

1969
April 2

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLES 146, 25 AND 28
OF THE CONSTITUTION.

ANDREAS
ATHINAKIS
AND ANOTHER
v.
REPUBLIC
(MINISTER OF
COMMUNICATIONS
AND WORKS
AND ANOTHER)

ANDREAS ATHINAKIS AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF COMMUNICATIONS AND WORKS,
2. THE PERMITS AUTHORITY,

Respondents.

(Case No. 57/68).

Administrative Law—Road Traffic—Decision of the Minister of Communications and Works dismissing an appeal made by the Applicants under section 6 of the Road Traffic (Regulation) Law, 1964 (No. 16 of 1964)—Appeal to the Minister from a decision of the “Licensing Authority” under the said Law—It was a common ground that the sub-judice decision of the Minister on such appeal is a decision of an organ or authority exercising executive or administrative authority within Article 146, paragraph 1, of the Constitution—And as such it can be challenged by the recourse under that Article—Decision of the Minister subject-matter of this recourse annulled—Because the grounds on which it was based are not applicable to the Licensing Authority’s decision appealed against as aforesaid.

Recourse under Article 146 of the Constitution—Decision of the Minister of Communications and Works on appeal under section 6 of the aforesaid Law No. 16 of 1964 from a decision of the Licensing Authority set up under that Law, is a decision of an organ exercising executive or administrative authority within the meaning of paragraph 1 of Article 146 of the Constitution—Consequently a recourse under that Article lies against such decision of the Minister—See also hereabove.

Constitutional and Administrative Law—Article 146.1 of the Constitution—See above.

Road Traffic—The Road Traffic (Regulation) Law, 1964 (Law No. 16 of 1964)—Section 6—Appeal to the Minister of Communications

and Works under that section against a decision of the Licensing Authority set up under the said Law—See hereabove.

Appeal—Appeal to the Minister of Communications and Works under section 6 of the Road Traffic (Regulation) Law, 1964 (Law No. 16 of 1964)—See above.

Words and Phrases—“Act or decision of an organ authority or person exercising executive or administrative authority” in the sense of Article 146.1 of the Constitution.

The facts sufficiently appear in the judgment of the Court annulling the Minister's decision challenged by this recourse.

Recourse.

Recourse against the decision of Respondent 1, on appeal under section 6 of the Road Traffic (Regulation) Law, 1964 (Law 16 of 1964), dismissing Applicants' appeal against the decision of Respondent 2 whereby Applicants' application for a road use licence was refused.

R. Michaelides with St. G. McBride, for the Applicants.

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

L. Demetriades, for the Interested Party.

Cur. adv. vult.

The following judgment was delivered by:—

STAVRINIDES, J.: The Applicants seek

- “(1) a declaration that the decision of the Minister of Communications and Works (and/or of the Permits Authority) dated December 22, 1967, as communicated to the Applicants by the Minister of Communications and Works by the letter dated December 29, 1967, being a decision of a person and/or authority exercising executive and/or administrative authority is contrary to the provisions of the Constitution and/or was made in excess of and/or in abuse of powers vested in them.
- (2) A declaration that such decision as aforesaid is *null* and *void* and/or of no effect whatsoever.
- (3) A declaration that the omission of the Respondents to

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grant the application of the Applicants to operate a bus between Ayios Amvrosios and Limassol, as more particularly set out in the Applicants' application dated November 2, 1966, ought not to have been made and for a declaration that whatever has been omitted as aforesaid should have been performed and/or the necessary permission and/or licence should have been granted."

A large number of documents are appended to the application to this Court (hereafter simply "the application", to distinguish it from applications made to the Authority), each marked with a different letter; and hereafter such letters following references to documents are to be understood as being references to the respective documents so marked.

One administrative decision affecting the Applicants was taken on December 22, 1967, not two; and it was taken, not by "the Permits Authority" (in the English translation of the Road Traffic (Regulation) Law, 1964 prepared by the Ministry of Justice more aptly rendered "the Licensing Authority" and hereafter referred to as "the Authority"), but by the Minister of Communications and Works (hereafter "the Minister") dismissing an appeal to him by the Applicants under s. 6 of that Law.

Omitting unnecessary detail, the facts are as follows: By a letter dated November 2, 1966 (A and *exhibit* 3(a)), the Applicants, who both come from Ayios Amvrosios village, in the district of Limassol, applied to the Authority for a licence to operate a bus service "for the carriage of labourers to the Akrotiri Base and the other needs of our village". Two days later a co-villager of the Applicants named Georghios Vyronos, who at the time was running a bus service between Ayios Amvrosios and Limassol, applied for a licence to use a second bus on that route (*exh.* 2). On January 20, 1967, the Authority wrote a letter (B) to the Applicants referring to their application of November 2, 1966 (hereafter "the November application"), requesting them to attend at its offices at 10 a.m. on the 25th of that month "to explain orally as well the points on which you base your above application". The letter added that "Mr. G. Vyronos, the λεωφορειοῦχος ('bus owner' or 'bus driver') of your village, who objects to the grant of such a licence to you, has also been invited to attend the above conference". On the appointed day both Applicants and Mr. Vyronos

attended before the Authority and all three made statements. It is common ground that what they said is correctly recorded at pp. 1-3 of a document appended to the opposition and headed "The history of case No. 57/68 and dated February 26, 1968, is as follows" (hereafter "the summary"), which contains marginal references to official files. Mr. Athinakis, the first Applicant, said he had been in possession of a public service vehicle whereby he had been providing a transport service to his village "for a period of six months in 1960 and specifically before 1961". He had sold that vehicle. "His main occupation was that of *ἐπαγγελματίας αὐτοκινητιστής*" ("professional motor vehicle owner" or "professional motor vehicle driver"): "He was then in possession of a public service goods vehicle... which already had a public carrier's licence" from the Authority. Mr. Eleftheriou, the second Applicant, said he had never had a public service vehicle of his own, but he was employed at a salary "in the British Military Bases of Akrotiri". "Only during a period of six months when (the first Applicant) had been possessing bus D209, by means of which he had been serving their village, he (the second Applicant) had been a driver of that vehicle." He explained that his and Mr. Athinakis intention was to use the vehicle in respect of which they had applied for a road use licence "for the carriage of labourers from their village to the British Military Bases". Mr. Vyronos said that "he was the only *λεωφορειοῦχος* serving his village by means of his bus TCT 500". The transport service between Limassol and that village had been carried out by his father for a period of over thirty years. Later, when he (Mr. Vyronos) had become of age, he had been working with his father, who had since died, and for more than five years last past "he had been serving his village alone and satisfactorily". He objected to the grant of a licence to the Applicants.

At the hearing before me Mr. Loucaides for the Republic stated that "the Respondent did not dispute that at the material time two buses were required for adequate communication between Ayios Amvrosios and Limassol via Royal Air Force Station, Akrotiri", adding, "The question however, is whether the licence for the second bus should have been given to the Applicants or to Mr. Vyronos". On the other hand Mr. Michaelides for the Applicants said that "he was content with a decision being reached by the Court on the footing that at all material times there was room for a second bus but not

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for a third bus on the relevant route". Further, it was expressly agreed between the parties that (when the 1964 Law came into force) "Mr. Vyronos had been running, bona fide, a bus line on the relevant route since 1962; that Mr. Athinakis "had been running, bona fide, a similar service on that route for about six months in 1961; that at all times he had been the owner of motor-lorries; and that Mr. Eleftheriou had been a bus driver for a long time".

. On May 9, 1967, each of the Applicants wrote to the Authority a letter bearing on top the names of both of them and expressed in the plural, but signed by himself alone (C and D respectively). Letter C expressly refers to "our letter dated November 2, 1966, relating to the grant of a road use licence enabling us to put into circulation a rural bus at our village of Ayios Amvrosios and following also our oral explanations in that behalf at our meeting of January 25, 1967". Letter D reads:

" We hereby request you to examine, in accordance also with our letter of November 2, 1966, our application for the grant of the requisite licence to put into circulation a rural bus registration No. TE 276 (sic for TDE 276), which we propose purchasing from Mr. Neophytos Ioannou of Limassol and to put into circulation at our village of Ayios Amvrosios. The reason for which we ask for a road use licence is for the carriage of labourers from our village to the Akrotiri Base and for the other needs of our village. We are professional motor vehicle drivers and we have no other source of living.

In our application of November 2, 1966, to which we have had no reply to this day, we were asking for a licence in respect of motor vehicle registration No. TB 756 (sic for TDB 756).

We are awaiting an early reply from you."

On May 12, 1967, the Authority wrote to the Applicants two letters (F and G respectively). By the latter it acknowledged "receipt of their letter of May 9, 1967, relating to a road use licence in respect of a rural bus" and informed them "that it had been noted and in due course the appropriate reply would be sent to them". The former reads:

" I wish to acknowledge receipt of your letter dated May

9, 1967, relating to the purchase of bus-type vehicle No. DE 276, and to inform you that it has been noted and in due course the appropriate reply will be sent to you."

This letter bears a reference to "File No." followed by "DE 276" (the identification mark of the vehicle referred to therein), while the former bears a reference to "File No. 565", as does the letter of January 20 already referred to. On July 28, 1967, the Authority wrote to the Applicants a letter (K) consisting of two paragraphs, of which the first, which alone is relevant to these proceedings, reads:

"I wish to refer to your letter of May 9, 1967, whereby you apply for the grant of a road use licence in respect of bus No. DE 276 which you will use on the prescribed route Ayios Amvrosios—British Military Bases of Akrotiri and to inform you that your application cannot be approved because your village is fully served by the existing means of transport."

It is clear that this letter is a reply to letter D, viewed as an independent application for a road use licence in respect of vehicle DE 276, and Mr. Michaelides argued that the latter letter was only a reminder of the November application, so that (it being common ground that a road use licence for running a second bus "from Ayios Amvrosios to Limassol via Royal Air Force Station, Akrotiri"—hereafter "the second bus licence"—was granted to Mr. Vyronos on March 7, 1967, and not earlier) the Authority in viewing it the way it did "acted under a misconception of fact"; that the virtual refusal conveyed by letter K was due to such a misconception; and that in consequence of that refusal the November application was never considered and decided by the Authority. In fact letter D was capable of being construed either as a reminder of the November application, coupled with an intimation that the road use licence was then required for a vehicle other than that in respect of which that application had been made, or as an independent application. But whether the Authority was right or wrong in viewing it as an independent application, it was stated by Mr. Loucaides, and not disputed by counsel for the Applicants, and moreover it appears from the summary, p. 3, paras. 4 and 5, that the November application had in fact been considered on March 7, 1967, in conjunction with Mr. Vyronos's application exhibit 3(a) and that the decision to grant the second bus licence to Mr. Vyronos was part of

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a composite decision not to allow the November application, but to allow that of Mr. Vyronos. Nor can the Applicants complain that that decision was not communicated to them, for by a letter dated July 18, 1967 (J), addressed to the Applicants jointly and bearing reference to "File No. 565"—obviously a reply to letter C,—the Chairman of the Authority wrote to them:

"I wish to acknowledge receipt of your letter of May 9, 1967, by which you apply for the grant of a road use licence in respect of a rural bus based on the village of Ayios Amvrosios and to inform you that (the Authority) carefully considered your application but I regret to say that it has been rejected."

It follows that para. (3) of the application fails entirely; further, since, as pointed out at the outset, no decision affecting the Applicants was taken by the Authority on December 22, 1967, paras. (1) and (2) of the application, in so far as they purport to question such a supposed decision also fail.

Thus it remains to consider the Minister's decision (S). It is dated December 22, 1967, and reads as follows:

"Order of the Minister of Communications and Works on the appeal of Messrs. A. Athinakis and Leandros Eleftheriou of Ayios Amvrosios, Limassol, against the decision of the Licensing Authority dated March 7, 1967 whereby the Licensing Authority refused the grant of a road use licence to the appellants in respect of their vehicle registration No. DE 276."

The Minister of Communications and Works having considered all the material before him and also the opinion of the Road Traffic Council, has reached the following conclusions:

- (a) "The appellants at the time of the coming into force of the Road Traffic (Regulation) Law were not providing transport facilities on the Ayios Amvrosios—British Military Bases of Akrotiri route and near thereto.
- (b) Georghios Vyronos, to whom a road use licence in respect of a second bus on the route in question was granted by the Licensing Authority, was providing at

the time of the coming into force of the said Law such transport facilities and could cope with a further increase in the requirements of the said route.

(c) The transport requirements on the route in question can be met adequately by the existing licensed rural buses.

For the above reasons the appeal is dismissed."

It will be noticed that ground (c) is a reproduction of the substance of the reason given in the first paragraph of letter K. Doubtless, the notice of appeal is apt to give the impression that the appeal was one from a decision conveyed to the Applicants by letter K. However, as appears from the very heading of his decision, the Minister treated the appeal as one from the Authority's decision of March 7, 1967; and hence the question whether his decision is valid or not must depend on whether the grounds on which it is based are applicable to the Authority's decision of that date. Now the very question before the Authority that day was whether a road use licence should have been given to Mr. Vyronos or the Applicants. Therefore ground (c) is wrong.

Since that ground goes to the root of the dismissal of the appeal, the Minister's decision is annulled and the appeal must be considered by him in the light of this judgment. No costs are allowed to the Applicants, both because the ambiguity of their letter D and the deceptiveness of their notice of appeal contributed to the invalid result of the administrative process and also because they are neither present nor represented today, as they should have been.

Sub judice decision annulled; no order as to costs.

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