IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOLEA CAR COMPANY LIMITED AND ANOTHER (NO. 1),

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMUNICATIONS AND WORKS,

Respondent.

(*Case No.* 388/74).

Administrative Law—Due reasoning—Minister's decision in an appeal under s. 6 *of the Motor Transport (Regulation) Law,* 1964—*Appeal heard by officers of the Ministry under proviso to s.* 6(2) *of the Law—Minister disagreeing with findings of officers and giving reasons for so doing—His decision a duly reasoned one.* 5

Motor Transport (Regulation) Law, 1964 (*Law* 16 *of* 1964 *as amended*) —*Appeal to the Minister under s.* 6(1) *of the Law—Non use of the form specified by regulation* 24(2) *of the Motor Transport Regulations,* 1964—*Whether a ground for annulment of the decision given on appeal—Assignment of hearing of appeal to* 3 *officers* 10 *of the Ministry under proviso to s.* 6(2) *of the Law—Whether failure to submit record of their conclusions to Minister vitiates his decision.*

Administrative Law—Collective Organ—Proceedings of—Need to keep written records of such proceedings—Appeal under s. 6 *of the* 15 *Motor Transport (Regulation) Law,* 1964 (*as amended*)—*Heard by* 3 *officers of the Ministry upon being assigned to do so by respondent Minister—Proviso to section* 6(2) *of the Law—No record that conclusions of said officers were submitted to the Minister before issuing his decision—Evidence to the effect that* 20 *he heard the said conclusions before reaching his decision—Absence of a written record not so inconsistent with the minimum of essential requirements of proper proceedings before a public collective organ so that its relevant decision was vitiated by a basic defect.*

Administrative Law—Misconception of fact—When established— 25 *There is no misconception of fact when the administration evaluates*

in substance various and conflicting elements whose evaluation can in principle lead to the conclusion to which the administration arrived—Such evaluation not controlled in its substance by the recourse for annulment.

5 By letter dated the 25th February, 1973, the interested party applied to the Chairman of the Licensing Authority under the Motor Transport (Regulation) Law, 1964, for the issue of a road service licence to him on the route Kakopetria – Galata – Evrychou – Nicosia, in respect of a new bus, to replace another 10 vehicle which he claimed to have sold. The Licensing Authority dismissed the application on the ground that the route in question was served fully by the existing buses. The interested party appealed to the Minister against this dismissal (see s. 6(1) of the Law) by addressing a letter to him instead of using the 15 appropriate form provided by regulation 24 of the Motor Transport Regulations, 1964. This letter was treated as an appeal. This appeal was heard by three officers working under the respondent Minister, who were assigned by him for the purpose under the proviso to section 6(2) of the Law (quoted at p. 53 20 *post*). The said officers heard the appeal but made no written record of their conclusions; they, instead, gave their opinion orally to the Minister which was to the effect that the needs of the area were duly served and a licence should not be granted to the interested party. The Minister declined to adopt the 25 conclusions of the officers and by his decision (see p. 51 *post*) gave instructions to the licensing authority to grant a road service licence to the interested party. Hence the present recourse.

Counsel for the applicants contended:

30 (a) That the non-use of the appropriate form when making the appeal was a ground for the annulment of the *sub judice* decision.

(b) That the appeal before the Minister was heard and determined on different grounds than the application 35 before the Licensing Authority and, in any event on different grounds than those set out in the appeal; and that there was legal misconception in that the Minister thought that he could examine the facts de novo as he deemed fit.

40 (c) That there had been a breach of a procedural requirement in that contrary to s. 6(2) of Law 16/64 (as amen-

ded), the three officers, to whom the Minister had assigned some of his duties, failed to submit to him their conclusions before he issued his decision on the appeal.

(d) That the *sub judice* decision was not duly reasoned particularly because it was contrary to the conclusions of the three officers. 5

(e) That there was a misconception of fact.

Held, (1) that once the Minister dealt with the appeal on its merits the objection regarding the form is too late in the day 10 to be taken at this stage; and that, in any event the failure in question could not be held to be of such a material nature so as to justify the annulment of the *sub judice* decision.

(2) That there were no grounds on appeal other than those upon which the Licensing Authority examined in the first instance 15 the application of the interested party for a road service licence (pp. 51–52 *post*).

(3) That though it is essential for the propriety of proceedings of public collective organs that they should keep such written records of such proceedings as are required for purposes 20 of good and proper administration (see *MEDCON Construction & Others* v. *The Republic* (1968) 3 C.L.R. 535), in the instant case the records were properly kept but the conclusions reached by the three officers of the Ministry were not recorded and they were orally conveyed to the Minister; and that, accordingly, it 25 cannot be said that the absence of a written record of these conclusions is so inconsistent with the minimum of essential requirements of proper proceedings before a public collective organ so that its relevant decision was vitiated by a basic defect.

(4) That the decision of the Minister was duly reasoned; 30 that there are in it the reasons why he disagrees with the findings of the three officers, which are to the effect that there was the evidence of witnesses who testified that they did not find places in the buses and that they had to be transported standing.

(5) That there was neither a misconception of fact, nor of 35 Law; that there is no misconception of fact whenever the Administration evaluates in substance various and conflicting elements whose evaluation can, in principle, lead to the conclusion to which the Administration arrived; that such evalua-

tion is not controlled in its substance by the recourse for an annulment (see Conclusions from the Jurisprudence of the Greek Council of State p. 268); and that in order to establish a misconception of fact, it must be shown that there was objective
5 non-existence of the facts and circumstances upon which the act is based.

(6) That the decision reached was reasonably open to be taken in the circumstances.

Application dismissed.

10 Cases referred to:

Zittis v. *The Republic* (1973) 3 C.L.R. 37 at pp. 43-44;

MEDCON Construction and Others v. *The Republic* (1968) 3 C.L.R. 535.

Recourse.

15 Recourse against the decision of the respondent to grant a road service licence to the interested party, Iacovos Marangos, in respect of the route Kakopetria-Galata-Evrychou-Nicosia.

L. Papaphilippou with *Ph. Valiandis*, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondent.

20 *A. Maghos*, for the interested party.

Cur. adv. vult.

The following judgment* was delivered by:-

A. LOIZOU, J.: By the present recourse the applicants seek a declaration of the Court that the decision and/or act of the
25 Minister of Communications and Works dated 14. 10. 1974 by which he decided and gave instructions to the Licensing Authority to grant a road service licence to Iacovos Marangou of Kakopetria, (hereinafter referred to as the "interested party"), in respect of the route Kakopetria—Galata—Evrychou—Nicosia,
30 is null and void and of no effect.

By letter dated the 25th February, 1973 (*exh.* 1), the interested party applied to the Chairman of the Licensing Authority for the issue of a licence to him, under the Motor Transport (Regulation) Law, 1964 (Law 16/64) as amended, for a road service
35 licence on the route Kakopetria—Galata—Evrychou—Nicosia, in respect of a new bus, to replace motor-vehicle Reg. No. AX820, which, the applicant claimed to have sold in the year

* For final judgment on appeal see p. 385 in this Part *post*.

1970, as there was a mistake regarding the route for which a road service licence had been obtained, then. On the following day, however, an application in the appropriate form was submitted (*exhibit* 2), in which the vehicle is described as "a new one in replacement of motor bus Reg. No. AX 820 or a new licence" and the description of the route for which the said bus was intended to circulate, is given as Kakopetria—Galata—Evrychou—Nicosia and return. A proper notice was given by the Licensing Authority and applicant No. 1 objected to the granting of such a licence by letter (*exhibit* 3), on the ground that the route was fully served by their company. The Cyprus Professional Motorists Union Ltd., also objected (*exh.* 4) to this application. On the 10th April, 1973, the interested party forwarded to the Licensing Authority a declaration that his application dated 26. 2. 1973 was in respect of the transport of pupils from Kakopetria, Galata to Evrychou and not the boarding of passengers from Evrychou to Nicosia.

The relevant minute of the Licensing Authority of its meeting of the 14th June, 1973 (*exhibit* 7), as far as material reads:-

> " Application of Iacovos Marangos dated 26. 2. 73 for road service licence for a new vehicle on the route Kakopetria—Galata—Evrychou—Nicosia.
>
> Produced documents: Notification (Red 91) objection, (Reds 93, 94), letter of the applicant dated 10. 4. 73 (Red 101) in which it is mentioned that the application refers to the transport of pupils from Kakopetria, Galata and Evrychou and not to the transport of passengers from Evrychou to Nicosia. Report of the District Controller of Transport (Reds 104–102) in which it is mentioned that the applicant stated that he asks this vehicle for the replacement of vehicle under Reg. No. AX 820, which served this route before the Law came into force. The views of the motorists are that the existing buses serve fully this route. P.E.A.A. does not object, as the applicant was, in the past, a motorist. The Licensing Authority having examined the aforesaid application and in the light of the fact that the route Kakopetria—Galata—Evrychou—Nicosia is served fully by the existing buses, dismissed the application".

In the report of the District Controller of Transport (*exh.* 6), reference is made to vehicle AX 820, in respect of which an application had been made for a road service licence on the route

Kakopetria—Nicosia and that the application was examined by the Licensing Authority and dismissed (Red 15, *exh.* 12) on the ground that the area was sufficiently served by the existing buses. The interested party appealed from the said decision, 5 but this appeal was dismissed by the Minister on the 4th November, 1969 (*exh.* 12, Reds 18–24). It is further stated in the said report that on the route of Kakopetria—Nicosia and Galata—Nicosia, there were 15 buses serving the route at frequent intervals.

10 Although reference is made in the minutes of the Licensing Authority to the letter of the applicant dated 10. 4. 1973, yet, the Licensing Authority examined the application as contained in *exhibit* 2, and decided same on its merits.

The dismissal of the interested party's application was com- 15 municated to him by letter dated the 22nd June, 1973 (*exhibit* 8). He was informed, thereby that the Licensing Authority had examined his application at its meeting of the 14th June, 1973 and dismissed same because the route Kakopetria—Galata—Evrychou—Nicosia, was served fully by the existing buses. 20 There is no indication as to when the interested party received this communication.

Under section 6(1) of the Motor Transport (Regulation) Law, 1964, as amended by Law 81/72, anyone who is dissatisfied with a decision of the Licensing Authority issued under that Law, 25 "may, within twenty days from the date of the communication to him of the decision, by written recourse to the Minister in which the reasons in support thereof are set out, challenge the said decision".

The interested party addressed to the Minister a letter dated 30 the 18th July, 1973 (Red 1, in *exh.* 17) to the contents of which I shall refer in due course. There is, however, a note thereon that it should be treated as a recourse and a file be opened in respect thereof. Though it appears that twenty six days elapsed between the dates of these two letters, I am not prepared to say 35 that the recourse to the Minister was out of time, as there is no indication as to when the communication of the decision of the Licensing Authority was actually posted and received by the interested party. The date of the communication by itself, coupled with the fact that no objection was taken at the pro- 40 ceedings before the Minister, a fact that would necessitate an inquiry of the factual aspect pertaining to the issue as to when

the interested party had full knowledge of the decision of the Licensing Authority, is not indicative of the date of the communication of the decision to him. It appears that communication in the context of section 6(1) of the Law should be considered as setting the time limits in motion, not from the time of posting same, but from the time the relevant document is received. (See Tsatsos Recourse for Annulment, 3rd Ed. p. 89).

Under regulation 24(2) of the Motor Transport Regulations, 1964, an appeal to the Minister under section 6(1) of the Law is "made on the form set out in the Fourth Schedule".

It has been argued on behalf of the applicants that the non use of the appropriate form specified by the said regulation was a ground for the annulment of the *sub judice* decision. In my view, once the Minister dealt with the appeal on its merits, this is an objection too late in the day to be taken at this stage, and in any event, the failure in question, could not be held to be of such a material nature so as to justify the annulment of the *sub judice* decision. This is not a material form whose observance was likely to exercise any influence in the determination of the recourse.

An analogous approach is to be found in the case of *Zittis* v. *The Republic* (1973) 3 C.L.R. 37 at pp. 43–44 which I have been asked to distinguish, because, there, the objection was raised by the respondent Authority which was found to have abandoned it by examining the application on the merits, whereas, in the present case, the objection is taken by the applicants who are persons affected by the *sub judice* decision and could raise this matter at any time. I do not subscribe to this approach, as the crux of the matter is whether the non–observance of a form could, possibly, affect the substance of the decision or not.

Relevant also to the procedure before the Minister is the ground that the appeal before him was heard and determined on different grounds than the application before the Licensing Authority and in any event, on different grounds that those set out in the appeal and, further, there was legal misconception, in that the Minister thought that he could examine the facts de novo, as he deemed fit.

The application of the interested party was dealt with by the Licensing Authority as an application for the issue of a road service licence for a new vehicle on the route Kakopetria—Ga-

lata—Evrychou—Nicosia and examined and decided same, as it is stated in its decision, in the light of the fact that the said route was served fully by the existing buses and consequently dismissed the application.

5 The character of the application of the interested party before the Licensing Authority, its examination and determination, show that it was a decision taken under section 8 of Law 16/64. Likewise, the appeal to the Minister, as it appears from the letter, (Red 1 in *exhibit* 17) the gound complained of is the 10 finding of the Licensing Authority that the route in question was fully served and this is what the Minister examined and it was on the ground that the finding of the Licensing Authority was wrong that its decision was reversed by the Minister and the *sub judice* decision was taken by him. The decision of the 15 Minister, dated 14. 11. 1974, reads as follows:

"The ground of the recourse in the present case is that the Licensing Authority refused to grant a rural bus licence to the applicant, because the route Kakopetria—Nicosia is fully served by the existing buses, whereas the applicant 20 alleges that it is not served satisfactorily. For this purpose, the applicant called witnesses and testified himself in support of his allegations. Also, the Solea Car Company called witnesses in order to rebut the allegations of the applicant. Among the witnesses for the Solea Car Com- 25 pany was Kyriacos Andreou, who admitted that he was a relative of its shareholders. The witnesses, *inter alia*, mentioned that in certain cases, not only they did not find a seat in the buses, but they were all carried standing and in some instances the behaviour of the drivers was, to some 30 extent, arbitrary. From the relevant file it appears that a few months after the application of the applicant and its dismissal, namely, the 21st January, 1974, Solea Car Company was allowed to convert bus No. GX 432 from 30 seats to 55 seats. This fact strengthens the allegations of the 35 applicant that the route was such as to need an increase of the seats for the fuller service of the passengers from Kakopetria to Nicosia. Hence, I believe that the application of the applicant who was a professional driver for many years was justified and consequently the recourse is allowed and 40 the Licensing Authority instructed to grant rural bus licence on a route as applied".

Looking at the totality of the case, I cannot help coming to

the conclusion that there were no grounds on appeal other than those upon which the Licensing Authority examined in the first instance the application of the interested party for a road service licence for the route Kakopetria—Galata—Evrychou—Nicosia and return. It appears that the statement of the applicant contained in *exhibit* 5 that his application dated the 26th February, 1973, was in respect of the transport of pupils from Kakopetria—Galata to Evrychou and not the boarding of passengers from Evrychou to Nicosia, was not treated as an abandonment of the application for a licence in respect of a route as originally applied for and the Licensing Authority carried out an inquiry into the needs of the whole route and not for the transport of pupils. Furthermore, the statement (*exhibit* 5) was unequivocably withdrawn at the hearing of the appeal to the Minister (Red 9, *exhibit* 17) and the complaint of the interested party for the decision of the Licensing Authority was regarding the refusal to give him a licence for the whole route Kakopetria—Nicosia, and that is the aspect investigated by the Minister.

By letter dated the 30th August, 1974 (*exh.* 17, Red 3) the interested party was informed that he might attend the office of Mr. P. PapaMichael of the Department of Road Transport, on the 7th September, 1974, in order to make his representations regarding his appeal. Copies of this letter were sent to the secretary of each of the two Motorists Professional Organizations which had participated in the proceedings before the Licensing Authority and they were requested "to be present at the examination of this appeal". The hearing before Mr. PapaMichael commenced on the 7th September, 1974 and continued on several days thereafter. The parties were represented by counsel and legal arguments and evidence were heard (*exhibit* 17, Reds 7–28).

As it appears from the minutes kept for the last hearing, Mr. I. Rouvis mentioned at its commencement, that it had been decided that the recourse be heard ab initio. Objection was raised to this course by counsel representing applicant 1, *inter alia*, to the effect that the officer who heard the case until then, should continue hearing same. This was accepted by Mr. Rouvis and Mr. PapaMichael presided at the meeting and heard the rest of the case.

There is no record, of the conclusion if any, of the officers or Committee of officers to whom the Minister assigned the duty of examining the witnesses and hearing counsel.

It had been the case for the applicant that these officers to whom the Minister had assigned some of his duties had to submit to him their conclusions before he issued his decision on the recourse, and that this failure should lead to the annulment of 5 the *sub judice* decision, on the ground that there had been a breach of procedural requirement. This ground is based on the provisions of section 6 of the Motor Transport (Regulation) Law, 1964, (Law No. 16/64), as amended by section 3 of the Motor Transport (Regulation) (Amendment No. 2) Law of 10 1972 (Law No. 81/72) and particularly section 6(2) thereof, which reads as follows:

> " The Minister examines the recourse made to him without undue delay and after hearing or giving the opportunity to the applicant to support the gounds upon which the re- 15 course is based, decides on it, and communicates forthwith his decision to the applicant:
>
> Provided that the Minister may assign to officer or officers or committee of officers of his Ministry the examination of certain matters arising in the recourse and submit 20 to him the conclusions of such examination before the issuing by the Minister of his decision on the recourse".

Whilst considering this case, I came across material in the file (*exhibit* 17) especially minute 1 in the Minute Sheet, as well as the minutes of a meeting in which the Minister participated, 25 dated the 10th December, 1974, which called for explanation and comment on the part of the parties to these proceedings. Hence, the case was fixed for re-hearing on the aforesaid issue and any other issues incidental thereto. As it turned out the meeting of the 10th December has no bearing in this case, but 30 the evidence heard proved very useful.

Mr. Iacovos Rouvis, Administrative Officer in the Ministry of Communications and Works, was called and gave evidence on relevant issues. Minute 1, in *exhibit* 17, is addressed to the Transport Control Officer, and was written by him upon receipt 35 of the recourse of the interested party. As a result of this minute, a report (Red 2, in *exhibit* 17) was filed.

The hearing commenced by Mr. PapaMichael, was in accordance with the standing practice at the Ministry. When a new Minister, Mr. Nicos Pattichis took over, he introduced a new 40 practice. He could hear personally a recourse and give his

decision himself, immediately afterwards. He also asked a Committee, consisting of Mr. PapaMichael, Mr. Rouvis and Mrs. Atteshli to sit with him at the hearing of an appeal, so that they would learn how to hold these inquiries, his passed judicial experience, obviously, being put into useful effect, and in the future, these officers would examine themselves these recourses under the proviso. The proceedings were recorded by a stenographer and at the conclusion of the case and after the minutes were transcribed, they would go all into the office of the Minister, give their opinions and he would give his decision immediately. In the instant case, Mr. Pattichis decided to hear the case himself, but in view of an extraordinary meeting of the Council of Ministers, he asked the said three officers to hear this recourse. The relevant minutes are to be found as Reds 21-28 in *exh.* 17. They then saw the Minister who asked their opinion whether the licence should be granted to the interested party or not, after he read the minutes. The three officers in question, gave their opinion, to the effect that the needs of the area were duly served and a licence should not be granted to the interested party. Their conclusions were not submitted in writing, but they did gave their conclusions, as stated by Mr. Rouvis in evidence and it is not in dispute. The Minister then issued his decision, the contents of which have been set out hereinabove verbatim.

It is clear that the Minister invoked the proviso and that he did hear the conclusions reached by the three officers of his Ministry, who were assigned to examine matters arising in the recourse, before issuing his decision. Consequently, the complaint of the applicants which emanated from the fact that there was no record that the conclusions of these three officers were submitted to the Minister before issuing his decision, can no longer stand. It has been stated in the case of *MEDCON Construction and others* v. *The Republic of Cyprus* (1968) 3 C.L.R. p. 535, "that it is essential for the propriety of proceedings of public collective organs that they should keep such written records of such proceedings as are required for purposes of good and proper administration".

In the instant case, the records were properly kept but the conclusions were not recorded, which consisted, in the opinions expressed by the three officers already referred to above and in the circumstances, I cannot say that this absence of a written record of these conclusions is "so inconsistent with the minimum

of essential requirements of proper proceedings before a public collective organ" that its relevant decision was vitiated by a basic defect.

It was argued that the decision of the Minister being contrary to the conclusions of the three officers in question, made the ground of law relied upon by the applicant for lack of due reasoning, stronger now with this evidence adduced, than what was before. I do not, with respect, subscribe to that view, because the decision of the Minister was duly reasoned. There are in it, the reasons why he disagrees with the findings of the three officers, which are to the effect that there was the evidence of witnesses who testified that they did not find places in the buses and that they had to be transported standing and that the fact that a permit was given to the applicant Company that bus Reg. No. GX 432, be adapted so that it would have 55 seats instead of 30, supported the allegations of the applicants that the route was such as to need an increase in the seats for the fuller service of passengers for the route Kakopetria—Nicosia. There is, in my view, neither a misconception of fact, nor of law. There is no misconception of fact whenever the Administration evaluates in substance various and conflicting elements whose evaluation can in principle, lead to the conclusion to which the Administration arrived. Such evaluation is not controlled in its substance by the recourse for an annulment. (See Conclusions from the Jurisprudence of the Greek Council of State, p. 268). In order to establish a misconception of fact, it must be shown that there was objective non-existence of the facts and circumstances upon which the act is based. Therefore, the decision reached was reasonably open to be taken, in the circumstances.

Having dealt with the grounds of law raised and being satisfied that in the present case there has been neither wrong procedure nor a misconception of fact and that there was a proper exercise of administrative discretion by the Minister and the decision was duly reasoned, the present recourse is dismissed. In the circumstances, there will be no order as to costs.

Application dismissed. No order as to costs.