

1986 November 26

[STYLIANIDES, J]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

TAKIS SKAROS.

Applicant,

v.

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

Respondents

(Case No. 690/84)

*Administrative Law—Misconception of fact—What constitutes
a misconception of fact*

*Reasoning of an administrative act—What constitutes due
reasoning depends on nature of decision—A decision,
even if laconical, may convey the reason why it was taken
—Reasoning may be supplemented by the material be-
fore the administration*

*Motor Transport—The Motor Transport Regulation Law 9/82
—Powers of Minister of Communications and Works
when dealing with a hierarchical recourse from a decision
of the Licensing Authority*

*Motor Transport—The Motor Transport Regulation Law 9/82
—Urban bus licences—Section 8(3)—The criteria there-
under*

The applicant, who is the owner of two buses, which may carry 11 passengers each applied for urban bus licences in respect of the said buses for the route "Kermia Hotels-Ayia Napa Square-Makronissos and return." Two other companies objected and eventually applied for urban bus licences in respect of their own buses, the one

capable of 50 and the other 39 passengers, for another route in the area, namely "Dome Hotel - Asterias Hotel - Ayia Napa - Protaras - Paralimni and return".

The Licensing Authority, taking into consideration the needs of the major area Paralimni, Protaras and Ayia Napa rejected applicant's application and granted the application of the said two companies. 5

Feeling aggrieved the applicant filed hierarchical recourses* to the respondent Minister, who dismissed them. Hence the present recourse. 10

The sub judice decision reads as follows: "Having taken into consideration all the material which has been placed before me, I arrived at the conclusion that the decisions of the Licensing Authority are correct and, therefore, I dismiss these recourses". 15

One of the complaints of the applicant is that the Minister misconceived the difference between the route for which the applicant applied and the service to a particular area and the route for which licences were granted to the two companies. 20

Held, dismissing the recourse: (1) The Minister before whom a hierarchical recourse was heard could take any decision that the subordinate body may reasonably take, as both organs in the hierarchy were charged with the same duty—to promote the objects of the Law by the application of its provisions to particular cases. 25

(2) Misconception of fact may consist of either the taking into account of non existing facts or the non taking into account of existing facts. Failure to make a due inquiry causing lack of knowledge of material facts amounts to a misconception of fact. The burden is on the applicant to satisfy the Court or at least to raise a doubt in its mind that the administration has acted under a misconception of fact. 30

It is correct that the route applied for by the appli- 35

These recourses were filed before the amendment of Law 9/82 by Law 84/84, which established a Reviewing Licensing Authority.

cant is a shorter one and serves a limited area, whereas the route for which licences were granted is a longer one. As, however, it appears from the record this was well known to the Minister, who took into consideration the existing means of transport, the needs intended to be served by the routes in question and the co-ordination of the transportation of passengers. The allegation as to the existence of a misconception has no merit.

(3) As it is plain from the material in the file the criteria in s. 8(3) of Law 9/82 were taken into consideration and the discretion was exercised having regard to such requirements of the Law in the area of Paralimni - Ayia Napa, which is one of the main tourist centres of the island.

(4) What is due reasoning depends on the nature of the decision. A decision, even if laconical, may convey the reason why it was taken. Furthermore, the reasoning may be supplemented from the material in the file. The decision in this case is short. It is identical with the decision in *Alona Co-operative Society v. The Republic* (1986) 3 C.L.R. 222. But this case is distinguishable from the case of *Alona*, because in *Alona* most of the issues raised in the hierarchical recourse had not been raised before the Licensing Authority. In this case the reasoning can be ascertained by the material in the file.

(5) There is no merit in the allegation as to lack of due inquiry and as to violation of the rules of natural justice.

Recourse dismissed.

No order as to costs.

Cases referred to:

Alona Co-operative Society v. The Republic (1986) 3 C.L.R. 222;

Christides v. The Republic (1966) 3 C.L.R. 732;

Iordanou v. The Republic (1967) 3 C.L.R. 245;

Ioannides v. The Republic (1972) 3 C.L.R. 318;

Mikellidou v. The Republic (1981) 3 C.L.R. 461;

Skapoullis and Another v. The Republic (1984) 3 C.L.R. 554;

L. and G. Iacovides Enterprises Ltd., v. The Republic 5
(1986) 3 C.L.R. 2101.

Recourse.

Recourse against the dismissal of applicant's hierarchical recourse against the decision of the Licensing Authority not to grant to him urban licences for his motor vehicles licensed as tourist buses for the area of Ayia Napa. 10

S. Karapatakis, for the applicant.

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

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant by means of this recourse seeks the annulment of the decision of the respondent Minister whereby he dismissed the hierarchical recourse of the applicant against the decision of the Licensing Authority not to grant to him urban licences for his motor-vehicles licensed as tourist buses for the area of Ayia Napa. 15 20

The applicant is the registered owner of buses Reg. No. P. P. 202 and N. L. 606 which carry 11 passengers each.

On 12.3.84 he applied for urban bus licences in respect of the said buses for the following route that did not exist and was not being served at the time: Kermia Hotels - Ayia Napa Square - Makronissos and return. Two companies, Ayia Napa Transport Co. Ltd. and Paralimni - Dherinia Transport Co. Ltd., objected to the grant of the said licences and later they applied for urban licences for another route: Dome Hotel - Asterias Hotel - Ayia Napa - Protaras - Paralimni and return, in relation to one bus of each company, namely, J.Q. 878 and F.L. 927, capable of carrying 50 and 39 passengers, respectively. 25 30

P.E.E.A., the Professional Organisation of Motorists, objected to the grant to the applicant of the licences sought. The two aforesaid transport companies also objected.

5 The needs of the major area of Paralimni, Protaras and Ayia Napa were considered. The existence of a number of taxis in the area of Ayia Napa and the use of tourist buses as taxis were also taken into consideration. The necessity and probable service of the two routes—the one applied for by the applicant and the other by the two bus companies—were investigated into.

10 The Licensing Authority, after hearing the applicant and the objectors and taking into consideration the needs of the area, they rejected the application and instead they granted the application of the two motor-bus companies for the longer route, Paralimni - Protaras - Ayia Napa - Makronissos.

20 The applicant, feeling aggrieved, challenged the decisions rejecting his applications by hierarchical recourses before the Minister. The Minister, having heard counsel for the applicant and counsel for the other two companies, who in the meantime were promoting a unification of their transport business for the better carrying on of their business and service of the public, issued the sub judice decision on 25.9.84 which was communicated to the applicant by letter dated 28.9.84.

The applicant, being aggrieved, filed this recourse whereby he challenges the identical sub judice decision on the following grounds:-

- 30 (a) That the sub judice decision was taken under a misconception of fact;
- (b) That no due inquiry was made and it is contrary to the provisions of the Motor-Car Regulations Law, 1982 (No. 9 of 1982), as amended;
- (c) That it is not duly reasoned;
- 35 (d) It was taken contrary to the principles of good administration and contrary to the rules of natural justice; and,

(e) That it was taken in excess and/or abuse of power.

The material part of the sub judice decision reads as follows:-

“Having taken into consideration all the material which has been placed before me, I arrived at the conclusion that the decisions of the Licensing Authority are correct and, therefore, I dismiss these recourses”.

These recourses were taken before the Minister under s. 4 of the Motor Transport Regulation Law, 1982, before its amendment by Law 84/84 which established a Reviewing Licensing Authority. The hierarchical recourse before the Minister, who was also an administrative organ, was not intended to be an appeal. The Minister before whom a hierarchical recourse was heard could take any decision that the subordinate body could reasonably take in the first instance, as both organs in the hierarchy were charged with the same duty—to promote the objects of the law by the application of its provision in particular cases. Generally, it is competent for the body exercising powers in hierarchical recourses, to review the legality of the decisions taken in the first instance, as well as the manner in which they exercised their discretionary powers by reference to the facts of the case—(*Alona Co-operative Society v. Republic*, (1986) 3 C.L.R. 222).

I shall consider the grounds on which the validity of the sub judice decisions were challenged.

Misconception as to facts may consist of either the taking into account of non existing facts or the non taking into account of existing facts; failure to make a due inquiry causing lack of knowledge of material facts amounts to misconception of fact—(*Christides v. The Republic*, (1966) 3 C.L.R. 732; *Iordanou v. The Republic*, (1967) 3 C.L.R. 245; *Ioannides v. The Republic*, (1972) 3 C.L.R. 318; *Mikellidou v. The Republic*, (1981) 3 C.L.R. 461; *Skapoullis and Another v. The Republic*, (1984) 3 C.L.R. 554).

The burden lies on the applicant to satisfy the Court

that the respondent has acted under a misconception of fact or at least to raise a doubt in the mind of the Court in this respect. A probability that the misconception has led to the taking of the decision complained of is sufficient to vitiate an administrative act.

It is the allegation of the applicant that the Minister misconceived the difference between the route for which the applicant applied and the service to a particular area and the route for which licences were granted to the two other transport companies. It is correct that the route for which the applicant applied is a shorter one and serves a limited area whereas the route for which the licences were granted to the others is a longer one but this, as it appears in the record, was well known to the Minister. He took into consideration both the existing means of transport, the needs intended to be served by the two routes and the co-ordination of the transportation of passengers necessary in the public interest. This emerges from the material before him which he took into consideration. I see no merit in the allegation that the sub judice decision was taken under a misconception of fact.

The material parts of the Road Transport Regulation Law, 1982 (No. 9 of 1982) that govern the matter are Sections 5(3), 14 and 8, particularly s. 8(3). In s. 8(3) a number of criteria are enumerated which have to be taken into consideration by the Licensing Authority in exercising its discretionary powers in granting a licence. Among these are the transport needs which the applicant for route intends to serve; the existence of other licensed transport enterprises offering the same or similar transport services in the area; the degree and regularity to which such services are adequately and regularly offered; the necessity of co-ordinating the transportation of passengers in the area for the purpose of achieving adequate and effective transport services; the avoidance of damaging competition among persons involved in such transportation and the extent to which the proposed route is necessary or desirable in the public interest.

In the present case the Licensing Authority and the Minister exercised their power and discretion having regard

to these particular requirements of the Law in the area of Paralimni - Ayia Napa, which is one of the main touristic centres of the island. This is plain from the whole material in the file. Paralimni and Ayia Napa are two neighbouring areas which have been rapidly developed into touristic areas with many tourists moving around. They need besides taxi services, public service by bus. There should be a co-ordination of the transportation of the passengers in the whole district in the public interest; that the transportation should be made by buses but not of a capacity of 11 passengers as the tourist buses of the applicant and that the route be longer to cover the line Paralimni - Protaras - Ayia Napa - Nissi Beach - Makronissos and return. The more limited route sought by the applicant, i. e. Kermia - Ayia Napa Square - Makronissos and return, would not satisfy the requirements set down in Subsection (3) of the Law.

An administrative decision should be reasoned. What is due reasoning is a question of degree dependant upon the nature of the decision concerned. A decision even if laconical may convey the reason why it was taken. Furthermore, the reasoning may be supplemented by the material before the administrative Authority---(*Alona Co-operative Society v. The Republic*, (supra); *L. & G. Luccombe Enterprises Ltd. v. The Republic*, Case No. 660/85, decision delivered on 8.11.86).*

The sub judge decision is short. It is identical with the decision in the hierarchical recourse in the case of *Alona Co-operative Society* which this Court annulled for lack of due reasoning. *Alona* case, however, is distinguishable from the present case in that most of the issues raised in the hierarchical recourse were not raised before the Licensing Authority. In the hierarchical recourse before the Minister *Alona Co-operative Society* challenged the decision on the grounds that it was contrary to Law, that it violated Article 25 of the Constitution, that the Licensing Authority acted in excess or abuse of power, etc. These were grounds of law which were not decided by the Licensing Authority and there was no material in the file to supplement the

* Reported in (1986) 3 C I R 2101

reasoning of the decision of the Minister. I said at page 229:-

5 "Most of the points raised in the appeal in the hierarchical recourse are not part of the decision under review by the Minister. The Minister simply said that the decision of the Licensing Authority was correct and he reached such conclusion on the material before him. He gives no reason whatsoever why he arrived at such a conclusion and no reason whatsoever for such decision is found in the records related thereto."

10

In the present case the reasoning can be ascertained from the file and the material to which reference is made. The sub judice decision satisfies the requirement of reasoning for an administrative decision.

15

The allegation that no due inquiry was made is totally unfounded. A due and exhaustive inquiry was made and all interested parties and all officials were heard and there is no aspect of the case that was not examined or inquired into.

20

The applicant complains that the rules of natural justice were violated. This is a vague allegation. The rules of natural justice are by now well settled and defined in the jurisprudence of this Court.

25 The applicant was granted the opportunity to be heard. The Minister was neither biased nor likely to be biased. He was not the Judge of his cause. He had no interest in the case and none of the rules of natural justice or the norms of good administration have been contravened.

30 In view of the aforesaid this recourse fails. The sub judice decision is confirmed.

Case dismissed—No order as to costs.

*Recourse dismissed with
no order as to costs.*