

1988 July 16

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GENERAL CONSTRUCTIONS CO. LTD.,

Applicants,

v.

REVIEW LICENSING AUTHORITY,

Respondents.

(Case No. 517/86).

Motor Transport—The Motor Transport Regulations Law (Law 9/82), as amended by Law 84/84—Carrier B licences—Sections 16(1) and 5(4)—The power to modify condition under s.5(4)—Course to be followed—Respondents labouring under impression that they had no power to modify the conditions—A material misconception of law.

5

Reasoning of an administrative act—Contradicted by material in the file—Ground for annulment.

The applicants are owners of a carrier "B" licensed vehicle. They sought modification of the condition in the existing licence, whereby the vehicle in question could not transport building materials.

10

The application was turned down. A hierarchical recourse to the Permits Review Authority met with the same fate.

Hence this recourse. The sub judice decision was based on the following reasons, i.e.

(a) Originally the carrier B licence was granted on condition that no building material would be transported,

15

(b) The needs of the applicants can be served by other carrier B licensed vehicles.

5 Held, annulling the sub judge decision: (1) Under section 5(4) the Li-
censing Authority may, for reasonable cause, at any time, amend the condi-
tions imposed in a licence. The respondents, either disregarded their power
under section 5(4) to amend on reasonable cause the conditions imposed in
10 a licence, or they laboured under a misconception that they had no such
power. In dealing with this hierarchical recourse they should have inquired
whether there was reasonable cause for the modifications of the conditions
of the licence. In doing so, they should have examined whether the facts
and circumstances, for which the existing condition was imposed, have
15 changed and whether the change is such that justifies the modification ap-
plied for.

Furthermore, they should inquire if the modification is required for the
purposes of the commercial or other-business of the applicant. (See section
16(1) of said law).

15 (2) The material in the file does not bear out that the needs of the appli-
cants - owners can be satisfied by other carriers 'B' belonging to them. The
sub judge decision is contradicted by the relevant records. An Administra-
tive Court has to annul the sub judge administrative act or decision, if the
reasoning stated therein is shown to be erroneous, through being contra-
20 dicted by the relevant administrative records.

*Sub judge decision annulled.
No order as to costs.*

Case referred to:

Papafstathiou v. Permits Review Authority (1988) 3 C.L.R. 1102;

25 *Iacovides v. The Republic* (1966) 3 C.L.R. 212;

Lardis v. The Republic (1967) 3 C.L.R. 64;

Georghiou v. The Republic (1976) 3 C.L.R. 74.

Recourse.

30 Recourse against the decision of the respondents dismissing
applicants' hierarchical recourse against the decision of the Li-
censing Authority refusing to amend carrier 'B' licence of vehicle
under Reg. No. HJ. 528 so as to allow it to be used for transpor-
tation of building materials.

N. Papaefstathiou, for the applicants.

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

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicants by means of this recourse seek declaration of the Court that the decision of the Respondent Authority, dated 17th May, 1986, whereby Respondent dismissed applicants' hierarchical recourse, lodged against a decision of the Licensing Authority, refusing to amend carrier 'B' licence of vehicle under Registration No. HJ 528, as to allow it to be used for transportation of building material, is null and void and of no effect whatsoever. 5 10

The applicants are a building and roadworks contractors. They own a number of goods vehicles including vehicle under Registration No. HJ 528. Carrier 'B' licence was issued for this motor goods vehicle to transport ready crushed stones to applicants' sites of building construction works. 15

This licence was, on 15th July, 1980 amended, so as to be used for the transportation of machinery and accessories thereof of the applicants to their various building sites, but the transportation of building materials was prohibited. 20

By application dated 28th September, 1983, the applicants requested the Licensing Authority for amendment of the conditions of the licence, by lifting the restriction for the transportation of building materials and thus enable the applicants to use same for both the transportation of machinery as well as of building materials to their sites throughout Cyprus. 25

The Licensing Authority rejected this application. Applicants thereupon filed a hierarchical recourse with the Respondents.

The Respondents - Review Licensing Authority - on 17th May, 1986 took the sub judice decision, which reads as follows:- 30

5 "Η Αναθεωρητική Αρχή Αδειών έχοντας υπόψη την ισχύουσα νομοθεσία και όλα τα πραγματικά περιστατικά της υπόθεσης που έχουν τεθεί ενώπιον της και αφού μελέτησε όλα τα σχετικά στοιχεία των σχετικών φακέλλων και όλα όσα έχουν λεχθεί από μέρους των προσφευγόντων, αποφασίζει ν' απορρίψει την προσφυγή γιατί αρχικά η άδεια Μεταφορέα 'B' για το όχημα με αρ. εγγραφής ΗJ 528 χορηγήθηκε με την προϋπόθεση πως το εν λόγω όχημα θα χρησιμοποιείται αποκλειστικά και μόνο για τη μεταφορά των μηχανημάτων της και υπό τον όρο ότι τούτο δεν θα χρησιμοποιείται για την μεταφορά υλικών οικοδομής. Η Εταιρεία είναι η ιδιοκτήτρια άλλων Μεταφορέων 'B' που μπορούν να ικανοποιήσουν τις ανάγκες της για έκτακτες μεταφορές από τις αποθήκες της Εταιρείας σε εργοτάξια ή από το ένα εργοτάξιο στο άλλο."

10 ("The Review Licensing Authority taking into consideration the legislation in force and all the facts and circumstances of the case which have been placed before it and having considered all the relevant material in the files and whatever has been said on behalf of the applicants decides to dismiss the recourse because originally the carrier 'B' licence in respect of vehicle HJ 528 had been issued on condition that it will be used exclusively only for the transportation of the machinery of the appellants and on condition that it will not be used for the transportation of building materials. The company is the owner of other carrier 'B' licences which can satisfy its needs for extraordinary transportations from the warehouses of the Company to the sites or from one site to another»).

25 The applicants being aggrieved filed this recourse under Article 30 146 of the Constitution for the annulment of the sub judge decision.

Learned counsel for the applicants submitted that the sub judge decision is contrary to law; it was taken under a misconception of law and fact; and it lacks due reasoning.

A hierarchical recourse 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. 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 cases. Generally, it is competent for the body exercising powers in a hierarchical recourse, to review the legality of the decision taken in the first instance - (*Tsatsos - Administration and the Law*, (1979), p. 63; Stassinopoulos - *Law of Administrative Acts*, (1951), p. 177 et sequence; *Katerina Papaefstathiou and Review Licensing Authority, Ministry of Communications and Works*, (1988) 3 C.L.R. 1102).

The power of the Review Licensing Authority is set out in section 4A - (4) as follows:-

"(4) Η αναθεωρητική αρχή αδειών δύναται να εκδώση μίαν των ακόλουθων αποφάσεων:

(α) να επικυρώση την προσβληθείσαν απόφασιν.

(β) να ακυρώση την προσβληθείσαν απόφασιν. 20

(γ) να τροποποιήση την προσβληθείσαν απόφασιν.

(δ) να προβή η ίδια εις έκδοσιν νέας αποφάσεως εις αντικατάστασιν της προσβληθείσης.

(ε) να παραπέμψη την υπόθεσιν εις την αρχήν αδειών, διατάσσουσα ταύτην να προβή εις ωρισμένην ενέργειαν." 25

("The Review Licensing Authority may issue any of the following decisions:

(a) to confirm the challenged decision:

(b) to annul the challenged decision;

(c) to modify the challenged decision;

(d) to issue a new decision in substitution of the challenged one;

5 (e) to send the case back to the Licensing Authority ordering the latter to do certain act.")

The decision of the Review Licensing Authority is an administrative act and is amenable to the revisional jurisdiction of this Court.

10 Carrier 'B' licences are issued by the Licensing Authority in exercise of its power under section 16.1 of the Motor Transport Regulation Laws, 1982 and 1984 (Laws Nos. 9/82 and 84/84). Under section 16.1 of the said Law carrier 'B' licences are issued by the Licensing Authority for motor vehicles belonging to commercial and other enterprises to serve their purposes under such
15 conditions as the Authority may deem appropriate to impose under the circumstances.

Subsection (3) provides that the Licensing Authority in the exercise of its discretionary power for the issue of licences for 'B' carriers duly takes into consideration the extent and nature of the
20 business carried out or to be carried out by the applicant.

Under section 5(4) the Licensing Authority may, for reasonable cause, at any time, amend the conditions imposed in a licence.

25 The respondents had before them a report of the District Transport Controller (see Blue 35 of Exhibit 2), in which, inter alia, we read the following:-

"2. The General Constructions Co. Ltd. , have, also, another five heavy - weight carrier 'B' licences in respect of vehicles LX 683, LX 895, LX 896, LQ 500 and CV 225, as

well as two light type ones under five tons in respect of vehicles KJ 46 and JK 647.

In the licences of the first three vehicles there is a restriction that they will work at Xyliatou dam. The dam has been completed and now are used at their quarry in Limassol exclusively within their private space. 5

There is, also, a restriction in the licence of LQ 500 that it shall be used for the transportation of small quantities of building materials, from one site to another, whereas for motor vehicle CV 225 there is no restriction at all.. 10

In this report it is recorded that the responsible official of the applicants told this Controller that the modification of the licence was necessary, due to the way and circumstances under which the business of the plaintiffs was carried out, for example when they transported machinery from Nicosia to Paphos vehicles should not return completely unloaded, but they ought to load the vehicle with stones or sand, or shingle, or other material. 15

The sub judice decision is based on two grounds:-

- (a) The original licence was issued for the transportation of machinery on condition that it should not be used for transportation of building materials; and 20
- (b) the applicants' company is the owner of other carriers 'B', which sufficiently serve the needs of the company.

The Respondents, either, disregarded their power under section 5(4) to amend on reasonable cause the conditions imposed in a licence, or they laboured under a misconception that they had no such power. The fact that the original licence contained the condition that it should not be used for transportation of building materials, was no impediment for the modification of the licence by the deletion of the said term. 25 30

5 In dealing with this hierarchical recourse they should have inquired whether there was reasonable cause for the modification of the conditions of the licence. In doing so, they should have examined whether the facts and circumstances, for which the existing condition was imposed, have changed and whether the change is such that justifies the modification applied for.

Furthermore, they should inquire if the modification is required for the purposes of the commercial or other business of an applicant.

10 The Respondents laboured under a misconception that once a condition was imposed at the time of the issuing of a licence, this could not and/or should not be changed, or removed. This is clearly contrary to law. The Respondents were labouring under a misconception of law.

15 The material in the file does not bear out that the needs of the applicants - owners can be satisfied by other carriers 'B' belonging to them. The sub judge decision is contradicted by the relevant records. An Administrative Court has to annul the sub judge administrative act or decision because the reasoning stated therein is shown to be erroneous, through being contradicted by the relevant administrative records. (See *Iacovos L. Iacovides and The Republic of Cyprus, through the Public Service Commission* (1966) 3 C.L.R. 212; *Andreas Lardis v. Republic (Public Service Commission)* (1967) 3 C.L.R. 64; *Odysseas Georghiou v. Republic (Public Service Commission)* (1976) 3 C.L.R. 74.)

25 In view of the foregoing, the sub judge decision is declared null and void and of no effect.

Let there be no order as to costs.

30 *Sub judge decision annulled.*
No order as to costs