1983 June 11

[LORIS J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS MARANGOS,

Applicant,

v.

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

Respondent

(*Case No.* 289/80)

Motor Transport (Regulation) Law, 1964 (Law 16/64 as amended)—Hierarchical recourse to Minister—Test by which decision of the Minister must be judged—Sub judice decision reasonably open to the Minister in view of the material before him and the provisions of the Law

Administrative Law—Hierarchical recourse—Meaning

Administrative Law—Misconception of fact—Failure to make due inquiry—Results in the invalidity of the relevant administrative action—No misconception of fact or failure to make out a new inquiry in this case

Administrative Law—Administrative acts or decisions—Reasoning—Due reasoning—Brevity of sub judice decision—Not indicative of lack of due reasoning which may be supplemented by the material in the file

Following the rejection by the Licensing Authority, established under the Motor Transport (Regulation) Law, 1964 (Law 16/64 as amended) of applicant's application for the issue of a licence in respect of his taxi in order to be used as a "rural taxi", he filed a hierarchical recourse to the respondent Minister as envisaged by section 3 of Law 81/72 (repealing and substituting section 6 of Law 16/64). The respondent Minister dismissed the hierarchical recourse and hence this recourse

Counsel for the applicant mainly contended:

(a) that the respondent Minister acted under a misconception of fact and failed to make a due inquiry.

(b) That the sub judice decision was taken in contravention of the Motor Transport (Regulation) Laws, 1964-1975.

(c) That the sub judice decision is not duly reasoned.

Held, (*after dealing with the meaning of a hierarchical recourse and the test by which the decision of the Minister must be judged*) that a misconception as to facts may consist of either the taking into account of non-existing facts or the non-taking into account of existing facts; that though a misconception as to a material fact, or a failure to make a due inquiry causing lack of knowledge of material facts, results due to contravention of well-settled principles of Administrative Law, in the invalidity of the relevant administrative action the respondent Minister carried out a due inquiry and did not act under a misconception as regards any fact and in particular of the specific facts complained of; accordingly contention (a) should fail.

(2) That it cannot be seriously contended that the sub judice decision was taken "in contravention of the laws 1964-1975", or that the discretion of the respondent Minister was wrongly exercised; that, on the contrary, everything points at the respondent taking into consideration everything required with a view to reaching the sub judice decision which was reasonably open to him to take, in view of the provisions of the law and the material before him; accordingly contention (b) should fail.

(3) That though it is well settled that administrative decisions have to be duly reasoned, the reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto; that, further, the brevity of the decision of the Minister is not in itself indicative of lack of due reasoning and the reasoning may be supplemented by the material in the file of the case; that having examined the sub judice decision of the Minister and the background thereto, as appearing from the administrative file, this Court is satisfied that the sub judice decision is duly reasoned and, therefore, contention (c) also fails.

Application dismissed.

Cases referred to:

Athinakis and Another v. The Republic (1969) 3 C.L.R. 182;

Kyriacou and Sons v. The Republic (1970) 3 C.L.R. 106;

Linou-Flassou-Petra Co. Ltd. v. The Republic (1976) 3 C.L.R. 25;

Solea Car Company Limited and Another (No. 2) v. The Republic (1976) 3 C.L.R.385;

Tsouloftas v. Republic (1983) 3 C.L.R. 426;

Ioannides v. Republic (1972) 3 C.L.R. 318 at pp. 324-325;

Georghiades and Others v. Republic (1967) 3 C.L.R. 653 at p. 666;

HadjiSavva v. Republic (1972) 3 C.L.R. 174 at p. 205;

Petrides v. Republic (1983) 1 C.L.R. 216.

Recourse.

Recourse against the dismissal by the respondent of applicant's hierarchical recourse against the refusal of the licensing authority to grant applicant a licence in respect of his taxi to be used as a "rural taxi."

A. Paschalides, for applicant.

A. Vassiliades, for respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant in the present recourse submitted on 30.10.78 an application to the "licensing authority" established under the Motor Transport (Regulation) Law 1964 - (Law No. 16/64) - as amended, praying for the issue of a licence in respect of his taxi under registration No. DQ680, to be used as a "rural taxi" (as defined by section 5(a)(2) of Law 60/75, amending the original law) at Kornos village.

In order to avoid confusion I feel that I should mention, at this early stage, that the relevant legislation in force at all material times of the present recourse was the Motor Transport (Regulation) Law 1964 - (Law No. 16/64) - as amended by Laws

78/66, 89/69, 13/70, 45/71, 33/72, 81/72, 60/73, 82/73 and 60/75. Law 9/82, repealing and substituting the original law with its amendments was enacted considerable time after the filing of the present recourse.

The aforesaid application was refused by the licensing authority and the applicant thereafter filed a "hierarchical recourse" to the respondent Minister, as envisaged by section 3 of Law 81/72 (repealing and substituting section 6 of the original enactment) attacking the said refusal of the licensing authority.

The respondent Minister examined the "hierarchical recourse" of the applicant and gave his decision on 13.6.80; (vide blue 55 in the administrative file produced in the present recourse).

The decision of the respondent in writing (blue 55) was forwarded to the applicant accompanied by a letter on behalf of the respondent dated 20.6.80 (blue 56).

The applicant maintains, and this is not denied by the other side, that he received the aforesaid decision of the respondent Minister, turning down his recourse, on 22.6.80.

On 1.9.80 the applicant filed the present recourse impugning the aforesaid decision of the respondent, praying for a declaratory judgment to the effect that the said decision, communicated to him on 22.6.80, "is null and devoid of any legal result".

On 12.1.81 the respondent filed his opposition to the present recourse.

Counsel on both sides filed written addresses, pursuant to the directions of this Court and the respondent, also produced the relevant administrative file, which is attached to the file of the present recourse.

The applicant impugns the decision of the respondent, relying on the following grounds of law:

(1) The respondent exercised his discretion wrongly as he ignored and/or did not take "sufficiently" into consideration the special circumstances of the case and/or the decision was taken in contravention of the laws 1964-1975.

(2) The decision was based on an erroneous assessment of the actual state of affairs and/or is the result of misconception of

facts in respect of the time of applicant's stay and occupation at Kornos village "and his potency to serve the needs of the village."

(3) Respondent reached the decision impugned without adequate and/or due inquiry.

(4) The decision of the respondent is not sufficiently and/or duly reasoned.

The respondent in his opposition alleges that he reached his decision complying with the relevant legislation and the regulations made thereunder, as well as with the relevant provisions of the Constitution. The respondent further maintains that the "impugned act and/or decision was given pursuant to the principles of administrative law and natural justice. All the relevant facts were taken into consideration in reaching the decision which is the result of the correct exercise of the discretion of the respondent". Finally respondent submits that his decision is duly reasoned.

The licensing of taxis by the licensing authority and the distinction of same into rural, urban and trans-urban is the special creation of section 5 of Law 60/75, a law amending section 9 of the basic law.

Thus, section 9(2), as amended, defines rural, urban and trans-urban taxis whilst section 9(4) provides for the discretionary powers vested in the licensing authority and sets out the matters to be taken into consideration by the authority for exercising such discretion.

Section 9(4), as amended (by section 5 of Law 60/75) reads as follows:

"9.(4). Ἡ ἀρχὴ ἀδειῶν κέκτηται διακριτικὴν ἐξουσίαν παροχῆς ἢ μὴ ἀδείας ταξί, ἐν τῇ ἐνασκήσει δὲ τῆς τοιαύτης ἐξουσίας δέον ὅπως λαμβάνῃ ὑπ' ὄψιν τὰ ἀκόλουθα:

(α) Ὅσον ἀφορᾶ εἰς ἀστικὰ ταξὶ καὶ ἀγροτικὰ ταξί—

(i) τὴν ἔκτασιν καθ' ἣν τυχὸν αἱ ἀνάγκαι τῆς οἰκείας ἀστικῆς τροχαίας περιοχῆς ἢ ἀγροτικῆς κοινότητος, ἀναλόγως τῆς περιπτώσεως, ἐξυπηρετοῦνται ἐπαρκῶς·

(ii) τὴν ἔκτασιν καθ' ἣν ἡ σκοπουμένη ὁδικὴ χρῆσις εἶναι ἀναγκαία ἢ εὐκταία ἐν τῷ δημοσίῳ συμφέροντι·

(iii) τὰς ἀνάγκας τῆς περιοχῆς ἐν τῷ συνόλῳ της ἀναφορικῶς πρὸς τὴν τροχαίαν·

καὶ θὰ λαμβάνῃ ὑπ' ὄψιν οἱασδήποτε τυχὸν παραστάσεις προσώπων ἅτινα παρέχουν ἤδη καλῇ τῇ πίστει μεταφορικας διευκολύνσεις εἰς τὴν αὐτὴν περιοχὴν ἢ πλησίον αὐτῆς

(β) - - "

(The translation in English is as follows:)

"(9)4. The licensing authority is vested with discretionary power of granting or refusing taxi licence and in the exercise of such a power should take into consideration the following:-

(a) As regards urban taxis and rural taxis -

(i) the extent to which the needs of the relevant urban traffic area or the rural community, according to the case, are adequately served;

(ii) the extent to which the proposed road use is necessary or desirable in the public interest;

(iii) the needs of the area as a whole in relation to traffic

and shall take into consideration any representations which may be made by persons who are already providing in good faith transport facilities in the same or nearby area.

(b) - - — ".

In examining the present recourse it must be borne in mind that what is being impugned by same, is only one administrative decision, notably the administrative decision taken by the respondent Minister on 13.6.80 (blue 55) attached to a letter dated 20.6.80 (blue 56) addressed on behalf of the respondent to the applicant.

This decision of the respondent Minister was taken on a "hierarchical recourse" submitted to him by the applicant in this case attacking the original decision of the licensing authority.

Such a power was originally conferred on the Minister of Communications and Works by virtue of section 6 of Law 16/64

which provided for an appeal to the Minister against a decision of the licensing authority subject to the right of recourse to the Supreme Constitutional Court as it then was.

On 10.11.1972, section 6 of Law 16/64 was repealed and replaced by a new section 6 (vide section 3 of Law 81/72). The new section, this time, converted the "appeal" to the Minister into "hierarchical recourse". The relevant parts of new section 6 read as follows:-

> "6. (1) Anyone dissatisfied with the decision of the licensing authority, issued under the provisions of the present law, may within twenty days from the date of the communication to him of the decision, by written recourse to the Minister, in which the reasons in support thereof are set out, challenge the said decision.
>
> (2) The Minister examines the recourse made to him without undue delay and after hearing or giving the opportunity to the applicant to support the grounds upon which the recourse is based, decides on it, and communicates forthwith his decision to the applicant:
>
> Provided that .. .. ".

The nature and extent of the "appeal" to the Minister (envisaged by the original section 6 of Law 16/64) was construed in a number of cases, amongst which I shall confine myself in mentioning here: *Athinakis and Another v. The Republic,* (1969) 3 C.L.R. 182 and *Kyriacou and Sons v. The Republic,* (1970) 3 C.L.R. 106.

Likewise, the nature of a "hierarchical recourse" to the Minister (provided by section 3 of Law 81/72 amending the original law) was considered by the Full Bench of this Court in the cases of *Linou-Flassou-Petra Co. Ltd. v. The Republic,* (1976) 3 C.L.R. 25 and *Solea Car Company Limited and Another (No.2) v. The Republic,* (1976) 3 C.L.R. 385.

The term "hierarchical recourse" in Greek Administrative Law is used in two senses:

A. The one refers to an application, not specifically provided for by any law, submitted to a hierarchically superior administrative organ by virtue of the right conferred on any person by the Constitution to apply individually or jointly with others to

public authorities (similar provision is to be found in Article 29 of our Constitution).

This application is otherwise mentioned by Greek authors as αἴτησις θεραπείας (application for redress).

B. The other refers to an application envisaged by a specific law submitted to a hierarchically superior administrative organ and is directed against a decision taken by the hierarchically subordinate organ; the relevant law regulates the time within which such an application may be submitted as well as other procedural matters. This application is termed "Τυπικὴ ἱεραρχικὴ προσφυγή" or "ἐνδικοφανὴς" (vide Lessons of Administrative Law, by Stassinopoulos, 1957 ed., p. 152).

It is apparent that the "hierarchical recourse" to the Minister, envisaged by section 3 of Law 81/72 is the equivalent of Greek B, above, and its nature is purely administrative.

The Minister, in exercising the powers vested in him under the "hierarchical recourse", can "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" (vide *Tsouloftas v. The Republic* (1983) 3 C.L.R. 426).

Although the Minister, in a "hierarchical recourse" has wide powers, such as the annulment or the reformation of the decision of the hierarchically subordinate administrative organ (vide Stassinopoulou Lessons of Administrative Law - supra - at pp. 225 and 226 and Kyriacopoulou Greek Administrative Law, 4th ed., vol. II, pp. 468-470) he has to exercise his discretion within the limits provided by section 9(4) of the law as amended by section 5 of Law 60/75, i.e. his discretion has to be exercised on the same lines as those of his subordinate hierarchically organ, notably 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" (vide *Tsouloftas* case - supra).

Reverting now to the facts of this case (bearing always in mind that the present recourse is impugning the decision of the re-

spondent Minister given on a "hierarchical recourse" to him pursuant to the provisions of section 3 of Law 81/72 from the administrative decision of the licensing authority), it is apparent from the administrative file which was placed before me that the applicant was given the opportunity to support the grounds upon which his "hierarchical recourse" was based as required by section 6(2) of the law as amended. These grounds appear extensively in blues 50 and 51 (the "hierarchical recourse" is blue 52 in the file).

It is, also, clear from the file that the Minister had before him further evidence emanating from the Divisional Police Commander, Larnaca (vide letter of the said Police Commander dated 4.3.80 under No. 'Αρ. Φακ. Λαρ. 219/5) which clearly states, inter alia,

(i) that the applicant is working during day time at Nicosia returning to Kornos village where he resides at night;

(ii) that the applicant admitted to the police that he was so working at Nicosia during day time and alleged that if the applied for licence is granted to him, he will stay in his village continuously; the applicant further alleged to the police that when he is absent from the village he will be replaced by his wife, who has driving licence bearing No. 215476.

Furthermore, the respondent Minister had before him all the material which was available to the licensing authority in the first place when the authority was examining the original application.

This matter includes, inter alia, statements made by counsel on behalf of the applicant at the meeting held by the licensing authority on 20.3.79 (vide blue 45) as well as a report (vide blue 40) prepared by a responsible officer of the authority on the occasion of the original application of the applicant.

I shall now proceed to examine the grounds on which applicant relies in impugning the sub judice decision.

I shall deal with grounds 2 and 3 first: Misconception of fact and failure to make due inquiry:

"A misconception as to facts may consist of either the taking into account of non-existing facts or the non-taking into account

of existing facts" (vide The Judicial Control of Discretionary Powers by Economou, 1965 ed., p. 243). "A misconception as to a material fact, or a failure to make a due inquiry causing lack of knowledge of material facts, results, due to contravention of well-settled principles of Administrative Law, in the invalidity of the relevant administrative action." (Per Triantafyllides P. in *Ioannides v. The Republic*, (1972) 3 C.L.R. 318, at pp. 324-325).

Applicant in the present recourse complains, in effect, by virtue of grounds 2 and 3, that the respondent reached the decision impugned without due inquiry and as a result there arose a misconception of facts "in respect of the time of the applicant's stay and occupation at Kornos village and his potency to serve the needs of the village".

Having considered the sub judice decision (blue 55) and having carefully gone through the administrative file, I am satisfied that the respondent Minister carried out due inquiry and did not act under a misconception as regards any fact and in particular of the specific facts complained of; in spite of the allegations of the applicant to the contrary (blues 50 and 51), it is abundantly clear from the letter of the Divisional Police Commander Larnaca, dated 4.3.80 -

(a) that the applicant was working at Nicosia during day time;

(b) that this fact was admitted by the applicant himself who alleged

(i) that if the licence for rural taxi is granted to him he will stay in his village continuously - an allegation the Divisional Police Commander would not subscribe -

(ii) that in the case of his absence from the village he would be replaced by his wife who has a driving licence as well.

In the circumstances, it was, therefore, open to the respondent to reach the decision which he, in fact, did reach after due inquiry; therefore, grounds 2 and 3 are doomed to fail.

In connection with ground 1, which is too wide and vague, it must be noted

(a) that the sub judice decision commences with the words "having taken into consideration the relevant legislation in force";

(b) that the applicant was given the opportunity to support the grounds upon which his hierarchical recourse was based (as envisaged by section 6(2) of the law as amended) and, in fact, he submitted such grounds (blues 50 and 51);

(c) that the material in the administrative file indicates that the respondent Minister acted pursuant to the provisions of the Motor Transport (Regulation) Law 1964, as amended, and exercised his discretion pursuant to the provisions of section 9(4) of the law, as amended.

Therefore, it cannot be seriously contended that his decision was taken "in contravention of the laws 1964-1975", or that his discretion was wrongly exercised; on the contrary, everything points at the respondent taking into consideration everything required with a view to reaching the sub judice decision which was reasonably open to him to take, in view of the provisions of the law and the material before him. Ground 1, therefore, fails as well.

The last ground which has to be considered, the fourth one, is the complaint that the present decision of the respondent Minister lacks due reasoning.

It is well settled that administrative decisions have to be duly reasoned: What is due reasoning is a question of degree dependent upon the nature of the decision concerned (*Athos Georghiades and Others v. The Republic*, (1967) 3 C.L.R. 653, at p. 666).

Reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto (*Georghios Hadjisavva v. The Republic*, (1972) 3 C.L.R. 174, at p. 205).

As L. Loizou J. pointed out in a recent decision in case No. 409/70, *Petrides v. The Republic*, (1983) 3 C.L.R. 216 the brevity of the decision of the Minister is not in itself indicative of lack of due reasoning and the reasoning may be supplemented by the material in the file of the case.

Having examined the sub judice decision of the Minister and the background thereto, as appearing from the administrative file before me, I am satisfied that the sub judice decision is duly reasoned and, therefore, ground 4, also fails.

In the result the present recourse fails and is, accordingly, dismissed; having given this case my best consideration I have decided to make no order as to costs.

Recourse dismissed. No order as to costs.