[TRIANTAFYLLIDES, J.]

1964
August, 31,
Nov. 12
1965
May, 22

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE CYPRUS PALESTINE PLANTATIONS CO. LTD.,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE REGISTRAR OF MOTOR CARS,

Respondent.

(Case No. 200/62).

THE CYPRUS PALESTINE PLANTATIONS CO. LTD. *and* THE REPUBLIC OF CYPRUS, THROUGH THE REGISTRAR OF MOTOR CARS

Motor Car Regulations—The 1951 *Motor Car Regulations, Reg.* 46, 46*(g) and* 51, *and the Motor Vehicles Regulations,* 1959, *Reg.* 51*(e) and* 56*(i)—Grant by the Registrar of Motor Cars of a general licence to Applicant to carry in his truck passengers in excess, under Reg.* 46*(g) of the* 1951 *Motor Car Regulations—Licence lawfully issued.*

Administrative Law—Decision of Respondent to revoke a general licence granted by the Registrar of Motor Cars under the 1951 *Motor Car Regulations to Applicant to carry in his truck passengers in excess—Revocation based on a misconception of the current legal position- Lack of a duly reasoned administrative decision relating to such recovation a sufficient ground by itself for its annulment, in addition to the ground of legal misconception.*

By this recourse the Applicants seek a declaration that the decision of Respondent cancelling the licence for their Commer truck No: 4632 to carry 32 passengers, is *null* and *void.*

As it appears from a letter of the then Duputy Registrar of Motor Cars, dated the 5th September, 1952, Applicants were informed that under the 1951 Motor Car Regulations he was empowered to give them a licence to carry labourers on their lorries, but that first he would like a traffic inspector to look at one truck and find out (a) how the temporary seats will be fixed and removed (b) how many passengers will be carried in each truck.

Thereafter, a certificate of registration was issued in respect of Applicants' Commer truck No. 4632, under the hand of the Registrar of Motor Cars, dated the 10th April,

1953, and it was stated therein in the column with the heading "Number of passengers or weight of goods, excluding driver" as follows: "2 Pass. & 69½ cwts or 72 cwts or 32 labourers". On the 19th March, 1962, a certificate of roadworthiness was issued for this truck stating that it was suitably constructed "for use as private to carry two (2) pass. & 69½ cwts or 72½ cwts or 32 labourers".

In July or August 1962, the authorities demanded for scrutiny the aforesaid certificate of registration and the just mentioned certificate of roadworthiness and when they were returned it was noticed that any mention of "32 labourers" had been erased therefrom.

Applicants protested against such course and this recourse was eventually filed on the 12th September, 1962. After the filing of the recourse a letter was written to Applicants by the Director-General of the Ministry of Interior on the 17th October, 1962, from which it appears that the action taken by the authorities was based on what it was thought to be the correct effect of regulation 51(e) of the Motor Vehicles Regulations, 1959.

Held, I. On whether or not the general licence granted to Applicants was within regulation 46 *(g) of the* 1951 *Motor Car Regulations.*

(1) By a licence under his hand the Registrar might authorize deviation from the provisions of paragraph (g) of regulation 46 in respect of particular occasions. But I see no valid reason to restrict the relevant powers of the Registrar to particular occasions *only*.

(2) The Registrar, having been satisfied that Applicants were transporting safely labourers in their truck for the purposes of their business, decided to authorize such transportation by means of a general licence of indefinite duration, rather than by issuing a licence for each journey or for each day.

(3) It was quite lawful for him to do so under regulation 46(g).

II. On the validity of the revocation of the licence.

(1) The relevant legislation did not and does not exclude the granting of the licence which Applicants have

been enjoying between 1953 and 1962, as erroneously assumed by Respondent. Irrespective of the motive for its revocation, once it has been based on a misconception of the correct legal position, the relevant administrative decision, as manifested by the erasing of the reference to 32 labourers effected on the registration certificate and the roadworthiness certificate relating to the truck in question, has to be declared *null* and *void.*

III. As regards the absence of due reasoning of the decision concerned.

(1) The lack of due reasoning is an additional ground leading to the annulment of the action which is the subject-matter of this recourse.

IV. As regards costs:

Applicants are entitled to most of their costs, which I assess to £30.-

Decision complained of declared null and void.

Cases referred to:

Pancyprian Federation of Labour and The Board of Cinematograph Films Censors, (reported in this Part at p. 27 *ante*);

Decision 339/1932 *of the Greek Council of State* (Reports 1932 A p. 1000).

Recourse.

Recourse against the act or decision of the Respondent cancelling the licence for a commer truck No. 4632 to carry 32 passengers.

St. McBride for the applicants.

L. Loucaides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: By this recourse the Applicants seek a declaration that the decision of Respondent cancelling the licence for their Commer truck No. 4632 to carry 32 passengers, is *null* and *void.*

The said truck (hereinafter to be referred to as "the truck") has been inspected by the Court in the presence of counsel and it is common ground that it is a dual purpose vehicle designed to carry both labourers and produce; for this reason it has two folding benches along the length of its sides on the inside. The said folding benches—which were part of the truck as imported—when unfolded and placed into position become for all intents and purposes fixed seats. This truck has also a fixed seat in the middle, along its length, which has been added to it here in Cyprus.

As it appears from the relevant entry of the register of motor vehicles, the truck was first registered in 1947; it was then registered as a private vehicle, and it still continues to be so; in the column of the register headed "Number of passengers or weight of goods, excluding driver" it is stated "2 passengers & 69 1/2 cwts or 72 1/2 cwts or 32 labourers". The phrase "32 labourers" is in pencil, whereas the remaining entry is in ink. I do not think that the part in pencil is any less valid than the rest of the entry. After all the register is an official document and it has been produced from official custody. So whatever is to be found therein is to be taken as duly recorded.

The beginnings of the history of this matter date back more than ten years. As it appears from a letter of the then Deputy Registrar of Motor Cars, dated the 5th September, 1952, Applicants were informed that: "Under the Motor-Car Regulations"—which were then the 1951 Motor Car Regulations—"I am empowered to give you a licence to carry labourers on your lorries..... But first I would like a traffic inspector to look at one truck..... I am asking the next traffic inspector who visits Limassol to contact you and find out (*a*) how the temporary seats will be fixed and removed (*b*) how many passengers will be carried in each truck.... I have asked the traffic inspector to do all he can to facilitate you, compatible with road safety...." It is rather significant that soon thereafter a certificate of registration was issued in respect of the truck in question, under the hand of the Registrar of Motor Cars, dated the 10th April, 1953, which is part of the record of this Case, and it was stated in the said certificate, in the column with the heading "Number of passengers or weight of goods, excluding driver" as follows: "2 Pass. & 69 1/2 cwts or 72 cwts or 32 labourers".

In the relevant entry in the register of motor vehicles there is an endorsement referring directly to the said certificate of registration.

It is useful to mention, also, that as it appears from the relevant file of Respondent, on the 25th June, 1951 this truck, having been duly inspected, was found to be "safe and suitable for use and operation on the roads and is fit to carry up to 80 cwts of load or 32 labourers or 2 front-seat pass. & 77 cwts of load" and a certificate of roadworthiness was issued accordingly.

Coming now to the immediate past, we note that—with the certificate of registration and the entry in the register of motor vehicles remaining the same as they have been since, at any rate, 1953,—on the 19th March, 1962 a new certificate of roadworthiness was issued for this truck stating that it was suitably constructed "for use as private to carry two (2) pass. & 69 1/2 cwts or 72 1/2 cwts or 32 labourers".

Thus stood the position when in July or August 1962 the authorities demanded for scrutiny the aforesaid certificate of registration and the just mentioned certificate of roadworthiness and when they were returned it was noticed that any mention of "32 labourers" had been duly erased therefrom.

Applicants protested, but unsuccessfully, against such course and this recourse was eventually filed on the 12th September, 1962. After the filing of the recourse a letter was written to Applicants by the Director-General of the Ministry of Interior on the 17th October, 1962, from which it appears that the action taken by the authorities was based on what it was thought to be the correct effect of regulation 51(*e*) of the Motor Vehicles Regulations, 1959. In the Opposition which was filed on the 12th October, 1962, this view is made abundantly clear because it is stated therein that to carry 32 passengers in the truck would be contrary to the said regulation 51(*e*), as well as regulation 56(*i*), and that the Registrar of Motor Cars had no power to authorize the carriage of such passengers.

At the Presentation and later at the hearing of this Case the view of the law taken by the authorities was expounded even further, to the effect that the Registrar had no power to allow permanently the transportation of 32 labourers in this truck

but he could only allow such transportation on specific occasions.

The case of Respondent appears, therefore, to be that the action complained of by Applicants was taken because of the view that a general licence for this truck to carry indefinitely 32 labourers was bad in law.

That such licence was in fact given in 1953 is the proper and reasonable inference to be drawn from all relevant facts —even though it has not been possible to trace any document by which it was first granted. As a matter of fact counsel for Respondent himself did not seem to dispute seriously, at the hearing, the existence of this licence and he concentrated on justifying its revocation.

The said licence must have been granted at least as early as 1953 because it is found endorsed on the certificate of registration which is dated the 10th April, 1953. It is also evidenced by the relevant entry in the register of motor vehicles.

At the time it must have been regarded as valid under regulation 46, of the then in force Motor Car Regulations, 1951, which reads:—"In addition to the provisions in regulation 45 hereof contained the following special provisions shall, unless the Registrar otherwise directs by licence under his hand, apply to, and shall be observed in respect of, motor lorries.....(*g*) no person shall be carried in a motor lorry other than the hirer or owner of the lorry or of the goods carried therein or the servants or agent of the owner or hirer not exceeding three persons in all, excluding the driver. Such persons, with the exception of one, who may sit on the goods, will only be carried on properly secured seats".

Much argument has been put forward as to whether the said licence could have then been granted lawfully under the said regulation 46.

It might be added that Regulation 46 was the only regulation under which such licence could have been granted at the time, if at all. Regulation 51, of the 1951 Regulations, which has been also referred to in argument, is irrelevant as it relates only to public service motor cars and, therefore, it could not have been applicable to the truck in question, which is a private one.

It is convenient to examine now whether or not the general licence granted to Applicants to convey 32 labourers in their truck was within regulation 46(*g*) of the 1951 Motor Car Regulations.

I quite agree with the submission of Respondent that by a licence under his hand the Registrar might authorize deviation from the provisions of paragraph (*g*) of regulation 46 in respect of particular occasions. But I see no valid reason to restrict the relevant powers of the Registrar to particular occasions *only*, as argued by counsel for Respondent.

Regulation 46 has to be construed as a whole. It contained provisions on a variety of matters pertaining to motor lorries. From all such provisions deviation could be authorized by the Registrar by virtue of one and the same enabling provision, in the opening part of regulation 46, which was applicable to all the paragraphs thereof. Some of the matters provided for in the said paragraphs were such that deviation therefrom could possibly be authorized on particular occasions but other of the said matters were such that, because of their very nature, they left no room for deviation on particular occasions and such deviation, if authorized, would have to be a more or less general or indefinite deviation, as e.g. deviation from paragraph (*a*) laying down the extreme length of lorries or from paragraph (*e*) laying down the maximum length of the wheel-base of lorries.

It follows, therefore, that under the above-mentioned enabling provision in the opening part of regulation 46 it was possible to authorize a more or less general or indefinite deviation from specific provisions contained in various paragraphs of such regulation. Once this is so, I cannot hold that such enabling provision should be restricted as being applicable to particular occasions only, merely because the matter in which a deviation is to be authorized is such as to make possible deviation on particular occasions in addition to more or less general or indefinite deviation, as is the case with the matter regulated by paragraph (*g*) of regulation 46, with which we are concerned. In my opinion, in such a case, both a specific and a general licence for deviation may be given; it is a matter of discretion for the Registrar to decide the extent of the deviation he will authorize in the light of all relevant circumstances.

It would also not be logical to hold otherwise: Assuming

e.g. that the Registrar had decided to authorize deviation from the provisions of regulation 46(*g*) for a particular journey which was recurring regularly, say twice or thrice daily in the same circumstances, it would be unreasonable to expect and insist that he should have issued a new licence each time, for each day or for each journey, when he could have authorized such a course generally in respect of all the journeys concerned; and this is, indeed, what appears that he has done in this Case. The Registrar, having been satisfied that Applicants were transporting safely labourers in their truck for the purposes of their business, decided to authorize such transportation by means of a general licence of indefinite duration, rather than by issuing a licence for each journey or for each day.

In the light of all the above considerations I am of the opinion that it was quite lawful for him to do so under regulation 46(*g*).

During the hearing it has been submitted by counsel for Respondent that even if the general licence could have been granted, it was *void* in this Case due to lack of due form, because it was not actually found to exist as a special licence under the hand of the Registrar; it was argued that such formality was of the essence of the matter.

In my opinion it is too late in the day to advance such an argument. It is true that no special document has been produced under the hand of the Registrar of Motor Cars granting a general licence for the carrying of 32 labourers in the said truck, in deviation from regulation 46(*g*), but I am satisfied, as already stated, that it is proper to conclude, in accordance especially with the presumption of regularity, that such a licence must have been duly granted, otherwise it would not have been endorsed in the relevant entry in the register of motor vehicles.

Moreover, we should bear in mind that the certificate of registration itself, which is under the hand of the Registrar of Motor Cars, was endorsed in the appropriate column to the effect that 32 labourers could be carried in the truck. In the particular circumstances of this Case, and bearing in mind the letter already written by the Deputy Registrar of Motor Cars to Applicants on the 5th September, 1952, I am of the opinion that the said certificate of registration, which was issued on the 10th April, 1963, establishes a licence for

the purposes of regulation 46(*g*).

Such licence was apparently never revoked until 1962, when, in July or August, the certificate of registration and the certificate of roadworthiness were requested for scrutiny by the authorities and any reference therein to 32 labourers was erased. It is reasonable to conclude, therefore, that in July or August 1962, a decision was taken to withdraw the licence in question and such decision was implemented through the erasing of the mention of 32 labourers from the relevant registration certificate and roadworthiness certificate. It is this decision which is in effect the subject-matter of this recourse.

Such decision has not been produced as a separate administrative act by Respondent and, also, it does not appear to have been formally and officially communicated to Applicants. The first time that Applicants came to know of such decision was when the registration certificate and certificate of roadworthiness were returned amended. Also a little later, in September, 1962, a new certificate of roadworthiness was issued, for the truck in question, omitting any reference to "32 labourers".

It is common ground that no relevant duly reasoned decision exists in this matter. The letter of the Director-General of the Ministry of Interior, dated the 17th October, 1962 which was referred to earlier, and which was received after the recourse was filed, in answer to enquiries by Applicants, cannot in my opinion be considered as a duly reasoned decision; it is only a communication pinpointing the provision on which the action of Respondent was founded.

In the said letter the Director-General of the Ministry of Interior refers to regulation 51(e) of the 1959 Motor Vehicles Regulations, which have replaced the relevant 1951 Regulations. In this connection it is useful to note that under regulation 70 of the 1959 Regulations it is provided that anything done under the 1951 Regulations was kept in force in spite of the repeal of such Regulations.

Regulation 51(*e*) of the 1959 Regulations reads as follows:- "In addition to the provisions in Regulation 50 hereof contained the following special provisions shall, unless the Registrar otherwise directs by licence under his hand, apply to, and shall be observed in respect of motor lorries—.....

(*e*) no person shall be carried in a motor lorry other than the hirer or owner of the lorry or of the goods carried therein or the servants or agent of the owner or hirer not exceeding three persons in all excluding the driver. Such persons with the exception of one, who may sit on the goods, will only be carried on properly secured seats".

This is the only relevant regulation in the 1959 Regulations, because regulation 56 of these Regulations, which was referred to in argument, is irrelevant, as it relates to public vehicles in the same way as regulation 51 of the 1951 Regulations related to such vehicles. In this connection I would observe that the expression "public service motor vehicle and motor lorry" must be read as one expression in the sense that "public service" refers to both "motor vehicle" and "motor lorry". Had it been otherwise it would result in having two parallel and conflicting provisions relating to motor lorries, whether public or private, i.e. regulation 51(*e*) and regulation 56; I do not think that this could be the intention of the legislator.

Coming now back to regulation 51(*e*) itself, it is clear that it does not differ in any way from regulation 46(*g*) of the 1951 Motor Car Regulations, and the enabling provision, for the licencing of deviation therefrom, is identical in both the said regulations, 51 and 46. So what I have stated earlier in relation to regulation 46 of the 1951 Regulations applies equally well to regulation 51 of the 1959 Regulations. In my opinion, therefore, the special licence to carry 32 labourers, as granted to Applicants in 1953, which has been kept in force by regulation 70 of the 1951 Regulations, does not contravene regulation 51 of such Regulations; it could be granted equally well thereunder.

To the extent, therefore, to which the revocation of the licence in question has been based on the ground that its granting or continued existence was incompatible with the legislation in force at the material time—and this appears to have been the primary cause for its revocation—such revocation has been made on an erroneous view of the effect of the relevant legislation.

During the hearing counsel for Respondent has attempted to establish that the revocation of the licence in question has not been based solely on legal considerations, but it was the outcome of the exercise of discretion by the Registrar of

Motor Cars, and that due regard has been paid also to considerations of public interest, *inter alia*. He said that the revocation took place in order to safeguard the interests of public carriers which were prejudiced by the fact that private carriers, the Applicants, were allowed to carry their own labourers. Counsel for Applicant took objection to this ground being introduced for the first time belatedly at the hearing and in the end counsel for Respondent stated that he was not pursuing this point any further as a ground justifying the revocation; he repeated, however, that Government, on being moved by public carriers that they were prejudiced, and out of consideration for a large class of persons, had gone into the relevant legal position and had decided that the Registrar was not legally entitled to grant the general licence in question to Applicants. He added that actually this had been raised also by the public carriers in complaining to Government. He said that he was mentioning all this in order to explain how Government came to take action in this matter.

I think that the disclosures made in this respect by counsel for Respondent—in a very fair and praiseworthy effort to assist the Court—are very useful as they tend to place this Case in proper perspective. It is thereby established beyond doubt that the general licence concerned, having been issued and being regarded as still in existence in 1962, came to be revoked not *ex proprio motu*, or on the merits of the particular situation pertaining to the truck in question or to its use by Applicants, but as a result of general legal considerations which were brought into focus when public carriers raised an issue of principle.

I have already found that the relevant legislation did not and does not exclude the granting of the licence which Applicants have been enjoying between 1953 and 1962, as erroneously assumed by Respondent. Irrespective of the motive for its revocation, once it has been based on a misconception of the correct legal position, the relevant administrative decision, as manifested by the erasing of the reference to 32 labourers effected on the registration certificate and the roadworthiness certificate relating to the truck in question, has to be declared *null* and *void*.

As I said already in this Case no relevant duly reasoned administrative decision exists; it does not exist either as a formally drawn up document or by way of relevant correlated

documents. Being faced, thus, with the position that a revocation of a licence, granted to Applicants, has taken place on the basis of an erroneous construction of the relevant legislation and having not before me a reasoned decision which might possibly enable me to come to the conclusion that there existed also other proper grounds justifying the revocation of the licence, as a matter of discretion, even if the proper construction of the relevant legislation had been adopted, I am bound to come to the conclusion that the said revocation should be annulled.

The lack of due reasoning is in my opinion, in the light of all material considerations in this Case, a sufficient ground by itself for the annulment of the administrative action concerned in addition to the above ground of legal misconception.

That absence of proper reasoning may be a ground of annulment in certain cases has already been laid down, by this Court. (See *Pancyprian Federation of Labour and The Board of Cinematograph Films Censors*, (reported in this Part at p. 27 *ante*)).

The material considerations, above-referred to, in this connection, are as follows:—

(*a*) The Applicants' long enjoyed accrued rights in the matter of the relevant licence were adversely affected by its revocation. I cannot agree with counsel for Respondent that there was no question of accrued rights because the licence was issued from year to year. I think that in this respect he is confusing the yearly circulation licence, which is another matter altogether, with the licence to carry 32 labourers which was granted in 1953 and which was endorsed both in the relevant entry in the register of motor vehicles and on the certificate of registration; such licence continued in existence, without renewals, until revoked in 1962.

(*b*) It was not legally possible, in my opinion, to revoke a licence, which had given rise to accrued rights, by means of a non-duly reasoned decision which was only manifested through the sudden erasing of the relevant endorsements. An act revoking a previous act, especially when such previous act has given rise

to accrued rights, has to be duly reasoned (See Conclusions from the Jurisprudence of the Council of State in Greece, 1929-1959, p. 184). This principle was upheld also in the Decision 339/1932 of the Greek Council of State (Reports 1932A p. 1000).

For the reasons given, therefore, I have reached the conclusion that the lack of due reasoning is an additional ground leading to the annulment of the action which is the subject-matter of this recourse.

A little earlier in the judgment I have indicated that I regarded the yearly circulation licences as not really relevant to the sub judice matter. I would like to add on this point that, in any case, in the present Case no decisive or definite conclusion could have been drawn from the circulation licences granted to Applicants in respect of the truck in question. In 1953 the circulation licence made express mention of "32 labourers"; in 1960 we still find the "32 passengers" being mentioned in the circulation licence; but they are not mentioned on the circulation licences of 1961 and 1962. Yet on the 19th March, 1962, a certificate of roadworthiness of that date, relating to the truck in question, makes express reference to "32 labourers". I am of the opinion that the authorities themselves did not appear to place any value on the contents of the circulation licences as being relevant to the question of the general licence to carry passengers in excess. Respondent has not taken the view that the non-mentioning of excess passengers in the circulation licences of 1961 and 1962 indicated a revocation of the said general licence as far back as 1961; it has been the case of Respondent all along that the revocation was decided and implemented in 1962, when the certificate of registration and the certificate of road-worthiness were amended accordingly.

It is now up to the authorities concerned to comply with this judgment, which lays down that the revocation of the licence for this truck to carry excess passengers, as granted in 1953 and entered in the registration certificate and the register of motor vehicles, is *null* and *void* and of no effect whatsoever; in other words the licence remains in force.

This, however, does not mean to say that the authorities are barred from revoking in future such licence on proper grounds, if any and by proper administrative action. At this stage I am not pronouncing one way or the other as to

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whether the protection of public carriers could be a proper ground justifying the revocation of the licence in question; so the possibility of considering the matter of the protection of the interests of the public carriers remains open.

Regarding costs I am of the view that in the light of all relevant circumstances Applicants are entitled to most of their costs, which I assess to £30.—

Decision complained of declared null and void. Order as to costs as aforesaid.