

1986 December 13

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

NESTORAS CHRISTODOULOU,

*Applicant,*

v.

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

*Respondent.*

(Case No. 629/85).

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*Motor transport—The Motor Transport Regulation Laws, 1982-1984—Section 4A—Powers of Permits Review Authority thereunder.*

5 *Motor transport—The Motor Transport Regulation Laws, 1982-1984—Cars hired without a driver—Section 5(9)—Rejection of application on ground that applicant does not carry on or does not intend to carry on the business as his main occupation—Fact that applicant was a substantial shareholder in a company carrying on such business*  
10 *correctly disregarded as a company's personality is distinct from its members.*

15 *Administrative law—Discretionary powers—Policy criteria not inconsistent with the law laid down in advance as guidance to the exercise of the discretion—Such course validly adopted.*

*Administrative law—Discretionary powers—Evaluation of facts—The province of the administration—Judicial Control—Principles applicable.*

20 Upon a hierarchical recourse against a decision of the Licensing Authority, granting to the applicant 5 licences

for the hiring of cars without a driver (Z cars) the Permits Review Authority, having laid down in advance certain policy criteria\* and having taken the same into consideration, reversed the said decision of the Licensing Authority on the ground that the applicant does not carry nor he intends to carry on the profession of hirer of "Z" cars as his main occupation (Section 5(9) of the Motor Transport Regulation Law 9/82). Hence the present recourse.

It should be noted that the applicant owned 50% of the shares of a company with limited liability—being, also, its secretary and director—which carried on the business of hire of vehicles without a driver. In addition the applicant carried on the business of selling vehicles and hiring cycles and bicycles. It is clear that the licences applied for were sought by the applicant in person and not by the said company.

*Held, dismissing the recourse:* (1) The sub judice decision was taken in virtue of the statutory powers conferred on the Permits Review Authority by section 4(A) of the Motor Transport Regulation Laws, 1982-1984. The wording of s. 4(A)(3) is similar to the wording of the repealed s. 4(2) of Law 9/82 and section 6(2) of the abolished Motor Transport Regulation Laws, 1964-1975. Section 6(2) was judicially considered in *Tsouloftas v. The Republic* (1983) 3 C.L.R. 426, where it was held that the purpose of the hierarchical recourse is not to review the correctness of the decision of the subordinate organ by reference to the soundness of its reasoning, but to establish a second tier designed to eliminate mistakes as well as abuse of authority by subordinates.

(2) It appears that the respondent Authority did not consider applicant's participation in the aforesaid company as satisfying the prerequisite of the law that he carries on or intends to carry on the business of transport as his main occupation. This approach is warranted from the nature of the corporate personality which is a legal entity distinct from its members.

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Quoted at pp. 2246-2248.

(3) The evaluation of facts is the province of the administration and this Court will only interfere, if the determination of the facts is the product of a misconception or has been reached in excess of the extreme limits of the discretionary powers of the administration.

(4) On the totality of the circumstances it was reasonably open to the respondent Authority to arrive at the sub judice decision, guided in the exercise of its discretion by validly laid down in advance criteria which were not inconsistent with the law, but, on the contrary, give effect to its very purpose of regulating in the public interest and in the interests of those already in the profession the licensing of "Z" vehicles.

*Recourse dismissed.*

*No order as to costs.*

Cases referred to:

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

*Republic v. Georghiades* (1972) 3 C.L.R. 594;

*R. v. Torquai Licensing Justices, ex p. Brockman* [1951]  
2 K. B. 784.

#### Recourse.

Recourse against the decision of the respondent whereby the decision of the Licensing Authority to grant to the applicant licences for the hire without a driver for five vehicles was annulled.

*C. Erotocritou*, for the applicant.

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

*E. Efsthathiou*, for interested parties Stavrinidou and Andreou.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent Authority dated the

6th May, 1985 (Appendix 14), by which it annulled the decision of the Licensing Authority of the 27th December 1984, (Appendix 4), to grant to the applicant licences for the hire without a driver for five vehicles is null and void and of no effect whatsoever.

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The applicant applied to the Licensing Authority for the grant to him of licences for the hire without a driver for twenty vehicles (Appendix 1). A report dated 24th November 1983, concerning the said application was prepared by the Paphos District Transport Inspector (Appendix 2). In answer to question 8 therein whether the applicant had purchased during the eight preceding years "Z" cars and how many it was stated that he bought one from Nicosia for the sum of £2,800 "only the licence". On the general observations the Inspector states that "the applicant is engaged in the sale and hire of vehicles. He is the owner of six motor-cycles and four bicycles which he hires" and that he had recently purchased the said car for the hire without a driver which he immediately replaced and that he had paid the sum of £2,800 only and only for the licence.

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The Licensing Authority examined the application at its meeting of the 2nd March and 27th September 1984, and at the latter one (Appendix 4) it decided to grant to the applicant the five licences applied for after it took into consideration the reports of the appropriate Transport Associations, the representatives of the interested parties as well as the views of the Cyprus Tourism Organization. As against that decision there were filed hierarchical recourses to the respondent Authority by Io Stavriniidou, Xanthoulla Andreou, A. Chrysostomou and A. Papalouca (Appendices 6, 7 and 8). The respondent Authority heard these hierarchical recourses at its meeting of the 30th March, 1985 (Appendix 9) in the course of which there were filed by the applicant the documents attached as Appendices 10 and 11. On the 17th April 1985, the respondent Authority considered the matter at its meetings of the 17th April 1985, and the 6th May, 1985 (Appendices 12 and 13) and took the sub judice decision:

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"The Reviewing Licensing Authority having con-

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sidered all the material in the relevant files and all that have been said on behalf of the appellants and the interested parties, proceeds to the following general ascertainment regarding the manner that the  
5 Licensing Authority exercised its discretionary power:

(a) There was a need for the grant of a big number of licences for vehicles for hire without a driver.

(b) The Licensing Authority in the exercise of its discretionary power should have taken into  
10 consideration a basic prerequisite which the Law prescribes in subsection 9 of Section 5, in accordance with which the licences must be granted to persons who carry on or intend to carry on transport business as their main occu-  
15 pation.

(c) In order that it would be possible to offer in a satisfactory manner the services which are implied from the hire of vehicles without a driver it is indispensable that these services be offered  
20 from offices which are well organised and have at their disposal a satisfactory number of vehicles. but there would not be granted to such offices a big number of licences beyond their needs so that the licences would be the subject of  
25 trading.

(d) At the same time a satisfactory number of licences must be granted to small businesses also which it is proved that they carry on or intend to carry on the business of hire of vehicles without a driver as their main business so that on the one hand they will function as viable businesses and on the other to be offered to them equal opportunity for making profits. It has, however, to be stressed here that the purpose of the Law is not served by the scattering of licences, that  
30 is by the granting of small number of licences to many persons which objectively considered will not be able to carry out in a viable manner this business with a necessary consequence either  
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to use the licences as a means of investment by sub-letting their vehicles or by trading them.

The aforesaid ascertainments offer also the criteria on which the Permits Review Authority in the exercise of its discretionary powers will be based. 5

Taking into consideration the above the Permits Review Authority takes the following decisions:

Accepts the recourses which have been submitted against the decision of the Licensing Authority to grant five licences for the hire without a driver to Mr. Nestoras Chrysostomou. 10

The acceptance of these recourses is decided as the Permits Review Authority has become convinced that the interested party does not carry on nor he intends to carry on the profession of hirer of 'Z' vehicles as his main occupation. The interested party is an employee of a business which hires out 'Z' cars." 15

It appears from the material in the file that the applicant had stated at the hearing of the hierarchical recourse that he owned 50% of the shares of a private company called Bella Tours Ltd., registered on 23rd May, 1984, (Appendix 9, page 20), which carried on the business of hire of vehicles without a driver and were the registered owners of eight licensed vehicles. The applicant was its secretary and one of its directors. In addition to being the secretary and director of the above mentioned company, the applicant carried on the business of selling vehicles and miring cycles and bicycles. The applicant did not own any licensed vehicles for hire. It is further clear that the licences applied for were sought by the applicant in person and not by the company (Appendices 1 and 9). 20 25 30

The respondent Authority issued the sub judice decision on the exercise of the statutory powers vested in it by Section 4(A) of the Motor Transport Regulation Laws 1982-1984 (Laws Nos. 9 of 1982, 84 of 1984). The wording of Section 4(A) subsection 3 is similar to the wording of abolished Section 4(2) of Law No. 9 of 1982 and Section 5(2) of the abolished Motor Transport Regulation Laws 35

1964-1975. The Minister's powers under Section 6(2) were judicially considered in the case of *A. Tsouloftas v. The Republic* (1983) 3 C.L.R. 426, in which it was held that "a hierarchical recourse is not a judicial proceeding in any sense. It is not intended to review the correctness of the hierarchically subordinate organ's decision by reference to the soundness of the reasoning propounded in respect thereof but to establish a second tier designed to eliminate mistakes as well as abuse of authority by subordinates."

10 It appears that the respondent Authority did not consider the fact that the applicant was a substantial shareholder, director and secretary of a company limited, carrying on the business of hiring of vehicles without a driver as establishing the prerequisite of the Law, that he carries on or intends to carry on transport business as his main occupation. This approach is warranted from the nature of corporate personality which is a legal entity distinct from its members. It has, as stated time and again, legal personality, often described as an artificial person in contrast with a human being, a natural person (see the Principles of Modern Company Law, by L.C.B. Gower 3rd edition p. 68).

25 On the whole the evaluation of the facts is within the province of the administration and this Court in its revisional jurisdiction will only interfere if the determination of the facts is the product of a misconception of fact or reached in excess of the extreme limits of the discretionary powers of the administration. (See inter alia the *Republic v. Lefkos Georghiades* (1972) 3 C.L.R. 594 at pp. 693 - 30 694). There does not appear to have been in the present case any of the grounds justifying an interference with their determination of the facts of this case.

35 The material in the file establishes that the applicant failed to persuade the respondent Authority that he carried on or proposes to carry on as his main profession the business of hiring vehicles without a driver and that stemmed from the fact that his main profession was that of an employee of a business which hires out "Z" cars in addition of course to being engaged in the sale and hire of vehicles

and being the owner of six motor-cycles and four bicycles which he hired out.

In the light of the above I have come to the conclusion that the sub judice decision is duly reasoned, reached after proper inquiry and that the applicant did not satisfy the requirements of Section 5(9) of the Law. So on the totality of the circumstances it was reasonably open to the Respondent Authority to arrive at the decision it did, guided by the exercise of its discretion by validly laid down in advance criteria which are not inconsistent with the Law, and on the contrary give effect to its very purpose of regulating, in the public interest, and in the interest of those ready in the profession, the licensing of such vehicles.

As pointed out in the Administrative Law by Wade 4th edition p. 318, "There can be no objection to such a policy provided that the application is properly heard and considered in each case. Thus where the justices announced publicly that they would renew restricted licences only subject to the same restrictions, save in very exceptional cases, and subsequently decided a case saying: 'The bench has carefully considered the application but is not prepared to alter the policy'." The Court upheld its decision. See *Wright v. Torquay Licensing Justices ex p. Brockman* [1951] 1 K.B. 784. It goes on then to say that "the Court is careful not to inhibit public authorities from laying down policies, since consistent administrative policies are not only permissible but highly desirable. And it is no less desirable that policies should be made public, so that applicants may know what to expect. But the policies must naturally be based on proper and relevant grounds."

In the result the recourse is dismissed with no order as to costs.

*Recourse dismissed.  
No order as to costs.*