

1985 June 14

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

EFSTATHIOS KYRIACOU AND SONS LTD.,  
AND ANOTHER,

*Applicants,*

v.

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

*Respondent.*

(Case No. 252/78).

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*Administrative Law—Due inquiry—Lack of—Sub judice decision granting road use licence to interested party on the ground that the needs of the area will be better served—Earlier decision directing applicants to increase the routes of their buses in the same area—No inquiry carried out by respondent as to whether such directions complied with and as to whether the area was, as a result, adequately served at the time of taking of the sub judice decision—Which has to be annulled for lack of due inquiry, and for absence of reasoning—Strong probability of a misconception of fact which would, also, be sufficient to vitiate the sub judice decision.*

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On the 6th June, 1977, applicant 1 applied for an extension of the route of its bus No. HV 992 so as to include Amathus Hotel. Applicant No. 2 made a similar application on the 24th June, 1977, in respect of his bus No. EE 373 whilst the interested party applied, on the 10th August, 1977, for a licence for a route from Amathus to Limassol Municipal Market and vice versa in respect of his bus No. DS 408. The Licensing Authority at its meeting dated 18th October, 1977, decided to approve the applications of applicants 1 and 2 and dismiss that of the interested party, on the ground that by the granting of

the two licences the route would be sufficiently served. As against this decision the interested party filed on the 2nd December, 1977, a hierarchical recourse to the Minister of Communications and Works. By his decision dated 6th March, 1978, the Minister allowed the recourse of the interested party and directed the Licensing Authority to issue a licence to him, in respect of bus No. DS 408 for the route Amathus area Municipal Market of Limassol (route 26) on the ground that the needs of the area will be better served. 5 10

By means of an earlier decision, taken on the 11th February, 1978, the Minister directed the Licensing Authority to invite the joint venture of urban bus owners of Limassol of which applicant 2 was a member—to increase the routes of their buses so as to provide service to Amathus Beach Hotel every twenty minutes and (b) to amend and/or extend the hours of service of their buses after 6.00 p.m. and until 2.00 a.m., so as to provide full service both for the employees and also for the guests of Amathus Beach Hotel. 15 20

*Upon a recourse by the applicants against the aforesaid decision of the Minister dated the 6th March, 1978:*

*Held*, that the Minister acting upon his own decision of the 11th February, 1978, should have carried out an inquiry as to whether his directions had been complied with and as to whether the area was, as a result, adequately served at the time of the taking of the sub judice decision. That this, as it appears from the material before the Court, he failed to do; and that, therefore, the sub judice decision has to be annulled for lack of due inquiry. 25 30

*Held, further*, that no reasoning appears in the sub judice decision as to why the Minister decided to grant the said permit; and that if such reasoning is to be deduced from the minutes of the hearing before him, to say the least there is a strong probability of a misconception of fact which would, also, be sufficient to vitiate the sub judice decision. 35

*Sub judice decision annulled.*

*Cases referred to:*

*Zenios v. Republic* (1983) 3 C.L.R. 1181.

**Recourse.**

5 Recourse against the decision of the respondent directing the Licensing Authority to issue a road use licence to interested party in respect of his bus DS 408 on the route Amathus-Municipal Market Limassol.

A. *Markides*, for the applicant.

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

B. *Vassiliades*, for the interested party.

*Cur. adv. vult.*

15 L. LOIZOU J. read the following judgment. By this recourse the applicants seek a declaration that the decision of the Minister of Communications and Works, dated 6th March, 1978 by which he directed the Licensing Authority to issue a road use licence to the interested party, Ch. Ky-preopoulos, in respect of his bus No. DS 408 on the route Amathus-Municipal Market of Limassol, is null and void  
20 and of no effect whatsoever.

Applicant 1 is a company of limited liability and the owner of buses amongst which bus HV 992.

25 Applicant 2 is also a bus owner, and owns bus No. EE 373 and the interested party is the owner of bus No. DS 408.

At the beginning of 1977 before the events leading to the present proceedings, the position, with regard to the three buses was as follows:

30 Bus No. HV 922 was licensed to carry passengers on the route Mouttayiaka-Limassol and as it appears from blues 6-4 in exhibit 11, it had, its starting point at the junction to Ayios Tychonas, on the Nicosia-Limassol road (route 6A).

35 Bus No. EE 373, which was originally licensed on a route in the occupied areas, was transferred in the name

of applicant No. 2 in April, 1977, in exchange for bus No. G 373 which belonged to him, and was licensed on the route Ayios Tychonas-Limassol, which is route 25.

Bus No. DS 408 was purchased by the interested party in 1977 in substitution for his old bus No. Q 845 which was licensed to carry students from Ayios Tychonas to the School at Yermasoyia. On the 1st July, 1977, a licence was issued to the interested party in respect of bus DS 408 which was restricted for carrying students only, from Ayios Tychonas to Yermasoyia, and so long as a contract to this effect between the parents of such students and the interested party subsisted. A previous application by the interested party for the issue of a licence in respect of his old bus No. Q 845, on the route Ayios Tychonas-Limassol (route 25) with his house which, as he stated, is near Amathus Hotel as a starting point, was dismissed by the Licensing Authority on the 7th June, 1977, on the ground that the route was sufficiently served by the existing licensed buses.

It also appears that at some time prior to April, 1977, Amathus Navigation Co. Ltd., applied for a licence in respect of private bus No. GY 364, in order to carry its personnel employed in Amathus Hotel as well as the guests of the Hotel, and that it was approved by the Licensing Authority only in as far as its employees were concerned. Against this decision there was a recourse to the Minister, both on behalf of the company against that part of the decision dismissing the application in so far as it related to the guests of the Hotel, as well as by applicant 1 in the present recourse. In the meantime applicant 1 sent, on behalf of the joint venture of the urban bus owners of Limassol, a letter to the Chairman of the Licensing Authority dated the 7th March, 1977 (exhibit 9) suggesting that in view of the increasing needs of the developing area adjoining the seashore on the Nicosia-Limassol road, route No. 6 (Mouttayiaka-Limassol) should be extended so as to cover the said area. The Minister issued his decision in respect of the above recourse on the 28th April, 1977 (exhibit 8) allowing the recourse of applicant No. 1 and rejecting that of Amathus Navigation Co. Ltd., and directed the Licensing Authority to:

“invite those serving the urban routes within the

5 traffic area of Limassol to proceed, if necessary to any arrangement (extension of the routes of their buses, increase of their routes, alteration and/or extension of their time tables etc) in such a way as to provide full service in respect of the transportation of the personnel of Amathus Navigation Co. Ltd., and the guests of Amathus Beach Hotel from the town of Limassol to the Hotel and vice versa.”

10 On the 6th June, 1977, applicant 1 applied for an extension of the route of its bus No. HV 992 so as to include Amathus Hotel. Applicant No. 2 made a similar application on the 24th June, 1977, in respect of his bus No. EE 373 whilst the interested party applied, on the 10th August, 1977, for a licence for a route from Amathus to 15 Limassol Municipal Market and vice versa in respect of his bus No. DS 408.

20 On the 19th September, 1977, a meeting took place in the District Transport Office in Limassol, at which applicant No. 2 agreed to join the joint venture of urban bus owners of Limassol.

25 The Licensing Authority at its meeting dated 18th October, 1977, decided to approve the applications of applicants 1 and 2 and dismiss that of the interested party, on the ground that by the granting of the two licences the route would be sufficiently served. The interested party filed on the 2nd December, 1977, a hierarchical recourse against the above decision of the Licensing Authority.

30 In the meantime Amathus Navigation Co. Ltd., filed a recourse against the decision of the Minister (exhibit 8) which was later withdrawn upon the undertaking of the Minister to re-examine the case. The Minister re-examined the case and issued his decision on the 11th February, 1978 allowing the recourse of applicant No. 1 and dismissing that of the company (exhibit 3).

35 By his decision the Minister directed the Licensing Authority to invite the joint venture of urban bus owners of Limassol (a) to increase the routes of their buses so as to provide service to Amathus Beach Hotel every twenty minutes and (b) to amend and/or extend the hours of service 40 of their buses after 6.00 p.m. and until 2.00 a.m., so as

to provide full service both for the employees and also for the guests of Amathus Beach Hotel.

The recourse of the interested party to the Minister was heard on the 30th January, 1978 (exhibit 2) and the Minister issued his decision on the 6th March, 1978, allowing the recourse of the interested party and directing the Licensing Authority to issue a licence to him, in respect of bus No. DS 408 for the route Amathus area-Municipal Market of Limassol (route 26) on the ground that the needs of the area will be better served, (without, however, cancelling the licences granted to the applicants) (exhibit 1). 5 10

The applicants filed the present recourse, against the decision of the Minister to grant a licence to the interested party.

Counsel for applicant argued firstly that the Minister was labouring under the factual misconception that the passengers from Amathus area had to travel through either Ayios Tychonas or Mouttayiaka in order to go to the town of Limassol, which caused delay and inconvenience to them, whereas this was not so, as these villages were the starting points of the routes, and the buses entered Amathus area later, on their way to Limassol. Counsel also argued that the Minister failed to give due regard to his decision dated 11th February, 1978, cancelling the licence granted by the Licensing Authority to Amathus Navigation Co. Ltd. and directing the applicants to increase their routes and extend their time tables so as to cover the needs of the area and failed also to carry out a due inquiry to ascertain the position at the relevant time and the needs of the area as a whole as a result of his directions. Lastly, counsel argued that the reasoning of the sub judice decision is vague and cannot be supplemented by the material in the file, which is only what is contained in exhibit 2. 15 20 25 30

Counsel for the respondents argued that there was no misconception of facts, that the facts as placed before the Minister were correct and that the buses did in fact, after taking up passengers from Amathus, proceed to Limassol via either Ayios Tychonas or Mouttayiaka. In respect of the reasoning he maintained that it is supplemented from the minutes of the proceedings before the Minister, i.e. 35 40

exhibit 2 and he lastly submitted that the case of Amathus Beach Hotel is irrelevant as it related to the employees of that hotel only and that is why it was refused.

5 I agree that the case of Amathus Navigation Co. Ltd., is irrelevant to the issue in the present case in so far as it related to the cancellation of the licence issued by the Licensing Authority to the Company for its private bus. His decision in the case, however, went beyond this as he directed, as stated earlier on, that the applicants should  
10 increase their routes in the area and provide service to Amathus Hotel every twenty minutes. The least that can be said is that the Minister, acting upon his own decision as above, should have carried out an inquiry as to whether his directions had been complied with and as to whether  
15 the area was, as result, adequately served at the time of the taking of the sub judge decision. This, as it appears from the material before me, he failed to do. Perhaps it should also be mentioned that the file of the hierarchical recourse before the Minister has not been produced in  
20 these proceedings except for the minutes of the hearing before the Minister. In the light of all the above, I find that the sub judge decision has to be annulled for lack of due inquiry.

25 Although this disposes of the case I may say briefly that no reasoning appears in the sub judge decision as to why the Minister decided to grant the said permit. If such reasoning is to be deduced from the minutes of the hearing before him (exhibit 2) then it would appear that it is the fact alleged on behalf of the interested party that the buses  
30 of the applicants, after taking up passengers from Amathus proceeded to Limassol via either Ayios Tychonas or Mouttayaika thus causing inconvenience to the said passengers. But as it appears from the evidence adduced on behalf of the applicants, which stands uncontradicted, and  
35 also from the files of buses EE 373 and HV 992 this does not seem to be so. To say the least there is a strong probability of a misconception of fact which would also be sufficient to vitiate the sub judge decision (see *Zenios v. The Republic* (1983) 3 C.L.R. 1181).

40 For all the above reasons this recourse succeeds and the sub judge decision is hereby annulled. There will be no

order as to costs. The order for costs made in favour of the interested party in the course of the hearing of the recourse is also discharged.

*Sub judice decision annulled.*

*No order as to costs.*

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