

1977

May 6

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COSTAKIS
NEOPHYTOU
v.
REPUBLIC
(MINISTRY OF
COMMUNICA-
TIONS AND
WORKS)

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

COSTAKIS NEOPHYTOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF COMMUNICATIONS
AND WORKS AND ANOTHER,

Respondents.

(Case No. 277/69).

*Administrative Law—Recourse under Article 146 of the Constitu-
tion—Absence of counsel for respondents—Hearing may pro-
ceed in his absence—Lambrou v. The Republic (1970) 3
C.L.R. 75 at p. 79 followed.*

*Motor Transport—“Carrier’s A” Licence—Revocation of, based
on regulation 12A of the Motor Transport (Regulation) Regu-
lations, 1964 (as amended)—Said regulation invalid—Sub ju-
dice revocation annulled—Spyrou and Others (No. 2) v. The
Republic (1973) 3 C.L.R. 627 followed.*

*Administrative Law—Act based on regulation invalidly enacted—
Annulled.*

The sole issue in this recourse, which was directed against the decision of the respondents to revoke a “Carrier’s A” licence granted to the applicant, was whether regulation 12A of the Motor Transport (Regulation) Regulations, 1964 (as amended) was valid. The case was originally fixed for hearing on March 10, 1977 but had to be adjourned till April 29, 1977 because of the non-appearance of counsel for respondents, though he had been duly notified. On the latter date, too, counsel for respondents did not appear, even though he was again duly notified and the Court decided to go ahead with the hearing of the case in his absence.

*Held, (I) on the question arising because of the absence of
counsel for the respondents:*

5 That the course of hearing the case in the absence of counsel for the respondents was a proper one in view of the nature of a recourse under Article 146 of the Constitution such as the present one (*Lambrou v. Republic* (1970) 3 C.L.R. 75 followed).

Held, (II) on the merits of the recourse:

10 That in this case it is sufficiently clear from the material before this Court, and, especially, from the wording of the *sub judice* decision, that it was based on regulation 12A of the Motor Transport (Regulation) Regulations, 1964 (as amended); and that as such regulation was found to be invalid in the case of *Spyrou and Others (No. 2) v. Republic* (1973) 3 C.L.R. 627 the only proper course for this Court is to annul the decision complained of by the present applicant.

15 *Sub judice decision annulled.*

Cases referred to:

Lambrou v. Republic (1970) 3 C.L.R. 75 at p. 79;

Spyrou and Others (No. 2) v. Republic (1973) 3 C.L.R. 627.

Recourse.

20 Recourse against the decision of the respondent Licencing Authority to revoke a "Carrier's A" licence in respect of a motor lorry of the applicant.

N. Nicolaou, for the applicant.

No appearance for the respondent.

25 *Cur. adv. vult.*

The following judgment was delivered by:-

30 TRIANTAFYLIDIS, P.: By this recourse the applicant complains against the decision of the Licencing Authority, respondent 2, which comes under the Ministry of Communications and Works, respondent 1, to revoke a "Carrier's A" licence in respect of his motor-lorry BA998.

35 The said decision was communicated to him by letter of the chairman of respondent 2, dated June 17, 1969 (see *exhibit 2*); the reason for the revocation was that though his vehicle was being put into circulation for the first time, it was not newly built and unused.

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The present recourse was filed on August 29, 1969, and was first fixed for hearing on December 9, 1969. On that date counsel for the parties agreed that, as the issue of the validity of regulation 12A of the Motor Transport (Regulation) Regulations, 1964—(as amended by the Motor Transport (Regulation) (Amending) Regulations, 1965, and by the Motor Transport (Regulation) (Amending) Regulations, 1967)—which is *sub judice* in the present case, was already being examined in another case, which was then being heard, the present case ought to be adjourned sine die pending the outcome of that case. Judgment in that other case has not yet been delivered; but, in the meantime, the issue of the validity of the said regulation 12A was determined in yet another case (*Spyrou and Others (No. 2) v. The Republic*, (1973) 3 C.L.R. 627), and counsel for applicant has applied that the present case should proceed to be determined, too; consequently, it has been heard on April 29, 1977, and judgment has been reserved until today.

The case was originally fixed for hearing on March 10, 1977, but had to be adjourned till April 29, 1977, because of the non-appearance of counsel for respondents, though he had been duly notified. On the latter date, too, counsel for respondents did not appear, even though he was again duly notified, and I decided to go ahead with the hearing of this case in his absence.

Such a course was proper, in my opinion, in view of the nature of a recourse under Article 146 of the Constitution, such as the present one; in *Lambrou v. The Republic*, (1970) 3 C.L.R. 75 this Court had this to say in a similar situation (at p. 79):-

“A recourse under a jurisdiction such as that provided for under Article 146 of the Constitution is made, in effect, against the act or decision which is its subject-matter; it is not made as against any party, as such (see, also, *Cyprus Transport Co. Ltd. and Another (No. 1) and The Republic* (1969) 3 C.L.R. 501). It follows from this premise that absence of any party need not prevent the Court from examining the validity of the subject-matter of a recourse (see *Tsatsos on the Recourse for Annulment*, 2nd edition, p. 238)”.

The corresponding passage from Tsatsos on the Re-
course for Annulment is now to be found in the 3rd edi-
tion of such textbook, at p. 369.

5 In the present case it is sufficiently clear from the ma-
terial before me, and, especially, from the wording of the
sub judice decision, that it was based on the aforementio-
ned regulation 12A, and as such regulation was found to
be invalid in the *Spyrou* case, *supra*, the only proper
10 course for me is to annul the decision complained of by
the present applicant.

It is open, of course, to the respondents to reconsider
the position, in this matter, afresh, and to reach any de-
cision in connection with it, which is warranted in the light
of the law and of the true facts of the case.

15 In view of the circumstances of the case and; especially,
because of the non-appearance of counsel for the respon-
dents, I award to counsel for applicant, and against the
Republic, £30 costs.

Sub judice decision annulled.

Order for costs as aforesaid.

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