

1987 July 11

[A LOIZOU, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

M & M TRANSPORT CO LTD ,

Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTER OF COMMUNICATIONS AND WORKS,
2 THE REVIEW LICENSING AUTHORITY,

Respondents

(Case No 717/85)

5 *Motor Transport — The Motor Transport Regulation Law 9/82 — Cars hired without a driver — Sections 5 and 10 — Ambit of each section — The general policy and object of the law — The needs of the country have to be examined — It is only when more vehicles are needed in the market that a decision as to whether a licence should be granted in the particular case or not has to be taken*

Construction of statutes — General policy and object of a law — Ascertainment of — The law in question should be looked at as a whole

10 Applicant's application for licences in respect of 37 vehicles for hire without a driver (2 cars) was turned down on the ground that the needs of Cyprus «will be served satisfactorily» by the existing licensed vehicles

Hence the present recourse The applicants argued, inter alia, that the right criterion in granting or refusing a licence is whether the applicants themselves had a concrete need to satisfy regarding the licences applied for

15 Held, *dismissing the recourse* (1) Section 5 of Law 9/82 deals generally with the requirement of a licence for vehicles intended to be used for any of the purposes therein referred to, which include hire without a driver, whereas section 10 of the same law sets out the prerequisites, which an applicant has to satisfy

20 (2) The issue raised in this case calls for the ascertainment of the object of the policy of the aforesaid law This issue should be determined by looking at the legislation in question as a whole, including the provision prohibiting the use of vehicles for any of the purposes set out therein Approaching the matter

from this standpoint the conclusion is that the requirement of a licence carries the notion that the object is to control the numbers and use of such vehicles and that the general needs of the country should be examined

It is only when more vehicles are required in the market that a decision as to whether a licence will be issued in the particular case or not has to be taken, after taking into consideration the factors referred to in the law, such factors do not come into play when there is no general requirement for the issue of new licences

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Recourse dismissed
No order as to costs

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Cases referred to

Chrstodoulou v Republic (1986) 3 C L R 2243

Vassos Eliades Ltd v The Republic (1979) 3 C L R 259,

Cytechno Ltd v Republic (1979) 3 C L R 513

Recourse.

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Recourse against the decision of the respondents to refuse applicants' application for the grant to them licences for thirty — seven vehicles for hire without a driver

A *Haviaras*, for the applicants

G *Erotokntou (Mrs)*, Senior Counsel of the Republic, for the respondent

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Cur adv vult

A LOIZOU J read the following judgment By the present recourse the applicant Company seeks a declaration of the Court that the act and/or decision of the respondents to refuse its application dated 14th February 1985, for the grant to them of licences for thirty seven vehicles - for hire without a driver commonly known as «Z» cars, is null and void and with no legal effect whatsoever

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The application of the applicant Company was examined by the Licensing Authority along with the applications of twelve other companies and individuals who were applying for the issue to them of licences in respect of a total of 335 such «Z» cars The relevant minutes of the meeting of the Licensing Authority of the 25th June, 1985 (Exhibit 1) refer to the various applicants and to the documents that it had before it which included the reports of

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the District Inspectors of Transport and the number of vehicles in respect of which each applicant was seeking a licence. It then goes on to say the following:

5 «The Department suggests the rejection of all the aforesaid applications as with the existing licensed vehicles hired without a driver («Z») and with those which were licensed recently the needs of Cyprus will be served satisfactorily.

The Licensing Authority adopts the suggestion of the Department and rejects all the aforesaid applications.»

10 The report of the District Inspector of Transport with regard to the applicant Company, says that the applicants own two buses for tours of tourists and goes on to mention that Mr. A. Markides the Director of the aforesaid Company mentioned to him that they face problems on many occasions for the hire of «Z» vehicles,
15 because many clients of theirs are interested in the hire of such cars.

It has been argued on behalf of the applicant Company that the ground upon which its application was refused was legally unfounded and contrary to the provisions of subsections 13 and
20 14 of Section 5 and Section 10 of the Motor Transport Regulation Law, 1982, (Law No. 9 of 1982) and that such ground was in direct conflict with the general guidelines which were formulated by the respondent Authority and in particular paragraph (d) thereof. I had the occasion to refer to the guidelines
25 in question in my judgment in *Nestoras Christodoulou v. The Republic*, Recourse No. 629/85, delivered on the 30th September 1986, as yet unreported*, where I set them out in full and for the sake of brevity I do not intend to reproduce them here.

It was urged that it was wrong to treat all the owners of «Z» cars
30 in Cyprus as one entity, which is set to serve the needs of the Country in «Z» cars. The right criterion being whether the applicant Company itself had concrete needs to satisfy regarding the licences applied for and not whether the existing licences in their totality could theoretically satisfy the needs of Cyprus. This
35 emanates from the fact that the applicant Company has requests for «Z» cars from clients, which it cannot itself satisfy as is not the holder of such licences and in that way it is compelled to hire «Z» cars from third parties, a situation contrary to paragraph «D» of the said guidelines.

* Reported in (1986) 3 C.L.R. 2243.

Section 5 of the Law with its fourteen subsections deals generally with the requirement of a licence for vehicles intended to be used for any of the purposes set out therein which include vehicles for hire without a driver. Subsection 13 thereof, which is its penultimate subsection, provides that the provisions of that «section will be applied in a manner giving, where possible to all concerned equal opportunity for making a profit» and subsection 14 provides that the Licensing Authority in the exercise of its discretionary power under that section will take into consideration the suggestions of the Department of Road Transport and will hear the representations of every person directly concerned.

On the other hand section 10 of the Law sets out the prerequisites which, subject to the Law and the Regulations, an applicant has to satisfy before a licence for the hire of vehicles without a driver is granted to him.

In my view the issue raised calls for the ascertainment of the policy and object of the Law which can be determined by looking at the legislation in question as a whole, including of course its provision prohibiting the use of vehicles for the purposes enumerated therein, which include the hire of vehicles without a driver, with which we are concerned in the present case. (See *Vassos Eliades Ltd., v. The Republic* (1979) 3 C.L.R. 259 and *Cytehno Ltd., v. The Republic* (1979) 3 C.L.R. 513).

Approaching the matter from this standpoint one cannot fail to conclude that the requirement of a licence carries with it the notion that its policy and object is to control the numbers and use of such vehicles, that the general needs of the country have to be examined and only when more vehicles are required in the market, a decision as to whether a licence will be issued in the particular case or not has to be taken. In such a case a licence is to be issued as a matter of discretion, which has to be exercised after taking into consideration the factors specified in the relevant sections of the Law. On the other hand such factors do not come into play and therefore need not be examined if there is no general requirement for the issue of new licences as it has been the conclusion reached by the Licensing Authority in the present case.

If I were to accept the argument of learned counsel that only the needs of the individual applicant have to be examined, the whole purpose of the Law to regulate the number of such vehicles licensed to operate without a driver would be thwarted.

For all the above reasons this recourse fails but the sub judge decision is hereby confirmed. There will be however, no order as to costs.

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Recourse dismissed.

No order as to costs.