

1986 July 18

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

EFSTATHIOS KYRIACOU AND SONS LTD.,

Applicants,

v.

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

Respondent.

(Case No. 333/83).

*Administrative Law—Reasoning of an administrative act—
See Road Transport, post.*

*Road Transport—The Road Transport (Regulation) Law 9/82
as amended by Law 84/84—Hierarchical recourse to the
5 Minister—No duty cast on Minister to reason specifically
any deviation from the decision of the Licensing Authority—
The Reasoning of his decision can be supplemented
from the material in the file—The test of the validity of
his decision is whether it was reasonably open to him
10 to act as he did—The Minister can exercise his discre-
tion in the place of that of the Licensing Authority—
Section 16 of the said laws.*

The Licensing Authority turned down an application
by the interested party for the grant of a carrier B' licence
15 for a trailer goods vehicle. required for the transportation
of cement. The interested party filed a hierarchical re-
course to the Minister of Communications and Works,
who allowed the recourse.

The applicants, who are a registered transport concern
20 with licensed carriers A and since 1967 have been trans-
porting cement to any part of Cyprus and who were duly

represented at the hearing before the Minister, filed the present recourse, impugning the Minister's said decision

The stand of the interested party was that the vehicles of the applicants could not serve them adequately. They emphasized their need for timely transportation as they had twice lost orders for the supply of cement due to the inadequacy of the transportation service 5

The applicants complained that the Minister failed to reason his departure or deviation from the decision of the Licensing Authority a collective organ 10

Held, dismissing the recourse (1) The Minister conducted a proper inquiry and acquainted himself with all material facts. The reasoning of the sub judice decision is duly supplemented from the material in the file

(2) No duty is cast upon the Minister as such to reason specifically any deviation from a decision of the Licensing Authority. The test of the validity of his decision is whether it was reasonably open to him to act as he did (*Tsouloftas v The Republic* (1983) 3 CLR 426 followed) 15 20

(3) The grant of carrier "B" licences is governed by s 16 of Law 9/82 as amended by Law 84/84. The power of the Licensing Authority thereunder is discretionary. Sub-section (3) of the said section imposes a statutory duty on the Licensing Authority to take duly into account the extent and nature of applicant's business. Likewise it was reasonably open to the Minister in view of the material as to the extent and nature of the interested party's business and weighing all relevant material to exercise his discretion as he did 25 30

The Minister can upon a hierarchical recourse exercise his discretion in the place of the discretion of the Licensing Authority (*Efstathios Kyriacou and Sons Ltd and Other v The Republic* (1970) 3 CLR 106)

Recourse dismissed 35
No order as to costs

Cases referred to:

Tsouloftas v. Republic (1983) 3 C.L.R. 426;

Efstathios Kyriacou and Sons Ltd. and Another v. Republic (1970) 3 C.L.R. 106.

5 **Recourse.**

Recourse against the decision of the respondent whereby the hierarchical recourse of Cybarco Ltd. against the negative decision of the Licensing Authority to their application for the granting of a licence for carrier B was
10 allowed.

M. Ioannou, for the applicant.

M. Tsiappa (Mrs), for the respondent.

St. Panayides, for the interested party.

Cur. adv. vult.

15 A. LOIZOU J. read the following judgment. By the present recourse the applicant Company seeks:-

“1. Declaration of the Court that the decision of the respondent Minister dated 28th May, 1983, by which the hierarchical recourse of Cybarco Ltd.,
20 under Section 4 of the Motor Transport (Regulation) Law 1982, (Law No. 9 of 1982) against the negative decision of the Licensing Authority to their application for the granting of a licence for a carrier B’ was allowed, is contrary to law, null and void and with
25 no legal effect.

2. Declaration of the Court that the decision of the respondent Minister dated 28th May, 1983, by which he decided that the granting of a licence to
30 Cybarco Ltd., for a carrier B’ for a trailer goods vehicle specially constructed for the transportation of cement in bulk is contrary to law, null and void and with no effect whatsoever.”

The applicant Company is a registered transport concern with licensed carriers A’ and since 1967 they undertake the transportation of cement to any part of Cyprus.
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For that purpose they have invested large amounts of money in specially constructed vehicles for the transportation in bulk, of cement. Moreover they claim to have specially trained personnel as drivers.

Cybarco Ltd., of Nicosia, (hereinafter to be referred to as the interested party), building contractors, which had a carrier B', licence for their articulated goods vehicle Reg. No. JX 771, applied on the 16th November, 1981, to the Licensing Authority for the grant of a carrier B' licence for a new articulated goods vehicle in place of their goods vehicle Reg. No. JX 771 and for two trailer goods vehicles. One of the above trailers was required by the said company for the transportation of cement and the other was required for the transportation of moulds. 5 10

On the 2nd March, 1982, the Licensing Authority decided to grant the licences applied for regarding the articulated goods vehicle and the trailer goods vehicle required for the transportation of moulds but with regard to the goods vehicle required by the interested party for the transportation of cement it decided to call upon the applicant Company to submit their representations. 15 20

The Licensing Authority after hearing the applicant Company, the Transport Organisations SEEAK and PEEA, the interested party and Moni Cement Company, it decided at its meeting of the 15th June, 1982, to refuse the application. The said decision was communicated, by letter dated 26th June, 1982 to the interested party who on the 13th July, 1982, filed an hierachical recourse to the respondent Minister against the Licensing Authority's decision. 25 30

The respondent Minister, after hearing the case and after consideration of the Legislation together with all the facts and circumstances of the case concluded that the nature and extent of the works of the interested party justified the granting of the licence and decided to allow the hierarchical recourse. The respondent's decision was issued on 28th May, 1983, and was communicated to the applicant Company and the interested party by letter dated 1st June, 1983. 35

The relevant files of the Licensing Authority and the respondent Minister have been produced as exhibits "Z" and "Y" respectively.

5 As it appears therefrom the hierarchical recourse was heard by the respondent Minister on the 8th January 1983; the applicant Company and the interested party were duly represented and took part in the hearing of the case. In addition the respondent Minister had before him all material that had been placed by all concerned before
10 the Licensing Authority. Indeed I find it opportune to say here and now that he conducted a proper, in the circumstances, inquiry and he acquainted himself with all material facts. The grounds of law therefore advanced on behalf of the applicant Company as to failure to carry out
15 a proper inquiry and misconception of fact through lack of knowledge of material facts. cannot stand. Moreover the reasoning of the decision reached by him is duly supplemented from the material in the file.

20 The stand of the interested party was that the licensed goods vehicles of the applicants could not serve them adequately in connection with the transportation of cement from both Vassiliko and Moni factories and that its timely transportation was essential in view of the nature of their business as a construction company. They emphasized
25 this as they had twice lost orders for the supply of cement in Paphos in view of the inadequacy of the transportation service. In fact they claimed that they required 110 tons of cement per week for each one of the districts of Limassol, Paphos and Nicosia and that they were not in a
30 position to fulfil their contractual obligations connected with the delivery of cement.

It is the case for the applicant Company that the sub
35 justice decision suffers from lack of due reasoning inasmuch as although it reversed the decision of a collective organ which was duly reasoned and arrived at after a proper inquiry yet, the respondent Minister failed to reason his departure or deviation from the decision of the Licensing Authority.

40 This ground was resolved by Pikis J., in *Tsouloftas v. The Republic* (1983) 3 C.L.R. 426. After dealing with

the nature of an hierarchical recourse and the principles governing same by reference also to leading text-books on Administrative Law. at p. 432 he says:

“The submission that the decision of the Minister is vulnerable to be set aside for failure to reason 5
 departure from the decision of the Licensing Authority, is ill-founded and must be dismissed. No duty was cast upon the Minister as such to reason specifically any deviation from the course approved by the Licensing Authority. The test by which we 10
 must judge the validity of the decision of the Minister is the same with that applicable to the Licensing Authority. It is this: Whether it was reasonably open to the Minister, in view of the provisions of the law and the material before him, to decide as he did. As 15
 L. Loizou, J. pointed out in a recent decision, in Case No. 409/80. on 11.3.1983—*Petrides v. The Republic* (1983) 3 C.L.R. 216. the brevity of the decision of the Minister is not in itself indicative of lack of due reasoning and the reasoning may, like 20
 every other species of administrative action, be supplemented by the material in the file of the case. So long as the decision conveys on examination of its contents and the background thereto the reasons why a given decision is taken, it cannot be faulted for 25
 lack of due reasoning.”

The test therefore is whether it was reasonably open to the Minister, in view of the provisions of the law and the material before him, to decide as he did.

The relevant law which governs the grant of carrier B' 30
 licences is the Motor Transport Regulation Law, 1982 (Law No. 9 of 1982, as amended by Law No. 84 of 1984), and in particular section 16 thereof. By sub-section (1) thereof the Licensing Authority is empowered to grant a carrier B' licence in relation to goods vehicles owned 35
 by trading or other businesses for serving the purposes of those businesses, and in view of the provisions of sections 5(1) and 5(6) the use of a vehicle for the transportation of goods, inter-alia, as above is prohibited unless the vehicle

is licensed under section 16. The Licensing Authority's power under section 16 is discretionary and in exercising it the Authority has a statutory duty by virtue of section 16(3) to take duly into account the extent and nature of an applicant's business.

Likewise it was reasonably open to the Minister in view of the material placed before him concerning the extent and nature of the interested party's business and weighing all relevant material to exercise his discretion in favour of granting the licence applied for.

As pointed out in *Efstathios Kyriacou and Sons Ltd., and others v. The Republic* (1970) 3 C.L.R. 106 at p. 116 "Under such section the Minister acts as an hierarchically superior authority in the context of the exercise of administrative powers, and not in a quasi-judicial capacity, even though the word 'appeal' is used therein.... The powers of the Minister in deciding on an appeal of this nature are very wide, indeed; it is clear from the wording of section 6(1) that he can exercise his own discretion in the place of the discretion of the Licensing Authority."

For all the above reasons this recourse fails and is hereby dismissed with no order as to costs.

*Recourse dismissed.
No order as to costs.*