

1985 June 7

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

KYRIACOS CONSTANTINOU,

Applicant,

v.

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

Respondent.

(Case No. 3/80).

Motor Transport—Carrier's "A" licence—Under the Motor Transport Regulation Law, 1964 (Law 16/64)—Equivalent to a "T" licence under the previous Law—Licence alone cannot be owned without a vehicle—Application in 1979 for an "A" licence in substitution for a "T" licence in respect of a vehicle deleted from the Register in 1966—Vehicle in question not having in force a licence "A" as provided by the second proviso to section 10(2) of Law 16/64 at the time of the application—And reference of this fact existing in the file of the administration—Though the application was turned down on the ground that the vehicle in question was never a licence carrier "A" the existence of the said reference in the file of the administration can form the basis of a proper legal reasoning of the sub-judice decision—Section 17 of Law 16/64.

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Administrative Law—Administrative acts or decisions—Reasoning—Wrong legal reasoning does not necessarily lead to annulment if the decision can have other legal support.

The applicant was, since 1954, the owner of a lorry, No. T 3715 which was licensed as a public service motor vehicle in accordance with the provisions of the Motor Vehicles and Road Traffic Law (Cap. 332) and the Re-

5 regulations made thereunder. In December, 1963, this vehicle was enclaved at Kioneli village during the inter-communal troubles and has not been recovered by the applicant. As a result the applicant did not renew the circulation licence of his said lorry which was eventually deleted from the Register on 31st December, 1966.

10 On the 2nd January, 1979, the applicant applied for the grant of an "A" licence in respect of a used lorry imported from the United Kingdom, in substitution for his said vehicle No. T 3715. The Licensing Authority dismissed the application because vehicle 3715 was never a licensed carrier "A" and it concerned therefore the grant of a new carrier "A" licence; and because the urban traffic area of Nicosia was fully served by the existing licensed carriers "A".

15 The applicant appealed by way of a hierarchical recourse to the Minister of Communications and Works against the above decision of the Licensing Authority and the Minister dismissed the recourse having arrived at the conclusion "that the Licensing Authority rightly rejected the granting of the licence applied for in that vehicle No. 3715 has never been a licensed carrier 'A' ". Hence this recourse.

20 At the hearing of the recourse Counsel for the respondents conceded that the subject-matter lorry was in fact licensed as a "A" vehicle under the Law in force prior to the enactment of the Motor Transport (Regulation) Law, 1964 (No. 16/64) and that the letter "T" was equivalent to the "A" under the 1964 Law.

25 *Held*, that since the subject matter lorry was licensed as a "T" vehicle under the previous legislation; that since "T" was equivalent to "A" under the 1964 Law; and that since the application was dismissed because the vehicle was never a licensed carrier "A" there is a misconception of fact on the part of the authority as well as the Minister which has led to wrong legal reasoning; that wrong legal reasoning does not necessarily lead to the annulment if the decision can have other legal support.

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40 (2) That since there was not in force a licence "A" in respect of the said vehicle as provided by the second

proviso to section 10(2) of Law 16/64; that since the vehicle had been deleted from the Register since 1966; and that since the licence alone cannot be owned without a vehicle, the carrier "A" licence could not have existed after such deletion; and that, therefore, irrespective of whether the said vehicle satisfied the provisions of s.17 and qualified for a licence upon the enactment of Law 16 of 1964, it did not, in any event, possess a licence in force in 1979, the time of the application, so as to entitle the applicant to have it substituted with another vehicle and to the transfer of its licence to the new vehicle.

(3) That the fact that the said vehicle did not possess at the time of the application in question a carrier's "A" licence in force appears, also, in the report of the Transport Controller and the existence of such a reference in the file of the administration can form the basis of a proper legal reasoning of the sub judge decision; and that, therefore, the sub judge decision has other legal support in as far as the application in question was treated as one for a licence under the provisions of s.17 and the second proviso to s.10(2) of the Law is concerned and the recourse relating to this part of the decision must, therefore, fail.

Held, further, that the part of the decision treating the application as one for a new carrier "A" licence is not challenged by the recourse as being wrong in any way and that, therefore, this part of the decision cannot be disturbed either.

Application dismissed.

Cases referred to:

Papadopoulos v. Republic (1968) 3 C.L.R. 662 at p. 674;

Anthoupolis v. Republic (1980) 3 C.L.R. 296 at p. 302-303;

Spyrou v. Republic (1973) 3 C.L.R. 478 at p. 484;

Christodoulou v. Republic (1972) 3 C.L.R. 290 at p. 292;

Decisions of the Greek Council of State Nos. 666/36, 1606/50 and 1850/50.

Recourse.

Recourse against the dismissal by the respondent of applicant's hierarchical recourse which challenges the refusal of the licensing authority to grant to him a carrier's
5 "A" licence in respect of a vehicle in substitution of his old one.

P. Lyssandrou, for the applicant.

M. Florentzos, Senior Counsel of the Republic, for the respondent.

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Cur. adv. vult.

L. LOIZOU J. read the following judgment. The applicant by this recourse challenges the decision of the respondent Minister of Communications and Werks, by which his hierarchical recourse against the refusal of the Licensing
15 Authority to grant to him a carrier's "A" licence in respect of a vehicle in substitution for his old one under Registration No. T3715, was dismissed.

The applicant was, since 1954, the owner of a lorry, No. T3715 which was licensed as a public service motor
20 vehicle in accordance with the provisions of the Motor Vehicles and Road Traffic Law, (Cap. 332) and the Regulations made thereunder (Reg. 8(3)) of the Motor Vehicles Regulations 1951 to 1954. In December, 1963, this vehicle was enclaved at Kioneli village during the intercommunal
25 troubles and has not been recovered by the applicant. As a result the applicant did not renew the circulation licence of his said lorry which was eventually deleted from the Register on 31st December, 1966. Applicant was notified
30 about this by a note (Form F 2640) dated 31st March, 1967 and he eventually, in reply, informed the Registrar of Motor Vehicles by an endorsement on the aforesaid form, made on the 31st May, 1967, that the said vehicle was enclaved in the Turkish Quarter.

The applicant applied on the 2nd January, 1979, for
35 the grant of an "A" licence in respect of a used lorry imported from the United Kingdom, in substitution for his said vehicle No. T3715. The Transport Controller in his report dated 12th March, 1979 (exhibit 1), stated, inter

alia, that there was no file of the vehicle in question with the office of the Registrar of Motor Vehicles and also that vehicle T3715 did not possess a carrier's "A" licence in force and it was not, therefore, possible to grant a licence for its substitution. With regard to the needs of Nicosia for carriers "A" the Transport Controller stated that there were 501 carriers and that other similar applications had been dismissed. 5

The Licensing Authority met on the 27th March, 1979, and decided to dismiss the application because: 10

"... vehicle 3715 was never a licensed carrier 'A' and it concerns therefore the grant of a new carrier 'A' licence. Moreover the Urban traffic area of Nicosia is fully served by the existing licensed carriers 'A'. 15

The Licensing Authority believes that the granting of the present licence is not necessary or possible in the public interest."

The applicant appealed, by way of a hierarchical recourse, to the Minister of Communications & Works against the above decision of the Licensing Authority. 20

The Minister heard the applicant on the 2nd October, 1979 (exhibit 2) and decided, on the 27th October, 1979, to dismiss his recourse. His decision reads as follows (exhibit 3): 25

"Having taken into consideration all material of the case put before me the legislation in force and the representations of the applicant, I arrived at the conclusion that the Licensing Authority rightly rejected the granting of the licence applied for in that vehicle No. 3715 has never been a licensed carrier 'A'. 30

2. The present recourse is therefore dismissed."

The above decision was communicated to the applicant by letter dated the 7th November, 1979, and as a result this recourse was made. 35

Before the case came up for hearing it transpired that the file of the subject-matter lorry had been traced and that it was in fact licensed as a "T" vehicle under the Law

in force prior to the enactment of the Motor Transport (Regulation) Law, 1964 (No. 16/64). Counsel for the respondents conceded that the letter "T" was equivalent to the "A" under the 1964 Law.

5 Counsel for the applicant argued that both the Licensing Authority and the Minister were labouring under the wrong impression that the old vehicle of the applicant was not licensed under the Law and as a result failed to direct their minds to the provisions of s. 10(2) and s. 17 of the
10 Law, in accordance with which they were bound to grant to the applicant the licence applied for and submitted that the sub judice decision was bad for misconception both of Law and fact.

Counsel for the respondent submitted that the sub judice
15 decision can be supported by other legal reasoning. In this respect he maintained that since the vehicle in question was lost in December, 1963, it was not in existence in November, 1964, when Law 16/64 was enacted. Law 16/64 came into operation on the 19th November, 1964. (Not.
20 483 published in Supplement No. 3 to the Gazette of the 12th November, 1964). Section 17 of Law 16/64, counsel argued, was intended to grant licences to vehicles which were in existence and in circulation in November, 1964, and not to persons without vehicles. Counsel further
25 argued that even if it were to be held that the vehicle of the applicant had acquired a licence "A" in 1964, the duration of such a licence, under s. 11 of the Law, would be for only one year, and as it was never renewed it follows that in 1979, when applicant made his application
30 for the substitution of his vehicle, he had neither a vehicle nor a licence in force in respect of it, and was not, therefore, entitled to its substitution. The application was examined as a new one and was dismissed because the needs of the area were fully satisfied by the existing licensed carriers.

35 The application of the applicant of the 2nd January, 1979, concerned the substitution for his vehicle T3715 of another and the grant to the new vehicle of a carrier's "A" licence to which both the Licensing Authority and the Minister replied that his application as above was dis-
40 missed because vehicle 3715 was never a licensed carrier "A".

In this respect it is obvious that there is a misconception of fact on the part of the Authority as well as the Minister which has led to wrong legal reasoning. The Authority, however, proceeded further and considered the application as being for a new licence and rejected it on the ground that the needs of the area were sufficiently served by the existing licensed carriers "A". 5

But wrong legal reasoning does not necessarily lead to annulment if the decision can have other legal support. (See, Kyriakopoulos on Greek Administrative Law, vol. B, p. 387; and Decisions 666/36, 1606/50 and 1850/50 of the Greek Council of State. To the same effect are also the cases of *Papadopoulos v. The Republic* (1968) 3 C.L.R. 662, 674; *Anthoupolis v. The Republic* (1980) 3 C.L.R. 296, 302-303 and *Spyrou v. The Republic* (1973) 3 C.L.R. 478 where it was held (at p. 484) that: 10 15

"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)". 20 25

In the light of the above authorities I have to consider whether the sub judice decision has other legal support. The question to be decided is whether in view of the fact that the vehicle in question was licensed as a public service vehicle under the Law in force prior to the enactment of Law 16/64 the respondent (and the Licensing Authority) were bound to issue a carrier's "A" licence for applicant's vehicle in substitution for his old one. In other words whether the fact that the said vehicle was licensed as a public service vehicle under the previous Law inevitably brings it within the provisions of the second proviso to s. 10(2) of Law 16/64. 30 35

This proviso which governs the granting of "A" licences to vehicles in substitution for others put out of circula- 40

tion was introduced by s. 7 of Law 60/75 and reads as follows:

5 «Νοεῖται περαιτέρω ὅτι ὡς ἄκις φορτηγὸν ὄχημα ἀναφορικῶς πρὸς τὸ ὁποῖον ὑπάρχει ἐν ἰσχύϊ ἄδεια «Α» τεθῆ ἔκτος κυκλοφορίας, ὁ ἰδιοκτῆτης τοῦτου δικαιοῦται, τηρουμένων τῶν διατάξεων τοῦ παρόντος ἢ παντὸς ἑτέρου οἰκείου νόμου, νὰ τύχη ἀδείας «Α» ἀναφορικῶς πρὸς ἕτερον ὄχημα δι' οὗ προτίθεται νὰ ἀντικαταστήσῃ τὸ τοιοῦτον ὄχημα διὰ τὸ αὐτὸ ἢ μικρότερον βάρους ἀγαθῶν τὸ ὁποῖον τὸ ἀντικατασταθησόμενον ὄχημα ἠδύνατο νὰ μεταφέρει».

15 (Provided further that when a goods vehicle in respect of which there is in force a licence "A" is put out of circulation, its owner is entitled, subject to the provisions of this or any other relevant Law, to be granted an "A" licence in respect of another vehicle with which he intends to substitute such vehicle for the same or a lesser weight of goods which the vehicle to be substituted could carry).

20 The part of the proviso the most material for the purposes of this case, are the words "ὑπάρχει ἐν ἰσχύϊ ἄδεια 'Α'" (there is in force a licence "A"). It is a fact that no such licence was in existence in respect of the said vehicle in 1979, the time when the applicant applied for the licence in question. The vehicle had been deleted from the Register in 1966 and since the licence alone cannot be owned without a vehicle (vide *Christodoulou v. The Republic* (1972) 3 C.L.R. 290, 292), the carrier "A" licence could not have existed after such deletion.

30 So, irrespective of whether the said vehicle satisfied the provisions of s. 17 and qualified for a licence upon the enactment of Law 16 of 1964, it did not, in any event, possess a licence in force in 1979, the time of the application, so as to entitle the applicant to have it substituted with another vehicle and to the transfer of its licence to the new vehicle.

40 Counsel for the applicant argued that the old vehicle should not have been deleted from the Register as no evidence at all existed as to whether it had been destroyed and should have been treated as still existing. This, however,

is an issue that concerns another administrative act, that of the deletion of the said vehicle, and although the applicant was informed about it he did not challenge it by a recourse then, but simply chose to inform the authorities concerned that it had been enclaved in the Turkish Quarter. 5

The fact that the vehicle T3715 did not possess at the time of the application in question, a carrier's "A" licence in force appears also in the report of the Transport Controller, dated 12th March, 1979 (exhibit 1), at the bottom of the first page, where it is stated that- 10

"Vehicle No. 3715 does not possess a carrier's "A" licence in force and a licence for its substitution by another vehicle is not therefore possible."

The existence of the above note in the file of the administration can, in my view, form the basis of a proper legal reasoning of the sub judge decision. 15

In view of the position as stated above, I find that the sub judge decision has other legal support in as far as the application in question was treated as one for a licence under the provisions of s. 17 and the second proviso to s. 10(2) of the Law is concerned and the recourse relating to this part of the decision must, therefore, fail. 20

With regard to the part of the decision of the Authority whereby it treated the application as one for a new carrier "A" licence and dismissed it on the ground that the area was sufficiently served by the existing licensed carriers "A" its correctness is not challenged by the recourse as being wrong in any way and I, therefore, must hold that this part of the decision cannot be disturbed either. 25 30

In the result this recourse fails and it is hereby dismissed. There will be no order as to costs.

*Recourse dismissed.
No order as to costs.*