

1983 March 29

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NEOPHYTOS SAVVA,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF COMMUNICATIONS AND WORKS,

2. THE CHAIRMAN OF THE LICENSING AUTHORITY,

Respondents.

(Case No. 11/80).

Motor Transport—Road service licence—Refusal to grant by Permits Authority—Hierarchical recourse to Minister—Dismissal of recourse by Minister who in reaching his decision had sufficient material—In the absence of anything to suggest that he either failed to make a proper inquiry or that he misconceived any material facts his decision must stand as it was reasonably open to him on the material before him—The Court, in the absence of any cogent reason, cannot substitute its own discretion for that of the Minister.

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Constitutional Law—Human rights—Right to exercise any trade or carry on any occupation—Which is safeguarded by Article 25.1 of the Constitution is subject to the restrictions provided for by para. 2 of the same Article—Restrictions provided by the Road Transport Regulation Laws 1964 to 1977 fall within the provisions of Article 25.2 being necessary for the public safety and in the public interest.

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On the 31st August, 1978, the applicant filed three applications with the Permits Authority for operating a bus service with three unspecified new buses of over 35 seats each on three different routes within the limits of Paphos town. His applications were considered by the Permits Authority in the light of a report prepared by the District Traffic Inspector and were

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refused on the ground that the Paphos urban area was fully served by the existing urban buses and that it was neither necessary nor desirable in the public interest to grant applicant's applications. Against the decision of the Permits Authority applicant filed a hierarchical recourse to the Minister who, after taking into consideration, inter alia, two more reports by the District Traffic Inspector, dismissed the recourse on the ground that in the light of all material placed before him he came to the conclusion that the Permits Authority had rightly dismissed his applications in as much as repeated tests carried out at different times established that the needs of the town were fully and adequately served by the existing licensed buses.

As a result the applicant filed the present recourse.

Counsel for the applicant mainly contended:

(a) That at the material time there was no bus service whatsoever operating within Paphos town and that, therefore, the Minister's decision was completely wrong.

(b) That the sub judice decision was contrary to Article 25 of the Constitution in that applicant was perfectly entitled to own buses and put them to use and that there was nothing in Article 25 which would prevent him from operating these buses on a service within Paphos town; and that although Article 25 does give the right to the Authorities to regulate the exercise of business and professions it does not give them the right to refuse a man his request to operate a bus service on the mistaken assumption that a bus service exists when none exists.

Held, (1) that the decision under the provisions of the law rested with the Minister and in reaching his decision he had sufficient material before him coming both from the officers of his Ministry who carried out a number of tests in order to ascertain the correct position with regard to the needs of the town and the adequacy of the service provided by the existing licensed buses and who were, it may be assumed, qualified to do so, and from other quarters; that this being the position and in the absence of anything to suggest that he either failed to make a proper inquiry or that he misconceived any material facts his

decision must stand as it was reasonably open to him to so decide on the material before him and this Court, in the absence of any cogent reason, cannot substitute its own discretion for that of the Minister; accordingly contention (a) must fail.

(2) That the restrictions provided for in the relevant legislation in force at the time i.e. the Road Transport Regulation Laws 1964 to 1977 clearly fall within the provisions of para. 2 of Article 25 being necessary for the public safety and in the public interest and, consequently, the decision challenged by the recourse cannot be said to offend against such provisions even though there may not have been a bus service on exactly the same routes on which the applicant proposed to operate his own buses especially as the suitability and the extent to which the proposed routes were necessary or desirable in the public interest and the extent to which the needs of the proposed routes were served by the existing licensed buses were matters which should be taken into consideration by the respondent in the exercise of his discretion; and that, therefore, the decision challenged by this recourse was not defective either as being contrary to the provisions of the Articles of the Constitution relied upon or that it was not reasonably open to the respondent.

Application dismissed.

Recourse.

Recourse against the decision of the respondent to dismiss applicant's hierarchical recourse from the decision of the Permits Authority whereby applicant's application to operate a bus service with three unspecified new buses on three different routes within Paphos town was refused.

St. McBride, for the applicant.

Cl. Antoniadis, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

L. LOIZOU J. read the following judgment. By this recourse the applicant, in effect, challenges the decision of the Minister of Communications and Works whereby he dismissed his hierarchical recourse from the decision of the Permits Authority.

The grounds of law on which the application is based read as follows:

"1. The applicant is, inter alia, the owner of three buses

and entitled under Article 23 of the Constitution to enjoy the use thereof namely to operate them as buses. The decision of the Minister denies him that right and is contrary to the combined effect of Articles 23 and 25 of the Constitution and Law 16/64.

2. By Article 25 the applicant is entitled to carry on the profession, occupation, trade or business of a bus operator and the decision of the Minister denies him that right and/or falls outside his powers under Article 25.2.

3. Sections 7 and 8 of Law 16/64. The discretion permitted by law has not been/or has wrongly been exercised as, inter alia, a need for the service applied for exists and remains unserved."

The facts of the case, in so far as they are relevant for the determination of these proceedings, are briefly these:

The applicant comes from Paphos and is a dealer in second-hand military articles. On the 31st August, 1978, he filed three applications with the Permits Authority for operating a bus service with three unspecified new buses of over 35 seats each on three different routes within the limits of Paphos town. The applications in question are to be found in the file exhibit 3 under blue Nos. 10, 11 and 11A. His applications were considered by the Permits Authority in the light of a report prepared by the District Traffic Inspector (blue 12 in exhibit 3). It is a detailed report which deals with all three routes to which the applicant proposed to put his three buses into operation and concludes that the proposed routes are, with some diversions, similar to the routes served by the already existing licensed urban buses which, according to the owners, in fact only had a satisfactory number of passengers during rush hours and when the schools were open. In this report he also states that the applicant himself told him that, should his applications be approved, for the first six months he would run his buses at a loss but that he was determined that the public should get used to using public transport instead of private cars.

The Permits Authority considered the applications at a meeting held on the 13th October, 1978 (blue 13 in exhibit 3) and refused them on the ground that the Paphos urban area was

fully served by the existing urban buses and that it was neither necessary nor desirable in the public interest to grant applicant's applications. The decision was communicated to the applicant by the letter dated 23rd October, 1978 (exhibit 1).

On the 4th November, 1978, the applicant filed a hierarchical recourse (blue 15 in exhibit 3) to the Minister. The grounds set out in the recourse were that there were no urban buses to serve the needs of the public in Paphos town and that the decision of the Permits Authority was groundless and wrong and/or based on wrong facts or information. In support of his recourse he enclosed two identically worded certificates (reds 3 and 4 in exhibit 4) one from the Chairman of the Municipal Commission of Paphos and the other from the officer in charge of the police to the effect that the public of the town of Paphos was not adequately served by the existing buses.

In March, 1979, the applicant addressed a letter to the Minister (red 5 in exhibit 4) informing him that he wished to help the town in the improvement of the bus service and stating that there was no bus service in various quarters of the town. He refers to his applications to the Permits Authority and to the fact that they were dismissed; he mentions the two certificates from the Chairman of the Municipal Commission and from the officer in charge of the police and also a petition by 250 inhabitants of the town (blues 23 - 7 in exhibit 3) to the effect that the urban buses of Paphos town do not serve the public and requesting that a permit be issued as they suffered great hardship.

The respondent Minister heard the recourse on the 13th April, 1979. Counsel appearing for the applicant at that hearing produced another two certificates one from the Paphos Chamber of Commerce and Industry and the other from the Economic Lyceum of Paphos supporting applicant's case. The applicant gave evidence and he stated that if he secured the licensing of his buses he would give up his commercial activities; and that the permits applied for were necessary for the service of the public. It transpired at the hearing of that recourse that the buses he proposed to put into service were not new as stated in his applications but that he had purchased them second-hand one from the United Nations, the other from the Army Authorities and the third from the government stores and he proposed

to have its body changed to make it fit for use as a bus. After the hearing and at the request of the Minister two more reports were prepared by the District Traffic Inspector one on the 31st May and the other on the 28th June, 1979 (reds 11 and 14-13 in exhibit 4). The gist of these reports was that in all 27 urban buses were in use in the urban area of Paphos but most of them had as a starting point the surrounding suburbs. That during the period between the 17th and the 30th May, 1979, a thorough check was carried out for each bus route in the town and it was ascertained that except during the rush hours the buses travelled almost empty and that in fact some of the licensed buses including some of those whose routes start and end within the town limits, remained idle because of lack of a sufficient number of passengers; and the Inspector makes certain suggestions for the improvement of the bus services which do not involve an increase in the number of buses but rather better organization such as with regard to the fixing of stops at parking spaces, the placing of parking meters, the prohibition of circulation of private vehicles in certain streets and a campaign to persuade the public to use public transport. The Inspector was also in favour of co-operation between the existing urban buses and placing them under a single management.

On the 25th July, 1979, the applicant wrote yet another letter to the Minister, inter alia, complaining that the trade unions were trying to organize and unite all urban buses' drivers by forming a company so that his own applications would be dismissed.

On the 12th December, 1979, the Minister dismissed applicant's hierarchical recourse on the ground that in the light of all material placed before him he came to the conclusion that the Permits Authority had rightly dismissed his applications in as much as repeated tests carried out at different times established that the needs of the town were fully and adequately served by the existing licensed buses.

As a result the applicant filed the present recourse.

In support of his case learned counsel appearing for the applicant submitted that at the material time there was no bus service whatsoever operating within Paphos town and that, therefore, the Minister's decision was completely wrong. As

learned counsel explained his above submission was based on the ground that the starting points of the routes of the existing licensed buses were the suburbs of the town and from various routes they took their passengers to various points within the town and then back again; and that they did not circulate within the town. If one considers Paphos town as the hub of a wheel, as counsel put it, the buses run up and down the spokes but there was no service connecting the spokes; and that was the service which the applicant had applied for and was refused. This, learned counsel concluded, is a wrong decision and was taken in abuse of the Minister's powers.

As stated earlier on, this was not quite the case because although the starting points of most of the urban buses were the suburbs, there were in fact certain buses whose routes were only within the town limits and as it happens some of these buses were among those which had to remain idle for lack of passengers. Be that as it may, the decision under the provisions of the law rested with the Minister and in reaching his decision he had sufficient material before him coming both from the officers of his Ministry who carried out a number of tests in order to ascertain the correct position with regard to the needs of the town and the adequacy of the service provided by the existing licensed buses and who were, we may assume, qualified to do so, and from other quarters. This being the position and in the absence of anything to suggest that he either failed to make a proper inquiry or that he misconceived any material facts his decision must stand as it was reasonably open to him to so decide on the material before him and this Court, in the absence of any cogent reason, cannot substitute its own discretion for that of the Minister.

Learned counsel in the course of his address also made reference to Articles 23 and 25.1 of the Constitution and submitted that the applicant was perfectly entitled to own buses and put them to use and that there was nothing in Article 25 which would prevent the applicant from operating these buses on a service within Paphos town; and that although Article 25 does give the right to the Authorities to regulate the exercise of business and professions it does not give them the right to refuse a man his request to operate a bus service on the mistaken assumption that a bus service exists when none exists.

But what the applicant was refused was a licence to operate the buses of which he was the owner on the routes set out in his applications with a view to carrying passengers for reward. Articles 23 and 25.1 of the Constitution safeguard the right to property and the right to carry on any occupation, trade or business, respectively; and the rights guaranteed under both Articles are, as learned counsel rightly conceded, subject to formalities, restrictions and limitations. In the present case the Article on which learned counsel mainly relied is Article 25.

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10 But it is quite clear, in my view that the restrictions provided for in the relevant legislation in force at the time i.e. the Road Transport Regulation Laws 1964 to 1977 clearly fall within the provisions of para. 2 of this Article being necessary for the public safety and in the public interest and, consequently, the

15 decision challenged by the recourse cannot be said to offend against such provisions even though there may not have been a bus service on exactly the same routes on which the applicant proposed to operate his own buses especially as the suitability and the extent to which the proposed routes were necessary or

20 desirable in the public interest and the extent to which the needs of the proposed routes were served by the existing licensed buses were matters which should be taken into consideration by the respondent in the exercise of his discretion.

In the light of all the above I have not been satisfied that the decision challenged by this recourse was defective either as being

25 contrary to the provisions of the Articles of the Constitution relied upon or that it was not reasonably open to the respondent.

In the result this recourse is dismissed but in all the circumstances I shall make no order as to costs.

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Recourse dismissed. No order as to costs.