

1983 December 23

[PICKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IASON CHARALAMBOUS,

Applicant

v.

THE REPUBLIC OF CYPRUS, THROUGH

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

Respondents.

(Case No. 123/82).

Motor transport—Carrier’s licence—Renewal—Regulated by section 11 of the Motor Transport Regulation Law, 1964 (Law 16/64)—Appropriate Authority has no power to amend the licence when same is presented for renewal—In so so doing it exceeded and abused its powers—In that it invoked provisions of the law for extraneous purposes.

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The applicant was the holder of a carriers ‘B’ licence entitling him to make use of his lorries, both for the supply of his petrol station with oil products as well as their distribution to customers. Upon presenting the licence for renewal the respondents, under the guise of clarification by the terms of renewal, restricted use of the vehicles to distribution of products from his petrol station to customers. Hence this recourse.

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Held, that renewal of a licence is regulated by the provisions of section 11 of the Motor Transport Regulation Law, 1964 (Law 16/64); that under this section a licence must, upon payment of the prescribed fees, be renewed unless previously revoked or suspended; that the licences of the applicant in this case had neither been revoked nor suspended; that, consequently, the authorities were dutybound to renew the licence; that in so doing, they exceeded their powers as well as abused them, in that they invoked the provisions of the law for purposes

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extraneous to its provisions: and that, therefore, the decision must be set aside.

Sub judice decision annulled.

Cases referred to:

- 5 *Tsouloftas v. Republic* (1983) 3 C.L.R. 426;
 Efstathios Kyriacou & Sons Ltd. v. Republic (1970) 3 C.L.R. 106.

Recourse.

10 Recourse against the decision of the respondents to clarify, modify or amend the terms attached to a "B" carrier's licence affecting two lorries of the applicant.

St. Nathanael, for the applicant.

M. Tsiappa (Mrs.), for the respondents.

Cur. adv. vult.

15 PIKIS J. read the following judgment. The contest in this recourse relates exclusively to the validity of a decision of the Minister of Communications and Works of 26.1.1982, whereby he clarified, modified or amended the terms attached to a "B" carrier's licence affecting two lorry tankers of the applicant he was first licenced to use under the provisions of the law, as
 20 from the years 1967 and 1973, respectively. The decision was taken under the provisions of the Motor Transport Regulation Law—16/64, as subsequently amended, constituting the Minister a reviewing authority by way of hierarchical recourse from decisions of the Licensing Authority established by the same law.
 25 It is unnecessary to examine in these proceedings in detail the nature or extent of the powers of the Minister, a subject I had occasion to examine recently in *Tsouloftas v. The Republic* (1983) 3 C.L.R. 426. (See also, *Efstathios Kyriacou & Sons Ltd. And Others v. The Republic* (1970) 3 C.L.R. 106).

30 It is the case of the applicant that the decision was taken in excess of the powers vested in the Licensing Authority and the Minister on appeal under s.11 of the Law and, in abuse of them inasmuch as he allegedly invoked his powers for a purpose extraneous to the law, that is, the amendment of the licence.
 35 Counsel for the respondents argued in reply that the decision is valid and invited the Court to dismiss the recourse, submitting it amounted to nothing other than a renewal accompanied by a proper clarification of the terms of the licence, a matter within the competence of the authorities under s.11 of the law.

The facts leading to the present dispute, may be briefly summarised as follows:

In September, 1980, an association of transporters furnished with "A" carrier's licence, complained to the Licensing Authority that applicant was using his vehicles in breach of the terms and the conditions of his licence. An inquiry was held by the Licensing Authority after inviting representations from the parties. Although they did not sustain the complaint and neither revoked nor suspended the licence of the applicant, nevertheless they took the view that need arose for clarification of its terms, presumably to accord with the true intention accompanying its issue. Consequently, they reworded the terms of the licence limiting use of the vehicles to the supply of customers of the applicant, the owner of a petrol filling station at Paphos, with oil products. The decision was communicated to the applicant in January, 1981. He appealed to the Minister who resolved the matter after holding an inquiry, by upholding the decision of the Licensing Authority (see red 8 - exhibit 3). For the purposes of this judgment, it is unnecessary to recount any other facts that appear in detail in the files exhibited before the Court.

Matters will be simplified if we ascertain the true character and implications of the sub judice decision, a matter about which, as earlier indicated, we received conflicting submissions. A comparison of the terms of the licence they purported to renew, and those of the renewed licence, reveals substantial differences between the terms of the two, so demonstrable as to make the submission of the applicant—that we are faced with a modification or amendment of the terms of the licence—valid at first glance. The licence that came up for renewal in accordance with the provisions of s.11, expressly authorised the applicant to make use of his vehicles and circulate them everywhere in Cyprus for the transportation of products connected with his business as the owner of a petrol filling station. Obviously, it entitled him to make use of his lorries, both for the supply of his station with oil products as well as their distribution to customers. Under the guise of clarification by the terms of renewal, they restricted use of the vehicles to distribution of products from his petrol station to customers. Evidently, the licence was not renewed but amended or modified

in a way restricting use of his vehicles to the transportation of products to customers.

5 This being the case, we must enquire whether the Licensing Authority or the Minister for that matter on appeal, had power to amend or modify the terms of a licence submitted for renewal. Renewal of a licence under the provisions of the Motor Transport Regulation Law—16/64, is regulated by the provisions of s.11. The plain provisions of the law make indulgence, in any exercise of interpretation, unnecessary. Section 11 plainly
10 provides that a licence must, upon payment of the prescribed fees, be renewed unless previously revoked or suspended. The licences of the applicant in this case had neither been revoked nor suspended. Consequently, the authorities were dutybound to renew the licence. In so doing, they exceeded their powers
15 as well as abused them, in that they invoked the provisions of the law for purposes extraneous to its provisions. Therefore, the decision must be set aside.

20 Before leaving the matter, we may note that under no provision of the law are the appropriate transport authorities empowered to give an authoritative interpretation of the provisions of a carrier's licence. In case of dispute as to the ambit of the terms of a licence the appropriate bodies to resolve it depending on the nature of the controversy, are the Courts of law.

25 In the result, the recourse is allowed. There shall be no order as to costs.

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