

1979 June 1

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CYPRUS PHASSOURI PLANTATIONS CO. LTD.,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS,  
THROUGH THE MINISTER OF COMMUNICATIONS  
AND WORKS,

*Respondent.*

(Case No. 354/78).

*Motor Transport—Carrier's licence "B"—Section 10 of the Motor Transport (Regulation) Law, 1964 (Law 16/64 as amended by Laws 60/73 and 60/77)—Whether Licensing Authority has discretion to refuse issue of "B" licence.*

- 5 *Administrative Law—Administrative acts or decisions—Reasoning—Wrong reasoning—Decision refusing issue of "B" licence under section 10 of Law 16/64 (as amended)—Disregarding without any reason findings of District Transport Officer—And reasons therefor not born out by material in the file—Annulled due to wrong reasoning.*
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On January 10, 1978 the applicant Company applied to the Licensing Authority for a "B" licence in respect of one of its vehicles, under section 10 of the Motor Transport (Regulation) Law, 1964 (Law 16/64 as amended). The application was examined by the District Transport Control Officer who stated\* that the extent of the work of the applicant Company was very large and it needed the applied for carrier "B". He further stated that the representatives of the Professional Motorists Associations objected to the grant of the "B" licence as the applicant Company could be served by the carriers "B" owned by it.

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The application was examined by the Licensing Authority on June 20, 1978 which decided as follows:

\* See his report at p. 172 *post*.

" The Licensing Authority examined the application and having taken into consideration the material in the file, dismissed it as the applicant Company may be served by the licensed carriers "B" which it has, as well as by the existing carriers "A" of the urban traffic area of Limassol".

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Hence the present recourse.

Counsel for the applicant Company mainly contended that section 10\* of Law 16/64, as amended by Laws 60/73 and 60/77, give no discretion to the Licensing Authority in respect of the issue of a "B" licence

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*Held*, (1) that from the wording of section 10(1)(b) of the Law and in particular the power given thereunder to the Licensing Authority to impose conditions with respect to a licence granted by it, there appears to exist some discretion in the Licensing Authority on the matter.

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(2) That, though stating in its decision that it took into consideration the material in the file, the Licensing Authority dismissed the application for two reasons, the first being that the applicant Company might be served by the licensed carriers "B" which it had, and the second that it might be served by the existing "A" carriers of the urban traffic area of Limassol; that with regard to the first reason it is obvious that it disregarded, without giving any reason, as it should have done, the finding of the District Transport Officer, who investigated on its behalf and reported to it on the merits of the application of the applicant Company; that with regard to the second reason and assuming always that it was a relevant and legitimate factor to be taken into consideration, a matter that it is left open, it is not born out from the material in the file, from which the Licensing Authority derived its reasoning; and that, therefore, the *sub judice* decision must be annulled on the ground of wrong reasoning.

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*Sub judice decision annulled.*

### Recourse.

Recourse against the decision of the respondent refusing to

\* Quoted at pp. 173-4 *post*.

grant to applicant Company a carrier's "B" licence in respect of one of its vehicles.

*St. G. McBride*, for the applicants. -

*R. Gavrielides*, Counsel of the Republic, for the respondent.

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*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. The applicant Company, incorporated in 1932, is one of the largest agricultural concerns in Cyprus. It employs about six hundred and fifty employees and is engaged in the production of citrus and vines, the bulk of which is exported. It owns its own fleet of mechanized vehicles, tractors, lorries, buses, etc, and which are driven by professional drivers, employed by it. It also maintains its own garage with qualified mechanics for the maintenance and repair of its vehicles.

15 On the 21st December, 1977, the applicant Company purchased vehicle under registration No. J.B. 198 from its previous owner, who operated it until then under an "A" licence, and on the 10th January, 1978 it applied (*exhibit B*) to the Licensing Authority for a "B" licence for the aforesaid vehicle under 20 section 10 of the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964) as amended.

The purpose for which the said vehicle was required was as stated in the said application, the speedier carrying out of their exports. The expeditious consideration of the matter was requested thereby, as they were at the time at the peak of the 25 season for the loading and export of citrus. It was in fact a vehicle bought in order to replace an older vehicle operated by them under a "B" licence.

30 It is their case that they are engaged in a highly competitive business and it is essential to them to have themselves effective control over all their operations, including the transportation of their produce to the airport and other ports in Cyprus, which is a matter of vital concern to the effective carrying out of their business. The non-availability of transport, the withdrawal of 35 labour, or an excessive demand in fees from outsiders, could well cause a halt in the movement of their produce with consequential financial losses.

Indeed their foreign earnings brought into Cyprus in 1977 an

amount in the region of one-million seven-hundred and fifty-thousand pounds. The application of the applicant Company was examined by the District Transport Control Officer of Limassol and his observations are to be found in *exhibit "C"* (blue 19-20) and they are as follows:

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" The applicant Company is the owner of a large plantation in the Limassol district. The extent of its plantation is 6,500 donums, of which 5,000 are planted with lemon, orange and grape fruit trees. The remaining 1,500 donums are planted with vines. Both the extent of the business of the applicant Company as well as its production are very large. It must be noted that the applicant Company finds its own markets for its products which it exports.

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The applicant Company is the owner of carriers "B" B.R. 821, B.R. 822, C.Z. 110, C.Y. 734, D.G. 734, D.G. 855, D.G. 856, C.F. 58, B.S. 354, E.T. 932, C.E. 466. The applicant Company will use the aforesaid carriers "B" as well as the one under application for the transport of its agricultural produce from its plantation to the packing stores and from there to the new port of Limassol for export. The applicant Company will use the aforementioned carriers "B" also for the transport of fertilizers, pesticides, and other goods connected with the business of the applicant Company. In my opinion the extent of the work of the applicant Company is very large and the applicant Company needs the applied carrier "B". It must be noted that the applicant Company during the period of the collection of grapes engages more than one-thousand two-hundred labourers and during the period of the collection of the citrus crop engaged more than eight-hundred labourers.

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With regard to the aforesaid application the representatives of "RIEA" "KEEAK" and "ETALK" object as the applicant Company may be served by the carriers "B" owned by it'.

The application was examined by the Licensing Authority at its meeting of the 20th June, 1978 and the relevant minute reads:

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" The Licensing Authority examined the application and having taken into consideration the material in the file,

dismissed it as the applicant Company may be served by the licensed carriers "B" which it has, as well as by the existing carriers "A" of the urban traffic area of Limassol."

The applicant Company by the present recourse seeks (a) a  
 5 declaration that the aforesaid decision communicated to them by  
 letter of the Licensing Authority, dated 19th July, 1978, (*exhibit*  
 "A") is null and void and or has been taken in excess of and or  
 in abuse of the powers exercised by it and is of no effect what-  
 soever, and (b) a declaration that the applicants are entitled to  
 10 be issued with a "B" licence for the vehicle under Reg. No. 198.

It was argued on behalf of the applicant Company that section  
 10 of the Law gives no discretion to the Licensing Authority in  
 respect of the issue of a "B" licence. In fact counsel for the  
 respondent was rather inclined to agree with this view.

15 Section 10 of the Law as amended by Laws 60/73 and 60/77  
 reads as follows:

" 10-(1) Subject to the provisions of this Part, no person  
 shall use a goods vehicle on a road for the carriage of  
 goods -

- 20 (a) for hire or reward; or  
 (b) for or in connection with any trade or business carried  
 on by him, except under a licence granted under this  
 Part (in this Law referred to as a "carrier's licence")  
 by the licensing authority and subject to such condi-  
 25 tions as therein contained.

Provided that no private carrier's licence will be  
 required (in the main law referred to as 'B' licence) for  
 goods vehicles the gross weight of which does not  
 exceed three tons.

- 30 (2) Carrier's licences shall be of the following classes, that  
 is to say -  
 (a) public carrier's licences (in this Law referred to as "A"  
 licences); and  
 (b) private carrier's licences (in this Law referred to as "B"  
 35 licences).

Provided that the Licensing Authority in the exercise

of its discretion for the grant of an 'A' Licence shall take into consideration the needs of the whole of the area of the intended seat of the public carrier, in connection with the transport of goods and the co-ordination of all types of transports of goods and take also 5  
into consideration any representations to be made by persons who are already transporting in good faith and for a reasonably sufficient time goods in such area:

Provided further that where a goods vehicle in relation to which there is in force an 'A' licence is placed 10  
out of circulation, its owner is entitled, subject to the provisions of this or any other relevant law, to be granted an 'A' licence in connection with another vehicle with which he intends to replace such vehicle for the same or less weight of goods which the replaced vehicle 15  
could transport.

- (3) Subject to the provisions of this Part an 'A' licence shall entitle the holder thereof to use the vehicle for the carriage of goods for hire or reward.
- (4) Subject to the provisions of this Part, a 'B' licence shall 20  
entitle the holder thereof to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.
- (5) A person who –
- (a) acts in contravention of this section; or 25
- (b) being the holder of a 'B' licence uses his vehicle for carriage of goods for hire or reward; or
- (c) fails to comply with any conditions of his licence, shall be guilty of an offence and shall be liable on conviction to imprisonment not exceeding six months 30  
or to a fine not exceeding one hundred pounds or to both such imprisonment and fine."

From the wording of section 10(1)(b) of the Law and in particular the power given thereunder to the Licensing Authority to impose conditions with respect to a licence granted by it, there 35  
appears to exist some discretion in the Licensing Authority on the matter, but I need not go into its extent as the sub judice decision has in any event to be annulled on the ground of wrong

reasoning. This results from the evaluation of the material in the file which the Licensing Authority has recorded to have taken into consideration. In the report of the District Transport Officer it is made clear that the applicant Company is in need of  
5 this carrier, a finding which supports the reason given by the applicant Company in its application of the 10th January, 1978 (*exhibit "C"*) blue 17.

On the other hand the representatives of the Professional Motorists Associations objected to the issuing of the licences  
10 applied for, for the reason given by them, that the applicant Company could be served by the "B" carriers it owned. It is not clear if by the expression "B carriers it owned" the "B" carrier to be replaced by the new one was included or not.

The Licensing Authority, however, though stating in its decision that it took into consideration the material in the file,  
15 dismissed the application for two reasons, the first being that the applicant Company might be served by the licensed carriers "B" which it had, and the second that it might be served by the existing "A" carriers of the urban traffic area of Limassol.

20 With regard to the first reason it is obvious that it disregarded without giving any reason, as it should have done, the finding of the District Transport Officer, who investigated on its behalf and reported to it the merits of the application of the applicant Company. With regard to the second reason and assuming always  
25 that it was a relevant and legitimate factor to be taken into consideration, a matter that I leave open, it is not born out from the material in the file, from which the Licensing Authority derived its reasoning.

For all the above reasons the sub judice decision is annulled  
30 and the matter is referred to the respondent Authority for re-examination.

In the circumstances I make no order as to costs.

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