

1968  
Dec. 11

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MIKIS  
HADJIPETRIS  
v.  
REPUBLIC  
(MINISTER OF  
COMMUNICATIONS  
& WORKS  
AND ANOTHER)

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

MIKIS HADJIPETRIS,

*Applicant.*

*and*

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

*Respondents.*

(Case No. 26/68).

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*Road Traffic (Regulation) Law, 1964—Sections 6 and 8(2)—Grant to Applicant of road licence under the Law by the “Permits Authority” (‘Αρχή ‘Αδειῶν)—Revocation of such licence by the Minister on appeal made to him by interested persons—Recourse by the Applicant against such revocation under Article 146 of the Constitution—Preliminary point of law taken by Applicant’s counsel to the effect that the Minister’s said decision should be annulled in limine without going into the merits of the case on the sole ground that it was reached by the Minister without Applicant having been heard or given notice of such appeal—Sub-judice decision not in the nature of a sanction, nor based on considerations personal to Applicant—Therefore, it was not necessary for the Minister to give notice of the proceedings before him to the Applicant or to hear him before reaching his decision to revoke the licence—Peristeronopighi Transport Co. Ltd. and The Republic, (1967) 3 C.L.R. 451 at p. 458-59, distinguished.*

*Administrative Law—Administrative decision—Right of persons affected to be heard—Scope and extent of such right—Principles of natural justice—See above.*

*Natural justice—Principles of—Scope and extent—See above under Road Traffic (Regulation) Law, 1964; Administrative Law.*

*Practice—Preliminary point of law—See above under Road Traffic (Regulation) Law, 1964.*

*Road Licence—Revocation by the Minister on appeal—See above.*

This is a recourse under Article 146 of the Constitution whereby the Applicant seeks a declaration that the “decision

or order" of the Minister of Communications and Works dated December 29, 1967, revoking a licence granted to the Applicant by "the Permits Authority" ('Αρχή 'Αδειῶν) under section 8 of the Road Traffic (Regulation) Law, 1964, to use a rural bus for the carriage of passengers from Clirou to Nicosia and back—"is *null and void* and of no effect whatsoever". The Minister's decision was given on an appeal to him for the revocation of the Applicant's licence made by nine persons operating a bus line between the same places.

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When the application came on for hearing counsel for the Applicant raised the preliminary legal point that the *sub judice* decision should be annulled without going into its merits on the ground that it was reached without the Applicant having been heard by the Minister, notice in that behalf not having been given to him.

The Court, distinguishing *Peristeronopighi Transport Co. Ltd. and The Republic*, (1967) 3 C.L.R. 451, at pp. 458-59, ruled that the preliminary point fails on the ground that it was not necessary for the Minister to give the Applicant notice of the appeal to him by the aforesaid nine persons before dealing with it.

The facts sufficiently appear in the ruling of the Court

*Order in terms.*

Cases referred to:

*Peristeronopighi Transport Co. Ltd. and The Republic*, (1967) 3 C.L.R. 451 at pp. 458-59, *distinguished*.

*Decision of the French Council of State, Dame Veuve Trompier-Gravier in Les Grands Arrêts de la Jurisprudence Administrative* (Sirey, 1958), pp. 253, 254, *distinguished*.

**Recourse.**

Recourse against the decision of and/or order of Respondent 1 revoking a licence granted to the Applicant by Respondent 2, the permits authority, to use a rural bus for the carriage of passengers from Clirou to Nicosia and back.

*J. Marvonicolas*, for the Applicant.

*L. Loucaides*, Counsel of the Republic, for the Respondents.

*Cur. adv. vult.*

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The following Ruling was delivered by:

STAVRINIDES, J.: This is an application for a declaration that “the decision and or order” of the Minister of Communications and Works dated December 29, 1967 (*exhibit 1*), whereby a licence granted to the Applicant by the (‘Αρχή ‘Αδειῶν) (in the title of these proceedings described as “the Permits Authority” and hereafter referred to as “the Licensing Authority”) under s. 8 of the Road Traffic (Regulation) Law, 1964, to use a rural bus for the carriage of passengers from Clirou to Nicosia and back was revoked “is *null* and *void* and of no effect whatsoever”. The Minister’s decision (hereafter “the subject decision”) was given on an appeal to him for the revocation of the Applicant’s licence made by nine persons (hereafter “the interested persons”) operating a bus line between the same places. When the application came on for hearing counsel for the Applicant raised this point of law, which he submitted should be argued and decided before other matters were gone into: whether the subject decision should be annulled without going into its merits, on the ground that it was reached without the Applicant having been heard, notice in that behalf not having been given to him. Counsel for the Respondent agreeing, the court proceeded to hear argument on both sides on that point. However, the interested persons not having been given notice of these proceedings, on conclusion of the argument Judgment was reserved on the terms that, if deemed by the court desirable, notice would be given to the interested persons to enable them to be heard before the point was decided. In the event, having reached the conclusion that the point is not a valid one, I proceed to give my reasons for that conclusion without ordering notice to be given to the interested persons under the terms of the adjournment.

It is common ground, and indeed clear from its terms, that the subject decision was based solely on the view that the licence should not have been issued in the first place, the Authority having issued it on the basis of wrong information. It was neither in the nature of a sanction nor based on considerations personal to the Applicant. Mr. Mavronicolas for the Applicant relied on a passage from the Judgment of Triantafyllides, J., in *Peristeronopighi Transport Co. Ltd. v. Republic*, (1967) 3 C.L.R. 451 at pp. 458-59, which reads:

“Irrespective, however, of the above view, there remains

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always the fact that the Licensing Authority reconsidered its refusal to grant a road service licence to the interested party on the ground of an allegation that the Applicant was not serving sufficiently the routes concerned and was exploiting a monopoly enjoyed by it. I am of the opinion that it was necessary, as a matter of proper administration and for the purpose of conducting a proper enquiry and ascertaining correctly all material facts, to bring the said allegation to the notice of the Applicant, and have its explanations thereon, before deciding finally the matter (see *Hadjilouca and The Republic*, (1966) 3 C.L.R. 854); this was not done and so the discretion of the Licensing Authority was exercised in a defective manner contrary to the relevant principles of administrative law and in excess and abuse of powers.”

However, that case was different from the present in two material respects. First, it was a case, not of a revocation of a road use licence, but of a grant of one; and in relation to such grant, but not in relation to its revocation, it is provided by s. 8(2) of the 1964 Law that

“The Licensing Authority in the exercise of such discretionary power shall take into consideration the following..... and shall take into consideration any representations from persons who at the time of commencement of this part of this Law were already providing in good faith and for a sufficiently long time transport facilities on the same route, or near such route, or on part thereof.”

That provision was one of the grounds of the decision in the *Peristeronopighi Transport Co. case*, as appears from this passage, which comes immediately before that quoted by counsel for the Applicant:

“It is not in dispute, however, that the shareholders of the Applicant company are persons who as individuals were providing transport facilities in the past, in the sense of the above-quoted provision in s. 8(2) of Law 16/64; so, though in law a company is a different person from its shareholders, I do think that for the purposes of the proper application of s. 8(2) of Law 16/64 the Applicant ought to have been treated as a group of persons whose representations ought to have been taken into consideration; and once it was known to the Licensing Authority that it was objecting to the grant of

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other road service licences along the routes concerned..... then Applicant ought to have been informed of the application of the interested party—especially the one which was granted,..... so that it could put forward any representations it might wish to make.”

Secondly, it appears from the words “on the ground of an allegation that the Applicant was not serving sufficiently the routes concerned and was exploiting a monopoly enjoyed by it”, which occur in the first-quoted passage, that the learned judge relied also on the ground that the decision in question before him was one based on blameworthy conduct on the part of the licence holder. That ground is in accord with the decision of the French Council of State in the case of Dame Veuve Trompier—Gravier: see *Les Grands Arrêts de la Jurisprudence Administrative* (Sirey, 1958), pp. 253, 254. As a note to the decision puts it:

“By this decision the Council of State has expressly laid down a principle which previously decisions had already foreshadowed and which was destined to take an important place in later case-law: ‘where an administrative decision assumes the character of a sanction and has a sufficiently adverse effect on the position of an individual the courts require that the person affected should be given the opportunity of questioning the reasons for the adverse decision’... However, respect for the ‘rights of the defence’ is not required, in the absence of specific provision, except where the measure in question has the character of a sanction and this sanction is sufficiently serious.”

For the above reasons I have come to the conclusion that it was not necessary for the Minister to give the Applicant notice of the appeal to him by the interested persons before dealing with it. Therefore the preliminary point fails.

It follows that the subject decision must be considered on its merits, and as the interested persons must have a full opportunity of having their say, I propose fixing a date when they as well as the parties may appear and all necessary directions may be given.

*Order in terms.*