

1986 November 22

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

EFSTATHIOS KYRIACOU AND SONS LTD.,

Applicant:

v.

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

Respondent

(Case No. 380/78)

5 *Motor transport—The Motor Transport Regulation Law 16/64—Section 10—Goods vehicles—Licences “A” and Licences “B”—Limits of discretion of Licensing Authority in respect of “B” licences—Proviso to s. 10(2)—Not applicable to “B” licences.*

10 *Legitimate interest—Motor transport—The Motor Transport Regulation Law 16/64—Section 10—Goods vehicles—Grant of a “B” licence—Holders of “A” licence do not possess a legitimate interest to challenge the decision granting a “B” licence.*

Construction of Statutes—Omission—Words should not be added, unless there are adequate grounds justifying inference that legislature intended something, which it omitted to express.

15 Upon a hierarchical recourse filed by the applicants, who are the owners of 22 cement tankers, having an “A” carrier’s licence, the respondent Minister confirmed the decision of the Licensing Authority, whereby the latter granted the application of the interested party for a “B”

licence in respect of its own cement tanker. Hence the present recourse.

Held, dismissing the recourse: (1) The relevant law regulating the matter in question is the Motor Transport Law 16/64. Section 10* of the said law deals with carrier's licences, both "A" and "B." 5

(2) It is clear from the wording of this section that:
(a) The interested party could have applied for a "B" licence under s. 10(1)(b), which licence, according to s. 10(4), entitles the holder to use the vehicle for the carriage of goods for or in connection with his trade or business. 10
(b) The Licensing Authority has a discretion in the matter and upon granting the licence may impose conditions (s. 10(1)). The discretion is confined to the making sure that the licence would be used for the particular trade or business and for no other purpose and, also, to the conditions that may be imposed. 15

(c) The proviso to subsection 2 of section 10, that the Licensing Authority has to take into consideration the needs of the area as a whole and to hear representations of any persons whose interests might be affected by granting the licence, is only applicable to "A" licences. If the legislator intended otherwise, it would have said so either expressly or by using general words. As it is stated in Maxwell on Interpretation of Statutes, 12th Ed., at p. 33 20
"nothing is to be added to or be taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express". 25

(3) In the light of the above it is clear that the applicants do not possess a legitimate interest. 30

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Kritiotis v. The Municipality of Paphos and Others (1986) 35
3 C.L.R. 322;

* Quoted at pp. 2257-2258 post.

Thompson v. Goold [1910] A.C. 409;

Lloyds Bank v. Elliot [1947] 1 All E.R. 79;

Donovan v. Cammell Laird [1949] 2 All E.R. 82.

Recourse.

- 5 Recourse against the decision of the respondent whereby applicants' hierarchical recourse against the decision of the Licensing Authority to grant to the interested party a "B" carriers licence for a cement tanker was dismissed.

D. A. Demetriades, for the applicants.

- 10 *R. Gavrielides*, Senior Counsel of the Republic, for the respondent.

P. Ioannides, for the interested party.

Cur. adv. vult.

- 15 MALACHTOS J. read the following judgment. The applicant is a company of limited liability owning a number of vehicles for the carriage of passengers and goods. For the purposes of its business it owns, amongst others, 22 cement tankers especially built for the carriage of cement in bulk and they cannot be used, in that form, for any other purpose. The above 22 tankers possess an "A" carrier's licence for the carriage of goods, obtained under the provisions of the Motor Transport (Regulation) Law, 1964, Law 16/64.

- 25 Having obtained a licence for its cement tankers, the applicant company entered into a contract with Vassiliko Cement Works Limited, a company manufacturing cement, for the carriage of cement in bulk straight from the factory all over Cyprus.

- 30 On 31.1.1978, the interested party, General Constructions Company, applied for a "B" carrier's licence for a cement tanker, No. GS 142 belonging to them. The General Construction Company is a contracting company and had undertaken, at that time, amongst other projects, the construction of Paphos Canal, the Grain stores in Limassol and the Makarion Athletic Centre in Nicosia.
- 35 The interested party applied for a "B" licence to have

its own cement tanker in order to facilitate its works, in that they could have the required quantity of cement at any time they needed it at any of its places of work. The company was going to use the tanker only for its own needs.

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The applicant company objected to the granting of that licence to the interested party by letter dated 8.2.1978, stating that it is in a position to satisfy the demand for cement and that the granting of the licence to the interested party would affect its interests. On the 14.2.1978, the applicant addressed a second letter to the Licensing Authority complaining that the vehicle GS 142, belonging to the interested party, carries cement from Vassiliko factory without a licence.

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The interested party was requested by letter dated 3.2.1978 to appear on the 21.2.78 before the Licensing Authority, to give information concerning his application. Consequently, the interested party produced a letter from Vassiliko Cement Works Limited, dated 24.2.78, confirming that the applicant company was unable to satisfy the demands of the market. This letter is addressed to the Chairman of the Licensing Authority and reads as follows:

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"We confirm that, due to the inability of our Transport Contractor, Messrs. Efstathios Kyriakou & Sons Ltd., to cope with their own transport means with the increased demand for our cement delivered in bulk, which has been increased by 50% since last year, we have suggested to four of our good customers, namely:

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- 1) General Constructions Company Limited,
- 2) Joannou & Paraskevaides Limited,
- 3) Cybarco Limited,
- 4) Florentiades Limited,

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that it would be advisable for each one of them to secure one or two bulk cement carriers for the trans-

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portation of their cement requirements in order to avoid long delays in the construction of certain important projects which they have undertaken.”

Copy of this letter was also sent to the applicant.

- 5 The Licensing Authority met on 28.2.78 and decided to grant the permit to the interested party. The relevant extract from the minutes of its meeting reads as follows:-

10 “The Licensing Authority examined the application and having taken into consideration the extent of the company’s works as well as the fact that E. Kyriakou company cannot satisfy the needs of the applicant company has granted it, on the condition that the vehicle will carry cement in bulk to the places of work which the company undertakes contractually and it will bear on its sides an inscription with the words ‘GENERAL CONSTRUCTIONS COMPANY LTD.’ and the size of the letters shall not be smaller than four centimetres. This licence is granted on the additional condition that the vehicle will not be substituted or altered or changed to any other type of carrier”.

25 The decision of the respondent Authority was communicated to the interested party by letter dated 20.3.1980. The applicant appealed against this decision to the Minister of Communications and Works by means of a hierarchical recourse dated 4.4.1978.

The Minister, on 22.7.1978, took the following decision:

30 “Having taken into consideration all the legal points of the case which were put before me as well as its facts and especially the fact that the needs of carriage of cement in bulk are not completely satisfied for the time being by the existing “A” carriers of the cement tanker type, I have reached the conclusion that the Licensing Authority has rightly granted the sub judice licence.

The above recourse is, therefore, dismissed”.

The applicant was informed about this decision of the Minister by letter dated 26.7.1978, and consequently filed the present recourse, on 13.9.1979.

In its application the applicant company prays for a declaration of the Court to the effect that the above mentioned decision of the Minister of Communications and Works is null and void and of no legal effect whatsoever. The grounds of law on which the application is based may be summarised as follows:-

1. That the sub judice decision is not duly reasoned.
2. Lack of due inquiry.
3. That the decision was taken under misconception of facts.

Counsel for the interested party has submitted that the applicant has no legitimate interest in the sense of Article 146.2 of the Constitution, to file this recourse in that the interested party has applied for a "B" licence whereas the licence possessed by the applicant is an "A" licence. Counsel for applicant on the other hand, submitted that the applicant possesses a legitimate interest because its interest as a transport company will be affected if a "B" licence is granted to the interested party, in that it will loose the transport fees of a client.

Article 146.2 of the Constitution, reads as follows:

"146.2: Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission."

It follows from the above that a recourse can only be filed before an administrative Court on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority if the applicant at the time of filing the recourse had an existing and concrete legitimate interest, which is directly affected by the act or decision complained of.

As it is stated in *Kritiotis v. The Municipality of Paphos and Others* (1986) 3 C.L.R. 322, at page 338:

5 “Though traditionally a recourse for annulment of
an administrative decision is very widely open, it is
not an actio popularis open to every citizen of the
country. A citizen cannot contest the validity of
every administrative act unless he possesses the qu-
10 ality of legitimate interest. Had it been otherwise, the
influx of the recourses would paralyse administrative
justice and the judicial control would have become
illusory; furthermore for practical reasons the ad-
15 ministration would also be handicapped in the due
performance of its function. The criterion is the
existence of a direct relationship and affectation of an
interest, material or moral, of the applicant, otherwise
the recourse is deprived of its admissibility.”

20 The Motor Transport (Regulation) Law, 1964, (Law
16/64), is the relevant law regulating the matter. Section 10
of that Law deals with carrier's licences, both “A” and “B”
type. Section 10, as far as relevant to this recourse, reads as
follows:-

25 “10.- (1) Subject to the provisions of this Part, no
person shall use a goods vehicle on a road for the
carriage of goods:-

- 30 (a) for hire or reward; or
(b) for or in connection with any trade or business
carried on by him, except under a licence granted
under this Part (in this law referred to as a ‘carriers
licence’) by the licensing authority and subject to
such conditions as therein contained.

(2) Carrier's licences shall be of the following classes,
that is to say:-

- 35 (a) public carrier's licences (in this Law referred to
as “A” licences); and
(b) private carriers licences (in this Law referred to
as “B” licences).

Provided that the licensing authority in the exercise of its discretionary power for the granting of an 'A' licence must take into consideration the needs of the area of the intended base of the public carrier as a whole, in relation to the carriage of goods, and the co-ordination of every type of carriage of goods and also to take into consideration any representations whatsoever of any persons who already provide in good faith and for a reasonably long time carriage of goods in that area. 5 10

(3) Subject to the provisions of this Part, an "A" licence shall entitle the holder thereof to use the vehicle for the carriage of goods for hire or reward.

(4) Subject to the provisions of this Part, a "B" licence shall entitle the holder thereof to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him." 15

It is clear from the wording of this section that:-

(a) The interested party could have applied for a "B" licence under s. 10(1)(b), for a private carrier's licence which, according to s. 10(4), entitles the holder to use the vehicle for the carriage of goods for or in connection with his trade or business. 20

(b) That the licensing authority has a discretion whether to grant the licence or not and to impose conditions upon granting it (s. 10(1), except under a licence...). 25

The discretion of the licensing authority in this respect should be confined in making sure that the licence would be used for the particular trade or business and for no other purpose, and also to the conditions that may be attached to the licence. 30

(c) That the proviso to subsection 2 of section 10, concerns only carrier's licences type "A". If it were in-

tended to apply to "B" licences as well it would have said so either expressly, as it has been done in the case of "A" licences, or by using general words.

5 As it is expressly provided in the proviso above, the licensing authority has to take into consideration the needs of the area as a whole in the case of "A" licences, and also hear the representations of any persons whose interests might be affected by granting the licence. It is nowhere in the Law stated that the same must be done
10 in the case of applications for "B" licences, or that any representations at all or anything else should be taken into consideration.

In Maxwell on Interpretation of Statutes, 12th Ed., at p. 33, under the sub heading "Omissions not to be in-
15 ferred", it is stated that:-

"It is a corollary of the general rule of literal construction that nothing is to be added to or be taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said:
20 'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do.' (See *Thompson v. Goold* [1910] A.C. 409, 420). 'We are not entitled',
25 said Lord Loreburn L.C., 'to read words into an Act of Parliament unless clear reasons for it is to be found within the four corners of the Act itself.'"

A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it
30 should have been omitted, and the omission appears in consequence to have been "unintentional". (See *Lloyds Bank v. Elliot* [1947] 1 All E.R. 79; *Donovan v. Cammell Laird* [1949] 2 All E.R. 82, per Devlin J.).

35 Applying the law in force at the time as exposed above to the facts of the present recourse, it is clear that the

applicant company has no legitimate interest in the sense of Article 146.2 of the Constitution.

In view of my above decision, I consider it unnecessary to pronounce on the other issues raised in this recourse.

This recourse is, therefore, dismissed, with no order as to costs. 5

*Recourse dismissed.
No order as to costs.*