

1987 October 8

[PIKIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

L.P. LOUCAIDES LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF COMMUNICATIONS AND WORKS,
2. THE REVIEW PERMITS AUTHORITY,
3. THE PERMITS AUTHORITY,

Respondents.

(Case No 800/85).

Motor transport — The Motor Transport Regulation Law 9/82, section 5(9) — Cars hired without a driver (Z cars) — Whether licensing of, within ambit of said section — Question determined in the affirmative.

5 *Motor transport — The Motor Transport Regulation Law 9/82, as amended by Law 84/84 — Permits Review Authority — Powers of — Tsouloftas, and Others v. Republic (1983) 3 C.L.R. 426 followed*

10 The Licensing Authority refused the application of the applicants for cars hired without a driver (Z cars) primarily on the ground that the needs of the country in «Z» cars were satisfied by existing licences. The Permits Review Authority before whom the applicants appealed for a review of that decision decided likewise and dismissed their application, but for a different reason, namely that the applicants failed to meet the requirements of s. 5(9) of Law 9/82 in that they were not in the transport trade or business nor did they intend to make transport their main occupation.

15 Hence this recourse. In support of applicants' case counsel for applicants argued that the licensing of «Z» cars is outside the ambit of the aforesaid section of the Law.

20 Held, *dismissing the recourse*: (1) A right to acquire a licence to own public use vehicles is confined to persons having road transport as their main business.

(2) It is settled that in founding its decision the Permits Review Authority was not confined to a review of the decision of the hierarchically subordinate

body but could extend their inquiry into any matter relevant to the propriety of the application and any factor bearing on the grant of a road transport licence

(3) It is clear beyond doubt that «Z» cars are covered by s 5(9) and subject to its provisions

(4) The applicants did not have transport as their main business nor did they intend to make it their main business or occupation

Recourse dismissed.

Cases referred to.

Olivia Travel Limited v The Republic (1986) 3 C.L.R. 2188.

L. G. Iacovides Enterprises Limited v The Republic (1986) 3 C.L.R. 2101;

Leda Travel Limited v The Republic (1986) 3 C.L.R. 1742.

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

Republic v. KEM Taxi Ltd. and Another (1987) 3 C.L.R. 1057

Recourse.

Recourse against the refusal of the respondents to grant applicants a licence to own, manage and run a number of cars for the purpose of hiring them to others.

Chr. Clerides, for the applicants

St. Ioannides (Mrs.), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicants, a company limited, are the importers of two known makes of cars, Peugeot and Talbot. They made application to the appropriate authority to be licensed to own, manage and run a number of cars for the purpose of hiring them to third parties, commonly known and hereinafter referred to as 'Z' cars. The licences were necessary to meet demand from their customers whose vehicles were garaged for repairs and other potential customers, namely foreign visitors, mostly Lebanese who had a preference for the hire of French cars during their stay in the island. Acquisition of 'Z' cars would also serve the needs of a subsidiary company of the appellants in the tourist trade and would further accord with the needs of an insurance company with whom the applicants were in co-operation

in that 'Z' cars would be made available for the use of insured persons during the period of repair of damaged cars.

5 The Licensing Authority refused the application primarily on the ground that the needs of the country in 'Z' cars were satisfied by existing licences. The Permits Review Authority before whom the applicants appealed for a review of that decision decided likewise and dismissed their application but for a different reason. In their estimation, the applicant failed to meet the requirements of s. 5(9) of the Road Transport Regulation Law (Law 9/82) in that the
10 applicants were not in the transport trade or business nor did they intend to make transport their main occupation. According to the above provision of the law, only persons in the transport business or persons intending to make the transport business their main occupation are qualified for a licence to own, manage and run
15 vehicles designated for public use. As explained in *Olivia Travel Limited v. The Republic*, *a right to acquire a licence to own public use vehicles is confined to persons having road transport as their main business. The establishment of a transport business as a subordinate or incidental business activity to another trade or
20 business will not suffice.**

It is settled that in founding its decision the Permits Review Authority was not confined to a review of the decision of the hierarchically subordinate body, but could extend their inquiry into any matter relevant to the propriety of the application and any
25 factor bearing on the grant of a road transport licence.***

Applicants doubted the construction placed by the respondents on s. 5(9) of the Law and argued that the licensing of 'Z' cars is outside the ambit of s. 5(9). Consequently, it was submitted that the decision rested on a misconception of the law and on that
30 account vulnerable to be set aside. The application of subsection 9 of s. 5 of Law 9/82 is limited to public use vehicles, while in the

* (1986) 3 C.L.R. 2188

** See also *L.G. Iacovides Enterprises Limited v. The Republic* (1986) 3 C.L.R. 2101 and *Leda Travel Limited v. The Republic*, (1986) 3 C.L.R. 1742.

*** *Tsouloftas and Others v. The Republic*, (1983) 3 C.L.R. 426. *Republic v. KEM Taxi Ltd and Another*, (1982) 3 C.L.R. 1057.

contention of counsel 'Z' cars do not fall in that category of vehicles in view of the relevant definition given by the Motor Vehicles and Road Traffic Law, 1972, (Law 86/72) as subsequently amended. He sought to reinforce his argument by reference to English Legislation having similar or corresponding objects though different in many material respects from our legislation. Not much benefit can be derived from such exercise, as both the content and range of application of Cyprus' and English legislation are far from coincidental.

Counsel for the respondents argued that the Law (9/82) makes it plain beyond argument that 'Z' cars qualify as vehicles of public use and as such are explicitly subject to the provisions of s. 5(9). Irrespective of the definition of «vehicle of public use» furnished by Law 86/72, the legislation regulating the grant of road service licences for vehicles of public use expressly qualifies in the definitional section a car designated for hire to third parties as a vehicle of public use. The intention of the legislator is reinforced by the provisions of s. 5(6) enumerating the categories of vehicles in respect of which a road service licence is a prerequisite for their use and operation.

Paragraph (d) of section 5(6) specifically categorises 'Z' cars as falling in that class of vehicles. It would be strange if 'Z' cars were excluded from the ambit of s. 5(9) as it would defy the uniform objective of the legislature to make every species of road transport the business of a professional class having road transport as their main occupation.

In my judgment it is clear beyond doubt that 'Z' cars are covered by s. 5(9) and subject to its provisions. That being the case the present recourse must necessarily be dismissed. Whether any subsidiary company of the applicant to be established in the future specifically devoted to transport business would have a better chance of success in securing 'Z' licences is a matter of speculation. Suffice it to say as re-affirmed in *Republic v. KEM Taxi Ltd.* (supra), a limited company is for the purposes of s. 5 of Law 9/82 too, a different personam from its shareholders and must qualify in her own right as a person entitled to the benefit of the provisions of that section of the law. Given my decision, the application is, for the reasons explained above, doomed to failure. It is unnecessary to explore the alternative argument of counsel for the respondents that 'Z' cars are also classified as vehicles of public

use under the 1972 legislation and regulations enacted thereunder. The judgment may be ended by noting that on any view of the facts the applicants did not have transport as their main business nor did they intend to make it their main business or occupation.

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In the result, the recourse is dismissed. The decision of the respondents is affirmed pursuant to the provisions of Article 146 4(a).

Recourse dismissed