

1987 November 7

{KOURRIS J}

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRAKIS EVGENIOU,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PERMITS REVIEW AUTHORITY,

Respondent

(Case No 605/85)

Motor transport — The Motor Transport Regulation Law 9/82, as amended by Law 84/84 — Permits Review Authority — Powers of — The criteria laid down at its meeting of 17 4 85 — Ultra vires the law — Kynacou v The Republic (1986) 3 C L R 1845, KEM TAXI Ltd and Another v Republic (1986) 3 C L R 703 followed

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The Permits Review Authority reversed a decision of the Licensing Authority, whereby the applicant had been granted licences for cars hired without a driver

The relevant minutes of the Permits Review Authority state that the Authority taking into account the criteria which were set out at its meeting on 17 4 85 . allows the appeals . because Mr Evgeniou does not satisfy the requirement of s 5(9) of the Law* *

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Hence this recourse

Held, annulling the sub judge decision (1) The criteria laid down by the Authority and which were taken into consideration in arriving at the sub judge decision are ultra vires the law (*Kynacou v The Republic (1986) 3 C L R 1845* and *KEM Taxi Ltd v The Republic (1986) 3 C L R 703* adopted) The sub judge decision has to be annulled

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2) Assuming that the criteria are not ultra vires the law, this recourse should be dismissed, because, in the light of the material before it, it was reasonably

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* Law 9/82

open to the respondent to reach the conclusion that applicant did not satisfy the requirements of section 5(9).

Sub judice decision annulled.

Costs against respondents.

5 *Cases referred to:*

Tsouloftas and Others v. The Republic (1983) 3 C.L.R. 425;

Kyriacou v. The Republic (1986) 3 C.L.R. 1845;

KEM Taxi Ltd. and another v. The Republic (1986) 3 C.L.R. 703;

Vassiliou v. The Republic (1982) 3 C.L.R. 220.

10 **Recourse.**

Recourse against the decision of the respondent to annul the licences granted by the Licensing Authority to the applicant for the hire of cars without a driver in relation to three vehicles.

A.S. Angelides, for the applicant.

- 15 *G. Erotokritou (Mrs.)*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

- 20 KOURRIS J. read the following judgment. By the present decision of the respondent Authority, dated 20.4.1985 and communicated to the applicant and interested parties by letter dated 3.5.1985, by which the respondent Authority had annulled the Licensing Authority decision of 9.1.1985, to grant to the applicant licences for the hire of cars without a driver in relation to three vehicles, is null and void and of no effect whatsoever.

- 25 The applicant applied on 15.6.1983 to the Licensing Authority for a licence to own and manage fifteen self-drive cars commonly known as «Z» cars. A report dated 13.7.1983 was subsequently prepared with regard to the said application by a Transport
30 Inspector and the Licensing Authority examined the abovementioned application at its meeting of 1.2.1984 and decided to grant to the applicant licences for the hire of cars without a driver in relation to three vehicles. By a letter dated 9.1.1985 the Licensing Authority communicated to the applicant
35 its above-mentioned decision.

The Interested Parties, Security Travel Limited, H & C Hotels Catennng Limited, KEM Taxi Limited and others and Chrstos Papegeorghiou being dissatisfied with the decision of the Licensing Authority, filed hierarchical recourses to the Permits Review Authority under s 4(a) of the Motor Transport Regulation Laws 1982 and 1984 Laws 9/82 and 84/84 5

The hierarchical recourses were heard by the Permits Review Authority at its meeting of 18 3 1985 and after taking into account all the facts and circumstances of the case, it decided at its meeting of 20 4 1985 to allow the hierarchical recourses and to annul the decision of the Licensing Authority 10

The decision of the Permits Review Authority, dated 20 4 1985, was communicated to the applicant and all concerned by letter dated 3 5 1985 and against this decision the applicant filed the present recourse 15

The sub judice decision reads as follows

«Η Ανάθεωρητική Αρχή Αδειών αφού μελέτησε όλα τα στοιχεία των σχετικών φακέλλων και όλα όσα έχουν λεχθεί από μέρους των προσφευγόντων και των ενδιαφερομένων μερών και λαμβάνοντας υπόψη τα κριτήρια που έθεσε στη συνεδρία της στις 17/4/1985, παίρνει τις πιο κάτω αποφάσεις:- 20

.....

10. Αποδέχεται τις προσφυγές 145/85, 291/85 και 507/85 που υποβλήθηκαν εναντίον της απόφασης της Αρχής Αδειών να χορηγηθούν 3 άδειες οχήματος εκμισθουμένου άνευ οδηγού στον κ. Δημητράκη Ευγενίου. 25

Αποφασίζεται η αποδοχή των προσφυγών διότι ο κ. Ευγενίου δεν πληροί τις προϋποθέσεις του άρθρου 5 (εδάφιον 9) του Νόμου». 30

(Vide Appendix B.)

In English it reads as follows.

«The Permits Review Authority having considered all the material of the relevant files and all that has been said on behalf of the applicants and on behalf of the Interested Parties 35

and taking into account the criteria which were before its meeting on 17.4.1985, reached the following decisions:-

5 10. It allows the appeals (Recourses) 144/85, 291/85 and 507/85 which were filed against the decision of the Licensing Authority to grant licences for the hire of cars without a driver in relation to 3 vehicles to Mr. Demetrakis Evgeniou.

10 It has been decided to allow the appeals because Mr. Evgeniou does not satisfy the requirements of s. 5(9) of the Law».

I think it is pertinent at this stage to set out s. 5(9).

Section 5(9) reads as follows:-

15 «Ουδεμία άδεια οδικής χρήσεως θα χορηγείται αναφορικώς προς οιονδήποτε όχημα δημοσίας χρήσεως προς εκτέλεσιν οιασδήποτε οδικής χρήσεως δι' ην απαιτείται τοιούτον όχημα δυνάμει των διατάξεων του παρόντος Νόμου, εκτός εάν ο ιδιοκτήτης τούτου πείσει την Αρχήν Αδειών ότι μετέρχεται ή προτίθεται όπως μεέλθει την μεταφορικήν επιχείρησιν ως κύριον αυτού επάγγελμα».

20 In English it may be translated as follows:

25 «No road service licence shall be granted in respect of any public service vehicle for the service of any road for which such vehicle is required under the provisions of this Law, unless its owner convinces the Licensing Authority that he carries on or intends to carry on the transport business as his main occupation.»

30 The nature and character of hierarchical recourses was dealt with in the case of *A. Tsouloftas and Others v. The Republic of Cyprus*, (1983) 3 C.L.R. 426. It was held that the test by which the validity of the decision of the Permits Review Authority must be judged is the same as that applicable to the Licensing Authority.

35 The sub judice decision was issued in exercise of statutory powers with which the respondent Authority is vested by s. 4(A) of the Motor Transport Regulation Laws, 1982 and 1984 (Laws 9/82 and 84/84). The wording of s. 4(A)(3) is similar to the wording of the abolished section 4(2) of Law 9/82 and s. 6(2) of the abolished Motor Transport Regulation Laws 1964 - 1975.

The Minister's powers under s. 6(2) were expounded in the *Tsouloftas* case (supra) where at page 431 it was stated:

«A hierarchical recourse is not a judicial proceeding in any sense. It is not intended to review the correctness of the hierarchically subordinated organ's decision by reference to the soundness of the reasoning propounded in respect thereof, but to establish a second tier in the decision-taking process, designed to eliminate mistakes as well as abuse of authority by subordinates... Both organs in the hierarchy are charged with the same duty - to promote the objects of the law by the application of its provision in particular cases.»

And at p. 432 it is stated:

«The test by which we must judge the validity of the decision of the Minister is the same with that applicable to the Licensing Authority. It is this: Whether it was reasonably open to the Minister, in view of the provisions of the Law, and the material before him, to decide as he did.»

By the time this case came up for hearing, Pikis, J. delivered judgment in the case of *Vassos Kyriacou v. The Republic of Cyprus Through the Permits Review Authority*, (1986) 3 C.L.R. 1845, and held that the criteria laid down were ultra vires the Law because «they were designed to introduce a body or rules outside the context of the law and in some areas in opposition to it» and he annulled the decision of the Permits Review Authority.

Also, Savvides, J., who delivered judgment in the case of *KEM Taxi Limited, trading under the business name «KEM Tours», and another v. The Republic of Cyprus*, (1986) 3 C.L.R. 703, also held that the criteria are ultra vires.

Counsel for the applicant invited the Court to adopt and rely on the case of *Kyriacou* (supra) because the facts in that case are similar to the facts of the present case in that the Licensing Review Authority held that the applicant did not satisfy the requirements of s. 5(9) of the Law as in the present case.

Counsel for the respondent Authority, on the other hand, contended that the *Kyriacou* case has no application to the facts of the case in hand because the applicant in the present case did not satisfy the requirements of s. 5(9) of the Law. Counsel submitted that the Licensing Review Authority proceeds and applies the «criteria» if it is found that an applicant comes under s. 5(9) of the

Law and not before. If he does not come under s. 5(9) then the application of the criteria does not arise and they do not come into operation and it cannot be said that the Licensing Review Authority relied on criteria which were ultra vires and consequently invalid.

In the case of *Kyriacou* (supra), Pikis J. referred to the case of *Vassiliou v. The Republic*, (1982) 3 C.L.R. 220 on the question of the amenity of Administrative Authorities to adopt a policy decision affecting the exercise of their discretionary powers and at p. 1851 said the following:

«An administrative authority cannot in the exercise of its administrative powers override the law by the evolution of criteria other than those laid down in the relevant statute. The one thing they cannot do is to neutralize their discretion to respond to the merits of the individual case.

The sweeping nature of the directives laid down in this case are designed to introduce a body of rules outside the context of the Law and in some areas in opposition to it. They are not confined to laying down the procedural means of eliciting the factual background to the application particularly the genuineness of the intention of the pursuer to start a Z-car business as his main occupation. Rules (c) and (d) in particular seem to lay down criteria unknown to the law and establish principles that may lead the Administration to decide without reference to the individual merits of the case.»

With due respect, I adopt the reasoning of Pikis, J., and I also find that the criteria are ultra vires and invalid and as the respondent Authority in this case relied on them in examining the hierarchical recourse, I have reached the conclusion to annul their decision. Consequently, the argument of counsel for the respondents cannot stand.

I shall now proceed and examine the case if it were held that the criteria are not ultra vires the Law.

The applicant, during the examination of the hierarchical recourse by the respondent Authority on the 18th March, 1985, said, inter alia, the following:

«Έχω τουριστικό κέντρο στην Κακοπετριά. Μιλώ για την πλατεία της Κακοπετριάς. Είναι καφέ και εστιατόριο υπό

την επωνυμία 'Πλατεία Κακοπετριάς ΤΑΒΕΡΝ' η ταβέρνα μου. Έχω και ένα κινηματογράφο καλοκαιρινό.

.....

Από το 1971 εργάζομαι αποκλειστικά εγώ μόνο πάνω στα τουριστικά. Ανεφέρθη προηγουμένως από τον κ. Πέτσα ότι έχω καφενείο στην Κακοπετριά. Δεν είναι καφενείο. Είναι τουριστικό κέντρο, έχω αρμοδία σχέση με τον Τουρισμό της Κακοπετριάς, κατά κάποιο τρόπο ανήκω στην κατηγορία των ανθρώπων και των επιχειρηματιών που εργάζονται αποκλειστικά και μόνο με τον τουρισμό.»

(Vide p. 3 of the proceedings before the Permits Review Authority of its meeting on 18.3.1985.)

It appears from the above passage that the applicant, who is also the Chairman of the Village Committee of Kakopetria, is the owner of a tavern and a summer open-air cinema and he is dealing with tourism business and it was reasonably open to the respondent Authority to reach the conclusion that the applicant did not fulfil the requirements of s. 5(9) of the Law, viz., that he was not carrying on the transport business and that he did not intend to carry on the transport business as his main occupation.

Another complaint of the applicant is that there is lack of due reasoning in that the respondent Authority in its decision which they communicated to the applicant, they said that the applicant does not fulfil the requirements of s. 5(9) of the Law.

I am of the view that the reasoning is sufficient and one may also resort to the file of the case.

In these circumstances, the recourse is allowed and the sub judice decision is declared null and void, with costs in favour of the applicant.

Costs to be assessed by the Registrar.

*Sub judice decision
annulled with costs
in favour of applicant.*