

1986 September 27

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

LEDA TRAVEL LTD..

Applicant,

v.

THE REVIEW LICENSING AUTHORITY, THROUGH
THE MINISTRY OF COMMUNICATIONS AND WORKS.

Respondent.

(Case No. 672/85).

Motor transport—The Transport Regulation Laws 9/82 and 84/84—Hierarchical recourse against decision of the Licensing Authority—The Permits Review Authority—Statutory powers of—Section 4(A)(3) of the said laws.

Motor Transport—The Transport Regulation Laws 9/82 and 84/84—Self-drive cars (Z cars)—Section 5(9) of the said laws—Applicant company neither carried out nor proposed to carry out as its main business the hiring of vehicles without a driver—Sub judice decision, whereby a decision of the Licensing Authority granting 5 licences to the applicant was annulled, reasonably open to the respondent Authority.

The applicant, a company limited, applied for a licence to own and manage 25 self-drive cars (Z cars). The Licensing Authority granted licences in relation to five cars, but the interested parties challenged the relevant decision by means of a hierarchical recourse to the Permits Review Authority, which decided to annul the decision of the Licensing Authority on the ground that the applicant company did not satisfy the requirements of s. 5(9)* of the Motor Transport Regulation Laws 1982-1984. As a

* Quoted at p. 1746 post.

result the applicant company filed the present recourse.

5 It clearly transpires from the statements of the representative of the applicant to the Licensing Authority and to the Permits Review Authority and from paras. 3(2) and 3(15) of the applicant's memorandum of association that the applicant neither carried out nor proposed to carry out as their main business the hiring of vehicles without a driver. The applicant rather aimed at obtaining licences for "Z" cars for the incidental purpose of serving tourists, who were offered accomodation through the applicants in the carrying out of applicant's main business as tourist and travel agents.

15 *Held*, dismissing the recourse: (1) The wording of section 4(A) (3) of the said Laws, which deals with the statutory powers of the Permits Review Authority, is similar to the wording of the abolished section 4(2) of Law 9/82 and s. 6(2) of the abolished Motor Transport Regulation Laws 1964-1975. The Minister's powers under s. 6(2) were expounded in *Tsouloftas and Others v. The Republic* (1983) 3 C.L.R. 426. In view of the said decision the complaint that the Permits Review Authority interfered with the exercise of the discretion of the Licensing Authority cannot stand.

25 (2) In the light of the material placed before the respondent Authority it was reasonably open to them to annul the decision of the Licensing Authority and to find that the applicant did not satisfy the requirements of section 5(9) of the said Laws.

30 *Recourse dismissed.*
No order as to costs.

Cases referred to:

Tsouloftas and Others v. The Republic (1983) 3 C.L.R. 426.

Recourse.

35 Recourse against the decision of the respondent to annul the decision of the Licensing Authority whereby it

granted to applicants licences for the hire of cars without a driver in relation to five vehicles.

A. Sofocleous for Chr. Georghiades, for the applicants.

M. Tsiappa (Mrs.), for the respondent.

Cur. adv. vult. 5

KOURRIS J. read the following judgment. By the present recourse, the applicants, a limited company, seek a declaration of the Court that the decision of the respondent Authority dated 6.5.1985 and communicated to the applicants and interested parties by letter dated 25.5.85, by which the respondent Authority had annulled the Licensing Authority decision of 25.12.84, to grant to the applicants licences for the hire of cars without a driver in relation to five vehicles, is null and void and of no effect whatsoever. 10

The applicant, a limited company, applied on 15.10.82 to the Licensing Authority for a licence to own and manage 25 self-drive cars commonly known as "Z" cars. 15

A report dated 29.10.82 was subsequently prepared with regard to the said application by a Transport Inspector and the Licensing Authority examined the above-mentioned application at its meetings of 2.3.1984 and 27.12.1984 and decided to grant to the applicants licences for the hire of cars without a driver in relation to five vehicles. 20

By letter dated 9.1.1985 the Licensing Authority communicated to the applicant its above-mentioned decision. 25

The interested parties being dissatisfied with the decision of the Licensing Authority filed hierarchical recourses to the Permits Review Authority on 21.1.85, 23.1.85, 25.1.85, 26.1.85 and 28.1.85 by Yiannoulla Komodromou, Thames Rent Car Limited, A. PapaLouca, A. Chrysostomou, J. and G. Motor Agency (Paphos) Ltd., Security Travel Limited, Y. Stavriniidou and Xanthoulla Andreou, KEM Taxi Limited and others under the Motor Transport Regulation Laws 1982 and 1984 (Laws 9/82 and 84/84). 30

The hierarchical recourses were heard by the Permits Review Authority at its meeting of 30.3.85 and after taking into account all the facts and circumstances of the case, it 35

decided at its meeting of 17.4.85 and 6.5.85 to allow the hierarchical recourses and to annul the decision of the Licensing Authority.

5 The decision of the Permits Review Authority dated 6.5.85 was communicated to the applicants and all concerned by letter dated 25.5.85 and against this decision the applicants have filed the present recourse.

Hence the present proceedings.

10 The grounds of law relied upon in support of the present application are the following:-

1) The decision of the respondent Authority is the result of misconception of fact.

2) The absence of due enquiry.

15 3) The decision was based on wrong interpretation of s. 5 (9) of the Motor Transport Regulation Laws 1982 and 1984.

4) The Permits Review Authority interfered with the exercise of the discretion of the Licensing Authority to grant road use licences.

20 5) The decision of the respondents was reached at in excess and/or abuse of power.

The sub judice decision reads as follows:-

25 «Η Αναθεωρητική Αρχή Αδειών αφού μελέτησε όλα τα στοιχεία των σχετικών φακέλλων και όσα έχουν λεχθεί από τους προσφεύγοντες και τους εκπροσώπους της ενδιαφερόμενης Εταιρείας, αποφασίζει την αποδοχή των προσφυγών διότι έχει πεισθεί ότι η ενδιαφερόμενη Εταιρεία δεν πληροί τις προϋποθέσεις του άρθρου 5, εδάφιο 9 του Νόμου. Η ενδιαφερόμενη Εταιρεία ασχολείται με τουριστικές επιχειρήσεις και
30 ιδιαίτερα διαχειρίζεται τις ξενοδοχειακές μονάδες του συγκροτήματος της εταιρείας Λεπτού».

In English it reads as follows:-

35 "The Permits Review Authority having considered all the material of the relevant files and all that has

been said by the interested parties and those representing the said company, decided to accept the recourses because it has been convinced that the said company does not satisfy the prerequisites of s. 5(9) of the law. The said company deals with the Tourist Trade and in particular manages the various hotel units owned by the Leptos Group of Companies". 5

I think it is pertinent at this stage to set out s. 5 (9).

Section 5 (9) reads as follows:-

«Ουδεμία άδεια οδικής χρήσεως θα χορηγείται αναφορικώς προς οιονδήποτε όχημα δημοσίας χρήσεως προς εκτέλεσιν οιασδήποτε οδικής χρήσεως δι' ην απαιτείται τοιούτον όχημα δυνάμει των διατάξεων του παρόντος Νόμου, εκτός εάν ο ιδιοκτήτης τούτου πείσει την Αρχήν Αδειών ότι μετέρχεται ή προτίθεται όπως μετέλθει την μεταφορικήν επιχείρησιν ως κύριον αυτού επάγγελμα». 10 15

In English it may be translated as follows:-

"No road service licence shall be granted in respect of any public service vehicle for the service of any road for which such vehicle is required under the provisions of this Law, unless its owner convinces the Licensing Authority *that he carries on or intends to carry on the transport business as his main profession*". 20 25.

Before proceeding any further I would like to deal with the ground of law No. 4 to the effect that the Permits Review Authority interfered with the exercise of the discretion of the Licensing Authority to grant road use licences.

The nature and character of hierarchical recourses was dealt with in the case of *A. Tsouloftas and others v. The Republic of Cyprus* (1983) 3 C.L.R. 426. It was held that the test by which the validity of the decision of the Permits Review Authority must be judged is the same with that applicable to the Licensing Authority. 30 35

The sub judice decision was issued in exercise of statutory powers with which the respondent Authority is vested

by s.4(A) of the Motor Transport Regulation Laws 1982 and 1984 (Laws 9/82 and 84/84). The wording of s. 4(A)(3) is similar to the wording of the abolished section 4(2) of Law 9/82 and s. 6(2) of the abolished Motor Transport Regulation Laws 1964-1975.

The Minister's powers under s. 6 (2) were expounded in the aforesaid case where at page 431 it was stated:-

10 "A hierarchical recourse is not a judicial proceeding in any sense. It is not intended to review the correctness of the hierarchically subordinated organ's decision by reference to the soundness of the reasoning propounded in respect thereof, but to establish a second tier in the decision-taking process, designed to eliminate mistakes as well as abuse of authority by subordinates Both organs in the hierarchy are judged with the same duty—to promote the objects of the law by the application of its provision in particular cases".

And at p. 432 it is stated:-

20 "The test by which we 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."

In view of the above the contention of the applicant that the Permits Review Authority interfered with the exercise of the discretion of the Licensing Authority cannot stand.

30 The main complaint of the applicants, as it appears from the written address of their counsel, is that they are not involved in the Tourist Trade and the management of hotel units of the Leptos Group of Companies as found by the Permits Review Authority. He stated that the main occupation of the applicants is the transport business and this is also apparent, he stated, from the fact that they rented a desk for "Z" cars at the Paphos airport.

At the hearing of this recourse counsel for the applicants called Stavros Leptos, who is the Internal Legal

Adviser to the Leptos Group of Companies and who represented the applicant together with a certain Loizou, at the hearing before the Permits Review Authority to clarify his answer with regard to p. 3 of Appendix 7 where in an answer to a question put to him he said that it deals with land valuation with the tourist business of Leptos and it manages the hotel units of the Leptos Group of Companies. 5

In his answer before this Court he said that he was referring to the Leptos Group of Companies and particularly to Armonia Estates Limited, Vesta Holidays and Leda Travel Limited and when he spoke of dealings with the land he meant Armonia Estates Limited and when he spoke about the management of the Hotel Units he was referring to Vesta Holidays Limited. 10

Even if I accept the evidence of Stavros Leptos the Permits Review Authority had sufficient material before them to the effect that the applicants neither carried out nor proposed to carry out as their main business the hiring of vehicles without a driver. The applicants in their application to the Licensing Authority for the grant of the relevant licences they described their trade as travel agents (Appendix 1 of the opposition). The same description is given in the report of the Transport Inspector dated 21.10.82 which is Appendix 2 to the opposition. 15 20

At the meeting of the Licensing Authority held on 2.3.84 for examining applicant's application and application by a company called "*Vesta Holidays*", it was stated by the representatives of the applicants and Vesta Holidays that the companies were sister companies forming part of the Leptos group of companies and that the applicant company were tourist and travel agents letting to tourists a large number of apartments. It was particularly stated that the applicants sought the grant of licences for the purpose of serving the needs of their clients by providing directly to them the hire of vehicles without a driver. 25 30 35

It was furthermore stated that the hire of "Z" cars was not the applicant company's trade but that the hire of such vehicles was incidental to the company's business as travel agents because it involved the transportation of tourists.

According to the representative of the applicant, the Leptos group of companies were the owners of 500 apartments in Vasilico, 1000 apartments in Paphos Gardens and 500 apartments in Kamares Village, all in the Paphos area, which the applicant company was dealing with the letting of these apartments to thousands of tourists visiting Cyprus and that they were not able to find "Z" cars for their clients (See Appendix 7 to the opposition).

It clearly transpires from the statements of the representative of the applicants to the Licensing Authority and to the Permits Review Authority and from the wording of paragraph 3(2) and 3(15) of the memorandum of the applicants which is Appendix 8, that the applicants neither carried out nor proposed to carry out as their main business the hiring of vehicles without a driver. They rather aimed at obtaining licences of "Z" cars for the incidental purpose of serving tourists who visited Cyprus and were offered accommodation through the applicants in the carrying out of their main business as tourist and travel agents.

In view of the above I am of the opinion that it was reasonably open to the respondent Authority, in view of the material placed before them to annul the decision of the Licensing Authority and the allegations of the applicants that the respondent Authority acted under a misconception of fact and law and that there was lack of due enquiry cannot stand. I am also satisfied that on the material before them it was open to find that the applicants did not satisfy the prerequisites set out by s. 5(9) of the said law.

For all the above reasons the recourse is dismissed but with no order for costs.

*Recourse dismissed.
No order as to costs.*