

1983 March 11

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PETROS PETRIDES,

Applicant.

v.

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

Respondent.

(Case No. 409/80).

Motor transport—Road service licence—Refusal to grant by Permits Authority—Hierarchical recourse to Minister—Decision of Minister allowing the recourse, reasonably open to him in the light of the material before him—Sections 6 and 9 of the Road Transport Regulation Law, 1964 (Law 16/64 as amended).

5

Administrative Law—Administrative acts or decisions—Reasoning—Though rather laconic it does clearly convey the reason why the sub judice decision was taken—Moreover reasoning therefor supplemented from the material contained in the relevant files.

The applicant who was the owner of a taxi based at Flassou village applied to the Permits Authority for a road service licence to run a second taxi in the same area after the interested party and a third person had submitted similar applications. All three applications were dismissed by the Permits Authority on the ground that the needs of the area were adequately served by the taxi which the applicant was already operating. The interested party challenged the decision of the Permits Authority by means of a hierarchical recourse to the Minister, under s.6 of the Road Transport Regulation Law, 1964 (Law 16/64 as amended), who allowed the recourse. Hence this recourse by the applicant.

10

15

20

Counsel for the applicant mainly contended:

- (a) That the sub judice decision was taken in excess or abuse of powers in that the Minister disregarded the

5 provisions of s.9 of the law (as set out in s.5(4)(a) of Law 60/75), which provides the criteria which the Permits Authority should take into consideration in the exercise of its discretionary powers in granting or refusing an application for a road service licence, in that he did not take into consideration the needs of the area and whether such needs were adequately served by the existing taxi of the applicant.

(b) That the sub judge decision was not duly reasoned.

10 *Held*, (1) that in the light of the material which the Minister had before him it cannot be said either that he did not have in mind or did not take into consideration all relevant criteria or that it was not reasonably open to him to arrive at the sub judge decision; accordingly contention (a) should fail.

15 (2) That though the sub judge decision is a rather laconic decision it does clearly convey the reason why the recourse was allowed i.e. the better service of the inhabitants of the area concerned; and that bearing in mind that the reasoning behind the decision may legitimately be supplemented from the material contained in the files which in fact do contain all the reasons for such decision contention (b) should, also, fail.

Application dismissed.

Recourse.

25 Recourse against the decision of the respondent allowing the hierarchical recourse lodged by the interested party against the decision of the Permits Authority whereby applicants application for a licence to operate a rural taxi based at Flassou village, was dismissed.

30 *A. Eftychiou*, for the applicant.

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

Chr. Triantafyllides, for the interested party.

Cur. adv. vult.

35 L. LOIZOU, J. read the following judgment. By the present recourse the applicant in effect challenges the correctness of the decision of the Minister of Communications and Works by which he allowed the hierarchical recourse lodged by the

interested party against the decision of the Permits Authority dismissing his application for a licence to operate a rural taxi based at Flassou village.

The undisputed facts of the case are briefly as follows:

The applicant is the owner of a rural taxi under registration No. TJR 460 based at Flassou village. On the 21st April, 1980, he applied to the Permits Authority for a road service licence to run a second taxi in the same area after the interested party and a third person, who is not a party in these proceedings, had submitted similar applications. All three applications were dismissed by the Permits Authority on the ground that the needs of the area were adequately served by the taxi which the applicant was already operating. The interested party being dissatisfied by the decision of the Permits Authority filed a recourse with the Minister under s.6 of the Road Transport Regulation Law 16/64 as amended by s.3 of Law 81/72 (now repealed by Law 9 of 1982).

The present recourse was based on a number of grounds of law but at the hearing learned counsel appearing for the applicant limited his case to three grounds: (a) That the decision of the Minister was taken contrary to the provisions of s. 6(2) of Law 81/72 in that the Minister had no power under the relevant law to issue a road service licence himself directly to the interested party; (b) that the decision was taken in excess or abuse of powers and (c) that it was not duly reasoned.

In arguing the first ground learned counsel relied on a statement in paragraph 4 of the facts in support of the Opposition where it is stated, in relation to the hierarchical recourse to the Minister, that the Minister by an order made granted the licence applied for. But this is not a correct statement of fact. As it appears from the decision the Minister, having heard the case, came to the conclusion that for the better service of the village of Flassou the issue of the licence applied for was justified and for this reason he allowed the recourse. What is more it is clear from blue 23 in exhibit 4 that it was the Permits Authority which issued the road service licence to the interested party in consequence of the Minister's decision and not the Minister himself.

In the light of the above the argument advanced by learned

counsel for the applicant, independently of its merits had it been based on correct facts, was obviously based on an erroneous assumption as to the facts and is devoid of any substance.

5 The next ground argued in support of the recourse is that the decision was taken in excess or abuse of powers. With regard to this ground counsel submitted that the Minister disregarded the provisions of s.9 of the law (as set out in s.5(4)(a) of Law 60/75), which provides the criteria which the Permits Authority should take into consideration in the exercise of its discretionary powers in granting or refusing an application for a road service licence, in that he did not take into consideration the needs of the area and whether such needs were adequately served by the existing taxi of the applicant. Learned counsel explained that the Minister did not take into consideration the report made by the District Transport Inspector to the Licensing Authority although such report was before him when taking his decision and he failed to make an inquiry of his own for the purposes of the recourse before him. As it appears from the evidence on record and the uncontested statements made in the course of the hearing the Minister had before him all the material that the Licensing Authority had in taking their decision and in addition he had a report prepared by the department of Land Transport made to the Minister for the purposes of the hierarchical recourse and also the evidence of the interested party in the course of the hearing of that recourse. As it transpires from the above the material upon which the Minister considered and decided the recourse was that although the new taxi would be based at Flassou the area of operation was the area comprising the two villages Linou and Flassou which are considered as forming one complex; that the number of the inhabitants of the two villages were in the region of 800 or 900 including the refugees. Furthermore, there was evidence before the Minister at the hearing of the hierarchical recourse that with the existing taxi of the applicant the needs of the area were not adequately served and that in fact prospective passengers had to ring for taxis from the villages of Kakopetria and Evrychou; and that in addition to the inhabitants of the two villages the taxi had to serve a military camp at Linou village. It is to be noted that the police were also consulted in the matter and they reported (blue 6 in exhibit 4) that the then existing taxi of the applicant TJR 460 was not

sufficient to serve the needs of the inhabitants especially in view of the fact that there was not available a bus service during the whole day.

In the light of the above it cannot be said either that the Minister did not have in mind or did not take into consideration all relevant criteria or that it was not reasonably open to him to arrive at the decision challenged by this recourse.

Finally it was argued that the decision was not duly reasoned. It is a fact that it is a rather laconic decision but it does, in my view, clearly convey the reason why the recourse was allowed i.e. the better service of the inhabitants of the area concerned; and bearing in mind that the reasoning behind the decision may legitimately be supplemented from the material contained in the files which in fact, as stated earlier on, do contain all the reasons for such decision this ground also fails.

For the above reasons I have come to the conclusion that it was reasonably open to the respondent to arrive at this decision and that none of the grounds raised and argued justifies the intervention of this Court.

In the result this recourse fails and is hereby dismissed. With regard to costs I make no order as between the applicant and the respondent but in the circumstances I consider it reasonable that the applicant should pay £25 towards the costs of the interested party.

Recourse dismissed. Order for costs as above.