

1985 January 8

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

LAZAROS THEODOULOU AND OTHERS,

Applicants.

v.

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

Respondents.

(Case No. 128j83).

Road Transport—Public use vehicle—Replacement of—Application for—Neither the Minister nor the Licensing Authority have discretion to limit or vary the terms of the licence of the vehicle to be substituted—Proviso to section 8(1) of the Road Transport Law, 1964 (Law 16/64 as amended).

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The recourse turned on the question whether upon an application for the replacement of a public use vehicle the Minister or the Licensing Authority have discretion to limit or vary the terms of the licence to be substituted.

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Held, that on application for the substitution of a licensed vehicle, the discretion of the Minister is limited to verifying the fact of withdrawal from circulation and suitability of the new car for the carriage of passengers on similar terms; that neither the Minister nor the Licensing Authority on application for the replacement of a public use vehicle have discretion to limit or vary the terms of the licence of the vehicle to be substituted; and that the law treats the licence as conferring a proprietary right in the transferability of which the owner of the licensed vehicle has a vested right on its replacement (see proviso to

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section 8(1) of the Road Transport Law, 1964 (Law 16/64 as amended).

Application dismissed.

Cases referred to -

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

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Recourse.

Recourse against the decision of the respondent whereby motor vehicle MU 677 belonging to the interested party was licensed as a rural bus designated for public use

J. Erotokritou, for the applicants.

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M. Tsiappa (Mrs), for the respondent.

M. Vassiliou, for the interested party.

Cur. adv. vult.

PIKIS J. read the following judgment. The case for the applicants turns solely on the appreciation of the facts by the Minister of Communications and Works, ill conceived in their contention, relevant to the application of the interested party for the licensing of vehicle MU677 as a rural bus designated for public use. It is their case that the error vitiated the decision, particularly the misconception by the Minister of the facts relevant to the licence of rural bus FL641 that vehicle MU677 was designed to replace. It is the case for the applicants that while bus FL641 was licensed to carry labourers en route to Paphos — Anatoliko-Asprokremos — the need for such transport service vanished with the session of work at certain industries in the Paphos area. The whole case is premised on the assumption that the conditions attached to the licence of bus FL641 limited its use to the transportation of labourers to the aforementioned areas, and the absence of any authority on the part of a Minister to sanction deviation therefrom upon withdrawal from circulation of vehicle FL641 and its replacement by bus MU677. The respondents dispute the correctness of this assumption and point to the terms of the licence for

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the carriage of passengers by vehicle FL641 that imposed no limitation in relation to the class of passengers the transporter was authorised to carry. Upon proper appreciation of this factor, it was argued for the respondents, the
5 Minister and the Licensing Authority before him, had no discretion to withhold a licence on similar terms for bus MU677 upon withdrawal from circulation of bus FL641. On reflection upon the rival positions, the case can be briefly disposed of upon ascertainment of the facts relevant
10 to the licence of bus FL641 for the carriage of passengers.

It is more than clear that vehicle FL641 was licensed as a public use bus for the carriage of passengers from Pomos to Paphos-Anatoliko and Asprokremos (see, exhibit 2, blues 29 and 30). There was no limitation whatsoever respecting either the class of passengers or the destination of passengers. It was an unconditional licence for the transportation of passengers to Paphos-Anatoliko and Asprokremos. Hence the factual basis upon which applicants rested their case, is ill founded. The Law
15 specifically confers a right on the owner of a public use vehicle to have it replaced with a new one, upon withdrawal of the licensed vehicle from circulation. He is entitled as of right to have the new vehicle licensed on similar terms to the replaced one—see, the proviso to s.8(1)
20 of the Road Transport Law—16/64, as amended by s.4 of Law 60/75, and s.8(6) of the Road Transport Law, 1982—Law 9/82, that repealed and reenacted the pertinent provisions of Law 16/64. On application for the substitution of a licensed vehicle, the discretion of the Minister is limited
30 to verifying the fact of withdrawal from circulation and suitability of the new car for the carriage of passengers on similar terms (certain conditions that may be introduced, relevant to the capacity of the vehicle, need not concern us here). The principles relevant to the powers of the
35 Minister on a hierarchical recourse need not concern us here. They were the subject of discussion and analysis in *Tsouloftas v. The Republic* (1983) 3 C.L.R. 426. Neither the Minister nor the Licensing Authority on application for the replacement of a public use vehicle have
40 discretion to limit or vary the terms of the licence of the vehicle to be substituted. The Law treats the licence as conferring a proprietary right in the transferability

of which the owner of the licensed vehicle has a vested right on its replacement.

With the verification of the facts of the case made above, and proper appreciation of the provisions of the law, the case for the applicants collapses and must be dismissed. It is dismissed. Let there be no order as to costs.

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Recourse dismissed
No order as to costs.