1983 August 4

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHALIS HADJICLEANTHOUS,

*Applicant,*

*v.*

THE MINISTER OF COMMUNICATIONS AND WORKS THROUGH THE ATTORNEY-GENERAL,

*Respondent.*

(*Case No.* 71/79).

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*Administrative Law—Administrative acts or decisions—Reasoning—May be supplemented from the material in the file—Moreover applicant had knowledge of all the material that led to the sub judice decisions since he was present at the hearing before the Administrative organ concerned—Change of attitude by administration within short time-Special reasons should be given for such change—Change of attitude in this case due to change of circumstances—No special reasons required.*

*Administrative Law—Misconception of fact—Burden of proof—How discharged.*

This was a recourse against the decision of the respondent Minister whereby applicant's hierarchical recourse against the decision of the licensing authority granting a road service licence for the route Kalavassos-Limassol to bus No. CU 983 owned by the interested party was dismissed.

Counsel for the applicant mainly contended:

(a) That as far as the decision* of the Licensing Authority is concerned, which was communicated to the applicant on the 8th June, 1978, no reasoning was given and

* The decision is quoted at p. 821 post.

that the Minister* when dealing with the hierarchical recourse instead of allowing the appeal on the ground of lack of reasoning, he confirmed the decision without giving any additional ground for having done so and merely repeated the decision of the Licensing Authority; and that in view of the fact that the sub judice decision affects the interests of the applicant it should have been specially reasoned.

(b) That the Licensing Authority took its decision, which was subsequently affirmed by the Minister, only a few months after the previous Minister of Communications and Works had dismissed a similar application of the interested party; and that due to the short time that elapsed between the previous decision dismissing the application of the interested party and the new decision granting such permit, special reasons should have been given for the change of the attitude of the Licensing Authority and the Minister.

(c) That the respondent acted under a misconception of fact.

*Held*, (1) that though the decision of the licensing authority does not contain any reasoning at all it is an accepted principle of administrative law that the reasoning may be supplemented from the material in the file; that the reasoning of the decision of the Licensing Authority is contained in the minutes of the meeting of the Authority; and that applicant was all along aware of the proceedings and since he was also present at the hearing before the Licensing Authority there is no doubt that he had knowledge of all the material and details which led to the decision taken by the Licensing Authority; that with regard to the decision of the Minister, it is clear that he took his decision bearing in mind the result of the inquiry carried out by the Inland Transport Department the representations of the parties and all other material before him, considerations which he communicated to the applicant by informing him of his decision; and that the contents of the decision of the

* The decision of the Minister is quoted at p. 817 post.

Minister, as communicated to the applicant, is duly reasoned; accordingly contention (a) should fail.

(2) That though when there is a change of attitude by the administration it is necessary that a more specific reasoning be given by stating the reasons which were taken into consideration for justifying such change, in this case the change of attitude was due to a change of circumstances; and that in view of such change of circumstances there was no need for special reasons to be given why the respondents departed from the previous decision; accordingly contention (b) should fail.

(3) That the burden of proof regarding the existence of a misconception of fact lies on an applicant who alleges it because there is a presumption against the existence of such misconception and that the burden is discharged if the misconception is proved to exist or if it is shown that it is most probable that it exists; that though the applicant has advanced a number of allegations as to misconception he did not call any evidence in support of his allegations; that, therefore, applicant failed to discharge his burden of proving any misconception and in the light of the totality of the material before this Court it has not been persuaded that the existence of the alleged misconception was most probable or "so sufficiently probable as to raise a doubt in my mind"; accordingly contention (c) should, also, fail.

*Application dismissed.*

Cases referred to:

*Miltiadou* v. *CYTA* (1982) 3 C.L.R. 555 at pp. 557, 580, 581;

*Christodoulou and Another* v. *CYTA* (1978) 3 C.L.R. 61 at p. 69;

*Nicolaides* v. *Greek Registrar of Co-Operative Societies* (1965) 3 C.L.R. 585 at pp. 600-601;

*Mallouros* v. *E.A.C.* (1974) 3 C.L.R. 200 at p. 224;

*Kontos* v. *Republic* (1974) 3 C.L.R. 112 at pp. 127-129;

*HadjiMichael* v. *Republic* (1972) 3 C.L.R. 246 at p. 252;

*Thalassinos* v. *Republic* (1974) 3 C.L.R. 290 at p. 294.

**Recourse.**

Recourse against the decision of the respondent Minister of Communications and Works whereby applicant's hierarchical recourse against the decision of the Licensing Authority granting a road service licence for the route Kalavassos–Limassol to bus No. C.U. 983 was dismissed.

*P. Soteriou*, for the applicant.

*Cl. Theodoulou* (*Mrs.*), Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. The applicant by this recourse seeks a declaration of the Court that the act and/or decision of the Minister of Communications and Works, dated 21.11.1978, by which his hierarchical recourse against the decision of the Licensing Authority granting a road service licence for the route Kalavassos—Limassol to bus No. CU 983 owned by Panayiotis Polycarpou of Kalavassos was dismissed, is null and void and of no legal effect whatsoever.

The facts of the case are as follows:

The applicant who comes from Vassa Kellakiou, is a professional bus owner and driver for many years, and has been serving the route Kalavassos–Limassol since 1968. He was originally the owner of bus No. EW 336 of 36 seats which he substituted with bus No. JJ 773, of 55 seats licensed to serve the route Vassa Kellakiou–Kalavassos–Limassol.

The interested party comes from Kalavassos and is also a professional bus owner operating his bus No. CU 983, licensed to carry workers on contract from Limassol to Vassiliko. He is also the owner of another bus No. HM 993, of 50 seats licensed to carry passengers on the route Kalavassos–Limassol.

There is also another bus No. BF 570, owned by a third person Menelaos Lambrou, also of Kalavassos, licensed to serve the route Kalavassos–Limassol three days a week.

On 31.1.1977, the applicant applied to the Licensing Authority for a licence to substitute his old Bus No. EW 336 of 36 passenger seats, with a new one, No. JJ 773 of 55 passenger seats. On 14.3.1977, before the application of the applicant

was considered by the Licensing Authority, another application was made, by Mr. Menelaos Lambrou, for a new road service licence on the route Kalavassos–Limassol, for his bus No. CY 157. Later on, another application for a new licence on the same route was made by the interested party for his bus No. EQ 904. These last two applications were later withdrawn and substituted by a new application dated 20.9.1977 by Mr. Polykarpou, the interested party and Mr. Lambrou jointly for the grant of a licence for bus No. CU 983 on the route Kalavassos—Limassol (see blues 1 and 2 of exhibit 1). The applicant objected to the granting of such licence. The Licensing Authority at its meeting on 8.11.1977 (the minutes of which appear in blue 10 of exhibit 1), decided to grant the application of the applicant for the substitution of his bus and dismiss the application of the interested party for a new road service licence, on the ground that by the substitution of bus EW 336 by a new one of greater capacity, the needs of the route were served in full.

The interested party appealed against both decisions of the Licensing Authority to the Minister of Communications and Works, who, by his decision dated 26.1.1978 dismissed the said appeals and confirmed the decisions of the Licensing Authority (blue 13 of exhibit 1). The above decisions of the Minister were communicated, by letter dated 7.2.1978, to the interested party, who on 17.2.1978, applied again for a new licence for his bus No. CU 983, on the same route. His application was supported by a letter from the Village Committee and the Improvement Board of Kalavassos addressed to the Licensing Authority, in which it was stated that a transportation problem existed at Kalavassos for the transportation of students and labourers and a request was made for the granting of a road service licence to bus No. CU 983, for the transportation of students and labourers to Limassol (blue 20 in exhibit 1).

As a result of such application, an inquiry was carried out by the Inland Transport Department of the Ministry of Communications & Works, to ascertain the number of passengers using the route in question. Such inquiry was effected by checking the route for six days between the 3rd and the 10th August, 1978, at a point outside Kalavassos and recording the number of passengers carried daily from Kalavassos to Limassol. The

result of such check (which appears in blue 29 of exhibit 1), was to the effect that the route was adequately served by the licensed buses only on the dates on which bus No. BF 570 of 32 seats, licensed to serve the route three times a week, was circulating. On the other four days there was a number of 4–14–17–14 passengers respectively, in excess of the number of seats of licensed buses. The inspector who carried out the check, submitted his report to the Inland Transport Department of the Ministry of Communications & Works (blues 30–34 in exhibit 1) in which he stated (blues 30–31) that there existed a transport problem on the route, which he discussed with all interested parties, including the applicant in this recourse, as well as the motorists' unions, and with the exception of the applicant, all other parties did not object to the granting of the licence to the interested party.

As a result of such inquiry, the Licensing Authority at its meeting of the 25.4.1978 decided to invite all interested parties, including the motorists' unions, to attend the meeting of the Authority of 16.5.1978, at which a decision was to be taken on the matter, and make their representations. Following such decision, a letter was sent on 3.5.1978 to the applicant in the present recourse, the interested party, the owner of bus BF 570 Menelaos Lambrou, the Asgata Bus Company and the motorists' unions to attend the above meeting.

From the minutes of the hearing before the Licensing Authority, which took place on 16.5.1978 (blues 38–42) it appears that both the applicant and the interested party, as well as the representative of Asgata Bus Co. Mr. Vassiliades who was also the owner of bus GD 92 licensed to take passengers on the same route and the representative of PEEA (a motorits' union) were present. Only the applicant objected to the granting of the licence to the interested party whilst all other parties present at the hearing gave their consent to its grant. The Licensing Authority after hearing the views of all parties concerned, decided to grant a rural bus licence for bus CU 983 of the interested party and by letter dated 8th June, 1978 informed the applicant of its decision to the effect that his objection was rejected and that a licence was granted to the interested party. The contents of such letter read (blue 44 of exhibit 1) as follows:

" Επιθυμώ όπως αναφερθώ εις την επιστολήν σας ημερο-

μηνίας ..... διὰ τῆς ὁποίας ἐνίστασθε εἰς τὴν χορήγησιν ἀδείας ἀγροτικοῦ λεωφορείου διὰ τὸ Δημοσίας Χρήσεως ὄχημα ὑπ' ἀρ. CU 983 ἐπὶ τῆς διαδρομῆς Καλαβασοῦ–Λεμεσοῦ, καὶ νὰ σᾶς πληροφορήσω ὅτι ἡ 'Αρχὴ 'Αδειῶν κατὰ τὴν συνεδρίαν αὐτῆς τῆς 16.5.1978 ἐξήτασε καὶ ἐνέκρινε τὴν ὡς ἄνω αἴτησιν. 'Ωσαύτως τὸ λεωφορεῖον θὰ δύναται νὰ μεταφέρῃ ἐργάτες ἀπὸ τὴν Λεμεσὸν εἰς τὸ Μεταλλεῖον Βασιλικοῦ, ὡς καὶ πρότερον.

Μετὰ τιμῆς,
(ὑπ.) Σ. Ι. Δημητριάδης
Πρόεδρος 'Αρχῆς 'Αδειῶν".

("I wish to refer to your letter dated ..... by which you object to the grant of a rural bus licence to the public use vehicle No. C.U. 983 for the route Kalavasos–Limassol, and to inform you that the Licensing Authority at its meeting of 16.5.1978 has examined and approved the above application. The bus may also carry labourers from Limassol to Vassiliko Mine as before.

Yours truly
(Sgd.) S.I. Demetriades,
Chairman, Licensing Authority").

As a result, the applicant filed on 24.6.1978 a hierarchical recourse against the above decision of the Licensing Authority (reds 1–4 in exhibit 2) which was fixed for hearing before the Minister on 24.10.1978.

On 25.9.1978, before the hearing of this hierarchical recourse, the applicant addressed a letter to the Licensing Authority (red 8 in exhibit 2) by which he informed them that on the first day of the new academic year he transported only 15 students and two other passengers, thus leaving 38 empty seats in his bus, whilst the interested party contravened the law with his bus CU 983 whilst the hierarchical recourse was still pending. He also asked for a new check on the route. On the 3rd October, 1978, he sent another letter, addressed to the Minister, to which he attached his previous letter to the Licensing Authority, repeating what he has said in that letter and stating (with reservation of any rights of his) that in view of the situation he could not circulate his bus any longer until the matter was finally settled (red 9).

The members of the Village Commission of Kalavassos addressed, on 8.10.1978, a letter to the Minister, to which they attached two other letters, one sent by them to the ex Minister of Communications and Works on 12.4.1977, and the other written by the parents of a number of students from Kalavassos dated 16.2.1978 and addressed to the Licensing Authority. By these letters which appear in exhibit 2 (reds 10–13), the parents and the Village Commission of Kalavassos were asking for the granting of the licence to the interested party because for personal reasons, they did not want the applicant.

The hearing of the recourse before the Minister finally took place on 14.11.1978. At the hearing both the applicant and the interested party were present with their counsel. They made their representations and advanced their arguments (reds 17–21 of exhibit 2).

The decision of the Minister was taken on 21.11.1978 and was communicated to the applicant by letter dated 29.11.1978 (reds 23–24). It reads as follows:

> "Having taken into consideration the law in force, the representations of the persons interested and all material put before me, especially the check carried out by the Department of Inland Transport, on the passengers using the route Kalavassos—Limassol, I have reached the conclusion that the Licensing Authority rightly granted the sub judice licence for the better service of the public using the said route.
>
> 2. For these reasons the above recourse is dismissed".

The applicant then filed the present recourse, against the above decision of the Minister, which is based on the following grounds of law:

> "1. The act and/or decision of the Respondent was taken under a misconception of fact in that the transportation needs and all the existing means of transport were not duly taken into account and/or is not justified by the existing transportation needs.
>
> 2. The act and/or decision of the Respondent was taken in abuse of power and/or on the basis of a wrong exercise of discretionary power and/or constitutes an abuse of

power in that the facts and circumstances of the case do not justify the lawful granting of the licence.

3. The act and/or decision of the Respondent is unjustified and/or is based on a defective and/or misconceived reasoning.

4. The administrative procedure as a whole, which resulted in the issue of the sub judice act and/or decision is contrary to the Constitution, the relevant Laws and Regulations and the principles of goods administration and is, therefore, void.

5. The respondent and its subordinate organs in issuing their sub judice act and/or decision, took into consideration, unlawfully and irregularly, material which is irrelevant and groundless and/or which were not lawfully entitled to take into consideration for the purpose of issuing the sub judice decision and/or the truth and foundation of which they did not examine and/or which was not properly and lawfully examined".

Counsel for applicant contended that as far as the decision of the Licensing Authority is concerned, which was communicated to the applicant on the 8th June, 1978, no reasoning is given and that the Minister when dealing with the hierarchical recourse, instead of allowing the appeal on the ground of lack of reasoning, he confirmed the decision without giving any additional ground for having done so and merely repeating the decision of the Licensing Authority. He further added that in view of the fact that the sub judice decision affects the interests of the applicant it should have been specially reasoned. He has also made special mention of the fact that the same Licensing Authority, a few months before the sub judice decision, dismissed a similar application of the applicant on the ground that the needs of the route did not justify the granting of a new licence. The interested party had appealed to the then Minister of Communications and Works who had also dismissed his appeal on the same ground, only within a month before the interested party submitted his new application which led to the sub judice decision. In view of that, counsel for applicant submitted, the Licensing Authority and the Minister should have given full and detailed reasons why they changed their previous decisions.

Counsel for the reaspondent has argued that it is not the decision of the Licensing Authority that is in issue in the present case, but that of the Minister. He added that in any event, the decision of the Licensing Authority is duly reasoned and that even if it was not the defect has been cured by the decision of the Minister which is the final decision and which is duly reasoned.

In the case of *Mitidou* v. *CYTA* (1982) 3 C.L.R. 555, I held that the decision of both the First and Second Instance Disciplinary Board form one composite administrative act and when it is completed the decision of the First Instance Board merges in the final act. Thus, at page 577, I said:-

> "It is correct that in the case of a composite administrative act, if the component parts have the characteristics of an executory act, they preserve their executory character and each one of them is capable of being challenged by recourse. But when the composite administrative act is completed, the independent intermediate parts merge into the final act and their executory character is lost by such changes and cannot be challenged individually".

And after making reference to certain Greek authorities and previous decisions of this Court, I concluded as follows at pp. 580, 581:-

> "Reverting now to the case under consideration I have come to the conclusion that the decision of the First Instance Disciplinary Board has merged in the decision of the Second Instance Appellate Board and in consequence it has lost its executory character and cannot be challenged by the present recourse. The only decision that can be challenged is that of the Second Instance Disciplinary Board.
>
> It is, however, well settled that though the last decision of a composite administrative act is the only one that can be challenged, nevertheless, once the intermediate component parts are a legal prerequisite to the final act, their validity may be examined in deciding the validity of the final act, as the invalidity of a part of a composite administrative act renders all acts which follow, including the final concluded act, null and void. (See Kyriacopoulos

—Greek Administrative Law, Vol. 3 at p. 99, Tsatsos—Recourse for Annulment, 3rd Ed. at p. 152, Conclusions from the Jurisprudence of the Greek Council of State (1929-1959) at p. 24 and also our own case law. See, inter alia, *Orphanides* v. *The Republic* (1968) 3 C.L.R. 385, at p. 392, *Nemitsas Industries Ltd.* v. *The Municipal Corporation of Limassol and Another* (1967) 3 C.L.R. 134, *Savvas Hji-Georghiou* v. *The Republic* (1974) 3 C.L.R. 436 at p. 445, *Ero Angelidou and Others* v. *The Republic* (1975) 3 C.L.R. 404, *Christodoulou and Another* v. *CYTA* (1978) 3 C.L.R. 61, *Ioannou* v. *Electricity Authority* (1981) 3 C.L.R. 280 at p. 299).

Therefore, though the decision of the First Instance Board cannot be challenged by the present recourse, the grounds of appeal advanced against the validity of such decision and argued before the Second Instance Disciplinary Board and which were rejected by such Board may be grounds of law in considering the validity of the decision of the Second Instance Disciplinary Board. For this reason, I find that grounds 1-15 of this recourse, though directed against the decision of the First Instance Disciplinary Board being grounds of law intended to establish the irregularity or the validity of acts or decisions which preceded the decision of the Second Instance Disciplinary Board, which is the final decision challenged under paragraph B of the prayer in this recourse have to be examined".

In the present case although the decision of the Licensing Authority has merged in the decision of the Minister, since the question of reasoning of that decision was one of the points raised in support of the hierarchical recourse before the Minister it can be examined in this recourse. Now, examining the decision of the Licensing Authority as it was communicated to the applicant (blue 44 in exhibit 1) I find that it does not contain any reasoning at all. It is however, an accepted principle of administrative law that the reasoning may be supplemented from the material in the file. In this respect, reference may be made to the extract from the minutes of the meeting of the Authority dated 16.5.1978, p. 17, which appears in blue 38 in exhibit 1 and contains the decision of the Licensing Authority. It reads as follows:

"The Licensing Authority having heard with attention what was said on behalf of those interested and having taken into consideration all the material in the files, finds that there exists a transportation problem for the service of the community of Kalavassos and it therefore decides to grant a rural bus licence to the applicant on the route Kalavassos–Limassol for his bus No. CU 983. The bus may also transport workers from Limassol to Vassiliko mine, as before.

The Licensing Authority also decided to cancel the licence of vehicle GD 92 to take passengers from Kalavassos, in view of the statement of Mr. Vassiliades".

The reasoning of the decision of the Licensing Authority is contained in the above quoted extract and the applicant was all along aware of the proceedings and since he was also present at the hearing before the Licensing Authority there is no doubt that he had knowledge of all the material and details which led to the decision taken by the Licensing Authority. I, therefore, find no merit in this part of the argument of counsel for the applicant.

I come now to consider the reasoning of the decision of the Minister, that is the sub judice decision, reference to which has already been made earlier in this judgment. From its text, it is clear that the Minister took his decision bearing in mind the result of the inquiry carried out by the Inland Transport Department, the representations of the parties and all other material before him, considerations which he communicated to the applicant by informing him of his decision. Having considered the contents of the decision of the Minister, as communicated to the applicant, I find that it is duly reasoned.

It was the contention of counsel for applicant that the Licensing Authority took its decision, which was subsequently affirmed by the Minister, only a few months after the previous Minister of Communications and Works had dismissed a similar application of the interested party. Due to the short time that elapsed between the previous decision dismissing the application of the interested party and the new decision granting such permit, counsel submitted, special reasons should have been given

for the change of the attitude of the Licensing Authority and the Minister.

In the Manual of Administrative Law by Spiliotopoulos in paragraph 456 at pp. 420, 421 it reads:

"_____Είδικώτερον, ή μεταγενεστέρα μεταβολή τοῦ περιεχομένου τῆς ἐννοίας, τῆς ὁποίας τὸν καθορισμὸν ὁ ἐφαρμοστέος κανὼν δικαίου ἀναθέτει εἰς αὐτό, δὲν συνιστᾶ ἄνισον ἄσκησιν τῆς διακριτικῆς εὐχερίας, ἐκτὸς ἐὰν τὸ αἰφνίδιον τῆς τοιαύτης μεταβολῆς ἐδημιούργησεν ἀδικαιολογήτως ἐξαιρετικὰς δυσχερείας διὰ τὸν διοικούμενον καὶ ἀντίκειται εἰς τὴν ἀρχὴν τῆς ἐπιεικείας".

("_____ Especially the later change of the contents of meaning, whose definition the rule of law applicable entrusts to it, does not constitute unequal exercise of the discretionary power, unless the sudden change has created unjustifiably special hardships for the subject and is contrary to the rule of leniency").

It appears that the above proposition was based on the decision of the Greek Council of State in Case S.E. 2387/1966 in which it was held that:

"Δεδομένου ὅμως ὅτι πρὸ βραχέος χρόνου ἡ ὁμοίου περιεχομένου πρότασις τοῦ Δήμου εἶχε κριθῆ ὑπὸ τοῦ ἰδίου Συμβουλίου ἀπορριπτέα καὶ τελικῶς ἀπερρίφθη ὑπὸ τοῦ Ὑπουργοῦ Δημοσίων Ἔργων, κρίναντος, κατὰ τ' ἀνωτέρω, τὴν προταθεῖσαν τροποποίησιν ὡς μὴ ἐπιβαλλομένην ὑπὸ κοινῆς τινος ἀνάγκης καὶ πολεοδομικῶς ἀσύμφορον, ἐπεβάλλετο ἤδη εἰδικώτερα αἰτιολόγησις τῆς μεταστροφῆς τῶν ἐπὶ τοῦ θέματος ἀπόψεων τῆς Διοικήσεως, διὰ παραθέσεως τῶν λόγων, οἵτινες ἐκρίθησαν δικαιολογοῦντες τὴν μεταστροφὴν ταύτην_____".

The English translation of which reads as follows:

("Given that a short time earlier the submission of the Municipality of similar context was considered by the same Council as unacceptable and was subsequently dismissed by the Minister of Public Works who, after consideration of the above, decided that the submitted alteration was not deemed as having to be imposed as a result of a public need and was not from the town planning aspect beneficial, it was necessary that a more specific reasoning of the change

of the opinion of the Administration on the subject be given by stating the reasons which were taken into consideration for justifying such change").

In the present case it is true that the new decision was taken only a few months after the previous decision dismissing the application of the interested party. The previous decision of the Minister, however, though taken on the 26th January, 1978, was based on the material before him and the circumstances existing in November, 1977, when the decision of the Licensing Authority was taken. The new Decision of the Licensing Authority which was taken on 16.5.1978 was based on new facts and in particular on a new inquiry as to the use of the route by the carrying out by the Inland Transport Authority of a check on the road in April, 1978 which, together with the representations of all parties interested for the proper functioning of the route, created new material and factual situation at the time when the sub judice decision was taken, justifying both the Licensing Authority and the Minister to exercise their discretion in the way they did. In view of such change of circumstances, there was no need for special reasons to be given why the respondents departed from the previous decision. Irrespective of that, however, even if special reasons for such departure would be necessary, such reasons may be found in the sub judice decision of the Minister in which special reference is made to the check on the route which took place in April, 1978, after the previous decision was taken. I, therefore, find that this ground fails.

The next ground I propose to examine is that of misconception of fact. Counsel for applicant has argued in this respect that the Minister should have ordered a new check on the route before issuing his decision in view of the new academic year and the fact that most of the passengers using the route are students. He has also argued that a number of the passengers boarding the buses get off at the junction of Kalavassos road with the Nicosia - Limassol main road which is about two miles away from the village, in order to find other means of transport to go to Larnaca, since for administration purposes, the village of Kalavassos belongs to the district of Larnaca. For this reason, counsel contended, the check should have been carried out on the Nicosia - Limassol main road and that therefore, the result of such check was wrong. He also submitted that the check

was carried in a way prejudicial to his client and in such a way as to lead to wrong inferences.

Counsel for the respondents, on the other hand, has argued that the check had been carried out in accordance with the standing practice of the Licensing Authority and it was reasonably open to the respondents to base their decision on it. That, in any case, the burden of proving misconception lies on the party who alleges it and applicant did not discharge this burden.

Misconception of fact is a ground which has to be proved and there is a presumption against it. In this respect in *Spiliotopoulos Manual on Administrative Law*, pp. 416, 417, paragraph 453, it is stated that:

> "Διὰ νὰ ἐπιφέρῃ τὴν ἀκύρωσιν τῆς προσβαλλομένης πράξεως ἡ πλάνη περὶ τὰ πράγματα πρέπει α) νὰ εἶναι οὐσιώδης (ΣΕ 1664/1962), δηλαδὴ νὰ ἔχῃ ἐπίδρασιν ἐπὶ τῆς κρίσεως τοῦ διοικητικοῦ ὀργάνου καὶ β) νὰ ἀποδεικνύεται ἐκ τῶν στοιχείων τοῦ φακέλλου ἢ δι' ἐπαρκῶν στοιχείων ὑποβαλλομένων ὑπὸ τοῦ προβάλλοντος τὸν λόγον τοῦτον ἀκυρώσεως αἰτοῦντος (ΣΕ 2809/1969). Δεδομένου δὲ ὅτι ἡ πλάνη περὶ τὰ πράγματα δὲν λαμβάνεται αὐτεπαγγέλτως ὑπ' ὄψιν ὑπὸ τοῦ δικαστηρίου, ἀλλὰ πρέπει ὁπωσδήποτε νὰ προταθῇ ὑπὸ τοῦ αἰτοῦντος, δημιουργεῖται τεκμήριον κατ' αὐτῆς".

The English translation reads as follows:

> ("In order to cause the annulment of the sub judice act the misconception of fact must a) be material (CS 1664/1962), in other words to affect the judgment of the administrative organ and (b) be proved by the material in the file or by sufficient material submitted by the applicant propounding this ground for annulment (CS 2809/1969). Since misconception of fact is not examined by the Court ex proprio motu, but has to be pleaded by the applicant, a presumption is raised against it.")

It has, however, been accepted by our Courts that even when a probability of any misconception of fact exists, the decision concerned should be annulled. In this respect, in the case of *Nicolaides* v. *The Greek Registrar of the Co-operative Societies etc.* (1965) 3 C.L.R. 585, Triantafyllides, J. (as he then was) stated at pp. 600 - 601 that:-

"The burden of proof regarding the existence of such a misconception lies on an applicant who alleges it, because there is a presumption against the existence of such misconception. Such burden is discharged if the misconception is proved to exist or if it is shown that it is most probable that it exists, (vide Stasinopoulos, Law of Administrative Disputes, (1964) p. 222 and Stasinopoulos, Law of Administrative Acts (1951) p. 305).

Moreover, once the applicant in a case succeeds in showing as probable the existence of such a misconception, it is open to an Administrative Court, being in doubt as to the existence of such a misconception, to annul the sub judice decision - so as to render possible a re-examination by the administration - rather than to call for further evidence before it for the purpose of resolving such doubt (vide Stasinopoulos (1951), supra, p. 305, and also *Photiades and The Republic*, 1964 C.L.R. 102).

In the light of the totality of the material before me, I have reached the conclusion that it is most probable, bordering on certainty, that the view that Applicant, in the matter of the expenses in question has acted fraudulently, in the manner suggested - on the basis of exhibit 22 - by Mr. Smyrnios in paragraph 2 of exhibit 23, is a misconception. It follows, therefore, that by adopting as he did exhibit 23, Respondent has acted on the strength of a most material misconception in dismissing Applicant from all his offices in the Co-operative movement, as a person unfit to hold any office therein and as a person who on the strength of the past practice in such matters had to be dismissed.

As a result I am bound to annul the decision of respondent set out in exhibit 1.

Even if I were only of the opinion that the existence of the said misconception was not most probable, as I have found it to be, but only so sufficiently probable as to raise a doubt in my mind on the point, then on the basis of the aforementioned principles of Administrative Law, I would still have annulled the sub judice decision of Respondent, thus opening the way for a fresh examination of the matter by Respondent, rather than adopt the alternative course of

calling further evidence before me, in an effort to clear up definitely the question of the existence or not of the said misconception. The latter course would have entailed a lengthy and detailed examination into a lot of relevant circumstances and such examination is one that should and could be made more properly in the first instance by Respondent, the officers under him and the Societies concerned."

The same principle has been repeated in a number of cases like *Mallouros* v. *E.A.C.* (1974) 3 C.L.R. 220, 224; *Kontos* v. *Republic* (1974) 3 C.L.R. 112, pp. 127 - 129; *HadjiMichael* v. *Republic* (1972) 3 C.L.R. 246, 252; *Christodoulou* v. *CYTA* (1978) 3 C.L.R. 61, 69; and the Full Bench case of *Thalassinos* v. *Republic* (1974) 3 C.L.R. 290, 294.

The applicant in the present case has advanced a number of allegations as to the wrong way that the check on the route was carried out and as to how such check should have been effected, on which he invited the Court to find that there was a misconception of fact. Though the burden of proving misconception lied on the applicant, he did not call any evidence in support of any of his allegations nor did he summon the responsible officer who carried out the check on the route and who mentioned in his report which is in the file before me, that the route was not sufficiently served, to submit him to cross-examination to answer the points raised by counsel for applicant in his address, and if need be, to call evidence to contradict him on any material point. Neither did the applicant himself give any evidence in support of his allegations which might have necessitated the calling of evidence by the respondents.

I, therefore, find that the applicant failed to discharge his burden of proving any misconception and in the light of the totality of the material before me, I have not been persuaded that the existence of the alleged misconception was most probable or "so sufficiently probable as to raise a doubt in my mind."

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

*Recourse dismissed with no order as to costs.*