

1988 December 22

[A. LOIZOU, P., DEMETRIADES, PAPADOPOULOS, HADJITSANGARIS,
CHRYSOSTOMIS, NIKITAS, ARTEMIDES, JJ.]

GEORGHIOS CHRISTOU AND OTHERS,

Appellants - Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF COMMUNICATIONS AND WORKS,
2. LICENSING AUTHORITY,

Respondents.

(Revisional Jurisdiction. Appeal No. 797).

*Legitimate interest—The issue may be raised by the court ex proprio motu—
Whether Court bound to hear the parties before determining such issue
raised as aforesaid—Question determined in the negative.*

5 The appellants, who are the holders of rural taxi licences for serving the
needs of Akrotiri village, attacked by means of a recourse the decision to
grant rural taxi licences to the interested parties for serving the British
Sovereign Area of Akrotiri.

10 The trial Judge raised ex proprio motu the issue of applicants (appel-
lants) legitimate interest and, without hearing the parties, held that the appli-
cants did not possess such an interest as their licences concerned an area
distinct from the one served by the interested parties in virtue of the sub ju-
dice licences.

15 Hence this appeal. Counsel for appellant argued that the Court should
have given the parties opportunity of submitting their views on the question
of legitimate interest.

Held, dismissing the appeal: (1) The issue of legitimate interest may be
inquired into by this Court ex proprio motu. An Administrative Court is
not bound to hear the parties before deciding such issue when all relevant

facts are before it. This Court is not prepared to depart from such approach.

(2) The trial Judge was correct in arriving at the conclusion he did. The two sets of licences concerned two distinct areas.

Appeal dismissed.

No order as to costs.

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Cases referred to:

Constantinou v. The Republic (1966) 3 C.L.R. 174;

Lambrakis v. The Republic (1970) 3 C.L.R. 72;

Constantinou and Others v. The Republic (1974) 3 C.L.R. 416;

Republic v. K.M.C. Motors Ltd. (1986) 3 C.L.R. 1899.

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Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Loris, J) given on the 4th March, 1988 (Revisional Jurisdiction Case No. 413/85)* whereby appellant's recourse against the reversal by the Minister of Communications and Works of the decision of the Licensing Authority refusing to grant to interested parties licences for rural taxis was dismissed.

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Chr. Pourgourides, for appellants - applicants.

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

A. Haviaras, for interested party KEM TAXI LTD.

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No appearance for interested party Y. Ellinas.

Cur. adv. vult.

* (Reported in (1988) 3 C.L.R. 425).

A. LOIZOU, P: The judgment of the Court will be delivered by Mr. Justice Chrysostomis.

5 CHRYSOStOMIS J: This is an appeal against the judgment of a Judge of this Court who dismissed the recourse of the applicants, the present appellants, on the ground that they had no existing legitimate interest in the sense of Article 146.2 of the Constitution.

10 In that recourse the applicants prayed for a declaration, that the decision of respondents 1, dated 7.1.85, to grant to each one of the interested parties, namely, Yiannakis P. Ellinas and KEM TAXI Ltd, a road service licence for the operation of three taxis to be stationed at Akrotiri Sovereign Base Area, was null and void and of no legal effect.

15 Our task has been made easy as, in the judgment under appeal, all elements, factual and legal, are set out. The facts in so far as relevant as stated therein are as follows:

20 "On 14.4.80 applicants No. 1 and No. 2 addressed two separate applications (vide Appendices No. 4 & No. 3 respectively) to the Licensing Authority for the issue of rural taxi Licences, for the purpose of serving the needs of Akrotiri Village by their respective vehicles JZ628 and EZ419.

25 On 28.3.81 applicant No. 3 likewise applied to the Licensing Authority (vide Appendix 5) for the issue of a rural taxi licence for the purpose of serving the needs of Akrotiri Village, by his vehicle KA909.

On 5.5.80 interested party Y. Ellinas applied to the Licensing Authority (vide Appendix No. 2) for the issue of 5 rural taxi licences for the purpose of serving the needs of the British Sovereign Base Area of Akrotiri.

30 On 18.4.80 interested party KEM Taxi Ltd applied to the Licensing Authority for the issue of 10 rural taxi licences for

the purpose of serving the needs of the British Sovereign Base Area of Akrotiri.

The Licensing Authority, after examining the relevant applications, granted on 23.2.82 to applicants 1 and 3 the applied for licences, turning down the application of Applicant No. 2 in the present recourse.

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The Licensing Authority refused applications of both interested parties for the issue of rural taxi licences for the purpose of serving the needs of the S.B.A. of Akrotiri. (Vide Appendix 6).

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Applicant No. 2 filed a hierarchical recourse with the Respondent Minister challenging the said refusal of the Licensing Authority; the Minister after examining the recourse of applicant No. 2 annulled the relevant decision of the Licensing Authority on 10.7.82, and invited the Authority in question to grant to applicant No. 2 the licence applied for, i.e. a licence for a rural taxi for the purpose of serving the needs of Akrotiri Village (vide Appendix 7).

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Interested parties in the present recourse namely Y. Ellinas and KEM Taxi Ltd, filed on 15.3.83 and 18.3.82 respectively hierarchical recourse with the respondent Minister (vide Appendices 9 and 10), challenging the decision - refusal of the Licensing Authority dated 27.2.82.

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The respondent Minister after hearing the hierarchical recourses of both interested parties on 19.6.82 and 25.9.82 (vide Appendices 11 and 12) decided on 7.1.85 to annul the relevant decision of the Licensing Authority; by virtue of his aforesaid decision, which appears in Appendix 13 attached to the opposition the respondent Minister invited the Licensing Authority to grant temporary rural taxi licences for a period of 6 months in relation to 3 vehicles owned by each one of the interested parties, to be stationed in the British Sovereign Base Area of Akrotiri with a view to serving the needs of the

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5 S.B.A. of Akrotiri; in his aforesaid decision of 7.1.85 the respondent has set out as a prerequisite for a further renewal of the said temporary licences after the initial period of 6 months, the adduction of evidence by the interested parties to the effect that they were still operating Taxi Offices in the Akrotiri S.B.A. with the permission of the Bases Authorities."

10 From the above statement of facts and the material before him, the learned trial judge proceeded and considered *ex proprio motu* the issue as to whether the appellants had an existing legitimate interest in the sense of Article 146.2 of the Constitution, as the road service licences that were eventually granted to them, concerned the village of Akrotiri, whereas, the road service licences that were granted to the interested parties concerned Akrotiri Sovereign Base Area, which for all intents and purposes is a distinct and separate area from the former, and he concluded that the sub judge decision of the respondent Minister could not and it did not, in fact, affect an existing legitimate interest of any one of the
15 three appellants, and he dismissed their recourse.

20 Grounds one and two of the present appeal are alternative grounds and are to the effect that the trial Judge erred in examining the issue whether the appellants had legitimate interest, *ex proprio motu*, without first inviting the parties to express their views on the matter.

25 The third ground of appeal is to the effect that the trial court erred in arriving at the conclusion that the appellants had no existing legitimate interest in the sense of Article 146.2 of the Constitution.

30 Learned counsel for the appellants advanced his argument before us and in support thereof the referred us to Stassinopoulos Law of Administrative Disputes, 4th ed. , p. 251, where it is stated that as a rule the administrative courts may employ the inquisitorial system in exercising their revisional jurisdiction, and on this he based the argument that, in the circumstances, the learned trial judge had a duty to invite the two sides to address him on the is-

sue of legitimate interest, before taking his decision. Furthermore, Mr. Pourgourides argued that once the existence of legitimate interest was not challenged, the appellant did not have to establish same affirmatively. In support of this proposition he referred us to the case of *Constantinou v. The Republic* (1966) 3 C.L.R. 174, at p. 180, where it was said that: "It is not necessary for the applicant to establish affirmatively that he has the necessary legitimate interest entitling him to make a recourse. Such proof need be adduced only if the existence of his legitimate interest is challenged. (Vide Tsatsos on the Recourse for Annulment, 2nd ed. p. 35)"

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Finally Mr. Pourgourides submitted that the legitimate interest of the appellants, apart from other considerations, could also be gathered from the fact that the number of road service licences were increased in the area, and thus their work would be decreased. In this respect, he referred us to Stassinopoulos Law of Administrative Disputes, pp. 202, 203.

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Learned counsel for the Respondents referred to the aforementioned facts and stated inter alia, that the appellants were granted the road service licences they applied for, and that those licences concerned Akrotiri Village only. The interested parties on the other hand, eventually obtained road service licences for Akrotiri Sovereign Base Area, which is a distinct area and thus she supported the stand, that the appellants have no legitimate interest as they were not in any way affected, and that the trial Judge rightly decided this point.

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Learned counsel for the interested party KEM TAXI LTD adopted whatever learned counsel for the respondents had stated. He also added that the road service licences, which were granted to the appellants were subject to the condition that their taxis had to remain in the village of Akrotiri throughout the day for the purpose of serving the public. He further submitted that, in the circumstances these licences should not be taken as covering the whole of the Sovereign Base Area of Akrotiri. He also mentioned that the licences of the appellants were granted on the 27th Febru-

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ary, 1982, whereas those of the interested parties in 1985 and after their hierarchical recourses, succeeded.

5 As regards the first ground, there is a line of authority of this Court to the effect that litigation under Article 146 of the Constitution is a matter of public law and the presence of an existing legitimate interest has to be inquired into by an administrative Court even *ex proprio motu*. (See *Lambrakis v. The Republic* (1970) 3 C.L.R. 72, at pp. 73, 74; *Constantinou and Others v. The Republic* (1974) 3 C.L.R. 416, at p. 418; *Republic v. K.M.C. Motors Ltd* (1986) 3 C.L.R. 1899, at pp. 1903, 1904). We are of the view that an Administrative Court is not bound to hear the parties before deciding such issue when all relevant facts are before it, and we are not prepared to depart from such approach. In the present case the trial Court was perfectly in a position to decide this issue from the material before it and it did not have to hear evidence for that purpose, as suggested by learned counsel for the appellants.

20 On the totality of the facts of the present case and the material placed before the learned trial Judge, we have come to the conclusion that he was correct in arriving at the conclusion that he did, namely that the applicants before him, the present appellants, had no existing legitimate interest as regards the licences that were granted to the interested parties. The two sets of licences concerned two distinct areas and in the case of the appellants their licences were subject to the condition that their taxis had to be stationed at Akrotiri village for the whole of the day and it is from that village that they were allowed to collect their passengers. On the other hand, the interested parties were licensed to collect their passengers from the Base of Akrotiri itself, where they kept taxi offices and they also had a permit for that purpose from the appropriate British Authorities, pursuant to a contract for such transportation.

30 In the result, the judgment of the learned trial judge is, in the circumstances, upheld.

35 For all the above reasons the present appeal is dismissed but in the circumstances, there will be no order as to costs.

Appeal dismissed.
No order as to costs.