

1988 September 30

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRAKIS HADJISAVVA,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE REVIEW PERMITS AUTHORITY,

Respondents.

(Case No. 459/86).

*Motor Transport—Hierarchical recourse to the Permits Review Authority—
Identification of the act attacked by the recourse—Principles applicable—
The same as those applicable to identify the sub judice act in a recourse for
annulment.*

*Recourse for annulment—Identification of sub judice act—Principles applica-
ble.*

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The Licensing Authority dismissed the applicant's application for a replacement of his rural taxi by a new one and, at the same time, revoked the licence as regards the old taxi. The respondents dismissed applicant's hierarchical recourse on the ground that it did not attack the revocation, but only the refusal to replace the one taxi by another. Hence this recourse.

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Having stated the principles applicable in order to identify the sub judice act in a recourse and on the basis that such principles are, also, applicable as regards the act, subject-matter of the hierarchical recourse, the Court annulled the sub judice decision, as it was based on an interpretation not reasonably open to the respondents.

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Sub judice decision annulled.

No order as to costs.

Cases referred to:

Papaefstathiou v. Review Licensing Authority, (1988) 3 C.L.R. 1102.

Aristidou v. Republic (1984) 3 C.L.R. 503.

Recourse.

5 Recourse against the dismissal, by the respondents, of applicant's hierarchical recourse against the refusal of the Licensing Authority to grant applicant a rural taxi licence in relation to his vehicle J.E. 262 in replacement of the licence of his rural taxi No. M.J. 383

10 S.A. Karapatakis, for the applicant.

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

Cur. adv. vult.

15 STYLIANIDES J. read the following judgment. The applicant by this recourse seeks the annulment of the decision of the Respondents, dated 25th June, 1986, whereby his hierarchical recourse against the decision of the Licensing Authority, dated 5th June, 1984, was dismissed.

20 The applicant comes from Peristerona village. At all the material times he was the owner of a licensed rural taxi under Registration No. MJ 383, stationed at the village of Peristerona. He was, also the owner of private vehicle, Registration No. JE 262.

25 The applicant applied to the Licensing Authority on 28th May, 1984 for the granting of a rural taxi licence in relation to his vehicle JE 262 in replacement of the licence of his rural taxi Registration No. MJ 383.

In the meantime a certain Adonis Constantinou, a bus driver, applied for a licence for a rural taxi at Peristerona. The report of

the police in respect of the application of Constantinou, dated 12th April, 1984, mentioned that taxis MJ 383 and JC 919, do not circulate for the service of the public.

The Licensing Authority heard the application on 5th June, 1984, and questioned the applicant about the use he was making of the taxi MJ 383. On the same day—5th June, 1984—they issued their decision which was communicated to the applicant by letter dated 15th June, 1984. The material part of that decision reads as follows:

"... να απορρίψει την αίτηση για αντικατάσταση και παράλληλα να ανακαλέσει την άδεια οδικής χρήσης του οχήματος MJ 383 γιατί ο ιδιοκτήτης του ομολόγησε ότι χρησιμοποιεί το ταξί αυτό στην Λευκωσία αντί στην έδρα του για χρονικό διάστημα πέραν των 2 μηνών. ... Επίσης υπάρχει επιστολή της Αστυνομίας ότι το ταξί αυτό δεν κυκλοφορεί για την εξυπηρέτηση του κοινού."

Against this decision of the Licensing Authority the applicant raised an hierarchical recourse under section 4 of the Motor Transport Regulation Laws, 1982-1984.

In no less than two years the recourse was heard by the Respondents.

The counsel appearing for him attacked the revocation of the licence of taxi MJ 383 and the failure and/or refusal to license and/or substitute the licence for the motor car JE 262.

On 25th June, 1986, the sub judice decision was taken. I consider pertinent to quote it:

"Η Αναθεωρητική Αρχή Αδειών έχοντας υπόψη την ισχύουσα νομοθεσία και όλα τα πραγματικά περιστατικά της υποθέσεως που έχουν τεθεί ενώπιον της και αφού μελέτησε όλα τα στοιχεία των σχετικών φακέλων και όλα όσα έχουν λεχθεί από μέρους του προσφεύγοντος, αποφα-

5 σίζει ν' απορρίψει την προσφυγή γιατί ο προσφεύγων παρέλειψε να προσβάλει την απόφαση της Αρχής Αδειών με την οποία ανακαλείτο η άδεια του αγροτικού ταξί MJ 383, και αντί αυτού υπέβαλε προσφυγή εναντίον αρνητικής απόφασης της Αρχής Αδειών να του χορηγήσει άδεια αντικατάστασης του MJ 383 με το JE 262. Επομένως εφόσο η ανακλητική απόφαση της Αρχής Αδειών δεν έχει προσβληθεί στην Αναθεωρητική Αρχή Αδειών, δεν υπάρχει αντικείμενο προσφυγής."

10 "The power of the Review Licensing Authority is set out in section 4A - (4) as follows:

"(4) Η αναθεωρητική αρχή αδειών δύναται να εκδώσει μίαν των ακόλουθων αποφάσεων:

- (α) να επικυρώσει την προσβληθείσαν απόφαση;
- 15 (β) να ακυρώσει την προσβληθείσαν απόφαση;
- (γ) να τροποποιήσει την προσβληθείσαν απόφαση;
- (δ) να προβή η ίδια εις έκδοσιν νέας αποφάσεως εις αντικατάστασιν της προσβληθείσης;
- 20 (ε) να παραπέμψη την υπόθεσιν εις την αρχήν αδειών, διατάσσουσα ταύτην να προβή εις ώρισμένην ενέργειαν."

"The Review Licensing Authority may issue any of the following decisions:

- (a) to confirm the challenged decision;
- 25 (b) to annul the challenged decision;
- (c) to modify the challenged decision;

(d) to issue a new decision in substitution of the challenged one;

(e) to send the case back to the Licensing Authority ordering the latter to do certain act").

It is the contention of the applicant that the sub judice decision is contrary to law, the reasoning is defective and it is the result of misconception both of law and fact.

The nature of hierarchical recourse and its attributes were stated in a number of decisions of this Court. Suffices to cite one of my recent Judgments - *Katerina Papaefstathiou v. Review Licensing Authority, Ministry of Communications and Works* - (1988) 3 C.L.R. 1102 in which I said at p.1105.

"A hierarchical recourse is not intended to review the correctness of the hierarchically subordinate organ's decision by reference to the soundness of the reasoning propounded in support 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. Generally, it is competent for the body exercising powers in a hierarchical recourse, to review the legality of the the decision taken in the first instance - (Tşoutsos - Administration and the Law, (1979), p. 63; Stassinopoulos - Law of Administrative Acts, (1951), p. 177 et sequence)."

The hierarchical recourse was made on a cyclo style form, which apparently is given out to aggrieved persons by the Authorities. It has to be noted that the hierarchical recourse on the form is stated that it is based on the preexisting legislation - the Motor Transport Regulation Laws 1964 - 1972 and is addressed to the Minister of Communications and Works. This recourse is quoted verbatim and the parts which were filled in handwriting are underlined:

"ΠΙΝΑΞ ΤΕΤΑΡΤΟΣ

(Κανονισμός 24)

Τύπος Ιεραρχικής Προσφυγής

ΟΙ ΠΕΡΙ ΡΥΘΜΙΣΕΩΣ ΤΗΣ ΤΡΟΧΑΙΑΣ ΜΕΤΑΦΟΡΑΣ ΝΟΜΟΙ

ΤΟΥ 1964 ΕΩΣ (ΑΡ. 2) ΤΟΥ 1972

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ΙΕΡΑΡΧΙΚΗ ΠΡΟΣΦΥΓΗ

Υπουργόν Συγκοινωνιών και Έργων,
Λευκωσία,

Έντιμε Κύριε,

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Δυνάμει του εδαφίου (Ι) του άρθρου 6 των περί Ρυθμίσεως της Τροχαίας Μεταφοράς Νόμων του 1964 έως (Αρ.2) του 1972 καταθέτω ενώπιον υμών την παρούσαν Ιεραρχικήν Προσφυγήν κατά της αποφάσεως της Αρχής υπό ημερομηνίαν 15/6/84 Φακ. MJ 383 - JE 262 επί του κάτωθι θέματος: * άρνησις χορηγήσεως αδείας αντικαταστάσεως του αγροτικού ταξί υπ' αριθ. MJ 383 με το ιδιωτικόν όχημα υπ' αριθ. JE 262.

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Οι προς υποστήριξιν της παρούσης Ιεραρχικής Προσφυγής λόγοι είναι οι ακόλουθοι: ** θα αναπτυχθούν κατά την εξέταση της προσφυγής.

Όνομα και διεύθυνσις
Προσφεύγοντος

* Δώσατε περιγραφήν του θέματος και της επί τούτου αποφάσεως της Αρχής Αδειών

** Δώσατε πλήρη περιγραφήν των λόγων εφ' ων στηρίζεται η Ιεραρχική Προσφυγή.

ΔΗΜΗΤΡΗΣ Χ" ΣΑΒΒΑ
ΠΕΡΙΣΤΕΡΩΝΑ - Λ/ΣΙΑ

Ημερομηνία 26/6/84

Υπογραφή Προσφεύγοντος Δ. Χ" Σάββα

Δι' επίσημον χρήση μόνον

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Απόφασεις Υπουργού

.....

Ημερομηνία

Εξεδόθη τη

Υπογραφή

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Υπουργός Συγκοινωνιών και Έργων»

A recourse before the Administrative Court is construed in such a way in order to ascertain at what it is aimed. In the recourse the act, decision or omission sought to be annulled must be described with certainty as the whole procedure and jurisdiction of the Court is with reference to a specific act attacked. If from the contents of the recourse it may emerge clearly that another decision was intended to be the subject-matter of the recourse and that by oversight the recourse refers to another decision, the Court may construe the recourse so as to treat it as attacking the decision intended to be attacked, that is to say, other than the one which appears to have been challenged by it. (Decision of the Greek Council of State No. 702/1954.)

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5 In order to ascertain exactly the subject-matter, the recourse has to be considered as a whole. This is settled by the jurisprudence of the Greek Council of State. (See Case Law of Greek Council of State, 1929-1959, p. 271; Cases set out in the "Ευρετήριο Νομολογίας" of the Greek Council of State 1961-1970, Vol. 1 p. 305 and "Ευρετήριο Νομολογίας" of the Greek Council of State 1971-1975 Vol. 1 p. 181; *Aristidou v. Republic* (1984) 3 C.L.R. 503).

10 The reasoning of the sub judice decision is that the applicant did not attack in the hierarchical recourse the withdrawal of the licence of his rural taxi MJ 383.

15 I referred to the document containing the hierarchical recourse. The decision attacked was issued on 5th June, 1984. It was one decision containing two legs. The Licensing Authority when dealing with the application of this applicant asked him questions about the way he was using his rural taxi MJ 383 and issued their decision, whereby they dismissed his application for substitution of the licence and withdrew same at the same time.

20 Was the interpretation placed on the prayer of the recourse by the Respondents reasonably open to them?

Did the applicant appeal to the Review Licensing Authority only for the part of the decision of the Licensing Authority, which referred to the refusal to grant to him the substitution of the licence for rural taxi MJ 383 and JE 262?

25 The principles governing the interpretation of a recourse before the Administrative Court apply, also, to the interpretation of a hierarchical recourse.

30 Applying those principles, the conclusion is inevitably reached that no reasonable man would interpret the hierarchical recourse in the way the Respondents did.

The applicant in the hierarchical recourse attacked the decision

of 5th June, 1984. That was one decision. In the details he wrote:

"άρνησις χορηγήσεως αδείας αντικαταστάσεως του αγροτικού ταξί υπ' αριθ. MJ 383 με το ιδιωτικό όχημα υπ' αριθ. JE 262."

This leaves no room that the recourse aimed at the refusal to substitute his licensed rural taxi and, also, the revocation of the licence of the rural taxi sought to be substituted. 5

The contention of counsel for the Respondents that - as they, under section 4A(3) of the law, had no power to examine and decide on any matter other than the particular hierarchical recourse, and as the applicant limited his recourse to the refusal to grant leave to substitute his rural taxi licence under Registration No. MJ 383 with the private vehicle under Registration No. JE 262 - they rightly did not examine the recourse of the applicant as there was no hierarchical recourse attacking also the decision of the Licensing Authority to revoke the licence of the vehicle sought to be substituted, is based on premises impermissible and on interpretation of a hierarchical recourse which was not reasonably open to the Respondents. It was so unreasonable, that nobody could reach it. 10 15 20

The Licensing Authority had to consider the challenged decision and issue their own decision under sub-section 4 cited above. They did not carry the proper inquiry. They did not examine the recourse as they were duty bound to do. They acted in a manner contrary to the statutory provisions and the principles of Administrative Law governing the exercise of powers by a body in a hierarchical recourse. The reasoning of the sub judice decision was a misconceived in law reasoning and the sub judice decision cannot survive judicial scrutiny. It would be annulled for this reason too. 25 30

The decision of the Licensing Authority truly consisted of two legs, which, however, were so closely linked and connected that the challenge of the validity of the one brought into the picture the

examination of the validity of the other.

For all the foregoing, the sub judice decision is declared null and void and of no effect under Article 146.4(b):

Let there be no order as to costs.

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Sub judice decision annulled. No order as to costs.