[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. EFSTATHIOS KYRIACOU & SONS, LTD,
2. SFERA TRANSPORT COMPANY LTD,
3. PHAROS TRANSPORT COMPANY LTD,

Applicants,

and

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

Respondent.

(*Case No.* 301/68).

Motor Transport—Bus route—Terminal of—Decision of the Respondent Minister on appeal, by Interested Parties, against a decision of the Licensing Authority—Appeal under section 6(1) *of the Motor Transport (Regulation) Law,* 1964 (*Law* 16 *of* 1964) *as amended by Law No.* 78 *of* 1966—*Notwithstanding the use of the word "appeal", the powers of the Minister on such "appeal" are not of a quasi-judicial nature—The Minister merely acts under said section* 6(1) *as a hierarchically superior authority in the context of the exercise of administrative powers—Recourse against such decision of the Minister by the Applicants—In the circumstances of this case said decision was reasonably open to the Minister viz. to reverse the decision of the Licensing Authority in view of the latter's failure to take into account the public interest i.e. the interest of the public—See further* infra.

Motor Transport—Appeal to the Minister against decision of the Licensing Authority—Section 6(1) *of said Law* (supra)—*Exercise of powers by Minister on such appeal—Open to him to authorise one of the officials of his Ministry to carry out function preparatory to the decision to be taken by the Minister under said section* 6(1) (supra)—*This does not amount to a delegation of powers—But it was something which could be done in view of the definition of "Minister" in section* 2(1) *of the said Law.*

Appeal to the Minister—Meaning, effect and nature of—See supra.

Delegation of statutory powers—It is a basic principle of law that

an organ vested with statutory powers cannot delegate them in whole, or in part, unless there is an express statutory authority for the purpose.

Misconception—Misconception of fact—Only a material misconception can vitiate an administrative decision.

Administrative decision—Taken without regard to the public interest i.e. to the interest of the public—See supra.

Public Interest—Interest of the public—Decision taken without regard thereto—See supra.

Administrative Practice—Provisions in section 2(1) *of the Motor Transport etc. etc. Law* (supra)*—Consistent with the realities and needs of good administration as well as with modern administrative practice prevailing abroad as, e.g. in England (see Carltona case* infra)*—When a statutory power is entrusted to a Minister it ought not to be the case that he has to do everything personally himself.*

Good administration—Realities and needs of—See supra.

Minister—Statutory powers vested in Minister—Minister cannot be expected to do everything personally himself—See further supra.

By this recourse the Applicants, which are transport concerns, challenge a decision of the Respondent Minister of Communications and Works dated June 12, 1968, under section 6(1) of the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964) as amended by Law No. 78 of 1964. The Minister's decision was taken as a result of an appeal made to him under the aforesaid section 6(1) by the "Interested Parties" who are bus-owners against a decision of the Licensing Authority set up under the aforesaid legislation. The whole matter relates to the change of the Limassol terminal of bus route 17, which runs between Ypsonas village and the town of Limassol.

The Licensing Authority, apparently ignoring the views of the Police and the Municipality of Limassol, decided some time in January 1968, to move the Limassol bus terminal of the said route 17 from Andreas Themistocleous Square to Katholikis Square. The Interested Parties appealed against this decision to the Minister under section 6(1) of the Law (*supra*). On June 12, 1968 the Minister reversed the said decision and ordered that the terminal be moved to its original

place i.e. to Andreas Themistocleous Square. The Minister based his decision on the consideration that the Licensing Authority took its decision appealed against without paying any regard to the public interest i.e. the interest of the public. It is against this decision of the Minister that the Applicants made the present recourse.

It is argued on behalf of the Applicants, *inter alia*, that the Minister's decision was reached under a misconception of fact. It was further argued that the aforementioned appeal to the Minister was not dealt with solely by the Minister himself, in that the hearing of the parties took place before an official of the Ministry concerned, Mr. P.; it was submitted that such course was inconsistent with the provisions of section 6(1) of Law No. 16 of 1964 (*supra*), which reads as follows:

> "Subject to the right of recourse to the Supreme Constitutional Court (now the Supreme Court) any decision of the licensing authority under this Law shall be subject to appeal to the Minister who may, with the advice of the Board, make such order on such appeal as he may think fit". (*Note:* The Board referred to above, is the Motor Transport Board set up under section 3 of the Law for the purpose of assisting the Minister in an advisory capacity).

On the other hand, the word "Minister" in section 2(1) of the Law as amended, means the "Minister of Communications and Works and includes any public officer specially authorised by the Minister for any of the purposes of this Law".

Dismissing the recourse, the Court:-

Held, I: As to the issue of the alleged misconception of fact (supra):

(1) There has been, indeed, a misconception as to the history of the matter; but its relationship to the material situation is so remote that I cannot by any means regard such a misconception as material, so as to justify interfering on this ground with the *sub judice* decision of the Minister.

(2) Because, it is only a material misconception that can vitiate an administrative decision (see *Conclusions from the Jurisprudence of the (Greek) Council of State* 1929–1959 p. 268).

Held, II: As to the allegation to the effect that the sub judice *decision was not solely the Minister's decision* (supra):

(1) It is a basic principle of law that an organ vested with statutory powers or duties cannot delegate them in whole, or in part, without express statutory authority for the purpose (see Halsbury's Laws of England, 3rd edition, Vol. 1, p. 169 paragraph 396; Kyriakopoulos on Greek Administrative Law, 4th ed. Vol. 2, p. 459).

(2) (a) In the present instance the relevant authority is to be found in the definition of Minister in section 2(1) of the Law (*supra*).

(b) I think that a provision such as this one is consistent with the realities and needs of good administration. It is quite obvious that when a statutory power is entrusted to a Minister it ought not to be the case that the Minister has to do everything himself. And it seems to me that the said definition of "Minister" in section 2(1) (*supra*) has been based on modern administrative practices, such as those obtaining abroad, as, for example, in England (see *Carltona, Ltd.* v. *Commissioners of Works and Others* [1943] 2 All E.R. 560, at p. 563 per Lord Greene, M.R.; *Lewisham Borough Council and Another* v. *Roberts* [1949] 1 All E.R. 815, at p. 828 per Jenkins, J.; Halsbury's (*supra*) p. 170, paragraph 397).

(3) (a) In the present case the Respondent Minister has neither, in effect, delegated his powers to decide on the appeal under section 6(1) (*supra*), nor has in fact the *sub judice* decision been reached in his name by any official of the Ministry. All that has happened is that the Minister authorized one of the officials of his Ministry to carry out a function preparatory to the decision to be taken by the Minister under the said section 6(1) *supra*. This was something which was permitted to be done by virtue of afore-mentioned definition of "Minister" in section 2(1) (*supra*).

(b) Nor do I accept the argument that such a course was not open at all to the Minister in the case of an appeal under section 6(1) (*supra*). Under this section the Minister acts as a hierarchically superior authority in the context of the exercise of administrative powers, and not in a quasi-judicial capacity, even though the word "appeal" is used therein. But even if his function was of a quasi-judicial nature, I do not think that there is anything in the context of the relevant provisions

of the statute (Law No. 16 of 1964) (*supra*) which precluded him from authorizing an official of his Ministry to act as he has done, so as to collect all necessary material on which the Minister himself reached his decision.

Held, III. As to the merits, particularly on the disregard by the Licensing Authority of the public interest:

(1) It is clear that, as the Minister has found, the Licensing Authority, caught in the midst of the conflicting interests of the parties, lost sight of the primary consideration viz. the public interest. This is abundantly clear from the minutes of the relevant meeting of the Authority, wherein there is no mention at all of the interests of the public.

(2) It follows that the Minister was right in reversing the aforesaid decision of the Licensing Authority by granting the order to move the bus terminal in question back to its original place.

Held, IV. In the result the recourse is dismissed but there shall be no order as to costs because I think that the recourse was made in a *bona fide* effort to redress what the Applicants thought was a wrong done to them.

Recourse dismissed; no order as to costs.

Cases referred to:

Carltona, Ltd. v. *Commissioners of Works and Others* [1943] 2 All E.R. 560, at p. 563, per Lord Greene, M.R.;

Lewisham Borough Council and Another v. *Roberts* [1949] 1 All E.R. 815 at p. 828 per Jenkins, J.

Recourse.

Recourse against the decision of the Respondent, taken as a result of an appeal under section 6(1) of the Motor Transport (Regulation) Law, 1964 (Law 16/64) as amended, whereby he reversed the decision of the Licensing Authority to move the Limassol terminal of bus route 17 from Andreas Themistocleous street to Katholiki Square.

M. Christofides, for the Applicants.

S. Georghiades, Senior Counsel of the Republic, for the *Respondent*.

G. Tornaritis, for the Interested Parties.

Cur. adv. vult.

The following judgment was delivered by:

TRIANTAFYLLIDES, J.: By this recourse the Applicants, which are transport concerns, challenge a decision of the Respondent Minister of Communications and Works (see *exhibit* 1 and, also, documents numbered, in reds, 46-47, in the official file, *exhibit* 7) which was reached by him under section 6(1) of the Motor Transport (Regulation) Law, 1964 (Law 16/64), as amended—till the date of such decision—by the Motor Transport (Regulation) (Amendment) Law, 1966 (Law 78/66).

The Minister's decision is dated the 12th June, 1968, and it was taken as a result of an appeal made to him, under the said section 6(1), by the " Interested Parties", who are bus-owners from Ypsonas village, near Limassol, against a decision of the Licensing Authority, which was set up under the aforesaid legislation.

By virtue of its decision in question the Authority had decided to move the Limassol terminal of bus route 17, which runs between Ypsonas and Limassol, from Andreas Themistocleous Street (otherwise known as Municipal Market Square) to Katholikis Square.

Such decision of the Authority was reached initially on the 16th December, 1967 (see red 14 in *exhibit* 7). There followed representations by the Interested Parties and, after considering them, the Authority decided, on the 13th January, 1968, to affirm its previous decision of the 16th December, 1967; eventually, such decision was put into effect as from the 18th March, 1968 (see again red 14 in *exhibit* 7).

The decision of the 16th December, 1967, has to be read together with a memorandum, dated the 26th October, 1967 (*exhibit* 10), by means of which the Transport Control Officer in the Ministry of Communications and Works, Mr. A. Alexandrou, presented the matter to the Authority, at the time.

From such memorandum, as well as from the official file (see particularly reds 14–17 in *exhibit* 7) one can get a clear picture of the prehistory of the decisions of the 16th December, 1967, and the 13th January, 1968. I need not incorporate all such prehistory in detail in this judgment. The conclusion is to be clearly drawn therefrom that what has created the problem which has led to the present proceedings is the conflict between the competing interests of the Applicants and of the Interested Parties.

From the aforesaid material it appears that originally, in 1965, the terminal of bus route 17 was fixed to be at Irenes Square; and that this was accepted, apparently, by all concerned.

Soon after, in November, 1965, the Interested Parties requested an alteration of the course followed by this route; and, actually, they themselves proposed Katholikis Square as the new terminal of such route. The alteration was approved by the Licensing Authority, but, in actual fact, the terminal of the route was fixed at Andreas Themistocleous Street, on the initiative of the police and the Limassol municipality. The Authority, not being fully aware of the relevant localities in Limassol, was for some time under the impression that Andreas Themistocleous Street was the same as Katholikis Square, but this was soon discovered by the Authority not to be so; yet, it approved in December, 1965, that the terminal of bus route 17 be fixed at Andreas Themistocleous Street, because such arrangement would serve better the public (see red 15 in *exhibit* 7).

Then, in 1966, the Applicants started making representations and requesting the removal back to Katholikis Square of the terminal of the said bus route; there followed a long series of meetings and negotiations and eventually the Authority reached its decision of the 16th December, 1967, which, as stated, was affirmed on the 13th January, 1968, with the result that the terminal was moved to Katholikis Square.

Then, an appeal was made, to the Respondent Minister, against such decision, by the Interested Parties.

The Minister, in his *sub judice* decision, held that the Licensing Authority, in moving the terminal of the bus route concerned from Andreas Themistocleous Street to Katholikis Square, had failed to take into account the material factor

of the public interest and, therefore, he ordered that the terminal should be moved back again to its original location, viz. Andreas Themistocleous Street.

It is true that in the Minister's decision it is stated that Andreas Themistocleous Street was the originally fixed terminal of route 17, as from November, 1965, whereas, actually, it became the terminal, as explained earlier, only as from December 1965.

There is, thus, to be found, indeed, a misconception as to the history of the matter; but its relationship to the material situation is so remote that I cannot by any means regard such a misconception as material, so as to justify interfering on this ground with the *sub judice* decision of the Minister; because, it is only a material misconception that can vitiate an administrative decision (see Conclusions from the Jurisprudence of the Greek Council of State, 1929–1959 p. 268).

It is convenient to deal at this stage with the argument of learned counsel for Applicants to the effect that the appeal to the Minister was not dealt with solely by the Minister himself, in that the hearing of the parties took place before an official of the Ministry concerned, Mr. Pelekanos; it was submitted that such a course was inconsistent with the nature and proper exercise of the powers under section 6(1) of Law 16/64, which reads as follows:–

> " Subject to the right of recourse to the Supreme Constitutional Court,"—now the Supreme Court—"any decision of the licensing authority under this Law shall be subject to appeal to the Minister who may, with the advice of the Board, make such order on such appeal as he may think fit".

The term " Minister" is defined in section 2(1) of the Law—as amended by section 2 of Law 78/66—and it "means the Minister of Communications and Works and includes any public officer specially authorized by the Minister for any of the purposes of this Law".

The Board referred to in section 6(1) is the Road Motor Transport Board, set up under section 3 of Law 16/64, for the purpose of advising the Minister "on all questions relating to road motor transport and on any matters referred to it by the Minister for advice".

As it appears from the relevant official file (*exhibit* 7), on the 11th May, 1968, the Respondent Minister wrote a minute (No. 4 therein) authorizing Mr. Pelekanos, by virtue of the provisions of section 2(1) of Law 16/64, to conduct the hearing of the appeal and to submit to the Minister his conclusion.

Such hearing took place on the 18th May, 1968 (see the relevant minutes, reds 35–41 in the file *exhibit* 7). The minutes were kept in detail and they were, no doubt, before the Minister when he considered the appeal under section 6(1), and reached his decision thereon. From the file (*exhibit* 7) it does not appear that, eventually, Mr. Pelekanos submitted to the Minister, in writing, his conclusion, but it is quite probable that the Minister may have discussed the matter with him; it is possible, even, that Mr. Pelekanos worked in relation to the drafting of the *sub judice* decision, once it was reached by the Minister.

The Minister himself signed such decision (see reds 46–47 in *exhibit* 7) and the decision was communicated, by letter dated the 13th June, 1968, as being the decision of the Minister.

It is a basic principle of law that an organ vested with statutory powers or duties cannot delegate them in whole, or in part, without express statutory authority for the purpose (see Halsbury's Laws of England, 3rd ed., vol. 1, p. 169, para. 396; Kyriacopoulos on Greek Administrative Law, 4th ed., vol. 2, p. 459).

In the present instance the relevant authority is to be found in the definition of "Minister" in section 2(1) of the Law.

I think that a provision such as this one is consistent with the realities and needs of good administration. It is quite obvious that when a statutory power is entrusted to a Minister it ought not be the case that he has to do everything personally himself.

It seems that the said definition has been based on modern administrative practices, such as those obtaining abroad, as, for example, in England, where in his judgment in *Carltona, Ltd.* v. *Commissioners of Works and Others* [1943] 2 All E.R. 560, Lord Greene, MR. said, at p. 563:–

> " In the administration of government in this country the functions which are given to ministers (and constitutionally

properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands or requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case".

The *Carltona* case was referred to with approval in *Lewisham Borough Council and Another* v. *Roberts* [1949] 1 All E.R. 815, where Bucknill, L.J. cited in his judgment the hereinbefore quoted dictum of Lord Greene, and Jenkins, J. had this to say at p. 828:-

"A Minister must perforce, from the necessity of the case, act through his departmental officials, and where, as in the Defence Regulations now under consideration, functions are expressed to be committed to a Minister, those functions must, as a matter of necessary implication, be exercisable by the Minister either personally or through his departmental officials, and acts done in exercise of those functions are equally acts of the Minister whether they are done by him personally, or through his departmental officials, as in practice except in matters of the very first importance they almost invariably would be done".

Also in Halsbury's Laws of England (*supra*) it is stated at p. 170, para. 397:-

"Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister".

In the present case the Minister of Communications and Works has neither, in effect, delegated his power to decide on the appeal under section 6(1), nor has in fact the relevant decision been reached in his name by any official of his Ministry.

All that has happened is that the Respondent Minister

authorized one of the officials of his Ministry to carry out a function preparatory to the decision by the Minister under section 6(1). This was something which was permitted to be done by virtue of the afore-mentioned definition of "Minister", and in the circumstances of this case and bearing in mind the material on record, I cannot find that the Minister acted in abuse or excess of powers in adopting such a course.

Nor do I accept the argument that such a course was not open at all to the Minister in the case of an appeal made under section 6(1).

Under such section the Minister acts as a hierarchically superior authority in the context of the exercise of administrative powers, and not in a quasi-judicial capacity, even though the word "appeal" is used therein. But even if his function was of a quasi-judicial nature I do not think that there is anything in the context of the relevant provisions of Law 16/64 which precluded him from authorizing an official of his Ministry to act as he has done, so as to collect all the necessary material on which the Minister himself reached his decision.

The powers of the Minister in deciding on an appeal of this nature are very wide, indeed; it is clear from the wording of section 6(1) that he can exercise his own discretion in the place of the discretion of the Licensing Authority.

On the material before me I am satisfied that it was reasonably open to the Minister to reach the decision which he reached; and which was both in accordance with the advice given to him by the Board, which met for the purpose on the 7th May, 1968 (see reds 19–20 in *exhibit* 7), and in accordance with the views of the police and municipality in Limassol (see red 15 in *exhibit* 7).

On looking at the matter against its proper background it emerges quite clearly that, as the Minister has found, the Authority, caught in the midst of the conflicting interests of the parties, lost sight of the primary consideration, viz. the public interest, and was swayed by much less weighty considerations, such as the past acceptance by the Interested Parties of Katholikis Square as the terminal for bus route 17 and what it deemed right to do as regards the competing claims of the parties. This is abundantly clear from the minutes of the meeting of the Licensing Authority which took place on

the 16th December, 1967 (see red 14 in *exhibit* 7), wherein there is no mention at all of the interests of the public; and yet the said Authority in December, 1965, had accepted Andreas Themistocleous Street, the terminal eventually decided upon by the Minister, as the one serving best the public.

In all the circumstances, therefore, this recourse fails and it is dismissed accordingly; but there shall be no order as to costs because I think that the Applicants' recourse was made in a *bona fide* effort to redress what they thought was a wrong done to them.

Application dismissed; no order as to costs.