

1987 February 25  
(SAVIDES J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

- 1 ANDREAS ARISTIDES
- 2 COSTAS CHARALAMBOUS
- 3 PYGMALION CHARALAMBOUS,
- 4 CHARALAMBOS LEONIDA

*Applicants.*

v

THE REPUBLIC OF CYPRUS THROUGH  
THE MINISTER OF COMMUNICATIONS AND WORKS

*Respondent*

*(Case No 195/85, 196/85)*

*Motor transport—The Motor Transport Regulation Law 9/82 section 4—The nature and extent of the powers of the Minister of Communications and Works in dealing with a hierarchical recourse from a decision of the Licensing Authority—Discretion of the Licensing Authority exercise of—Section 15(3) of the said Law—Sub judice decision not supported by the material placed before the Authority and the respondent Minister—Annulled*

5

The applicants are the owners of vehicles licensed as carriers «A» The vehicles of applicants 1 and 3 have their fixed station at Galatana village and the vehicles of applicants 2 and 4 at Kilinia village Both villages are mainly grape producing vil-

10

Interested party Stelios Michael submitted to the Licensing Authority an application for a carrier A licence in respect of a new goods vehicle of upto four tons to be stationed at and serve Galatana village Interested party Christos Panayiotou submitted a similar application for a carrier A licence in respect of his vehicle NG 995

15

On the 2 6 83 the Licensing Authority examined the said applications and decided to grant them As a result the applicants who had objected to the said applications, filed hierarchical recourses to the respondent Minister, who having heard such recourses in the presence of all concerned, decided to dismiss them and affirmed the said decision of the Licensing Authority As a result the applicants filed the above recourses It should be noted that the said applications of the interested parties were supported by the Galatana village authority on the ground that the

20

needs of the village could be better served by small vehicles

The authority, also, contended in their letter dated 1 10 82 that applicant 3 was for the last two years incapacitated by physical disability and his carrier was not serving the village. The District Transport Controller of Paphos stated in his first  
 5 report on the case dated 18 1 83 that the vehicle of applicant 3 was out of circulation throughout 1982 due to his temporary physical disability from which however, he had in the meantime recovered. He further stated that in his opinion the existing licensed carriers A adequately served Galatana village throughout the year with the exception of the grape season as from the 15th of September till the 10th  
 10 of November.

*Held, annulling the sub judice decision* (1) The wording of s 4\* of Law 9/82 was identical to section 6 of the Motor Transport Regulation Laws 1964 1975, which was analysed in *Tsouloftas and Others v The Republic* (1983) 3 C L R 426 and in *Efstathios Kynacou and Sons Ltd and Others v The Republic* (1970) 3 C L R 106

15 (2) The question in the present case is whether the Licensing Authority exercised its discretion properly bearing in mind the matters enumerated by sub section 3 of section 15 of Law 9/82. Bearing in mind that the disability of applicant 3 did not exist at the time the decision of the Licensing Authority was taken and that as it emanates from the objections of the applicants and is supported by the report of the  
 20 District Transport Controller of Paphos the needs of Galatana and the surrounding villages are served by numerous lorries licensed as carriers A the conclusion is that the sub judice decision is not supported by the material placed before the respondent. The special needs during the grape season could be faced by the grant of special licences in respect of the relevant limited period, but not by permanent  
 25 licences over the whole year, which were in excess of existing needs and to the prejudice of supernumerous licensed carriers A in the area.

*Sub judice decision annulled*  
*No order as to costs*

*Cases referred to*

30 *Tsouloftas and Others v The Republic* (1983) 3 C L R 426,

*Efstathios Kynacou and Sons Ltd and Others v The Republic* (1970) 3 C L R 106

### **Recourses.**

35 Recourses against the decision of the respondents affirming the decision of the Licensing Authority to grant to the interested parties licences to operate their vehicles as carriers A in the village

\*Repealed by Law 84/84

of Galataria and dismissing applicants' hierarchical recourses.

*S. Karapatakis*, for the applicants.

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

*Cur. adv. vult.*

SAVIDES J. read the following judgment. The applicants in these two recourses which were heard together as presenting common questions of law and fact and as directed against the same administrative decision, challenge the decision of the respondent communicated to them by letter dated 12.12.1984 whereby he affirmed the decision of the Licensing Authority to grant to the interested parties licences for operating their vehicles as carriers A in the village of Galataria and dismissed the hierarchical recourses of the applicants.

The applicants are the owners of vehicles licensed as carriers «A». Applicant 1 is the owner of vehicle PE 280, with fixed station Galataria village. Applicant 2 is the owner of vehicle MZ 982 with fixed station Kilinia village, applicant 3 is the owner of vehicle JY 147 with fixed station Galataria, and applicant No.4 is the owner of vehicle JU 80 with fixed station Kilinia village.

Galataria village has a population of about 200 and Kilinia about 100 inhabitants. Both villages are mainly grape-producing villages. They are close to each other and the distance between them is about half a mile. All the said vehicles of the applicants are licensed to carry goods both from Kilinia and Galataria villages to any destination in Cyprus.

Interested party Stelios Michael, a farmer and vine grower of Galataria village, is the owner of vehicle NE 979 which, before the sub judge decision, was licensed as carrier class B. Also, interested party Christofis Panayiotou, a farmer and vine grower of Galataria village, is the owner of vehicle NJ 995 licensed before the sub judge decision as carrier class B for the needs of his occupation.

Interested party Stelios Michael submitted an application on the 18th March, 1982, for the grant to him of a carrier A licence in respect of a new goods vehicle, of upto four tons, to be stationed at and serve Galataria village. A similar application was submitted by Christofis Panayiotou on the 22nd December, 1982 for a carrier A licence in respect of his vehicle NG 995.

By letter dated 1 10 82 the Galatana village authority and members of the community, supported the grant of the licence applied for by interested party Stelios Michael, contending that the needs of the village could be satisfied better by a small licensed carner A

5 Also, by letters dated 22 12 82 and 31 1 83 the Galatana village authorities, the secretary of the Galatana Co-operative and members of the community, supported the application of interested party Christofis Panayiotou for the same reasons advanced by them in support of the application of Stelios Michael

10 When applicants came to know about the application of Stelios Michael, they wrote a letter dated 5 4 1982 to the chairman of the Licensing Authority voicing their objection to the application on the following grounds

(a) The village of Galatana and the surrounding villages were  
15 sufficiently served by the existing carriers of class A

(b) The interested party had already been operating illegally his carner of class B as carner A and interfered with the work of the applicants

(c) That the object of the interested party in submitting his appli-  
20 cation was to legalise his illegality of using his carner B as carner A for which he had been repeatedly reported by the applicants

By a further letter dated 17th January, 1983, the applicants objected to the application of interested party Chnstofis Panayiotou contending that Galatana village is sufficiently served  
25 by the existing licensed carriers A of Galatana village and the surrounding area and that such carriers were facing problems due to the lack of sufficient work

From what emanates from the files of the case, the applicants had repeatedly on previous occasions complained to the Li-  
30 censing Authority against the interested parties for contraventions of their licences by using their carriers B as carriers A

In the letter of the Galatana village authority of the 1st October, 1982 it was contended that the owner of a licensed carner A stationed at Galatana, namely, P Charalambous, was for the last  
35 two years incapacitated by physical disability and his carner was not serving the village. Similar allegations are contained in the two letters dated 22nd December, 1982 and 31st January, 1983

On the 2nd December, 1982 the Licensing Authority instructed the District Transport Controller of Paphos to investigate into the needs of the area in respect of carriers A. The District Transport Controller submitted his report on the 18th January, 1983. He mentioned in his report that vehicle under Registration No JY 147 licensed as carrier A and stationed at Galatana village, had not been circulating throughout the year 1982 due to its owner's temporary physical disability from which however, he had in the meantime recovered. He further mentioned that in addition to this carrier and another one over five tons stationed at Pano Arodhes, there were ten other licensed carriers A in the surrounding area and in particular six at Statos village, at a distance of three miles from Galatana three at the village of Kilinia at a distance of half a mile from Galatana and one at Pendalia village at a distance of one mile from Galatana village. In his opinion, the said carriers adequately served Galatana village throughout the year with the exception of the grape season as from the 15th September till the 10th November.

By a subsequent report dated the 4th February, 1983, in the course of investigations concerning the applications of the interested parties, the District Transport Controller mentioned that Galatana village had 200 inhabitants, that the village is an agricultural one producing mainly grapes, and some almonds, olives, fruit and cereal and that there was one carrier A at the village, three at Kilinia village and one at Pendalia village. Also that interested party Christofis Panayiotou never had any driving licence nor had he ever driven a car. He finally mentioned that the Transport Union of carriers in the area raised objections to the granting of any new licences on the ground that the existing licensed carriers were sufficient to meet the needs of Galatana village.

The Licensing Authority at its meeting of the 2nd June, 1983 examined the applications of both interested parties and decided to grant the licences applied for on the ground that the vehicles would serve the needs of Galatana and the surrounding villages for small cargoes.

The said decision was communicated to the interested parties and the applicants by letters dated 10th June, 1983. As a result, the applicants lodged hierarchical recourses to the Minister of Communications and Works, who, under the provisions of the law then in force, was the appropriate organ to deal with hierarchical

recourses from decisions of the Licensing Authority. Such hierarchical recourses were heard by the respondent Minister in the presence of the applicants, their advocate and the interested parties and his decision was reached on the 5th December, 1984. By his  
5 decision which was communicated to the applicants and the interested parties by letter dated the 12th December 1984, the Minister found that the Licensing Authority rightly granted the licences in question for the better service of the needs of Galataria village

10 As a result, the applicants filed the present recourses, No 195/85, challenging the grant of a licence to interested party Christofis Panayiotou and No 196/85, challenging the grant of a licence to interested party Stelios Michael

15 Counsel for the applicants argued that the Licensing Authority, the decision of which was affirmed by the respondent Minister acted in excess of its power and exercised its discretion wrongly as, in the light of the material before it the criteria which the law contemplates were not satisfied. According to the report of the  
20 District Transport Controller of Paphos, counsel added, the needs of the area were sufficiently served by the existing carriers. Furthermore, that in the present case the Licensing Authority acted under a misconception of fact in that it considered that the needs of the area were not sufficiently served by relying on the opinion expressed by the Village Commission and not on the report of the  
25 District Transport Controller of Paphos who carried out a proper inquiry in the matter, in compliance with instructions given to him. He further contended that the Licensing Authority failed to carry a due inquiry in the matter and that the decision of the Minister affirming that of the Licensing Authority has to be annulled on the  
30 same grounds

Counsel for the respondent submitted that the sub-judice decision was issued in the exercise of the statutory powers with which the Minister is vested under the Law and that in the circumstances of the present case it was reasonably open to the Minister to decide  
35 as he did. In defending the decision of the Licensing Authority she submitted that the authority acted on the basis of the provisions of the law and the criteria set out therein and reached its decision after a proper inquiry into the matter, bearing in mind the type and capacity of the vehicles which, in the present case, were small

vehicles and could serve the needs for transportation of small cargoes better.

The sub judge decision of the Minister was taken in the exercise of the statutory powers vested in him by section 4 of the Motor Transport Regulation Law, 1982, (9/82) (which section since the 16th November, 1984 has been repealed and substituted by a new section replacing the Minister by the Review Licensing Authority and widening the powers of such Authority). 5

The wording of section 4 of Law 9/82 was identical to section 6 of the Motor Transport Regulation Laws 1964-1975. The powers of the Minister under section 6(2) of Law 16/64 were analysed in *the case of Tsoulloftas and Others v. The Republic* (1983) 3 C.L.R. 426 in which at p.431, it is stated that - 10

«A hierarchical recourse is not a judicial proceeding in any sense. It is not intended to review the correctness of the hierarchically subordinate organ's decision by reference to the soundness of the reasoning propounded in support thereof but, to establish a second tier in the decision - taking process, designed to eliminate mistakes as well as abuse of authority by subordinates. Hence it is at least as feasible for the superior in hierarchy to take any decision that the subordinate body could reasonably take in the first instance. Both organs in the hierarchy are charged with the same duty - to promote the objects of the law by the application of its provision in particular case.» 15 20 25

*In Efstathios Kyriacou & Sons Ltd. and others v. The Republic* (1970) 3 C.L.R. 106 at p.116, it is stated:-

«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.» 30

The question which arises in cases of this nature is whether it was reasonably open to the Minister as a hierarchically superior organ to reach the sub judge decision in the light of the surrounding circumstances and the provisions of the law and also whether the decision of the Licensing Authority which he affirmed was a correct one in the circumstances of the case. 35

The power of the Licensing Authority to grant a road use licence

is given by section 5 of Law 9/82. Under sub-section (3) of such section the Licensing Authority is vested with a discretionary power to grant road use licences subject to such conditions as the authority would deem necessary in the case.

5 Sub-section (3) of section 15 of the law provides that in the exercise of its discretionary power for the grant of a carrier A licence the Licensing Authority should examine the following:

(a) The needs of the area for the transportation of the particular type of cargo together with the extent and nature of such needs.

10 (b) The extent to which the area's needs are being served by existing carriers A in the area.

(c) The degree to which it is possible that the applicant will be in a position to supply in the area safe, continuous and regular transportation services.

15 (d) The type and capacity of the vehicle in relation to which the application has been lodged.

In the present case the question which has to be examined is whether the Licensing Authority exercised its discretion properly in the case, bearing in mind the matters enumerated in sub-section  
20 (3) of section 15. The Licensing Authority as it appears from its minutes, had before it the report of the District Transport Controller of Paphos, the letter of the chairman of the village commission of Galatara and the objections of the applicants. In the letter of the  
25 chairman of the village commission of Galataria it is stated that the village had one lorry, owned by Pygmalion Charalambous, who could not drive it the last two or three years due to the incapacity of its owner and which as a result was not circulating. The alleged incapacity of Pygmalion Charalambous due to an accident, in fact did not exist at the time when the decision of the Licensing Authority was taken, because, according to the report of the District Transport Controller of the 18th January, 1983, the said person had by such time recovered from his temporary physical disability due to which he was not operating his lorry in the year 1982.

35 From what emanates from the objections of the applicants and is supported by the report of the District Transport Controller of Paphos, the needs of Galataria and the surrounding villages are



served by numerous lorries, licensed as carriers A, stationed both in Galataria and other villages situated within a radius of half to three miles. The only period during which, according to the District Transport Controller's report, additional service is required, is the grape season, that is the period between the 15th September and the 10th November of each year. 5

Bearing in mind the above facts and on the basis of all the material before me I have come to the conclusion that the sub judice decision is not supported by the material which was placed before the respondent. It is abundantly clear that the needs of the area were more than sufficiently served for the whole year, with the exception of a period of about two months during the grape season. Such needs could be faced by the grant of special licences in respect of such limited periods but not permanent licences over the whole year which were in excess of the existing needs and to the prejudice of super-numerous licensed carriers A in the area. 10 15

For the above reasons I find that the discretion both of the Licensing Authority and the respondent Minister was not properly exercised having regard to the circumstances of the case.

In the result both recourses succeed and the sub judice decisions are hereby set aside with no order for costs. 20

*Sub judice decisions annulled  
No order as to costs*