

1983 April 7

[PIKIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS TSOULOFTAS AND OTHERS,

Applicants,

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

Respondents.

(Case No. 250/82).

*Administrative Law—Hierarchical recourse—Nature and character of
—No duty cast upon hierarchically superior organ to reason
specifically any deviation from the course approved by inferior
organ*

*Motor transport—Road service licence—Hierarchical recourse to 5
Minister against refusal to grant—Section 6 of the Road Transport
Regulation Law, 1964 (Law 16/64 as amended)—Principles
applicable—No duty cast upon Minister to reason specifically any
deviation from the course approved by Licensing Authority—
Test by which validity of the decision of the Minister must be 10
judged.*

On March 3, 1981, the interested party applied to the Licen-
sing Authority under the provisions of the Road Transport
Regulation Law, 1964 (Law 16/64 as amended) to be issued with
carrier 'A' permit entitling him to operate a vehicle as a cesspool 15
emptier. The Licensing Authority, after taking into considera-
tion a report prepared by an Inspector of the Ministry of Com-
munications and Works and the objections of licensed operators
turned down the application. The interested party lodged a
hierarchical recourse to the respondent Minister, under s.6 of 20
the above Law, who after taking into consideration, inter alia,
the fact that some of the objectors lifted their objections to the
grant of a permit decided to grant the permit applied for to the

interested party. Upon a recourse by certain of the licensed operators the decision of the Minister was challenged mainly on the ground of his failure to reason his departure or deviation from the decision of the Licensing Authority.

5 *Held*, (1) (after stating the principles governing the nature of a hierarchical recourse - *vide pp. 431-432 post*) that no duty is cast upon the Minister as such to reason specifically any deviation from the course approved by the Licensing Authority.

10 (2) That the test by which the validity of the decision of the Minister must be judged is the same with that applicable to the Licensing Authority. It is this: Whether it was reasonably open to the Minister, in view of the provisions of the law and the material before him, to decide as he did; that not only it was
15 reasonably open to the Minister to arrive at the decision he did on the material before him, but one might argue with a degree of justification that, his decision was objectively conducive to the promotion of the purposes of the law to ensure the provision of adequate transport services for the disposal of sewage, an all
20 important consideration for the comfort of the public and observance of appropriate sanitary and hygienic conditions; accordingly the recourse must fail.

Application dismissed.

Cases referred to:

25 *Efstathios Kyriacou and Sons and Others v. Republic* (1970) 3 C.L.R. 106 at p. 116;
 Petrides v. Republic (1983) 3 C.L.R. 216.

Recourse.

30 Recourse against the decision of the respondent to grant to the interested party a permit entitling him to operate a vehicle as a cesspool emptier.

A. S. Angelides, for the applicant.

D. Papadopoulou (Mrs.), for the respondents.

S. Karapatakis, for the interested party.

Cur. adv. vult.

35 PIKIS J. read the following judgment. On 3.3.1981 the interested party applied to the Licensing Authority under the provisions of the Road Transport Regulation Law - 1964 (as

amended), to be issued with Carrier A' permit, entitling him to operate a vehicle as a cesspool emptier. An inspector of the Ministry of Communications and Works was instructed to study the matter and report to the Authority. He made, so far as we may gather, a survey of facts bearing on the application, in order to furnish the factual background for the deliberations of the Licensing Authority. In a report filed on 30.3.1981 he examined the needs of the town of Limassol for cesspool emptiers and the degree to which they were met and, noted the stand of licensed operators to the desirability of issuing the permit sought for by the interested party. It emerges from his report that Limassol is rapidly developing into a commercial and industrial centre, a state of affairs that generates, as one may infer from his report, an increased demand for cesspool emptiers. Over the last six years, many blocks of flats went up and many are under construction. The licensed operators, fourteen in number, objected to the grant of a permit to the interested party.

The views of the inspector as to the rise in demand for cesspool emptiers are supported by the report of the municipal doctor, submitted on 23.3.1981, who recommended the grant of additional permits in order to ease acute problems created by the construction of new buildings. Such permits would contribute to the sustainance of appropriate hygienic and sanitary conditions. The Cyprus Hotel Association, by a report dated 29.8.1980, informed the authorities that the situation with regard to the disposal of sewage at Limassol was unsatisfactory because of great increases in the charges for the services rendered by operators of cesspool emptiers and delays and anomalies encountered in the disposal of sewage. By the time the sub judice decision was taken, some more permits had been granted. They queried whether it was feasible to grant additional permits for the operation of cesspool emptiers to ease the existing unsatisfactory situation. The inference from the above is that all the aforementioned officials and authorities subscribed to the view there was a shortage of vehicles for the disposal of sewage in the Limassol area and, inclined to the grant of new permits as a means of satisfying road transport needs of Limassol with regard to the disposal of sewage.

Before taking a decision on the application of the interested party, the objections of existing operators were heard on 25.6.81

at the invitation of the Licensing Authority. They raised objection to the grant of a permit to the interested party on general and specific grounds. In their opinion, the needs of the town of Limassol were, in the area under consideration, adequately satisfied by existing licensed operators. In addition, they objected to the interested party being furnished with a licence because of -

- (a) his repeated violations of the law and,
- (b) the fact that he voluntarily ceased to operate cesspool emptiers by disposing of his vehicles in times past.

What they wanted to convey by these objections, was that interested party was not a bona fide applicant for a permit but, one seeking a permit with a view to realising a profit from the sale of a licensed vehicle in time to come. On 6.8.1981 the Licensing Authority rejected the application of the interested party for the following reasons:-

- (i) The fact that interested party was formerly a licensed operator and disposed of his vehicles.
- (ii) The objections of licensed operators, and because
- (iii) existing needs were satisfactorily met.

The interested party lodged an appeal before the Minister, in accordance with the provisions of s.6 of the Road Transport Regulation Law 1964, as amended by Law 81/72. Section 6(1) conferred a right to a party aggrieved from the decision of the Licensing Authority to make a hierarchical recourse to the Minister of Communications and Works within twenty days, a right duly exercised by the interested party. Thus, the matter came before the Minister who was dutybound, in accordance with s.6(2) of the aforesaid law, to deal with the recourse expeditiously, after affording opportunity to the appellant to be heard in the matter. Before decision was taken, there took place an important development. It was this: Some of the objectors, a sizeable proportion of them, seven in number, lifted their objections to the grant of a permit to the interested party and, more important still, they urged the Authorities to granting a permit, accepting the version of the interested party as to how and in what circumstances he disposed of, in the past, the cesspool emptiers he was licensed to operate. They ack-

nowledged that dire necessity compelled him to part with his vehicles in the course of an illness that made necessary a visit to the United Kingdom for treatment.

The Minister decided, on 15.4.1982, to grant a permit to the interested party, in the interests of the road transport needs of the Limassol area. Twelve of the licensed operators objected to the decision and filed the present recourse. The legitimacy of their interest to seek judicial review of the sub judice decision was not questioned, evidently because of the repercussions upon their financial interests from the grant of an additional permit. It was with great surprise I discovered, in the course of studying the files of the case that, at least four of the applicants had consented to the grant of a permit to the interested party and signed, along with other colleagues, the petition to the Minister of 17.9.1981. Unless we are confronted with a strange coincidence arising from synonymity, four of the applicants, namely Nicolas Antoniou, Antonakis Nicolaou, Leonidas Demosthenous and Costas Christofi, while purporting to approbate the grant of a permit, they reprobated the decision taken because it was allegedly vitiated by the ulterior motives of the interested party. Neither counsel drew my attention to this contradictory state of affairs. How and in what circumstances it was allowed to arise, I have no knowledge.

The decision is challenged, mainly on two grounds:-

- (a) For failure on the part of the Minister to conduct a proper inquiry, including an omission to hear objectors afresh and,
- (b) for failure to reason departure or deviation from the decision of the Licensing Authority.

Mr. Angelides argued his case on the premise that the Minister was under a duty to reason specifically his disagreement with the decision of the Licensing Authority, in the way an appellate tribunal reasons interference with the deliberations of a hierarchically inferior tribunal. Although he does not specifically draw this parallel, this is the inescapable inference from his argumentation. Mrs. Papadopoulou submitted for the respondents that the Minister was at least, as free to decide the matter either way, as the Licensing Authority were, with no

obligation on his part to indicate specifically his reasons for taking a contrary view of the matter. This proposition has the assent of Mr. Karapatakis, as well, who joined in the submission of Mrs. Papadopoulou, on behalf of the interested party.

5 *Hierarchical Recourse—The Principles:*

A hierarchical recourse is not a judicial proceeding in any sense. It is not intended to review the correctness of the hierarchically subordinate organ's decision by reference to the soundness of the reasoning propounded in support thereof but, to
 10 establish a second tyre in the decision-taking process, designed to eliminate mistakes as well as abuse of authority by subordinates. Hence it is at least as feasible for the superior in hierarchy to take any decision that the subordinate body could reasonably take in the first instance. Both organs in the hierarchy are
 15 charged with the same duty—to promote the objects of the law by the application of its provision in particular cases. Some authors suggest that the hierarchically superior organ should be allowed greater latitude and should enjoy correspondingly wider discretion because it is credited with more knowledge
 20 and experience to evaluate the needs of the service and the implications from a particular decision on the purposes of the law, in comparison to the subordinate organ. (see, *Tsoutsos, Administration and the Law—1979*, pp. 63, 64).

Generally, it is competent for the body exercising powers
 25 on a hierarchical recourse, to review the legality of the decision taken in the first instance, as well as the manner in which they exercised their discretionary powers by reference to the facts of the case. (See, *Speliotopoulos, Manual of Administrative Law—1977*, Vol. 1, pp. 221, 222; *Stassinopoulos, Law of
 30 Administrative Action—1951*, pp. 177, 178).

There is direct authority for the view that the Minister of Communications and Works, in exercising the powers vested in him by s.6 of the Road Transport Regulation Law—1964 (essentially reproduced by s.4 of Law 9/82, promulgated in the
 35 Gazette on 19.3.1982, a law amending and consolidating the Road Traffic Regulation Laws), acts in an administrative capacity and not in a quasi judicial one, notwithstanding the use of the word "appeal". (See, *Efstathios Kyriacou & Sons Ltd. and Others v. Republic* (1970) 3 C.L.R. 106, 116). As Trianta-

fyllides, J., as he then was, noted in the aforesaid decision, the Minister enjoys a wide discretion in exercise of the powers vested in him by the relevant provisions of the law.

The submission that the decision of the Minister is vulnerable to be set aside for failure to reason departure from the decision of the Licensing Authority, is ill-founded and must be dismissed. No duty was cast upon the Minister as such to reason specifically any deviation from the course approved by the Licensing Authority. The test by which we must judge the validity of the decision of the Minister is the same with that applicable to the Licensing Authority. It is this: Whether it was reasonably open to the Minister, in view of the provisions of the law and the material before him, to decide as he did. As L. Loizou, J. pointed out in a recent decision, in Case No. 409/80, on 11.3.1983—*Petrides v. The Republic* (unreported as yet)*, the brevity of the decision of the Minister is not in itself indicative of lack of due reasoning and the reasoning may, like every other species of administrative action, be supplemented by the material in the file of the case. So long as the decision conveys on examination of its contents and the background thereto the reasons why a given decision is taken, it cannot be faulted for lack of due reasoning.

On examination of the contents of the decision of the Minister in this case, it emerges that he took the view that by approving the application for the grant of a permit to the interested party, the transport needs of the Limassol area would be best served. There was ample material before him to justify this view, outlined earlier, suggesting the available services were inadequate, a shortage that created problems for the public and posed risks to hygienic and sanitary standards. The objections of licensed operators to the person of the interested party that, evidently carried weight with the Licensing Authority bearing in mind their decision, must have lost part of their force by the withdrawal of the objections by seven of them and their affirmation of the version of the interested party as to how and in what circumstances he disposed of the cesspool emptiers he was licensed to operate in the past. It is probable indeed that the Licensing Authority would have come to the same decision as

* Reported in this part at p. 216.

the Minister if they had before them the letter in question. How and in what circumstances some of them came to complain and joined in the present proceedings as applicants, is a matter of conjecture. No explanation was given about it by counsel
5 for the applicants. It is unnecessary to explore the matter further, except note that the complaint voiced by them in these proceedings has lost much of its force.

Not only it was reasonably open to the Minister to arrive at the decision he did, but one may argue with a degree of
10 justification that, his decision is objectively conducive to the promotion of the purposes of the law to ensure the provision of adequate transport services for the disposal of sewage, an all important consideration for the comfort of the public and observance of appropriate sanitary and hygienic conditions.

15 The recourse is dismissed, it is with some reluctance I have decided to make no order as to costs. Let there be no order as to costs.

*Recourse dismissed with no order
as to costs.*