

1986 June 13

[MALACHTOS, J]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ETERIA METAFORON DIERONAS—ARAKAPA LTD.
AND ANOTHER,

Applicants,

v.

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

Respondent.

(Case No. 274/81).

The Motor Transport (Regulation) Law 16/64 as amended by Law 81/72—Section 6—Hierarchical Recourse to the Minister—Such Recourse does not lie against a decision, whereby the Licensing Authority, without considering new facts, merely confirms an earlier decision.

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Administrative Law—Reasoning of an administrative act—Misconception of fact.

On 21.7.80 the interested party applied to the Licensing Authority for an “A” licence to serve the village of Arakapas. On 9.9.80 his application was dismissed on the ground that the needs of the said village could be adequately served by the existing licensed vehicles of the area. On 2.12.80 the interested party presented a new application, which was also dismissed on the ground that the applicant did not disclose new facts, which would justify the reversal of the decision of the 9.9.80.

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As a result of the second decision the interested party on 6.2.81 filed a hierarchical recourse to the Minister of Communications and Works, who allowed the recourse on the ground, inter alia, that “the owner of the licensed. “A”

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carrier of the village of Arakapas does not object to the granting of the licence applied for”.

5 As a result applicant 1, the owner of three rural buses with the right of carrying goods on the route Dierona-Arakapas-Limassol-Nicosia and applicant 2, the owner of a vehicle in respect of which he possesses a public carrier's licence “A” with Dierona as a starting point, filed the present recourse.

10 Counsel for the applicants submitted that: (a) As the second decision of the licensing Authority was confirmatory of the first decision the hierarchical recourse to the Minister was filed out of the 20 days time limit provided in s. 6 of Law 16/64 as amended by Law 81/72, and (b)
15 The sub judice decision was taken under a misconception of fact in that no carrier of Arakapas existed.

Counsel for the respondent argued that the Minister can examine even a confirmatory decision of the Licensing Authority and that by referring to the carrier of Arakapas he meant the Sycopetra carrier, whose letter, that he did not object, was before him.
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Held, annulling the sub judice decision: (1) In the light of the provisions of s. 6(1)* of Law 16/64 as amended by law 81/72 and once no new facts were submitted to the Licensing Authority for reconsideration of its earlier decision, the Minister could not deal with the hierarchical recourse and was bound by law to dismiss it.
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(2) The reasons given by the respondent are not borne out from the material in the file and they are, therefore, erroneous (*Alexandra Rent a Car Ltd. v. The Republic* (1984) 3 C.L.R. 1105 applied).
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Sub judice Decision annulled.
£25.- Costs against respondent.

Cases referred to:

35 *Alexandra Rent a Car Ltd. v. The Republic* (1984) 3 C.L.R. 1105.

* Quoted at p. 986 post

Recourse.

Recourse against the decision of the respondents to grant to the interested party a public carrier's licence "A" in respect of a new goods vehicle to serve the village of Arakapas. 5

A. Markides, for the applicant.

M. Tsiappa (Mrs.), for the respondent.

A. Papadopoulos, for the interested party.

Cur. adv. vult.

MALACTOS J. read the following judgment. By the present recourse the applicants seek a declaration of the Court that the act and/or decision of the respondent dated 1.6.81 to grant the interested party Georghios Andreou a public carrier's licence "A" in respect of a new goods vehicle to serve the village of Arakapas, is null and void and of no legal effect whatsoever. 10 15

Applicant 1, a limited company by shares, was at all relevant times the owner of rural buses reg. Nos. DP 89, FU494 and FZ 555, in respect of which it has public carrier's licences with the right of carrying goods on the route Dierona-Arakapas-Limassol-Nicosia. 20

Applicant 2 is the owner of a vehicle under Reg. No. FK 701 in respect of which he possesses a public carrier's licence "A", with Dierona as a starting point.

The interested party, a certain Georghios Andreou on 21.7.80, applied to the Licensing Authority for an "A" licence to serve the village of Arakapa. His application was, however, dismissed on 9.9.80, because the Licensing Authority found that the needs of the village of Arakapa could be adequately served by the existing licensed vehicles of the area. 25 30

On 2.12.80, the interested party submitted a new application to the Licensing Authority which was again dismissed on 23.12.80. The applicant was notified accordingly by letter dated 12.1.1981 as follows: 35

5 "I wish to refer to your letter dated 2.12.80... for the reexamination of a previous application of yours... and would inform you that the Licensing Authority at its meeting of the 23rd December, 1980, considered your application and dismissed it because you did not present new facts which would justify a reversal of the decision of the Licensing Authority dated 9.9.80....".

10 In consequence to this decision the interested party filed a hierarchical recourse before the Minister of Communications and Works on 6.2.81 who considered the matter on 1.6.81. His decision, which was communicated to the interested party by letter dated 15.6.81, states the following:

15 "Having taken into consideration all the material put before me, the law applicable and in particular, that -

- (a) the licensed carrier "A" of the village of Sykopenetra never served the transport requirements of Arakapas, and
- 20 (b) the owner of the licensed "A" carrier of the village of Arakapas does not object to the granting of the licence applied for and certifies that there is work in the village to occupy another "A" carrier also.

25 I reached the conclusion that the granting of the licence applied for is justified.

2. For the above reasons, this recourse is allowed."

As against this decision the applicants filed the present recourse.

30 Counsel for applicants in arguing his case based it on the following two grounds of law:-

35 The first ground is that the sub judice decision is contrary to law, in that the respondent Minister wrongly or contrary to the provisions of the law examined by way of a hierarchical recourse the second decision of the Licensing

Authority, of 12.1.81, such decision being in fact confirmatory of its previous decision of 9.9.80, and thus rendering the recourse before the Minister out of the 20 days time limit as prescribed by section 6 of the Motor Transport (Regulation) Law, 1964, Law 16 of 1964, as amended by Law 81 of 1972. 5

On the other hand, it was contended by counsel for the respondent that the respondent Minister is not prevented from examining even a confirmatory decision of the Licensing Authority because provision to such effect does not appear in the Motor Transport (Regulation) Law. 10

Having considered the arguments of counsel on the above issue, I must say that I accept, not without some difficulty, the submission of counsel for applicants in view of the provisions of section 6(1) of the Law, which reads as follows: 15

“Anyone who is not satisfied from the decision of the Permits Authority, issued by virtue of the provisions of the present Law, may, within 20 days from the day on which such decision was communicated to him, by a recourse in writing, in which the reasons in support thereof are stated, attack such decision before the Minister.” 20

Once no new facts for reconsideration of the previous decision were submitted to the Permits Authority, I am of the view that the Minister could not deal with the recourse on its merits and was bound by law to dismiss it. 25

Before concluding my judgment and taking into consideration that I have my doubts as to whether I am right in deciding as I did the above point, I shall proceed to deal with the second ground of law as argued by counsel for applicants. 30

The other arguments of counsel for applicants is that the *sub judice* decision was taken under a misconception of fact in that the respondent Minister considered that the owner of the existing Arakapas “A” carrier had no objection, whereas no Arakapas carrier existed, the only carriers serving the area being the applicants who did object and the Sykopetra carrier. 35

5 It was contended by counsel for the respondent that there was no misconception because from the contents of the files it is clear that the respondent Minister meant the Sykopetra carrier whose letter (exhibit 12)—that he did not object—was before him.

From the various documents filed before this Court the following facts transpire.

In the report of the Controller of Transport dated 23.7.80 (exhibit 7) it is stated, inter alia, that:

10 “the needs of the village of Arakapas are served by the rural buses of the village as well as an “A” carrier of the village of Dierona.”

The said Dierona carrier is applicant 2, owner of vehicle Reg. No. FK 701.

15 In the letter of the applicants dated 20.5.81, to the respondent Minister, it is stated in para 3 thereof:

20 “... the... goods are being carried by 4 rural buses and the ‘A’ carrier Reg. FK 701, as well as the other ‘A’ carriers from the neighbouring villages; Eptagonia and Sykopetra.”

This is also verified by the interested party in the opposition filed on his behalf.

25 As regards the reasons given by the respondent Minister it is obvious that they are not borne out from the material in the file and they are, therefore, erroneous. As stated by Pikis, J. in the case of *Alexandra Rent a car Ltd. v. The Republic*, (1984) 3 C.L.R. 1105, at p. 1108, which is relevant to the case in hand:

30 “It is settled the reasoning of an administrative decision may be extracted from or supplemented by facts in the file of the case. This principle, on the other hand, does not permit supplanting the reasoning of a decision by reference to the facts of the case. Where the reasons of a decision are clear and unambiguous, as they are in this case, they must be”
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taken and evaluated on their face value. Any other approach would open the door to overriding administrative decisions by reference to the facts of the case. Such course would be arbitrary as it would be arbitrary in this case to read the decision of the Minister as saying anything other than it expressed, namely, that applicants improperly traded in 'Z' cars in times past. Evidently the Minister misconceived the facts either due to error on his part or misappreciation of the facts before him. The decision was founded on a misconception of the facts that invalidated it in its entirety." 5 10

Therefore, the sub judice decision has to be also annulled on the ground of wrong reasoning and as taken under a misconception of fact. 15

For the reasons stated above, this recourse succeeds and the sub judice decision is hereby annulled.

The respondent Authority to pay £25.- against the costs of the applicants.

Sub judice decision annulled. 20
Order for costs as above.