

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYPROS KOURRIS AND ANOTHER,

*Applicants,*

v.

THE MINISTER OF COMMUNICATIONS AND WORKS,  
THROUGH THE ATTORNEY-GENERAL,

*Respondent.*

KYPROS  
KOURRIS  
AND ANOTHER  
v.  
MINISTER OF  
COMMUNICATIONS  
AND WORKS  
THROUGH  
THE ATTORNEY-  
GENERAL

( Case No. 120/75).

*Motor Transport—Road service licence—Hierarchical recourse against grant of, to Minister—Section 6 of the Motor Transport (Regulation) Law, 1964 (Law 16 of 1964 as amended)—Minister dismissing recourse and upon finding that condition imposed therein practically impossible directed amendment of the licence by deleting the condition—Said condition never an issue at any time on any party's behalf and no material placed before Minister to that effect—Within the Licensing Authority's discretion when issuing a licence to impose such conditions which did not make it contrary to law—In the circumstances of the case reasonably open both to the Licensing Authority and the Minister to arrive at the conclusion they did regarding grant of the licence—Minister's decision confirmed to the extent of dismissing applicant's hierarchical recourse and annulled to the extent of the direction for the amendment of the licence.*

On January 27, 1975, the interested party submitted an application to the Licensing Authority for a road service licence in respect of its vehicle under Reg. No. D.G. 634 on the route Psimolophou Refugee Camp - Deftera - Nicosia, instead of the route Kyrenia-Nicosia for which same was licensed. The application was made on the prescribed printed form and on its top it was written in ink "application for serving the needs of refugees".

After taking into consideration that several refugees were daily transported from the villages of Psimolophou and Deftera, the Licensing Authority decided to grant the application on condition that the interested party would transport only

1976  
May 14  
—  
KYPROS  
KOURRIS  
AND ANOTHER  
v.  
MINISTER OF  
COMMUNICATIONS  
AND WORKS  
THROUGH  
THE ATTORNEY-  
GENERAL

refugee passengers. Against this decision the applicants filed a hierarchical recourse to the respondent Minister under s. 6 of Law 16 of 1964. The Minister (see his decision at pp. 112–113 *post*) found (a) that the bus of applicant No. 2 could not satisfy the transport needs of the displaced persons residing at Psimolophou and (b) that the condition imposed by the Licensing Authority to the effect that the bus of the interested party will transport only displaced persons was practically impossible. He then proceeded to dismiss the recourses of the applicants but directed that the license granted to the interested party be amended so that its omnibus may be licensed to transport passengers from Psimolophou in general and not only displaced persons.

In challenging the validity of the Minister's decision applicants contended that finding (a) of the Minister was not supported by the real facts and that finding (b) was not again supported by the real facts in that there has never been placed before him such a matter or problem as all the parties concerned were insisting only on the transport of displaced persons.

*Held*, (1) that in the circumstances of this case, it was reasonably open both to the Licensing Authority and the Minister on appeal under section 6 of Law 16 of 1964, to arrive at the conclusions that they did, regarding the needs of the route in question particularly so in view of the presence of displaced persons in the area and their transport needs; that there has been no misconception of fact whatsoever; and that there is nothing to suggest that the criteria laid down in section 8 of Law 16/64 (as amended) have not been duly taken into consideration, or that the reasoning is either insufficient or misconceived.

(2) That the question whether the transport of displaced persons was practically impossible was never in issue at any time on any party's behalf and no material was placed before the Minister to that effect; that it was within the Licensing Authority's discretion when issuing a road service licence, to impose such conditions which did not make the licence contrary to Law, so that the Minister in the exercise of his powers under section 6 of the Law could cancel it on his own; and that, accordingly, the *sub judice* decision is confirmed to the extent of dismissing the applicants' hierarchical recourses and annulled to the extent of the direction made by the Minister for the amendment of the licence granted.

*Sub judice decision partly annulled.*

**Recourse.**

Recourse against the decision of the respondent to dismiss applicants' hierarchical recourses against the decision of the Licensing Authority and give instructions to the Licensing Authority to amend the road service licence granted to the interested party so that the bus under Reg. No. D.G. 634 be entitled to carry from Psimolophou passengers in general and not only displaced persons.

*D. Panayiotou*, for the applicants.

*Cl. Antoniadis*, Counsel of the Republic for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:

A. LOIZOU, J.: By the present recourse the applicants seek a declaration of the Court that the act and/or decision of the Minister of Communications and Works dated 17.6.1975 by which he dismissed the said recourses and gave instructions to the Licensing Authority to amend the road service licence granted to "Lambousa" Co. Ltd., (hereinafter referred to as the interested party) so that their bus under Reg. No. DG 634 be entitled to carry from Psimolophou passengers in general and not only displaced persons, is *null* and *void* and of no legal effect whatsoever.

Both applicants are owners of duly licensed buses which serve the route Psimolophou-Nicosia. As a result of the Turkish invasion, a number of displaced persons, including applicant No. 2, moved to Psimolophou village. Although, as claimed, the transport needs of the said route could be served by the vehicles existing prior to the invasion, applicant No. 1 consented that a road service licence be given to applicant No. 2 in respect of his bus under Reg. No. CQ 539 for the better and fuller service of the new needs of the village and the Licensing Authority granted same.

On the 27th January, 1975, the interested party submitted an application to the Licensing Authority in respect of their vehicle under Reg. No. DG 634 on the route Psimolophou Refugee Camp-Deftera-Nicosia, instead of the route Kyrenia-Nicosia for which same was licensed. This application was submitted on the prescribed printed form A.A.4 and on its top part it was written in ink, "Application for serving the needs of refugees". The provisional character of the licence

1976  
May 14  
—  
KYPROS  
KOURRIS  
AND ANOTHER  
v.  
MINISTER OF  
COMMUNICATIONS  
AND WORKS  
THROUGH  
THE ATTORNEY-  
GENERAL

sought confined to the transport of refugees only, was also reiterated to the District Transport Control Officer, Nicosia, by the representative of the interested party. (See his report dated 4.2.1975). In the said report it is also stated that at Deftera and Psimolophou villages, there were living about five hundred and four hundred refugees respectively and that the organizations of the Motorists 'KEEA' and 'PEEA' objected to the grant of the licence applied for, on the ground that the needs of the route were fully served both by the pre-existing licensed vehicles and the buses of displaced persons already provisionally licensed.

The Licensing Authority having heard representations from all parties and having before it the report of the District Transport Control Officer dated 4.2.1975, together with a survey of the transport of passengers on the aforesaid route, did consider this application at its meeting of the 14th March, 1975.

After having taken into consideration that several refugees were daily transported from the villages of Psimolophou and Deftera, it decided to grant the application, on condition that they would transport refugee-passengers only under the following terms:

- “(a) This licence is being granted due to the present anomalous situation and will be of a temporary duration and in force for a period of three months from today with a right of renewal every three months until this situation becomes normal.
- (b) The owner of the vehicle retains the rights he possessed on his previous route and he should resume his previous route as soon as the situation becomes normal.”

The aforesaid decision was communicated to all concerned on 24.3.1975 and both applicants filed against same, hierarchical recourses to the Minister of Communications and Works on 31.3.1975 and 4.4.1975, respectively.

The *sub judice* decision of the Minister dated 17.6.1975 reads as follows:

“ Having taken into consideration all the material before me and the representations of the parties I have arrived at the following conclusions:

- (a) Out of the displaced persons residing at Psimolophou about 55 are transported to Nicosia.

(b) The displaced omnibus CG 539 of Mr. Ioannis Constantinou of Vouno which has been granted a provisional licence on the Psimolophou-Nicosia route does not satisfy the transport needs of the displaced persons residing at Psimolophou.

(c) The condition imposed by the Licensing Authority to the effect that omnibus DG 634 of 'LAMBOUSA' Company Ltd. will transport displaced persons is practically impossible.

2. In view of the above the recourses are hereby dismissed and the Licensing Authority is directed to amend the licence granted to 'LAMBOUSA' Company Ltd. so that its omnibus DG 634 may be licensed to transport passengers from Psimolophou in general and not only displaced persons."

The aforesaid decision was communicated to all parties on the 1st July, 1975 and the applicants filed the present recourse which was based on the following grounds:

"1. The act and/or decision of the respondent is contrary to law and/or was taken in excess or abuse of power because the criteria laid down in section 8 of Law 16 of 1964 were not taken into consideration as Law 16 of 1964 does not empower the Minister to amend the decision of the Licensing Authority in the absence of a recourse by the I.P.

2. That the act and/or decision of the respondent was taken under a misconception of fact because there were not taken into consideration the transport needs as a whole and all the existing means of transport and particularly the distance of the route and the fact that there are also other licensed vehicles.

3. That the said act is unwarranted and/or lacks sufficient and/or clear reasoning in that though stating that only displaced persons are not served it granted a licence of such a nature in order to serve non-existent needs."

It has been argued on behalf of the applicants that the finding of the Minister that vehicle CG 539 did not satisfy the needs of the displaced persons that took up shelter in Psimolophou, is not supported by the real facts and that the findings of the Minister in paragraph (c) of his decision, is again not supported by the real facts in that there has never been placed before him such a matter or problem, as all the parties concerned were

1976  
May 14  
—  
KYPROS  
KOURRIS  
AND ANOTHER  
v.  
MINISTER OF  
COMMUNICATIONS  
AND WORKS  
THROUGH  
THE ATTORNEY-  
GENERAL

insisting only on the transport of displaced persons from the Displaced Persons Camp at Psimolophou and that there has been a wrong exercise of discretion or excess or abuse of power.

I have gone through the relevant material in the file that the Minister and the Licensing Authority had before them and I have been satisfied that in the circumstances of this case, it was reasonably open both to the Licensing Authority and the Minister on appeal under section 6, to arrive at the conclusions that they did, regarding the needs of the route in question, particularly so in view of the presence of displaced persons in the area and their transport needs and there has been no misconception of fact whatsoever. There is nothing to suggest that the criteria laid down in section 8 of the Motor Transport (Regulation) Law, 1964, Law No. 16/64, as amended, have not been duly taken into consideration, or that the reasoning is either insufficient or misconceived.

There is, however, one more point that has to be considered. The Minister by his decision found that the condition imposed by the Licensing Authority to the effect that omnibus Reg. No. DG 634 of the interested party will transport displaced persons, was practically impossible and after dismissing the recourses of the applicants, directed the Licensing Authority to amend the licence granted, so that the said omnibus would be licensed to transport passengers from Psimolophou in general and not displaced persons.

The short answer to the question that this finding and direction raises, is that same was never in issue at any time on any party's behalf and no material was placed before the Minister to that effect. It was within the Licensing Authority's discretion when issuing a road service licence, to impose such conditions which did not make it contrary to law, so that the Minister, in the exercise of his powers under section 6 of the Law, as amended, could cancel it on his own. Therefore, the *sub judice* decision is confirmed to the extent of dismissing the applicants' hierarchical recourses and annulled to the extent of the direction made by the Minister for the amendment of the licence granted, so that the said bus should be licensed to transport passengers from Psimolophou in general and not only displaced persons, as decided by the Licensing Authority.

In the circumstances, there will be no order as to costs.

*Sub judice decision annulled in part. No order as to costs.*