

1983 May 27

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STELIOS STYLIANIDES,

Applicant,

v.

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

Respondent.

(Case No. 412/79).

Legitimate interest—Article 146.2 of the Constitution—Acceptance of an administrative act deprives acceptor of legitimate interest to pursue a recourse against such act, provided that the acceptance is free and unreserved—Recourse against issue of road service licence—Applicant had assented to the issue of the licence complained of—Has no legitimate interest to pursue the recourse. 5

Practice—Legitimate interest under Article 146.2 of the Constitution—May be examined by the Court ex proprio motu.

This recourse was directed against the decision of the respondent by means of which the appeal of the applicant to the Minister of Communications and Works, for the cancellation of a road service licence granted to Christos Evripidou, by the licensing Authority, for the transportation of passengers by his bus No.AE. 283, on the route Messana-Trachypedhoula-Paphos, was dismissed. 10
15

As from the facts before the Court there was no doubt that the applicant gave his consent to the issue of the licence complained of, the Court examined ex proprio motu the question of possession of legitimate interest by applicant, in the sense of Article 146.2 of the Constitution to file this recourse and: 20

Held, that acceptance of or acquiescence to an administrative act deprives an applicant of his legitimate interest to

5 pursue a recourse against that act; that such acceptance must be unreserved and free and must not have taken place under the pressure of forthcoming injurious consequences for the applicants; that there is no doubt that applicant has assented to the sub judice decision and his consent was free and unreserved; and that, therefore, he has lost his legitimate interest to pursue this recourse: accordingly the recourse must fail.

Application dismissed.

Cases referred to:

- 10 *Constantinidou v. Republic* (1974) 3 C.L.R. 416 at p.417;
Leontiou v. Republic (1983) 3 C.L.R. 221;
Metaforiki Eteria "Ayios Antonios" v. Republic (1981) 3 C.L.R. 221 at pp. 236, 237;
15 *Neocleous and Others v. The Republic* (1980) 3 C.L.R.497 at pp. 508, 509;
Aniliades v. The Cyprus Telecommunications Authority (1981) 3 C.L.R. 21 at p. 36;
Zambakides v. The Republic (1982) 3 C.L.R. 1017 at pp. 1024-1025;
20 *Tomboli v. The Cyprus Telecommunications Authority* (1982) 3 C.L.R. 149 at pp. 154, 155.

Recourse.

25 Recourse against the decision of the respondent whereby applicant's appeal for the cancellation of a road service licence granted to the interested party by the Licensing Authority was dismissed.

L. N. Clerides, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

30 A. Timothi (Mrs.), for the interested party.

Cur. adv. vult.

SAVVIDES J. read the following judgment. This recourse turns against the decision of the respondent dated 28.9.1979 and

communicated to the applicant by letter dated 5.10.1979, by which the appeal of the applicant to the Minister of Communications & Works, for the cancellation of a road service licence granted to Christos Evripidou, by the Licensing Authority, for the transportation of passengers by bus No. AE 283, on the route Messana-Trachypedhoula-Paphos, was dismissed. 5

The facts of the case are, as far as relevant with the issue in the recourse, shortly as follows:

The applicant comes from Salamiou (Paphos), and is the owner of bus No. FD 817, licensed to carry passengers on the route Salamiou-Messana-Paphos. The interested party comes also from Salamiou and is the owner of bus No. AE 283. 10

The interested party, has, several times in the past, applied for a road service licence on the route Messana-Paphos, or nearby routes, but his applications were refused on the ground that the needs of the route were adequately served by the existing licensed buses. 15

According to the facts before me he firstly applied on 11.12.75 for a road service licence on the route Messana-Ayios Ioannis-Paphos for a new 38 passengers bus which was refused by the Licensing Authority. On 17.4.1976 he made a joint application together with one Christodoulos Argyrou of Salamiou for a similar licence on the route Messana-Salamiou-Paphos for bus CC 238. The owners of buses of Salamiou village strongly objected to the grant of such licence and the Licensing Authority, after considering all material before it, refused the application. The interested party and his co-applicant appealed to the Minister of Communications and Works who affirmed the decision of the Licensing Authority on the ground that the route was sufficiently served by the existing buses. On 12.1.1979 the interested party submitted a new application for the route Trachypedhoula-Paphos for his bus AE 283. The Licensing Authority after having considered everything that was put before it, refused the application on the ground that the route of Arminou-Trachypedhoula-Paphos or any nearby route was sufficiently served by the licensed bus-owner Leandros Serghiou of Arminou. The decision concluded as follows: 20 25 30 35

“A decision of the Licensing Authority to the contrary would contravene the said provision of the Law which is

intended to safeguard the interests of the public in conjunction with the interests of the professional bus-owner. Mr. Leandros Serghiou who is the holder of a road service licence on the said route or any nearby route or part of same for his bus FG 779 which can serve the needs of Trachypedhoula village. The fact that the inhabitants of Trachypedhoula prefer the bus of Mr. Evripidou is not a strong reason for granting a road service licence to an additional bus for this village.

10 The Licensing Authority is of the opinion that the proposed route Trachypedhoula-Paphos is neither necessary nor desirable in the public interest."

The interested party appealed to the Minister of Communications & Works and together with his appeal he submitted a written declaration from Mr. Leandros Serghiou, the person whose interest would have been adversely affected in accordance with the decision of the Licensing Authority, addressed to the Village Commission of Trachypedhoula, to the effect that he was not prepared to render services for the transportation of students from Trachypedhoula to Paphos and that the community of Trachypedhoula could try to secure another bus for the transportation of passengers and students from Trachypedhoula to Paphos. The Minister after considering the appeal, in the light of the material before him, decided to allow same and the decision of the Licensing Authority was set aside.

As a result, the interested party applied again to the Licensing Authority on 4.5.1979, for a licence to serve the route Messana-Trachypedhoula-Paphos, with his bus No. AE 283. Such application was granted to him on 8.5.1979, after the Licensing Authority took into consideration the minutes of a meeting which took place in the office of the District Officer of Paphos, regarding the transportation problems of passengers of that area, as well as the report of the Road District Inspector of Paphos on the matter. This appears both in the statement of facts in support of the opposition and the file of the appeal which was produced as exhibit 1 (see Red 3).

The applicant then appealed, on 11.6.1979, to the Minister, against the granting of the licence to the interested party. His appeal is to be found in exhibit 1, as Red 2. On 29.8.1979, the

applicant was notified to appear on 14.9.1979, at 10.45 a.m. at the Ministry of Communications & Works, and make his representations (Red 5 in the same file).

The hearing of the hierarchical recourse took place on 14.9.79, before the Minister of Communications and Works and in the presence of both the applicant and the interested party. 5

The decision of the Minister (which was signed on 28.9.1977) was communicated to the applicant by letter dated 5.10.1979 (Reds 10 and 11) and reads as follows:

“Having taken into consideration the legislation in force and all material of the case put before me, I came to the conclusion that the granting of the licence applied for, to Mr. Christos Evripidou, for a rural bus on the route Messana-Trachypedhoula-Paphos, is justified for the better service of the public travelling on the said route. 10
15

2. For these reasons the above recourse is dismissed.”

The applicant, as a result, filed the present recourse, whereby he attacks the decision of the Minister dismissing his appeal.

The grounds of law on which the recourse is based, are the following: 20

“1. The decision of the Minister is not duly reasoned.

2. The decision was reached in circumstances amounting to an abuse of power, in that:-

(a) The Licensing Authority dismissed an application of the interested party Christos Evripidou for a road service licence, on 24.3.1976. 25

(b) He appealed to the then Minister of Communications and Works, Mr. Tombazos who dismissed the appeal on 28.1.1977.

(c) On 31.3.1979 the Minister dismissed an application of the interested party for a licence to transport passengers from the village of Trachypedhoula. 30

(d) The Minister acted as a first instance body rather than as an appellate one.”

Counsel for the respondent, on the other hand, based his opposition on the general ground that the sub judice decision was lawfully taken, on the basis of all facts and circumstances of the case and within the proper exercise with which the respondent is vested.

From a mere reading of the minutes of the hearing of the hierarchical recourse before the Minister, dated 14.9.1979 (Red 8 in the file, exhibit 1), it seems that the applicant may have consented to the issue of the sub judice decision, or acquiesced to it, and thus he may have lost his legitimate interest to pursue this recourse.

Although various arguments have been advanced by counsel representing all parties in their written addresses, no mention was made by any one of them as to the existence of a legitimate interest in this case. It is, however, the duty of the Court to examine it, even *ex proprio motu*, because lack of such an interest deprives the applicant of his right to pursue his recourse (see, in this respect, the cases of *Constantinidou v. The Republic* (1974) 3 C.L.R. 416, 417 and the recent case of *Leontiou v. The Republic* (1983) 3 C.L.R. 221.

For the purpose of resolving the question of legitimate interest, I wish to cite the minutes of the hearing before the Minister (Reds 7 and 8 in exhibit 1) at which both the applicant and the interested party were present. They read as follows:

25 "Q. Mr. Stylianides you are the owner of FD 817.

A. Yes.

Q. What do you have to say about your recourse?

A. I object to the granting of the licence from Messana. This man continuously contravenes the law. Although a licence has been granted to him for Messana-Trachypedhoula-Paphos, he contravened the law and used to take passengers from Salamiou. He contravened the law in the past and the Licensing Authority cancelled his licence. Although he gave promises to the Superintendent of Paphos and the District Inspector that he would stop contravening the law, as soon as he gets the licence he starts contravening it. For this

30
35

reason I object to the granting of the said licence because Mr. Evripidou works to my detriment.

Q. The licence granted to him was for Messana-Trachyphoula-Paphos. He is not entitled to take any passengers from Salamiou. If he contravenes the conditions of his licence I will cancel his licence immediately. 5

A. As soon as he gets his licence he starts contravening it.

Q. Mr. Stylianides if he violates the law you should come immediately to the Ministry and report him to me personally and I will cancel his licence. 10

Q. After what we have said do you still object with regard to Messana?

A. I object *only for the taking of passengers from Salamiou.*

Q. In other words Mr. Stylianides we will confirm the decision of the Licensing Authority, by which a licence was granted to Mr. Evripidou and if Mr. Evripidou contravenes the law, you come and report him and then be sure that his licence will be cancelled." 15
(the underlining is mine).

There is no doubt, in my mind, from the above cited minutes and especially those words underlined, that the applicant gave his consent to the issue of the sub judice decision. I am going now to examine what is the effect of such consent. 20

It is a principle of Administrative Law that acceptance of or acquiescence to an administrative act, deprives an applicant of his legitimate interest to pursue a recourse against that act. In this respect, in the Conclusions from the Case Law of the Greek Council of State (1929 - 1959), it is stated at pp. 260-261 that:- 25

α) Συναίνεσις και άποδοχή.

Δέν ύφίσταται ένομον συμφέρον πρός προσβολήν διοικητικής πράξεως, έκδοθείσης τή αίτήσει, ή τή προκλήσει ή τή συναινέσει του αίτούντος. Γενικώς δέ δέν δημιουργείται ένομον συμφέρον, όσάκις διαπιστουται ότι ό αίτών συνήνεσεν καθ' οιονδήποτε τρόπον εις την έκδοσιν τής πράξεως. Ούτω έκρίθη ότι Δημόσιος ή Κοινότης δέν κέκτηται ένομον συμφέρον πρός προσβολήν πράξεως τροποποιούσης τό σχέδιον 30 35

πόλεως, εάν προκύπτει εκ του φακέλλου ότι ή τροποποίησης του σχεδίου είναι σύμφωνος προς την ύπ' αυτών υπεβλήθεισαν πρότασιν: 483(35).

5 Έξ άλλου, ή γενομένη τυχόν άποδοχή τής προσβαλλομένης πράξεως υπό του αίτουντος καθιστά άπαράδεκτον την κατ' αυτής στρεφομένην αίτησιν άκυρώσεως. έλλείπει συμφέροντος. Η άποδοχή έπέρχεται ού μόνον ρητώς, διά σχετικής δηλώσεως του αίτουντος, αλλά και σιωπηρώς, 10 δυναμένη δηλονότι να συναχθῆ και εκ διαφόρων ένεργειών του, ως ή άναγνώρισις εκ μέρους του αίτουντος νομικής τινος καταστάσεως, έφ' όσον αυτή δεν αντίκειται εις τό δημόσιον συμφέρον, ή ή άνευ έπιφυλάξεως είσπραξις χρηματικού έντάλματος, έκδοθέντος εις έκτέλεσιν, τής προσβαλλομένης πράξεως. Πάντως ή άποδοχή δέον να είναι άνεπιφύλακτος και έλευθέρα και ούχι να έλαβεν χώραν υπό την πίεσιν τής έπελεύσεως έπιβλαβών συνεπειών διά τον αίτουντα". 15

The English translation reads as follows:

("(a) Consent and acceptance.

20 There is no legitimate interest for attacking an administrative act, issued on the application or at the request or the consent of the applicant. Generally no legitimate interest is acquired when it is verified that the applicant has consented in any way to the issue of the act. It was thus decided that a Municipality or community 25 does not possess legitimate interest for attacking an act amending the plan of a town, if it emerges from the file that the amendment of the plan was in accordance with their submission: 483/35.

30 On the other hand, acceptance of the attacked act by the applicant renders unacceptable the recourse for annulment which is directed against it for lack of legitimate interest. The acceptance does not come only expressly, by a relevant declaration of the applicant but tacitly also which can be 35 inferred from various acts of his, such as the recognition on the part of the applicant of some legal situation, so long as same is not contrary to the public interest, or the receipt of a monetary warrant without reservation, issued in execution of the attacked act. In any event the acceptance must be unreserved and free and must not have taken place under

the pressure of forthcoming injurious consequences for the applicants.”).

See, also, in this respect, *Kyriacopoulos on Greek Administrative Law*, 4th Edition, vol. 3, p. 124, and Tsatsos “Application for Annulment” p. 40.

This principle has been accepted and restated by our Courts in a number of cases. Thus, in the case of *Metaphoriki Eteria “Ayios Antonios” etc. v. The Republic* (1981) 3 C.L.R. 221, the Court, after making reference to certain Greek Authorities on the point, stated, at pp. 236, 237, that:

“It has been repeatedly pronounced in a number of decisions of this Court that if a person accepts an administrative act or decision unreservedly, he no longer possesses a legitimate interest entitling him to make a recourse against it, in the sense of Article 146.2 of the Constitution (vide, in this respect, *Neocleous and others v. The Republic* (1980) 3 C.L.R. 497, in which reference is made to the following decisions of this Court: *Piperis v. The Republic* (1967) 3 C.L.R. 295, *Ioannou and others v. The Republic* (1968) 3 C.L.R. 612, *Markou v. The Republic* (1968) 3 C.L.R. 267 and *Myriantthis v. The Republic* (1977) 3 C.L.R. 165).

I wish to adopt for the purposes of this recourse, what was said by Triantafyllides, P. in *Myriantthis* (supra) at p. 168:

‘It is well established, by now, in the administrative law of Cyprus, on the basis of relevant principles which have been expounded in Greece in relation to a legislative provision there (section 48 of Law 3713/1928) which corresponds to our Article 146.2 above, that a person, who, expressly or impliedly, accepts an act or decision of the administration, is deprived, because of such acceptance, of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision’.

For the reasons I have endeavoured to explain, I find that the recourse so far as this legal ground is concerned, fails”.

See, also, the cases of *Neocleous and others v. The Republic* (1980) 3 C.L.R. 497, at pp. 508, 509, *Aniliades v. The Cyprus Telecommunications Authority* (1981) 3 C.L.R. 21 at p. 36; *Zambakides v. The Republic* (1982) 3 C.L.R. 1017, at pp. 1024–
5 1025 and the judgment of the Full Bench in the case of *Tomboli v. The Cyprus Telecommunications Authority* (1982) 3 C.L.R. 149, at pp. 154, 155.

There is no doubt that the applicant in the present case has assented to the sub judice decision. What remains to be con-
10 sidered is whether such assent was free and unreserved.

From the contents of the record of the hearing of the appeal before the Minister, which I have cited earlier, no question arises to the effect that the consent of the applicant was not free and unreserved. The only reservation of his was with
15 regard to passengers from Salamiou but the licence granted excluded Salamiou from the route of the bus of the interested party. The decision of the Minister was explained to the applicant at the end of the above-mentioned hearing and no complaint or any reservation whatsoever was made by him.
20 All along his protest was about Salamiou.

In the light of the authorities cited above and the fact, as found by me, that the applicant has freely and unreservedly given his consent to the issue of the sub judice decision, the applicant has lost his legitimate interest to pursue this recourse.

25 In view of the above, I find it unnecessary to deal with any of the grounds of law advanced by counsel.

In the result, this recourse fails and is hereby dismissed but in the circumstances I make no order for costs.

30 *Recourse dismissed. No order as to costs.*