos 3529/1970 and 3537/1970)

(B) It is, however, open to an administrative judge to uphold the validity of an administrative decision on the basis of a lawful reasoning therefor even though such reasoning is different from the reasoning given by the

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administration for reaching such decision and even if the reasoning given by the administration is legally defective (see, *inter alia*, the *Decisions of the Greek Council of State* Nos. 48/1968, 132/1969, 2134/1969 and 2238/1970).

- (3) Now, if regulation 12A (*supra*) were to be construed as applicable to vehicles which are *put into circulation for the first time in Cyprus as goods vehicles or buses*, irrespective of the previous circulation of such vehicles as vehicles of any other nature in Cyprus or of the previous circulation of such vehicles as vehicles of any nature abroad, then I would have to hold that regulation 12A is applicable to the vehicles in question of the applicants, as being vehicles put into circulation for the *first time in Cyprus as goods vehicles*; and that there existed a valid reason in law for refusing the licences in question, namely that they were not newly built and unused, irrespective of the fact that the respondent Licensing Authority treated the said vehicles as vehicles not put into circulation for the first time.
- (4) But in fairness to all concerned I have decided to hear further argument in this connection; and if I reach the conclusion that on a proper interpretation of Regulation 12A (*supra*) I should uphold as valid the *sub judice* decisions on the basis of a different reasoning as aforesaid, then I will also examine the submissions already made by counsel for the applicants to the effect that Regulation 12A (*supra*) was not validly enacted.

Order in terms.

Cases referred to :

The Republic v. Lefcos Georghiades (1972) 3 C.L.R. 594, at pp. 688 - 689;

Decisions of the Greek Council of State Nos. 3529/1970, 3537/1970, 132/1969, 2134/1969 and 2238/1970.

Recourses.

Recourses against the validity of decisions of the respondent Licensing Authority refusing applicants carriers' licence in respect of vehicles of theirs which were imported into Cyprus, as used vehicles, after 1965.

L. Clerides, for the applicant in Case No. 80/71.

E. Efsthathiou, A. Panayiotou and L. Pelekanos,
for all the other applicants.

V. Aristodemou, Counsel of the Republic,
for the respondent.

Cur. adv. vult.

The following interim decision was delivered by:-

TRIANAFYLLIDES, P.: By these recourses, which were heard together because of their nature, the applicants challenge the validity of decisions of the respondent Licensing Authority refusing them carriers' licences in respect of vehicles of theirs which were all imported into Cyprus, as used vehicles, after 1965.

The said decisions were communicated to them by practically identically worded letters (see, for example, the letter dated 11th February, 1971, which is attached to recourse 204/71); only the two letters dated 10th April, 1971, which are attached to recourse 205/71, are different in wording from the rest of the letters, but the difference is certainly not of any substantial significance.

By means of such letters the applicants were informed that the licence applied for in respect of each of the vehicles in question had been refused because the vehicle was not one which was put into circulation for the first time and newly built and unused («τοῦτο δὲν εἶναι τὸ πρῶτον κυκλοφοροῦν καὶ νεότευκτον καὶ ἀμεταχειριστον»).

The vehicles concerned were, after their importation, converted so as to become goods vehicles, in the sense of sections 2 and 10 of the Motor Transport (Regulation) Law, 1964 (Law 16/64), that is vehicles for the carriage of goods; and an application was made in each instance either for a public carrier's licence, known as

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an "A" licence, or for a private carrier's licence, known as a "B" licence.

Provision about these licences is made in the said section 10 of Law 16/64.

The licences were refused under regulation 12A of the Motor Transport (Regulation) Regulations, 1964 (see Third Supplement to the official Gazette of 1964, at p. 609), as amended by the Motor Transport (Regulation) (Amending) Regulations, 1965 (see Third Supplement to the official Gazette of 1965, at p. 684) and by the Motor Transport (Regulation) (Amending) Regulations, 1967 (see third Supplement to the official Gazette of 1967, at p. 432).

Regulation 12A reads as follows :-

«12Α. Ούδεμία άδεια όδικής χρήσεως διά λεωφορείον και ούδεμία άδεια δημοσίου μεταφορέως 'Α' ή ιδιωτικού μεταφορέως 'Β' έκδίδεται επί τή βάσει τών παρόντων Κανονισμών διά μηχανοκίνητον όχημα τò πρῶτον κυκλοφοροῦν έκτός εάν τούτο είναι νεότευκτον και άμεταχειρίστων.

Νοεΐται ότι εις εύλόγους περιπτώσεις ή άρχή άδειών δύναται έν τή διακριτικη αύτης έξουσία νά έκδώση τοιαύτην άδειαν άφοῦ ίκανοποιηθῆ ότι τò μηχανοκίνητον όχημα —

- (α) ήγοράσθη έκ τού Βρεττανικού 'Υπουργείου Πολέμου πρό τής 7ης 'Οκτωβρίου, 1965, ή
- (β) ήγοράσθη ή συνεφωνήθη όπως άγορασθῆ έκτός τής Κύπρου πρό τής 7ης 'Οκτωβρίου, 1965, ή
- (γ) εισήχθη έν Κύπρω πρό ή κατά τήν 7ην 'Οκτωβρίου, 1965, αλλά δέν ένεγράφη πρό ή κατά τήν ειρημένην ήμερομηνίαν, και εάν ύποβληθῆ αίτησις δι' έκδοσιν τοιαύτης άδειας μέχρι τής 31ης Μαΐου, 1967».

("No road service licence for a bus and no public carrier's licence 'A' or private carrier's licence 'B' is issued under these Regulations for any motor vehicle which is put into circulation for the first time unless it is newly built and unused.

Provided that in proper cases the Licensing Authority may in its discretion issue such a licence when satisfied that the motor vehicle —

- (a) was bought from the British Ministry of War before the 7th October, 1965, or
- (b) was bought or it was agreed that it would be bought outside Cyprus before the 7th October, 1965, or
- (c) was imported into Cyprus before or on the 7th October, 1965, but it was not registered before or on the aforesaid date and if an application for the issue of such a licence is submitted by the 31st May, 1967”).

It has been contended by counsel for the applicants that regulation 12A was not applicable at all to the vehicles involved in these proceedings, because they were not vehicles put into circulation for the first time; and, as a matter of fact, from the letters addressed to the applicants, as aforesaid, it appears that the respondent was *also* of the view that such vehicles were not put into circulation for the first time; actually, this reason was given as one of three cumulative reasons for refusing carriers' licences in respect of these vehicles. Moreover, in all the letters addressed to the applicants—except in those addressed to the applicant in recourse 205/71—it was stressed that even if the vehicles had been imported as goods vehicles they would not have been licensed, in view of regulation 12A, because they were not vehicles put into circulation for the first time; it does seem that the respondent regarded the vehicles in question as vehicles not put into circulation for the first time because they had been put already into circulation abroad.

The statement of facts in the Opposition to each recourse states that the vehicles to which the recourse relates were originally of a nature other than that of goods vehicles (such as cranes), that they were converted into goods vehicles with the necessary official approval, that the applications for carriers' licences were rejected because the vehicles were not newly built and unused and that the decision of the respondent was communicated by letter to the applicant. It has not been alleged

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on behalf of the respondent, during the proceedings, that any letter written to any applicant did not convey correctly the relevant decision of the respondent; and, indeed, all such letters are consistent with the facts stated in the Oppositions, as aforesaid, in the sense that all the vehicles concerned were not being put into circulation for the first time as goods vehicles, but had been put into circulation earlier, as vehicles of a different nature, before their conversion into goods vehicles.

Since the respondent took the view, at the material time, that all such vehicles were not then being put into circulation for the first time it follows that the respondent could not refuse the carriers' licences applied for by the applicants, inasmuch as regulation 12A is only applicable to vehicles which are put into circulation for the first time.

On merely this ground these recourses would have to succeed; and in view of this, in accordance with the relevant judicial practice, it would be unnecessary to pronounce on any other issue raised in the present proceedings (see in this connection, *inter alia*, the case of the *Republic v. Georghiades* (1972) 3 C.L.R. 594, at pp. 688 - 689, as well as the decisions of the Greek Council of State—«Συμβούλιον Ἐπικρατείας»—in Cases 3529/1970 and 3537/1970).

It is, however, open to an administrative judge—and I am dealing with these cases in such a capacity—to uphold the validity of an administrative decision on the basis of a lawful reasoning therefor even though such reasoning is different from the reasoning given by the administration for reaching such decision and even if the reasoning given by the administration is legally defective (see, *inter alia*, the decisions of the Greek Council of State in Cases 48/1968, 132/1969, 2134/1969 and 2238/1970).

If regulation 12A were to be construed as applicable to vehicles which are *put into circulation for the first time in Cyprus as goods vehicles or buses*, irrespective of the previous circulation of such vehicles as vehicles of any other nature in Cyprus or of the previous circulation of such vehicles as vehicles of any nature abroad, then I would have to hold that regulation 12A is applicable

to the vehicles in question of the applicants, as being vehicles put into circulation for the first time in Cyprus as goods vehicles, and that there existed a valid reason in law for the licences applied for to be refused, namely that they were not newly built and unused, irrespective of the fact that the respondent treated the said vehicles as vehicles not put into circulation for the first time.

It would, in my view, be unfair to the applicants for me either to reach a final decision about the interpretation of regulation 12A or to adopt the course of upholding as valid the *sub judice* decisions on the basis of a reasoning different from that given in respect of them by the respondent, without affording to counsel for the applicants—and to counsel for the respondent, if he wishes to be heard too—a chance to be heard on the above matters. I, therefore, have decided to hear further these cases in this connection and, of course, if I reach the conclusion that on a proper interpretation of regulation 12A I should uphold as valid the *sub judice* decisions on the basis of a different reasoning, then I will also examine duly the submissions already made to the effect that regulation 12A was not validly enacted; it is clear that it would be inappropriate for me to deal with such submissions in this Interim Decision before deciding about the exact effect, and thus the exact scope, of the regulation concerned.

Order in terms.

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