

1986 November 8

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

L. & G. IACOVIDES ENTERPRISES LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE REVIEW LICENSING AUTHORITY AND/OR
THE MINISTER OF COMMUNICATION
AND WORKS AND
THE LICENSING AUTHORITY,

Respondents.

(Case No. 660/85).

5 *Motor Transport—The Motor Transport Regulation Laws 1982 and 1984 (9/82 and 84/84)—Section 5(9)—Cars hired without a driver—Applicant must have or intend to have transport business as his main occupation—Burden cast on applicant's shoulders to persuade the administration that said requirements are satisfied.*

10 *Reasoning of an administrative act—Such act is not construed according to the principles applicable to the construction of statutes—Dismissal of application for licences for “Z” cars on ground that “main object of company is not the hiring of “Z” cars and, consequently, it does not satisfy the requirements of s. 5(9) of the Laws” (The Motor Transport Regulation Laws 1982-1984)—This wording indicates that*
15 *neither of the two alternatives of s. 5(9), that is carrying on or intention to carry on transport business as main occupation, was satisfied—No misconception of law—Decision does not lack due reasoning, such reasoning being supplemented from the file.*

20 *Administrative Law—Evaluation of facts—The province of the administration—Judicial control—Principles applicable.*

The applicants, who are a company with limited liability, seek the annulment of the decision of the Review Licensing Authority, whereby the decision of the Licensing Authority, granting to the applicant four licences for "Z" cars was annulled, on the ground that the "main object of the interested company is not the hiring of 'Z' vehicles and consequently it does not satisfy the prerequisites of section 5. paragraph 9, of the Law". 5

Counsel for the applicants argued, inter alia, that the respondent Authority misconceived the Law in that it did not consider whether the applicants intend to carry on transport business. 10

Held, dismissing the recourse: (1) The object of the Law as it emerges from s. 5(9) of the aforesaid laws is clear and unambiguous. Licences should be granted to persons, who have or intend to have as their main occupation the transport business. The burden of proof is cast squarely on the shoulders of an applicant. 15

(2) The evaluation of facts is the province of the administration and this Court can only interfere, if the discretionary power is improperly used or there exists a misconception of fact or the non taking into account of a material factor. 20

(3) An administrative decision is not a statute and it should not be construed according to the principles pertaining the construction of a statute. The wording of the sub judice decision points out that the applicants did not persuade the respondent that any of the two alternatives required by s. 5(9) was satisfied. The combined effect of the "main object of the interested company" and the reference to s. 5(9) is that the applicants are neither carrying on nor intend to carry on transport business as their main occupation. It follows that the Authority was not labouring under a misconception of Law. The decision does not lack due reasoning, such reasoning being supplemented by the material before the Authority. 25 30 35

(4) In the light of all circumstances the sub judice decision was reasonably open to the Authority.

Recourse dismissed.

No order as to costs.

5 **Cases referred to.**

Saruhan v. The Republic, 2 R.S.C.C. 133;

Pierides v. The Republic (1969) 3 C.L.R. 274;

Nicosia Techalemit v. Municipality of Nicosia (1971) 3 C.L.R. 357;

10 *Avgousti v. The Permits Authority* (1972) 3 C.L.R. 356;

Merck v. The Republic (1972) 3 C.L.R. 548;

Kyriakou and Another v. The Republic (1974) 3 C.L.R. 358.

Recourse.

15 Recourse against the decision of the Review Licensing Authority whereby the decision of the Licensing Authority to grant applicants four licences for "Z" cars was set aside and against the decision of the Review Licensing Authority to grant to the interested parties licences for "Z" cars.

20 *A. Haviaras*, for the applicants.

G. Erotocritou (Mrs.), Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

25 **STYLIANIDES J.** read the following judgment. The applicants by this recourse sought two reliefs:-

(a) The annulment of the decision of the Review Licensing Authority dated 6.5.85 and communicated to them by letter 24.5.85 whereby the decision of the Licensing Authority to grant to them four licences for "Z" cars dated 9.1.85 was set aside; and,

30 (b) The annulment of the decision of the Review Li-

censing Authority to grant licences for "Z" cars to a number of persons who were described in the recourse as "interested parties".

In the course of the hearing the second relief was rightly withdrawn for a number of good reasons to which I need not refer in this judgment. 5

The applicants are a registered company with limited liability, having Paphos as the seat of their activities.

On 4.10.83 they applied to the Licensing Authority for the grant to them of licences for the hire of 10 cars without driver. A report was prepared by the Paphos District Transport Inspector. The application was considered by the Licensing Authority. The representative of the applicants, who appeared before the Licensing Authority, stated that they run a tourist office at Paphos since 1980 and that the said licences were necessary for the service of their clients. 10
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The Licensing Authority at its meeting of 27.12.84 decided to grant to the applicants four licences for the hiring of cars without driver.

Five interested parties being aggrieved by the said decision, impeached it by hierarchical Recourses No. 121/85, 178/85, 170/85, 311/85 and 408/85 before the Review Licensing Authority under Section 4A. of the Motor-Transport (Regulation) Laws, 1982 and 1984. The hierarchical recourses were heard by the Review Licensing Authority on 30.3.85. The applicants in the recourses and/or their advocates as well as Mrs. Iacovidou for the present applicants were heard. It transpired that the applicants run a supermarket, they do estate agency and they let flats for tourists. In the past, for a period, "Z" cars were provided in co-operation with transport companies, such as Glamico Ltd., Hertz and Astra. 20
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The Review Licensing Authority issued its decision on 6.5.85, whereby it annulled the decision of the Licensing Authority, and communicated same to the applicants. The sub judice decision reads as follows:- 35

«Η Αναθεωρητική Αρχή Αδειών αφού μελέτησε όλα

τα στοιχεία των σχετικών Φακέλλων και όλα όσα έχουν ληχθεί από τους προσφεύγοντες και την εκπρόσωπο της ενδιαφερομένης Εταιρείας, αποφασίζει την αποδοχή των προσφυγών διότι ο κύριος σκοπός της ενδιαφερομένης Εταιρείας δεν είναι οι ενοικιάσεις οχημάτων «Ζ» και κατά συνέπεια δεν πληροί τις προϋποθέσεις του άρθρου 5 εδάφιο 9 του Νόμου».

(“The Review Licensing Authority, having considered all the material of the relevant files and all that was said by the applicants and the representative of the interested Company, decided to allow the recourses as the main object of the interested Company is not the hiring of “Z” vehicles and consequently it does not satisfy the prerequisites of Section 5, paragraph 9, of the Law”).

The grounds of law on which this recourse is based are:-

- (a) *The sub judice decision was obtained in excess or abuse of power;*
- (b) *It is the product of misconception of fact and law; and,*
- (c) *It is not duly reasoned and was reached without due inquiry.*

Both in the written and in the oral address counsel for the applicants confined himself to the grounds that the respondent Authority failed to evaluate properly the facts and erroneously reached the conclusion that the applicants did not carry on transport business and further that the Authority misconceived the Law in that it did not consider whether the applicants intend to carry on transport business. He referred to the report of the Transport Inspector and to the objects of the Company as set out in the Memorandum of Association.

The power of the Review Licensing Authority in dealing with recourses is set out in Section 4A, paragraph 4. The Review Licensing Authority may take into consideration facts subsequent to the issue of the decision of the Li-

censing Authority—(Subsection 4A. (5) of Law No. 84/84).

Section 5(9) of the Motor Transport Regulation Laws, 1982 and 1984 (Laws Nos. 9/82 and 84/84) reads as follows:-

«(9) Ουδεμία άδεια οδικής χρήσεως θα χορηγήται 5
αναφορικώς προς οιονδήποτε όχημα δημοσίας χρήσεως
προς εκτέλεσιν οιασδήποτε οδικής χρήσεως δι' ήν απαιτείται τοιούτον όχημα δυνάμει των διατάξεων του
παρόντος Νόμου, εκτός εάν ο ιδιοκτήτης τούτου πείση την αρχήν αδειών ότι μετέρχεται ή προτίθεται ό- 10
πως μετέλθη την μεταφορικήν επιχείρησιν ως κύριον
αυτού επάγγελμα».

“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 persuades the Licensing Authority that he carries on or intends to carry on transport business as his main occupation”). 15

The object of the Law emerging from this provision is clear and unambiguous. Licences should be granted to persons who have or intended to have as their main occupation the transport business. The burden of proof is cast squarely on the shoulders of an applicant. 20

The evaluation of the facts is within the discretionary power of the administrative Authority. An administrative Court can only interfere if there exists an improper use of the discretionary power or a misconception concerning the factual situation or the non-taking into account of material factors. The principles governing judicial control of discretionary power are well settled—(*Saruhan v. Republic*, 2 R.S.C.C. 133, 136; *Pierides v. Republic*, (1969) 3 C.L.R. 274, 282-283; *Nicosia Techalemit v. Municipality of Nicosia*, (1971) 3 C.L.R. 357, 368-369; *Avgousti v. The Zimmits Authority*, (1972) 3 C.L.R. 356, 363; *E. Merck v. Republic*, (1972) 3 C.L.R. 548, 564; *Kyriacou and Another v. Republic*, (1974) 3 C.L.R. 358, 364-365). 25 30 35

It is well settled that administrative decisions should be adequately reasoned and that lack of due reasoning renders them contrary to law as taken in excess or abuse of power.

The reasoning of the sub judge decision is that the main object of the interested Company is not the hiring of "Z" cars and consequently it does not satisfy the prerequisites of Section 5, paragraph 9, of the Law.

- 5 An administrative decision is not a statute and it should not be construed according to the principles pertaining to the construction of statutes.

10 The sub judge decision refers to the requirements of Section 5, paragraph 9, of the Law. This paragraph requires an applicant to persuade the Authority either that he carries on or intends to carry on transport business as his main occupation.

15 The material before the Authority was the file of the Licensing Authority, the Memorandum of Association of the Company, the representations of counsel and applicants in the hierarchical recourses and the statement of Mrs. Iacovidou who represented the applicants. The files and all the material were taken into consideration and evaluated by the respondent Authority.

20 An examination of the contents of the sub judge decision conveys why this decision was taken. It is well settled that the reasoning may be supplemented by the material before the administrative Authority. The sub judge decision does not suffer from lack of due reasoning.

25 The wording of the sub judge decision points out that the applicants did not persuade the Authority that any of the two alternatives required by the Law was satisfied.

30 The sub judge decision indicates that the applicants do not carry on or intend to carry on the hiring of "Z" cars as their main occupation. The combined effect of the "main object of the interested Company" and the reference to the provisions of paragraph 9 of Section 5 of the Law is that the applicants are neither carrying on nor intend to carry on transport business as their main occupation. Therefore,
35 they were not labouring under any misconception as to the law.

This decision of the Authority, on the material before

them, was reasonably open to them. The statement of Mrs. Iacovidou before the Review Licensing Authority points clearly that the main occupation of the applicant Company is the supermarket, estate agency and the aim of obtaining licences for "Z" vehicles is only incidental for serving their clients - lessees of flats. 5

The respondent Authority did neither act under a misconception of fact nor law. It reached its decision, which is duly reasoned, after a due inquiry. The sub judice decision that the applicants did not satisfy the requirements of s. 5(9) and the consequent annulling decision were reasonably open to them. 10

In view of the aforesaid this recourse fails. It is hereby dismissed.

Let there be no order as to costs. 15

*Recourse dismissed.
No order as to costs.*