

1986 December 23

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

STYLIANOS CHRISTODOULIDES,

Applicant,

v.

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

Respondent.

(Case No. 309/77).

Motor Transport—The Motor Transport Regulation Law 1964
—Section 6(1)—Hierarchical recourse—Powers of Minister
of Communications and Works in dealing with such re-
course—Minister vested with same powers as those of the
Licensing Authority.

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The applicant, who, inter alia, is the owner of a bus,
licensed to carry passengers on the route Alona - Kato
Moni - Nicosia, with permission to take students from
Platanistasa, challenges by means of this recourse the
decision of the respondent Minister, whereby, upon a
hierarchical recourse by the interested parties, he re-
versed the decision of the Licensing Authority and granted
to the interested parties a road use permit for bus DE
469 on the route Platanistasa - Nicosia.

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The sub judge decision was taken on the ground that
the number of passengers on the route Platanistasa - Ni-
cosia justifies the granting of the permit applied for.

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The applicant complains of a misconception of fact
in that the conclusion as to the number of such passengers
conflicts with the check made on the needs of the route,
which was before both the Licensing Authority and the

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respondent Minister. He, also, complains that the Minister failed to take into consideration the illicit competition by the interested parties, i.e. the carrying of passengers at reduced fees.

5 *Held, dismissing the recourse:* (1) The Minister in determining a hierarchical recourse is vested with the same powers as those of the Permits Authority and he is empowered to review the facts and exercise his own discretion.

10 (2) Nothing that was placed before this Court proves any misconception of fact or that the Minister wrongly exercised his discretion.

(3) The allegation as to illicit competition was not substantiated by any evidence.

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

Cases referred to:

Solea Car Co. Ltd. v. The Republic (1976) 3 C.L.R. 44;

Kourris and Another v. The Republic (1976) 3 C.L.R. 109;

20 *Efstathios Kyriacou v. The Republic* (1970) 3 C.L.R. 106.

Recourse.

25 Recourse against the decision of the respondent to grant to the interested parties a road use licence in respect of the bus under Reg. No. DE 469 on the route Platanistasa - Nicosia.

Ph. Valiantis, for the applicant.

Cl. Antoniadis, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

30 MALACHTOS J. read the following judgment. The applicant in this recourse prays for a declaration that the act or decision of the Minister of Communications and Works

dated 21.9.77, by which he decided to grant a road use permit to P. Aloneftis, O. Georghiou and G. Hadjisymeou as regards the bus under Reg. No. DE 469 on the route Platanistasa - Nicosia, is null and void and of no legal effect whatsoever.

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The facts of the case are the following:-

The applicant comes from Alona and is the owner of rural bus No. EP 280, licensed to carry passengers on the route Alona - Kato Moni - Nicosia, with permission to take students from Platanistasa. His bus has a capacity of 38 passengers. He is also the owner of two other rural buses, licensed to carry passengers on the route Kato Moni - Nicosia only. Platanistasa has three buses licensed to carry passengers to Nicosia of a joint capacity of 148 passengers and a fourth one, carrying workers only to Komitis Farm. The owners of the three buses serving Platanistasa - Nicosia route, formed jointly an association, in or about November, 1976. They then bought another bus, Reg. No. DE 469, of the capacity of 38 passengers. That bus, namely DE 469, formerly belonged to a certain Varelhas and was licensed on the route Morphou - Nicosia. This owner had applied, on 21.9.1976 (blue 117 of exhibit 11), for a licence to circulate it on the route Platanistasa - Nicosia. Following this application, a check was made, on the 27th and 29th September, 1976, on this route, to ascertain the number of passengers using it. The check and its results appear in exhibit 8. The members of the association then bought the bus DE 469, and on 6.12.76 all the rights of the previous owner were transferred to them (see blue 136 of exhibit 11).

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On 7.12.1976, the new owners applied to the Permits Authority for a licence to circulate it on the route Platanistasa - Nicosia. Two objections were made. The first objection was made by a certain Mr. Papaefstathiou, owner of bus No. GH 633, licensed to carry workers from Platanistasa to Komitis farm, and the second was made by the applicant.

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In his objection, (exh. 1), applicant alleges, inter alia, that the "association" members carry passengers in their

buses with reduced passenger fees, with the result that his interest is adversely affected.

5 The Permits Authority then, by a letter dated 19.5.77 invited all parties interested, i.e. the applicant, the interested parties and Mr. Papaefstathiou, to attend a meeting on the 31.5.77 and hear their representations. On that date the Permits Authority examined the matter and rejected the application of the interested parties on the ground that the number of existing buses is enough to cover the needs of the village and also that the granting of such a licence would affect adversely the interests of the applicant in this case.

15 The interested parties were notified by a letter from the Permits Authority dated 8.6.77 which is exhibit 2 and reads as follows:-

20 "I wish to refer to your application dated 7.12.76 by which you apply for a road use licence for the bus under Reg. No. DE 469 on the route Platanistasa - Nicosia, and to inform you that the Permits Authority at its meeting dated 31.5.77 examined your application and rejected it for the reason that the existing licensed buses serve the needs of Platanistasa village as well as the fact that by the granting of the said licence the interests of the owner of the buses of Kato Moni will be affected."

The interested parties then appealed to the Minister of Communications and Works by means of a hierarchical recourse (exh. 9) on the following grounds, as they appear in paragraph 2 of exhibit 9:-

- 30 "(a) Misconception of facts as regards the serving of the route Platanistasa - Nicosia;
- (b) Wrong application of the Motor Transport (Regulation) Law, and especially bad and/or wrong interpretation of section 8 of Law 16/64.
- 35 (c) Excess of power."

The Minister heard the parties and their representations on 12.9.77 and decided to grant the permit. His decision

appears in exhibit 3, dated 21.9.77, which reads as follows:-

"Having taken into consideration all the material before me as well as the representations of the interested parties, I have reached the conclusion that the number of passengers on the route Platanistasa - Nicosia, justify the granting of the permit applied for.

2. For these reasons the above appeal is allowed and the Permits Authority is ordered to grant to the vehicle of the applicants a road use licence for rural bus, under Reg. No. DE 469, on the route Platanistasa - Nicosia."

The applicant filed the present recourse on 14.11.1977 based on the following grounds of law:-

1. The respondent acted under a misconception of fact as regards his conclusion that the number of passengers of the route Platanistasa - Nicosia justified the granting of the sub judice permit because this conclusion conflicts with the effected check on the needs of the route which was put before him and before the Permits Authority.

2. The respondent ignored completely the fact that the applicant conducts transport on the said route and that his car circulates empty because of illicit competition, i.e. the carrying of passengers at reduced fees.

Counsel for applicant has argued that the respondent acted under a misconception of fact in that he misconceived the contents of exhibits 7 and 8 which concern the report of the Comptroller of Transport and the result of the check made on the route. He did not take into account the fact that a number of the passengers were students and as such they could be carried by bus No. EP 280 which was licensed to carry students and was circulating almost empty at the relevant time. It was also argued that the Minister did not have before him the facts of the illicit competition by the interested parties against the applicant's interest, i.e. by carrying passengers at reduced fares.

As regards the allegation of illicit competition by the interested parties, it is a mere allegation for which no evi-

dence was adduced on behalf of the applicant to substantiate it.

As regards the other argument of counsel for applicant about misconception of fact this, as counsel for respondents put it, has to be proved by the party alleging it. I must say that nothing that was placed before this Court proves any misconception of fact. All the facts which were before the Permits Authority when they took their decision were placed once again before the Minister who heard the parties on appeal and formed his own opinion.

The powers of the Minister in determining a hierarchical recourse by way of appeal are set out in a line of decisions of this Court.

In *Solea Car Co. Ltd. v. The Republic* (1976) 3 C.L.R. 44 at p. 55 the following is stated:-

"There is no misconception of fact whenever the Administration evaluates in substance various and conflicting elements whose evaluation can in principle, lead to the conclusion to which the Administration arrived. Such evaluation is not controlled in its substance by the recourse for an annulment. In order to establish a misconception of fact, it must be shown that there was objective non-existence of the facts and circumstances upon which the act is based. Therefore, the decision reached was reasonably open to be taken, in the circumstances."

In *Kourris and Another v. The Republic* (1976). 3 C.L.R. 109, the following is stated at page 114:-

"I have gone through the relevant material in the file that the Minister and the Licensing Authority had before them and I have been satisfied that in the circumstances of this case, it was reasonably open both to the Licensing Authority and the Minister on appeal under section 6, to arrive at the conclusions that they did, regarding the needs of the route in question, particularly so in view of the presence of displaced persons in the area and their transport needs and there has been no misconception of fact whatsoever."

In *Efstathios Kyriacou v. The Republic* (1970), 3 C.L.R. 106 at p. 116 we read:-

“The powers of the Minister in deciding on an appeal of this nature are very wide, indeed; it is clear from the wording of section 6(1) that he can exercise his own discretion in the place of the discretion of the Licensing Authority.”

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It is clear from the above that the Minister in determining a hierarchical recourse, is vested with the same powers as those of the Permits Authority and he is empowered to review the facts and exercise his own discretion.

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In the case in hand, it cannot be said that there was a misconception of fact on the part of the Minister or that he wrongly exercised his discretion in reaching the decision complained of.

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For the above reasons, this recourse fails and is hereby dismissed with no order as to costs.

Recourse dismissed.

No order as to costs.

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