

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, A. LOIZOU, JJ.]

LINO—FLASOU—PETRA COMPANY LTD.,

Appellant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF COMMUNICATIONS AND WORKS,
2. THE CHAIRMAN OF LICENSING AUTHORITY,

Respondents.

1976
Jan. 29

—
LINO—FLASOU—
PETRA
COMPANY LTD.
v.
REPUBLIC
(MINISTER OF
COMMUNICATIONS
AND WORKS
AND ANOTHER)

(*Revisional Jurisdiction Appeal*
No. 129).

5 *Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964)—Road service licence—Issued by order of the Minister, under s. 17 of the law, in respect of “one” out of the two vehicles of the interested party—Section 17 being applicable only in respect of a specified particular vehicle not lawfully open to Minister to make the order he did make without specifying which that vehicle was going to be—Order made prematurely as there had still to be inquired into the factual aspect regarding which, if any, of the two vehicles of the interested party met the requirements of the said section 17—*

10 *Annulled.*

Practice—Recourse for annulment—Though latitude afforded on appeal to parties in proceedings of this nature, all issues arising in a recourse should, as a rule, be raised and fully argued before the trial Judge.

15 The respondent Authority having decided to grant an additional road service licence for the route of Kalo Chorio—Ayios Georghios—Petra—Nicosia invited applications for it and among those who applied were the appellant and the interested party.

20 The Authority considered the applications on November 28, 1970 and it decided to grant the additional licence for the route concerned to the appellant. After the interested party was informed about the rejection of his application he appealed to

1976
Jan. 29

LINO—FLASOU—
PETRA
COMPANY LTD.
v.
REPUBLIC
(MINISTER OF
COMMUNICATIONS
AND WORKS
AND ANOTHER)

the Minister under s. 6 of Law 16 of 1964. The Minister referred the matter to the Road Motor Transport Board which recommended to the Minister to grant to the interested party a licence for the Petra—Evrychou route in respect of his bus TY. 238 and a licence for the Petra—Nicosia—route in respect of his bus T. 3738. The board found, on the material before it, that the interested party was entitled to these licences under section 17* of Law 16 of 1964. 5

In his *sub judice* order the Minister stated that the interested party was entitled to a road service licence for the Petra—Nicosia route in respect of “one” of his two buses, TY. 238 and T. 3738, and he directed the Authority to issue to him such a licence. 10

The appellant company challenged by means of a recourse the Minister’s order because it had, at the material time, a bus which was licensed, too, in respect of the route in question. 15

Upon appeal against the dismissal of the recourse.

Held, that, even assuming that section 17 of Law 16/64 could have been resorted to, the *sub judice* order of the Minister has to be annulled because it was formulated in a manner incompatible with the express wording of section 17; that since in such section it is stated that the vehicle to be licensed must be so constructed or adapted as to comply with the other relevant provisions of Law 16/64 it follows that section 17 is applicable only in respect of a specified particular vehicle; that the Minister made his order prematurely as there had still to be inquired into the factual aspect regarding which, if any, of the two vehicles of the interested party met the said requirements of section 17; and that, accordingly, it was not lawfully open to the Minister to order that a licence should be issued to the interested party in respect of “one” out of his two vehicles, without specifying which that vehicle was going to be. 20
25
30

Appeal allowed.

Per curiam: In the course of the proceedings before us some of the issues have been propounded by arguments which were not advanced before the trial Judge; in view of the latitude which this Court has sometimes afforded to parties in proceedings of this nature, we have allowed such arguments to be advanced, but we must on the other hand, stress that it is essential that all 35

* Quoted at p. 28 *post*.

issues arising in a recourse should, as a rule, be raised and fully argued before the trial Judge.

1976
Jan. 29

LINOU-FLASOU-
PETRA
COMPANY LTD.
v.
REPUBLIC
(MINISTER OF
COMMUNICATIONS
AND WORKS
AND ANOTHER)

Appeal.

5 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Malachtos, J.) given on the 10th December, 1973 (Case No. 34/73) whereby applicant's recourse against an order made by the Minister of Communications and Works, on an appeal to him by the interested party, from a decision of the Licensing Authority, was dismissed.

10 *L. Papaphilippou*, for the appellant.
N. Charalambous, Counsel of the Republic, for the respondent.
Chr. Kitromilides, for the interested party.

Cur. adv. vult.

15 The judgment of the Court was delivered by:-

1 TRIANTAFYLIDIS, P.: This is an appeal from an in first instance judgment* of a Judge of this Court by means of which there was dismissed a recourse of the appellant against an order made by the Minister of Communications and Works
20 (respondent 1) on an appeal by the "interested party" from a decision of the Licensing Authority (respondent 2).

25 The interested party appealed against the decision of the Authority on December 17, 1970, and the order of the Minister was made on January 20, 1973, and was communicated to the interested party on January 25, 1973.

30 In his *sub judice* order the Minister stated that the interested party was entitled to a road service licence (to be described hereinafter as a "licence") for the route of Petra-Nicosia, in respect of "one" of his two buses, TY238 and T3738, and he directed the Authority to issue to him such a licence.

The appellant company has challenged the Minister's order because it had, at the material time, a bus which was licensed, too, in respect of the route in question.

The history of the matter is, briefly, as follows:

35 The Authority, having decided to grant an additional licence for the route of Kalo Chorio-Ayios Georghios-Petra-Nicosia

* Published in (1973) 3 C.L.R. 659.

1976
Jan. 29

LINOÛ-FLASOÛ-
PETRA
COMPANY LTD.
v.
REPUBLIC
(MINISTER OF
COMMUNICATIONS
AND WORKS
AND ANOTHER)

invited applications for it; among those who applied were the appellant and the interested party.

At that time the interested party was the owner of the aforementioned two buses. Bus TY238 had in the past been furnished with a licence for the route of Petra-Evrychou only, but such licence had expired on September 15, 1968; and the last issued circulation permit for this vehicle had also expired. Bus T3738 had in the past been furnished with a licence for the Petra-Xeros route only, but such licence had expired on September 15, 1966; and the last issued circulation permit for this vehicle had already expired, too.

The Authority considered the applications on November 28, 1970, and it decided to grant the additional licence, for the route concerned, to the appellant. It informed the interested party on December 4, 1970, about the rejection of his application and, as a result, he appealed to the Minister, who referred the matter to the Road Motor Transport Board. On November 15, 1971, the Board recommended to the Minister to grant to the interested party a licence for the Petra-Evrychou route in respect of bus TY238 and a licence for the Petra-Nicosia route in respect of bus T3738. The Board found, on the material before it, that the interested party was entitled to these licences under section 17 of the Motor Transport (Regulation) Law, 1964 (No. 16/64), which reads as follows:-

“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 was so constructed or adapted for use as to comply with the relevant provisions of this Law.”

On November 14, 1972, the Attorney-General's Office gave legal advice in the matter; it agreed with the view expressed by the Board, as aforesaid and, also, went on to point out that there was no evidence that the interested party had abandoned his rights under section 17 of Law 16/64.

An inquiry was directed in order to ascertain whether the vehicles in question of the interested party were being used, at the time of the coming into operation of Law 16/64, on the route of Petra-Nicosia and, eventually, the *sub judice* order of the Minister was made. The appeal to the Minister had been

made under the old section 6 of Law 16/64, but it was decided under the new section 6 of such Law, which was introduced by section 3 of the Motor Transport (Regulation) (Amendment) (No. 2) Law, 1972 (Law 81/72).

5 In the course of the proceedings before us some of the issues have been propounded by arguments which were not advanced before the trial Judge; in view of the latitude which this Court has sometimes afforded to parties in proceedings of this nature, we have allowed such arguments to be advanced, but we must,
10 on the other hand, stress that it is essential that all issues arising in a recourse should, as a rule, be raised and fully argued before the trial Judge.

In determining the present appeal we need not pronounce on the hotly contested before us issue as to whether, on the
15 basis of the facts of this case and on a correct application of the relevant legislation to them, it was proper to resort to section 17 of Law 16/64 for the purpose of granting a licence, for the route concerned, to the interested party; we have reached the conclusion that, even assuming that section 17 could have
20 been resorted to, we have to annul the *sub judice* order of the Minister, because it was formulated in a manner incompatible with the express wording of section 17; since in such section it is stated that the vehicle to be licensed must be so constructed or adapted as to comply with the other relevant provisions of
25 Law 16/64, it follows that section 17 is applicable only in respect of a specified particular vehicle and, therefore, it was not lawfully open to the Minister to order that a licence should be issued to the interested party in respect of "one" out of his two vehicles, without specifying which that vehicle was going to be; indeed,
30 the course adopted by the Minister indicates that he made his order prematurely, as there had still to be inquired into the factual aspect regarding which, if any, of the two vehicles of the interested party met the above referred to requirement of section 17.

35 For these reasons this appeal succeeds and the *sub judice* order of the Minister is annulled. It is now up to the Minister to reach a new decision in this matter through a proper application of the law to all material facts of this case.

40 We do not propose to make any order as to the costs of this appeal.

Appeal allowed. No order as to costs.

1976

Jan. 29

—
LINOU-FLASOU-
PETRA
COMPANY LTD.
v.
REPUBLIC
(MINISTER OF
COMMUNICATIONS
AND WORKS
AND ANOTHER)