

1985 October 3

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

SOZOS IOANNOU,

*Applicant,*

v.

1. THE MINISTER OF COMMUNICATIONS  
AND WORKS,
2. THE DIRECTOR OF INLAND TRANSPORT,
3. SENIOR INSPECTOR OF MOTOR VEHICLES,

*Respondents.*

*(Case No. 39/82).*

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5 *Administrative Law—Administrative act—Reasoning—Due in-*  
*quiry—Refusal to grant applicant's application to fix an*  
*additional seat in his van for the transportation of pas-*  
*sengers—On the grounds that such an addition would be*  
*dangerous from "the safety point of view" and that "the*  
*dimensions of the seats would not correspond to the pro-*  
*visions of the respective legislation"—Nothing put forward*  
*to substantiate the second ground—Reasoning insufficient*  
*as being of a general character—And there is nothing in*  
10 *the file of the administration to supplement it—Further no*  
*due inquiry was carried out as to whether the fixing of the*  
*seat will be a source of danger—Sub judice decision an-*  
*nulled.*

15 *Administrative Law—Administrative act—The legality of the*  
*sub judice decision should be judged on the basis of the*  
*regulations in force at the time it was taken and not on*  
*the regulations as amended thereafter.*

20 Applicant is a farmer and owner of a car Reg. No.  
MS 296 Volks Wagen, diesel, van type registered on 29.9.  
1981 as a "goods vehicle-light" and licensed as such. On  
the 12.11.1981 applicant applied for a permit to fix an

additional seat on the said car for the transportation of labourers for agricultural purposes. This application was dismissed on the following grounds, namely that the addition of the seat applied for would be "dangerous from the safety point of view" and that in such a case "the dimensions of the seats will not correspond to the provisions of the respective legislation" Hence the present recourse. 5

The evidence adduced showed that the only differences between a Volks Wagen, van type and a Volks Wagen saloon are that in the case of the van the factory instead of filling the sides at the rear part of the car with glass panes it fixes metal panels and that in the case of a saloon car it fixes a seat all along behind the driver, whereas in the case of the van it does not fix this seat. A van can be converted into a saloon car by affixing on it the rear seat for which there exist certain fittings for fixing the same and replacing the metal panels with glass panes. By effecting such a modification a van imported as "goods vehicle" will be converted into a saloon car. This aspect, however, has not been made an issue in the present case. 10 15 20

Counsel for the applicant argued inter alia that though under the new Regulations there is a provision for the fixing of a grill behind the drivers seat, no such provision existed in the old Regulations (Motor Vehicles and Road Traffic Regulations, 1973) and that in any event such grill can be placed at the rear of the passengers seat. 25

*Held*, annulling the decision (1) As the sub judice decision was taken whilst the old regulations of 1973 were in force the case should be determined on the basis of such regulations and not on such regulations as amended in 1984. 30

(2) The reasons given for the sub judice decision are general and no particulars are given in support of same. The evidence showed that no question of danger from the safety point of view arises; and nothing has been put forward supporting the contention that the dimensions of the seat will not correspond to the provisions of the respective legislation. 35 40

(3) In the light of the material before the Court the sub judice decision is not sufficiently reasoned. There is nothing in the file of the administration adding to or supplementing the reasoning.

5 (4) The respondents failed to carry out a due inquiry as to whether the fixing of a seat in this particular type of van will be the cause of any dangers.

(5) For all the above reasons the sub judice decision has to be annulled.

10 *Sub judice decision annulled.*  
*No order as to costs.*

#### Recourse.

15 Recourse against the refusal of the respondents to issue to applicant a permit to fix an additional seat on his motor vehicle MS 296, which was registered as "light goods vehicle," for the transportation of passengers for agricultural purposes.

*N. Pelides*, for the applicant.

20 *A. Papasavvas*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

25 SAVVIDES J. read the following judgment. Applicant is a farmer and owner of a car under Registration No. MS 296, Volks Wagen, diesel, van type. Such car was, upon its importation, registered on the application of the importers on 29.9.81 as a "goods vehicle-light" and it was licensed as such. On the 12th November, 1981, applicant submitted an application to the Ministry of Communications and Works for a permit to fix an additional seat on the said car for the transportation of labourers for agricultural purposes. After consideration of the application the appropriate Authority refused same and the reasons for so doing, were communicated to the applicant by letter dated 9th December, 1981, sent by the Ministry of Communications and Works—Inland Transport—Service on Inspection of  
35 Motor Vehicles the contents of which read as follows:

"I wish to refer to your application on Form agriculture 248 dated 12th November, 1981, whereby you are applying for a permit to place an additional seat on your light goods vehicle under Reg. MS 296 for the transportation of passengers for agricultural purposes. 5

2. I wish to inform you that the matter has been considered and your application cannot be approved as in case you will place seats on the floor of the body of the said light goods vehicle, besides the fact that the dimensions of the seats will not correspond to the provisions of the respective legislation, it will be dangerous from the safety point of view." 10

As a result, applicant filed the present recourse whereby he prays for - 15

A declaration of the Court that the administrative decisions and/or the administrative decisions of each one of the respondents and/or the act and/or acts of them, to refuse to issue a permit to use the registered vehicle MS 296 for the transportation of passengers for agricultural purposes is null and void and of no legal effect. 20

The grounds of law relied upon in support of the application, are the following:

1. The respondents acting in abuse and/or in excess of power in the exercise of their discretion in violation of the existing legislation and the Regulations decided to deprive the applicant of his right to obtain a permit of use for his registered vehicle MS 296 for carriage of passengers for agricultural purposes and/or they failed to give due weight to the interpretation of the relevant law, the Motor Vehicles and Road Traffic Law, 86/72 and/or the Regulations made thereunder (159/73). 25 30

2. The respondents acted in violation of Law 86/72 and of the Regulations made thereunder, in reaching their decision contained in the letter dated 9th December, 1981, refusing the application of the applicant which was lawful and in accordance with the Regulations. 35

3. The sub judice act and/or decision in its totality and/or

the procedure followed for the issue of the sub judge decision and/or act is illegal and/or void and in excess of the powers of the respondents in that it is contrary to the law and/or the principles of good administration and/or natural justice.

4. The sub judge decision and/or act lacks due reasoning and/or the reasoning is defective, vague, unjust and illegal...

The application was opposed on the ground that the sub judge decision was taken properly and in accordance with the law and in due exercise of the powers vested in the respondents under the Law and the Regulations and after all relevant facts and circumstances of the case were taken into consideration.

It has been the contention of counsel for applicant by his written address that the respondents acted in violation of regulations 50(6) and 55 (1)(d) of the Motor Vehicles and Road Traffic Regulations, 1973 in refusing to grant the permit applied for. Also, that they acted arbitrarily in that there is no substantial difference between a light goods vehicle of the Golf type and an ordinary saloon car of the same make which is imported with the seats affixed on it. Counsel further contended that the respondents had granted permits to the owners of similar type of vehicles and, therefore the reasons they mentioned in their letter sent to him, for refusing his application, are not valid. In conclusion he submitted that the refusal is not duly reasoned and that the reasons contained in the letter of the Senior Inspector of Motor Vehicles are entirely unfounded.

Counsel for the respondents, on the other hand, in his written address contended that the legal grounds advanced by counsel for applicant in support of his recourse are entirely unfounded in that -

(a) No concrete grounds of abuse of power are set out and no evidence substantiating such allegations has been adduced and that from the material in the relative files no inferences can be drawn that there was an abuse of powers.

(b) The respondents have not acted in violation of the Motor Vehicles Regulations but on the contrary they acted within the spirit and letter of such Regulations.

(c) The allegations of the applicant that respondents' decision was illegal and/or violating the principle of good administration, have not been substantiated. In the circumstances of the present case and in the light of all material before the respondents, the respondents exercised their discretion properly and in accordance with the well established principles of administrative law and good administration. Concerning the contention of counsel for applicants that the respondents had in the past granted similar permits, counsel for the respondents refuted such allegation and contended that in any event one cannot rely on an allegation of equal treatment in case of an illegal act. 5 10

Counsel for applicant in support of his contention that the fixing of the seat and its dimensions do not contravene any provision of the law and that there is no difference between a Volks Wagen van of the type of the one in question and a Volks Wagen saloon car, called as witness a qualified automobile engineer, namely Mr. Alkis Longinos who gave evidence before this Court. This witness produced a leaflet showing the specifications and the body structure of a Volks Wagen van of the type owned by the applicant and explained that the body structure of the Golf type is the same with that of a saloon car of the same type. The only difference is that in the case of the van the factory instead of filling the sides at the rear part of the car with glass panes, it fixes metal panels. Also, in the case of the saloon car it fixes a seat all along behind the driver, whereas in the case of the van it does not fix this seat. In the case of the vans the space where the rear seat can be placed, is covered with a wooden cover to bring it to the same level with the rest of the floor of the car and if a seat is to be placed, then this cover may be removed and a rear seat may be fixed in the same way as in the saloon car and be as safe as in the case of a saloon car of the same make. The witness mentioned in his evidence, and this also appears in exhibit 1 (under (A)), that in the case of the van type there is a wooden board affixed at the rear part of the front seat reaching upto the height of the back of the seat, the object of which is to protect the driver and the passenger next to him from any risk from goods placed behind the seat which may move about in the van when the van is in motion. In case a rear seat is affixed on the van such 15 20 25 30 35 40

wooden board may be affixed at the back of the rear seat to avoid any eventuality of the goods creating any risk for the passengers.

5 Counsel for applicant sought to rely on the provisions of Regulation 50(6) of the Motor Vehicles and Road Traffic Regulations, 1973, which were made under the provisions of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and its subsequent amendments, and were published in the official Gazette of the Republic No. 10  
10 1023 of 13.7.1973, Supplement No. 3, Part 1, page 571, Notification 159. In making a clarification after the evidence was concluded counsel for applicant submitted that though under the new Regulations of 1984 there is a provision for the fixing of a grill behind the driver's seat of  
15 a goods vehicle, no such provision existed in the old Regulations. In any event counsel concluded such protective grill could, according to the evidence adduced by him, be placed at the rear of the passengers seat.

20 Counsel for the respondents on the other hand submitted that notwithstanding the fact that the requirement for the fixing of a protective grill at the back of the driver's seat was introduced under the new Regulations a provision to the same effect may be inferred from the provisions of para. 12 of regulation 49 of the Regulations which was in  
25 force at the material time.

Regulation 50(6) to which reference has been made by counsel for applicant provides as follows:

30 «(6) απαγορεύεται ή μεταφορά εντός φορτηγού μηχανοκινήτου οχήματος, οίουδήποτε έτέρου προσώπου, πλην του έκμισθώσαντος τό όχημα ή του ιδιοκτήτου του οχήματος ή τών αυτώ μεταφερομένων αγαθών, τών υπηρετών ή του αντιπροσώπου του ιδιοκτήτου ή έκμισθωτού. Τά ούτω μεταφερόμενα πρόσωπα έπιπροσθέτως του όδηγού εν ούδεμιά περιπτώσει δύνανται να  
35 ύπερβώσι τά τρία, έξαιρέσει δέ ένός προσώπου, όπερ δύναται να κάθηται επί τών μεταφερομένων αγαθών, τά εν τώ οχήματι μεταφερόμενα πρόσωπα δέον όπως κάθηται εις δεόντως ήσφαλισμένα καθίσματα:

Νοείται ότι εις έλαφρά φορτηγά μηχανοκίνητα όχή-

ματα, χρησιμοποιούμενα υπό προσώπων άπασχολουμένων εις την γεωργίαν, επιτρέπεται ή μεταφορά προσώπων διά γεωργικούς σκοπούς, έφ' όσον τó όχημα διαθέτει προσηκόντως ήσφαλισμένα καθίσματα.

Διά τούς σκοπούς τής παρούσης παραγράφου 'γεωργία' περιλαμβάνει την κηπουρικήν, την φρουτοπαραγωγήν, την παραγωγήν σπόρων, την γαλακτοκομίαν, την κτηνοτροφίαν, την ανάπτυξιν κήπων και φυτωρίων, ό όρος δέ 'γεωργικός' θέλει τύχει άναλόγου έρμηνείας».

(" (6) no person shall be carried in a goods vehicle other than the hirer of the vehicle or the owner of the vehicle or of the goods carried therein or the servants or agent of the owner or hirer. The persons so carried shall not exceed three in all, excluding the driver, and, with the exception of one person who may sit on the goods carried in the vehicle will be seated on properly secured seats:

Provided that in light goods vehicles used by persons engaged in agriculture, persons may be carried for agricultural purposes if the vehicle has properly secured seats.

For the purposes of this paragraph 'agriculture' includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as marked gardens and nursery grounds, and the term 'agricultural' shall be interpreted accordingly").

Regulation 49(12) of the Motor Vehicles and Road Traffic Regulations, 1973 on which counsel for respondent sought to rely, is one of the regulations under part V which refers to the "Condition and accessories of motor vehicles and general conditions for their road use." It provides as follows:

«49. Τηρουμένων τών διατάξεων τών Κανονισμών 50, 51 και 52, ούδεις θέλει προκαλέσει, άνεχθῆ ή επιτρέψη τήν χρῆσιν μηχανοκινήτου όχήματος έφ' οίασδήποτε όδοϋ, οϋδέ όδηγήσει ή άναλάβει τήν εύθύνην ή τόν έλεγχον μηχανοκινήτου όχήματος δτε τούτο χρη-



σιμοποιείται ἐφ' οἰονδήποτε ὁδοῦ, ἐκτός ἐάν περιβῶ-  
σιν αἱ ἀκόλουθοι διατάξεις:

.....  
.....

5 (12) ἡ κατάσταση παντός μηχανοκινήτου ~~εργαλείου~~  
ὡς καὶ ἀπάντων τῶν ἐξαρτημάτων αὐτοῦ δεόν ὅπως  
εἶναι τοιαύτη ὥστε νὰ μὴ προκαλῆ ἢ νὰ ἐνδέχεται νὰ  
προκαλέσῃ κίνδυνον εἰς οἰονδήποτε ἐν τῷ ὀχήματι ἢ  
10 ἐπὶ αὐτοῦ εὐρισκόμενον πρόσωπον ἢ εἰς πρόσωπον ἐπὶ  
τῆς ὁδοῦ ἢ εἰς πρόσωπον ἐντός ἢ ἐπὶ ἐτέρου ὀχήμα-  
τος ἐπὶ τῆς ὁδοῦ·»

15 (“49. Subject to the provisions of Regulations 50,  
51 and 52 no person shall cause, suffer or permit a  
motor vehicle to be used on a road or shall drive or  
have charge or control of a motor vehicle when the  
same is used on a road unless the following provisions  
are observed:

.....  
.....

20 (12) the motor vehicle and all fittings thereof shall  
be in such condition as not to cause, or be likely to  
cause, danger to any person in or on the motor vehi-  
cle or on the road or in or on any other vehicle  
thereon;”).

25 The Motor Vehicles and Road Traffic Regulations,  
1973 were amended in 1984 but as the present case con-  
cerns a decision taken whilst the old regulations were in  
force, I shall proceed to examine the case on the basis of  
the regulations of 1973.

30 It is common ground that the vehicle in question was  
imported and registered as a “Goods vehicle-light” and not  
as a saloon car. As it emanates from the evidence before  
me, there is no substantial difference in the body structure  
of saloon and a goods vehicle van of this make. The  
35 only difference is that the saloon car has an additional seat  
behind the driver’s seat and glass panes on the rear parts  
instead of the metal panels of the van. A van can be con-  
verted into a saloon car by affixing on it the rear seat for  
which there exists certain fittings for fixing same and re-  
40 placing the metal panels on the sides with glass panes.

When such modifications are effected then there is no difference between the two cars.

Notwithstanding the fact that a van can be converted into a saloon car there is no doubt that the nature of the car and the object for which it was imported and registered would be changed and most likely an increased import duty may have to become payable. By effecting such modification, a van imported as "Goods-Vehicle" will be converted into a saloon leaving the same space for carriage of goods in both cases. In the present case, however, I am not asked to examine this aspect of the case, as the refusal of the respondents was not based on such ground and there is no such issue before me. The reasons for refusal as stated in the letter of respondents 3 and the tenor of the arguments before me is that:

(a) The dimensions of the seat will not correspond to the provisions of the respective legislation.

(b) It will be dangerous from the safety point of view.

The said reasons in the way they are expressed are general and no particulars are given in support of same. On the evidence before me which has not been contradicted by the respondents, it clearly emanates that no question of danger from the safety point of view arises as proper seats can be fixed on this type of van as in the case of a saloon car of the same make and no problem would arise concerning the safety of either the passengers or the public. As to the first ground of refusal no argument has been advanced by counsel for respondents and nothing has been put forward supporting the contention that the dimensions of the seat will not correspond to the provisions of the respective legislation.

In the present case in the light of all the material before me I have come to the conclusion that the sub judice decision is not sufficiently reasoned and there is nothing in the relevant file of the administration adding to or supplementing such reasoning.

Furthermore, I find that there was lack of due inquiry by the respondents as to whether the fixing of a seat in

this particular type of van would be the cause of any danger.

5 For the above reasons I find that the sub judice decision has to be annulled. As I have already mentioned I leave the question open as to whether the modification sought to be carried out may amount to a conversion of the van in question from a "goods vehicle light" into a saloon car, contrary to law.

10 In the result, the sub judice decision is annulled but with no order for costs.

*Sub judice decision annulled.  
No order as to costs.*