

1987 December 11

(PIKIS, J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
ETERIA METAFORON AHERITOU LTD ,

Applicants,

v

THE REVIEW LICENSING AUTHORITY,

Respondents

(Case No 502/86)

Motor transport — The Motor Transport Regulation Law 9/82, as amended by Law 84/84 — Substitution of a licensed vehicle — Prerequisites — Section 7(1)

5 *Motor transport — The Motor Transport Regulation Law 9/82, as amended by Law 84/84 — Transportation of passengers by non professional carriers — Section 11(2) — Needs of interested party identified with needs of a company limited of which the interested party was the director and main shareholder — Amounts to misconception of the needs of the interested party*

Company Law — The separateness in Law of the company from its shareholders and management

10 Manno Kounnas was licensed to use bus HS 816 for the transportation to and from their work of the staff of Grecian Hotel belonging to Grecian Hotel Enterprises Limited, of which he is the main shareholder and managing director. The permit was renewed and was in force in 1985 when Mr Kounnas applied for the licensing of a new and bigger bus for the transport
15 needs of the hotel.

The Licensing Authority found the application justified. Upon a hierarchical recourse the Permits Review Authority were satisfied that existing bus services in the area could not satisfy the transport needs of the personnel of Grecian Hotel and confirmed the decision of the Licensing Authority. The permit
20 provided in terms that the new bus was licensed in substitution for bus HS 816.

25 Held, *annulling the sub judice decision* (1) Section 7(1) of the law authorises the substitution of a licensed vehicle in either one of two situations — upon destruction or compulsory loss. The material before the respondents did not establish that bus HS 816 was either destroyed or compulsorily lost. It follows that respondents acted under misconception of the provisions of the law relevant to the substitution of a licensed vehicle.

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(2) The law limits in terms amenity to license the transportation of passengers by a non-professional carmer to satisfaction of the needs of the business or trade of the carmer himself (see s 11(2) of the law) Evidently, the respondents identified his needs with those of Grecian Hotel Enterprises Limited notwithstanding the separateness in law of the company from its shareholders and management It follows that the decision has to be annulled for misconception of the facts relevant to the needs of the applicant for the use of a bus for his business or trade

Sub judice decision annulled.

No order as to costs

Cases referred to.

Bank of Cyprus Holdings v Republic (1985) 3 C L R 1883;

Bank of Cyprus v Republic (1983) 3 C L R 636

Recourse.

Recourse against the decision of the respondent whereby the licence issued to the interested party in respect of bus No. HS 816 was replaced by a new licence for a bigger bus with a sitting capacity of 46 instead of 36.

N. Papaefstathiou, for the applicants.

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

M. Cleopas, for the interested party.

Cur. adv. vult.

PIKIS J. read the following judgment. In 1980 Marinos Kounnas was licensed to use bus HS 816 for the transportation to and from their work of the staff of Grecian Hotel belonging to Grecian Hotel Enterprises Limited, of which he is the main shareholder and managing director. The permit was renewed and was in force in 1985 when Mr. Kounnas applied for the licensing of a new and bigger bus for the transport needs of the hotel. The new bus had a sitting capacity of 46 compared to 36, the capacity of bus HS 816. The application was opposed by the professional carriers likely to be affected by the grant of the permit. After hearing the parties, the Licensing Authority found the application justified and approved it in exercise of the powers vested in them by s. 11 of the Road Transport Regulation Law*. An appeal was launched before the Permits Review Authority that led to re-examination of the substance of the application. Like the Licensing Authority respondents were satisfied that existing bus services in the area could not satisfy the transport needs of the personnel of Grecian

* Law 9/82 amended by Law 84/84.

Hotel and confirmed the decision of the Licensing Authority. The permit provided in terms that the new bus was licensed in substitution for bus HS 816.

5 After careful consideration of the circumstances surrounding the issue of the licence and the identity of the licensee, I am of the opinion that the decision must be annulled for the following two reasons:

(a) Misconception of the provisions of the law relevant to the substitution of a licensed vehicle, and

10 (b) misconception of the facts relevant to the needs of the applicant for the use of a bus for his business or trade.

Section 7(1) of the law authorises the substitution of a licensed vehicle in either one of two situations - upon destruction or compulsory loss. Establishment of the prerequisites is a condition precedent to approval for the substitution of the licensed vehicle. The law stipulates one more pre-condition that the application for replacement be made not later than one year from the occurrence of the event that necessitated the replacement. The application for the licensing of the new car was not founded on the provisions of s. 7 of the law and it did not specify that the new car would be used in substitution of the old one. Moreover, neither the respondents nor the Licensing Authority examined the merits of the application from the angle of s. 7 despite reference to substitution in the terms of the permit itself. The material before the respondents did not establish that bus HS 816 was either destroyed or compulsorily lost. On the contrary, the material before the Permits Review Authority did indicate that despite its poor condition some use was still made of bus HS 816.

Furthermore, the respondents did not address themselves at all to the question whether on an application for replacement it is at all permissible to authorise the use of a vehicle with a bigger passenger capacity. The misconception under which the respondents laboured affected the premise of their decision, and for that reason rendered defective the exercise of administrative power.

The decision is also assailable for misconception of the facts relevant to the needs of Marinos Kounnas. Evidently, they

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identified his needs with those of Grecian Hotel Enterprises Limited notwithstanding the separateness in law of the company from its shareholders and management*. The misconception of the facts was material for contrary to the submission of counsel for the respondents, the law limits in terms amenity to license the transportation of passengers by a non-professional carrier to satisfaction of the needs of the business or trade of the carrier himself (see s. 11(2) of the law). The limitation is compatible with the spirit and tenor of the law, particularly the parts of it that attach liability to the licensee for breach of the terms and conditions of the licence. 5 10

For each one of the reasons indicated above, the decision must be annulled. And pursuant to the provisions of article 146.4(b) I declare it to be wholly void.

Let there be no order as to costs. 15

*Sub judice decision
annulled. No order
as to costs.*

* See *Bank of Cyprus Holdings v Republic* (1985) 3 C L R 1883 and the decision at first instance in the case of *Bank of Cyprus v Republic* (1983) 3 C L R 636