

1986 March 27

[A. Loizou. J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1. GEORGHIOS PENTAVKAS,
2. PANAYIOTIS PENTAVKAS.

Applicants.

v.

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

Respondents.

(Case No. 317/84).

Administrative Act—Executory—Confirmatory—New inquiry.

*Administrative Law—General principles—Reasoning of an administrative act—May be supplemented from the file—
—Due inquiry.*

5 On the 29.10.1982 the applicants applied to the Licensing
Authority for the grant to them of a temporary road
service licence for urban taxi for the vehicle Reg. No.
HB 70. The Licensing Authority decided to insist on its
10 decision dated 29.12.1981 and communicated to the ap-
plicants by letter dated 27.1.1982 and, as a result, dis-
missed the application and communicated the dismissal
to the applicants by letter dated 22.4.1983. The applicants
impeached the said decision by a hierarchical recourse to
15 the Minister of Communication and Works, who, how-
ever, "having in mind the existing legislation and all the
facts" reached the conclusion that the Licensing Authority
correctly dismissed the application. Hence the present re-
course.

20 It should be noted that by its said decision of the
29.12.81 the Licensing Authority had dismissed an appli-

ca-tion of the applicants dated 2.4.81 for a road service licence. in respect of the same vehicle with its seat at Larnaca on the following grounds, namely: (a) As mentioned in applicant's letter dated 1.9.1976 they had sold the said vehicle, then a rural taxi having its seat at Larnaca (Lapithou) to Adem Ramadan from Kyrenia with all its rights and consequently the application is without a subject, (b) That on the basis of the case law road service licences are linked both with the owner and the vehicle and in the present instance the licence followed the purchaser of the vehicle since it was separated from its owner and consequently the application is without a subject-matter, and (c) If applicants' application was for a new vehicle in replacement of HB 70, still standing registered in applicants' name, then and again it would have been rejected because it would have been for a new urban Taxi in Larnaca which is served satisfactorily by the existing licensed taxis.

In support of their last application dated 29.10.1982 applicants alleged, inter alia, that after the dismissal of their earlier application they made a new agreement with Adem Ramadan with which they sold to him the vehicle only as private and that they spent £600.- to bring Ramadan from Germany, who, after arriving in Cyprus, signed a declaration to the effect that he bought the vehicle as private without the "T". The Licensing Authority did not accept this declaration as true.

Held, dismissing the recourse: (1) The Court is not convinced that there has not been a new inquiry. Irrespective of the correctness and truthfulness of applicants' new allegations they appear to have been considered as new facts. It follows that the sub judice decision is not confirmatory of the earlier decision of the 29.12.81.

(2) The applicants' allegations as to the new agreement and the contents of the declaration of the said Ramadan are afterthoughts and rightly the Licensing Authority did not accept the declaration by Ramadan as true.

(3) The exposition of the relevant facts and the contents of all minutes placed before the Court show that the sub judice decision is duly reasoned in all respects. In any

event any reasoning that it may be found to be lacking is fully supplemented from the material in the file.

5 (4) There has been a due inquiry both by the Licensing Authority and the respondent and there is nothing to indicate that either the Authority or the respondent acted under a misconception of fact. Moreover, there is nothing before the Court to suggest that there has been a wrong exercise of discretion. On the totality of the circumstances before the Court the sub judice decision was reasonably open to the respondent.

Recourse dismissed.
No order as to costs.

Cases referred to:

Savva v. The Republic. (1985) 3 C.L.R. 694.

15 **Recourse.**

Recourse against the dismissal by the respondent of the hierarchical recourse of the applicants against the refusal of the licensing Authority to grant applicants a temporary licence of urban taxi in Larnaca for the vehicle under registration No. HB 70.

S. Karapatakis, for the applicants.

A. Vassiliades, for the respondents.

Cur. adv. vult.

25 A. LOIZOU J. read the following judgment. Motor-vehicle under registration No. HB 70 has had some history with the Licensing Authority as it appears from the relevant file of the Authority produced as exhibit A, before me. To the extent that the relevant correspondence, applications, minutes and decisions have a bearing to the sub
30 judice decision and the circumstances relating to it reference will be made in due course.

The applicants applied to the Licensing Authority on the 29th October, 1982, for the grant to them of a temporary road service licence for urban taxi for the vehicle

under registration HB 70 with Larnaca town as its seat of operation.

The application was considered by the Licensing Authority at its meeting of the 5th April 1983 and its relevant minutes (exhibit A. blues 107 - 106) read as follows: 5

"HB 70

43. Application by Georghios P. Pentafka and Panayioti P. Pentafka from Ormidhia dated 29th October 1982, for the grant to him of a licence for urban taxi for the vehicle under Registration HB 70 and place of parking Michalaki Nicolaide street, PIERIS ESTATES, block of flats at Larnaca. 10

Documents received:

Report of the District Transport Controller Larnaca, dated, 29th October 1982, blues 102 - 103. 15

Letter of Mr. Pentafkas dated 22nd October 1982, blue 104. Declaration blue 98.

Pentafkas letter, blue 52 dated 1st September 1976 in which it is mentioned that the applicant sold HB 70 with all its rights to Adem Ramadan. 20

Letter of A. Ramadan, blue 53.

Report of District Transport Controller Larnaca blue 55.

Letter of Pentafkas, blue 59 and objection blue 64.

Letter of Sol Karadjia, blues 70 - 71. 25

New application Pentafka, blue 76.

New decision of Licensing Authority, blue 79.

Recourse blue 82.

Decision of the Minister, blue 84 - 85.

Recourse of the applicant to Court, blue 88. 30

Letter of Mr. Pentafka dated 2nd April 1981 in

which it is mentioned that he withdraws his recourse, blue 85.

Decision of the Licensing Authority p. 91 - 94.”
Decision of the Licensing Authority p. 91 - 94.

5 “The Licensing Authority having taken into consi-
deration the history of the case and all the material
in the file decided not to accept the statement at p.
98 as it does not consider it real and decides to insist
10 on its decision dated 29th December 1981, and which
was communicated to the applicants on the 27th
January 1982.”

Copy of that decision of the 29th December 1981 as com-
municated to the applicants is appended to the opposition
(Appendix A). It reads as follows:

15 ‘I wish to refer to your application with which you
asked the grant of a licence (temporary) of an urban
taxi for the vehicle under No. HB 70 with a parking
place at Larnaca and inform you that the Licensing
Authority at its meeting of the 29th December 1981,
20 examined your application and dismissed it for the
following reasons:

(1) As mentioned in your letter dated 1st Septem-
ber 1976, you sold this vehicle which was then a
rural taxi having its seat at Larnaca (Lapithou) to
25 Adem Ramadan from Kyrenia with all its rights and
Adem Ramadan by his letter of the same date ad-
mitted this and ever since it is not in your possession
in the free areas of Cyprus and consequently your
application is without subject.

30 (2) On the basis of the Case Law of the Courts
road service licences are “*prosopopagis*”, linked with
the owner and “*pragmatopayis*” linked with the vehicle
and in the present instance the road licence followed
the vehicle since this was separated from its owner
35 and followed its purchaser and consequently your ap-
plication is without a subject matter.

(3) Independently of the above, if your application
was for a new vehicle in replacement of HB 70 be-

cause this is, as regards title of ownership, registered in your name, then and again it would have been dismissed because it would be for a new licence for an urban taxi in Larnaca which is served satisfactorily by the existing licensed taxis of Larnaca." 5

The decision of the Licensing Authority of the 5th April, 1983, was communicated to the applicants by letter dated the 22nd April 1983 (exhibit A, blue 108) to the effect that the Authority decided to insist on its previous decision of the 29th December, 1981 which had been communicated on the 27th January 1982. 10

On the 27th April 1983 applicant Panayiotis Pentafka filed a hierarchical recourse to the respondent Minister against that refusal of the Licensing Authority to grant him "a licence in order to replace HB 70". The respondent Minister then asked from the Director of Motor Transport for the submission of a report on the facts together with all relevant files of the case for consideration. In fact such a report was submitted, (exhibit A, blues 113 - 114), was containing in thirteen paragraphs all relevant facts of the case as emanating from the file exhibit A. It reads as follows:- 15

"Georghios and Panayiotis Pentafkas had a temporary road service licence for urban taxi under registration No. HB 70. 20

2. By letter dated 1st September 1976, Messrs Georghios and Panayiotis G. Pentafkas asked to be permitted to transfer the vehicle to Adem Ramadan from Kyrenia because as they mentioned they sold the vehicle to Mr. Ramadan with all their rights (blue 52 - 53). 25 30

3. By letter dated 1st September 1976 Mr. Adem Ramadan mentioned that he bought the rural taxi under registration No. HB 70 from Messrs Georghios and Panayiotis Pentafkas and asked to be transferred in his name with its seat at Larnaca Lapithou. 35

4. By letter dated 18th March, 1977, the aforesaid

Georghios and Panayiotis Pentafkas asked to change the seats of their taxies under registration No. HZ 666 and HB 70, that HZ 666 from Prastio Famagusta to have its seat at Larnaca Lapithou and HB 70 from Larnaca Lapithou to have its seat at Prastio Famagusta. That was approved (blue 57).

5. By application dated 12th July 1978 (blue 59) Panayiotis Pentafkas asked the replacement of taxi HB 70 with a new one and with its seat at Ormidhia. In relation to this application an objection was submitted (blue 64). The Licensing Authority at its meeting dated 14th November 1978 dismissed the application because the vehicle was in the possession of a Turkish Cypriot in the occupied part of Cyprus and because Ormidhia village was served sufficiently well from the existing vehicles. (Blue 67).

6. On the 8th January, 1979, Mr. Panayiotis Pentafkas submitted a new application for the replacement of taxi HB 70 with a new one with a seat the Amunition Depot. (Blue 76). The application was examined by the Licensing Authority on the 15th May, 1979. (Blue 79) and dismissed because vehicle HB 70 was sold in 1975 to a Turkish Cypriot and was in the occupied part of the island and because the area of Ormidhia was served sufficiently well by the existing vehicles.

7. By letter dated 4th July 1979, blue 81 Mr. Panayiotis Pentafkas mentions that he sold to the Turkish Cypriot only the vehicle as private but not its road service licence.

8. On the 4th July 1979, a recourse was filed (hierarchical recourse) (blue 82) which was dismissed (blue 84) because the vehicle HB 70 was sold to a Turkish Cypriot and was in the occupied part of Cyprus and because the area of Ormidhia was served sufficiently well from the existing vehicles.

9. The applicant filed a recourse to the Supreme Court (blue 88) that recourse was withdrawn (blue

89) and the applicant with his letter dated 2nd April 1981, asked that a new application (blue 88) be examined for road service licence of his taxi HB 70 with its seat at Larnaca.

10. The Licensing Authority dismissed the new application at its meeting dated 29th December 1981 (blues 94 - 93). 5

11. In their letter dated 2nd April 1982, (blue 97). Messrs Panayiotis and Georghios Pentafkas they mentioned that: 10

- (a) They sold vehicle HB 70 to Adem Ramadan in February 1976 with all its rights.
- (b) The Licensing Authority dismissed their application and after their application was dismissed they entered into a new agreement with Adem Ramadan with which they sold only the vehicle as private. 15
- (c) The Licensing Authority always recognised them as owners of HB 70. In March, 1977 (that is one year after the sale to Adem) the Licensing Authority approved a change of the seat of the taxi from Larnaca Lapithou to Prastio Messaourias (para. 4 above). This action is a proof that the Licensing Authority recognizes them as owners of HB 70. 20
- (d) He spent £600.- and brought Adem Ramadan from Germany and took him to Xylofagou Police Station and the Chairman of the village Committee of Ormidhia and he signed that he bought the vehicle as private without the "T". The declaration is in blue 98. 25 30

12. By application dated 29th October, 1982 (blue 101) G. and P. Pentafkas asked for a road service licence of taxi HB 70 with a seat at Larnaca.

13. The Licensing Authority at its meeting dated 5th April 1983, (blues 107 - 106) decided not to accept the declaration of Adem Ramadan as it did 35

not consider it real and decided to insist on its decision dated 27th January, 1982. Its decision was communicated to the applicant on the 22nd April 1983 (blue 108)."

5 The respondent Minister by its decision dated 6th April 1984, which was communicated to the applicants by letter dated the 24th April 1984, took the sub judice decision under the Motor Transport Regulation Law of 1982 section 4, it reads:

10 "Decision of the Minister of Communication and Works in the Recourse of Messrs Georghiou and Pannayiotis Pentafka, c/o Mr. S. Karapataki advocate, against the negative decision of the Licensing Authority to their application for the granting of a
15 temporary licence of urban taxi in Larnaca for the vehicle under registration No. HB 70.

Having in mind the existing legislation and all the facts I have come to the conclusion that the Licensing Authority correctly dismissed the application of the
20 applicant.

For that reason the aforesaid recourse is dismissed."

As against this decision the applicants filed the present recourse.

25 It was the contention of the respondent that the sub judice act is a confirmatory one of the decision of the 29th December 1981, communicated to the applicants by letter dated the 27th January, 1982, both of which together with the relevant minutes have already been quoted
30 in this judgment (see also exhibit A blues 96 - 91). Counsel for the applicants on the other hand claimed that there were new facts in their application of the 2nd April 1982 (exhibit A blue 97) but it has been argued on behalf of the respondent that these new facts were not such as to
35 lead the Licensing Authority to a new inquiry and that they were added in order to by-pass the provision regarding the time limit of 75 days during which a recourse under Article 146 of the Constitution has to be filed.

Indeed the new facts were in direct conflict with those previously put forward that is whereas in their first application the applicants claimed to have sold their said vehicle and licence to Adem Ramadan in their new application they claim to have entered with him into a new agreement after the dismissal of their application by the Licensing Authority and to have sold to him only the vehicle HB 70 as private and that whenever they wanted they could have the "T" of this vehicle. They appended thereto a declaration made by the said Ramadan (exhibit A. Blue 98) to that effect and to which reference has already been made. Whilst on this point I cannot help observing that all these allegations are afterthoughts, and rightly therefore the Licensing Authority did not accept this declaration as true and found that there could not be a change in their decision.

Their said decision of the 29th December 1981, which was adopted by the latest one, included independently of anything else thereby decided a consideration of the alternative position that if their application was for a new vehicle in replacement of motor-vehicle HB 70 which was still registered in their name, then again same would have been dismissed because it would be for a new licence for an urban taxi in Larnaca which was served satisfactorily by the existing licensed taxis of Larnaca. This indicates the exercise of their discretion given to them by the relevant legislation.

In the circumstances of the case I am not convinced that there has not been a new inquiry inasmuch as the very wording of the minutes of the Licensing Authority including that of their decision and that of the respondent points to the contrary. Irrespective of the correctness and truthfulness of the new allegations they appear to have been considered as new facts by the Licensing Authority, in particular those relating to the alleged new agreement and its terms entered into between the parties and Ramadan subsequently to the Licensing Authority's previous decision and the credibility of which was evaluated by it and the respondent. I need not therefore proceed to examine the well settled principles of law governing the questions

of confirmatory acts and new inquiries and I shall examine the recourse on its merits.

5 The brief exposition of the relevant facts and the contents of all minutes leading to the sub judge decision clearly establish that same is duly reasoned in all respects and in any event any reasoning that it may be found to be lacking is fully supplemented from the material in the file (see *Savva v. The Republic* (1985) 3 C.L.R. 694).

10 It also convincingly shows that a due and proper inquiry was carried out both by the Licensing Authority and the respondent. Also there does not appear from the wording of the sub judge decision or anything contained in the relevant minutes that either the Licensing Authority or
15 the respondent acted under any misconception of fact. On the contrary their appears an accurate exposition of the factual aspect of the case with the only difference that the Licensing Authority in evaluating the probative effect of the evidence adduced in the exercise of their unfettered discretion came to the conclusion that it did about the
20 allegations of a new agreement which conclusion brings back the case to the position where it was when the previous decision was reached by the Licensing Authority. Moreover there is nothing in the material before me to suggest that there has been a wrong exercise by the
25 respondent or the Licensing Authority of their administrative discretion in refusing a licence for an urban taxi in Larnaca which as they said,—and there is nothing to contradict them, was served satisfactorily by the existing licensed taxis.

30 On the totality of the circumstances before me I have come to the conclusion that the sub judge decision was reasonably open to the respondent, was duly warranted by the relevant statutory provisions and was in accordance with the general principles of Administrative Law.

35 For all the above reasons the recourse is dismissed and it is very reluctantly that I do not award costs against the applicants.

*Recourse dismissed.
No order as to costs.*