

[MALACHTOS, J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

SALAHİ AHMET AND OTHERS,

Applicants,

and

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

Respondent.

(Case No. 298/71).

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SALAHİ
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AND OTHERS

v.

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Motor Transport—Road Service Licence—Minister of Communications and Works—Reconsidering and revoking in part an order previously made by him on appeal under section 6(1) of the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964)—Reconsideration proceedings falling within the provisions of section 17 of the Law, it is not necessary for the Minister (now respondent) to obtain advice of the Road Motor Transport Board or to take into consideration representations under section 8(2) of the Law.

Road Service Licence—The Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964)—Sections 8(2) and 17—Cf. section 6(1).

The facts sufficiently appear in the judgment of the learned Judge, dismissing the present recourse directed against an order of the Minister of Communications and Works whereby, after reconsideration he revoked in part an order previously made by him on appeal under section 6(1) of the aforesaid Law No. 16 of 1964 (*supra*) without first obtaining the advice of the Road Motor Transport Board or taking into consideration representations referred to in section 6(2) of the Law. The learned Judge held that the said reconsideration proceedings falling within the provisions of section 17 of the Law (see text of said section set out in the judgment, *post*) there was no need for the Minister either to obtain the advice of the Board or to take into consideration re-

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presentations under section 8(2) of the Law. (*Note* : text of section 8(2) set out *post*, in the judgment).

Cases referred to :

Efstathios Kyriacou and Son Ltd. and Others v. The Republic (1970) 3 C.L.R. 106, at p. 116.

Recourse.

Recourse against the decision of the respondent to cancel part of his previous order dated 15th March, 1971 concerning road service licence to vehicle No. AN. 519.

L. Pelekanos, for the applicants.

V. Aristodemou, Counsel of the Republic,
for the respondent.

A. Berberoglou, for the interested party.

Cur. adv. vult.

The following judgment was delivered by :

MALACHTOS, J. : The applicants in this recourse are the owners of a number of public service vehicles licensed under the Motor Transport (Regulation) Law, 1964, as trans-urban buses on the Nicosia—Kyrenia route. On 26/2/1969 the Licensing Authority granted to Lozan Bus Transport and Taxi Co. Ltd., of Nicosia, the interested party in these proceedings, a road service licence for the same bus route as regards its motor vehicles under Registration Nos. AN 519 and AK 822. It must be noted here that the relative application to the Licensing Authority for the issue of such licence was made on 12th March, 1965 and for unknown reasons remained pending for a period of almost four years.

On 6th February, 1970, the Authority granted a similar licence to the interested party for the same route for the vehicle under Registration No. AT 442 as a reserve one. The applicants came to know about the above decisions of the Licensing Authority on 7th April, 1970 and on 17th April, 1970, appealed to the Minister of Communications and Works against those decisions.

The respondent considered the appeal of the appli-

cants and on 9th February, 1971, made the following order :

“The Minister of Communications and Works after taking into consideration all the facts before him, as well as the advice of the Road Motor Transport Board, reached the following conclusions :

(a) There is no certification or assurance that on the date of the coming into operation of Law 16/64 (The Motor Transport (Regulation) Law, 1964), the vehicles under Registration Nos. AN 519, AK 822 and AT 442 were licensed as public service vehicles and that they were serving the Nicosia—Kyrenia route and *vice versa*.

(b) The Licensing Authority failed, before deciding to issue the road service licences for the buses of the respondent company, under Registration Nos. AN 519, AK 822 and AT 442, to ask, according to section 8, subsection 2 of Law 16/64, for the representations of persons who were already providing in good faith and for reasonably long time transport facilities along the Nicosia—Kyrenia route. Among these persons the applicants are included and, in particular, the four Turkish Cypriots.

(c) Particularly for the vehicle AT 442, there was issued a road service licence for use as a trans-urban service bus in two trans-urban areas at the same time which are directly incompatible to one another, *i.e.* the Nicosia—Limassol and the Nicosia—Kyrenia routes. Neither in Law 16/64 nor in the Motor Transport Regulations there is any provision for the issue of a road service licence for reserve trans-urban buses.

(d) The Licensing Authority in granting a road service licence for the vehicles under Registration AN 519, AK 822 and AT 442, on the Nicosia—Kyrenia route, exercised wrongly its discretionary powers.

2. In view of the above the Minister of Communications and Works allows the appeal of the appellants and by this Order orders the cancellation of the road service licences of Lozan Company for

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the buses AN 519, AK 822 and AT 442 on the Nicosia—Kyrenia routes.”

The advice of the Road Transport Board which appears in paragraph 5 of the minutes of its 242nd meeting, *exhibit 1*, reads as follows :

“For all the above reasons the Board unanimously decided to advise the Minister to allow the above three appeals and cancel the road service licences granted to Lozan Company for the three buses under registration Nos. AN 519, AK 822 and AT 442, for the Nicosia—Kyrenia route and *vice versa*”.

The reasons given by the Board for reaching its above decision are enumerated in the said minutes (*exhibit 1*) and as far as the bus under registration No. AN 519, for which we are only concerned in the present proceedings, are the following :

1. There is no certification or assurance that on the day when Law 16/64 came into operation, this vehicle was licensed as a public service vehicle; and

2. The Licensing Authority before reaching its decision ought to ask and take into consideration by virtue of section 8 subsection 2 of Law 16/64, any representations which might be made by persons who, on the date of the coming into operation of this law, were already providing in good faith and for a reasonably long time, transport facilities on the Nicosia—Kyrenia route.

In fact the Minister in making his above order followed the advice of the Board and adopted the above reasons.

Against this order, which was issued in its absence, the interested party filed on 14/5/1971, recourse No. 183/71.

During the hearing of the said recourse new facts came into light by way of documentary and other evidence, which facts were not placed before the Minister when he issued his order of the 9/2/1971 for cancellation of the road service licences of the above mentioned vehicles of the interested party. The new facts appear in the notes of proceedings and have been produced as *exhibit 2*. In view of these new facts the respondent

re-examined the case and on the 6th July, 1971, he issued the following Order :

“The Minister of Communications and Works after taking into consideration the *exhibits* which were produced before the Supreme Court at the hearing of recourse No. 183/71, which *exhibits* were not produced during the examination of the appeal filed before him, by which (*exhibits*) it is proved that one of the vehicles of the respondent, *i.e.* the one under Registration No. AN 519, was licensed as a public service vehicle on the date of the coming into operation of Law 16/64 and the said vehicle, according to the evidence on oath before the Supreme Court of Veysi Djam, one of the owners of Lozan Company, was circulating on the Nicosia—Kyrenia route and *vice versa*, hereby cancels his Order of the 15th March, 1971, regarding the part thereof which concerns the vehicle AN 519, dismisses that part of the appeal filed which concerns the vehicle AN 519 and Orders the cancellation of the annulment of the licence granted as regards the vehicle AN 519”.

The relative section of Law 16/64, which came into operation on 19th November, 1964, to which the Minister refers, is section 17 and reads as follows :

“17. Notwithstanding anything contained in this Law, a public service vehicle licensed as such on the date of the coming into operation of this Law shall be licensed under the provisions of this Law if it is so constructed or adapted for use as to comply with the relevant provisions of this Law”.

Against this Order of the Minister the applicants filed the present recourse claiming the following relief :

A declaration of the Honourable Court that the act and/or decision and/or order of the respondent dated 6th July, 1971, by which his previous Order of the 15th March, 1971, was annulled regarding the road service licence of the vehicle AN 519, is null and void and of no legal effect whatsoever.

Counsel for applicants based his case and argued on the following two points of Law :

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1. That the decision of the respondent was taken in contravention of section 6(1) of Law 16/64 in view of his omission to ask for the advice of the Road Motor Transport Board before taking such decision.

Section 6(1) reads as follows :

“6(1) Subject to the right of recourse to the Supreme Constitutional 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;” and

2. That the decision complained of was taken by the respondent in contravention of the general principles of administrative law and the rules of natural justice, in view of the fact that the respondent did not give the opportunity to the applicants to make their representations on the new allegations of the interested party. In this respect he submitted that the provisions of section 8(2) of Law 16/64, which apply in the case of the Licensing Authority in the exercise of its discretion when granting road service licences, should apply *mutatis mutandis* in the case of an appeal before the Minister under section 6 of the Law.

Section 8(2) of the Law, reads as follows :

“8(2) In exercising such discretion the licensing authority shall have regard to the following matters :-

(a)

(b)

(c)

(d)

and shall take into consideration any representations which may be made by persons who, on the date of the coming into operation of this Part of this Law, were already providing in good faith and for a reasonably long time transport facilities along or near to the route in - question or any part thereof.”

The argument on the other hand on behalf of the respondent, which argument was also adopted by counsel

for the interested party, was that it was not necessary for the Minister when he reconsidered his order of the 9th February, 1971, to obtain the advice of the Board since he had obtained such advice when he considered the appeal of the interested party.

In fact, when he reconsidered his said order and issued the order of the 6th July, 1972, the subject matter of the present recourse, the Minister had before him the said advice as well as the notes of proceedings in recourse No. 183/71 (*exhibit 2*). So, it was not necessary for him to send back to the Board the new facts and ask for their advice as in reconsidering his own administrative decision he was acting in an administrative and not in a judicial capacity.

Counsel for the respondent further submitted that in reconsidering his own order in the light of the notes of proceedings in recourse No. 183/71, the Minister found out that his said order was defective and so he revoked it. He was entitled to do that on the principle that all defective administrative acts are revocable. The facts which were not before him when he issued the order of the 9/2/71, and which were disclosed at the hearing of recourse No. 183/71, were that the bus in question was a public service vehicle on 19th November, 1964, the date when the Motor Transport (Regulation) Law, 1964, came into operation.

Counsel for the respondent finally submitted that the Minister had no duty imposed on him by law to hear the representations of the applicants.

No doubt, in considering the appeal against the decision of the Licensing Authority under Law 16/64, the Minister acts, by virtue of section 6(1) of the said Law, as a hierarchically superior authority in the context of the exercise of administrative powers and not in a quasi-judicial capacity. In so doing he can exercise his own discretion in the place of the discretion of the Licensing Authority (see *Efstathios Kyriacou & Son Ltd. and Others v. The Republic* (1970) 3 C.L.R. 106 at page 116).

It is not in dispute in the present case that the Minister in dealing with the appeal of the applicants before

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issuing his order of the 9th February, 1971, had obtained the advice of the Board.

In my view it was not necessary in reconsidering his said order to obtain the advice of the Board once again, before issuing his order of the 6th July, 1971. Furthermore, neither the Minister nor even the Licensing Authority were bound to invite the applicants and listen to any representations they might make, as this particular case did not fall within the provisions of section 8 of the Law but within the provisions of section 17. When an application is considered under section 8, it is in my view a new application whereas in cases where the requirements of section 17 are complied with and the application is considered under that section, then that application is not a new one but is an application for renewal of a licence. In the former case the Authority, and on appeal the Minister, have a discretion which they can exercise. In the latter case, however, they have no such discretion but they are bound by law to grant the licence applied for.

For all the above reasons this recourse fails.

In the circumstances I make no order as to costs.

*Application dismissed.
No order as to costs.*