

1988 March 4

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. GEORGHIOS CHRISTOU,
2. COSTAS A. NEOPHYTOU,
3. CHRISTOPHIS CONSTANTINOU,

Applicants,

v.

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

Respondents.

(Case No. 413/85).

Legitimate interest—Issue may be raised by Court ex proprio motu.

5 *Legitimate interest—Applicants sought and obtained permits for rural taxis serving Akrotiri village—Interested parties sought and obtained similar permits for serving the British Sovereign Base Area of Akrotiri—Area of base distinct from area of said village—Moreover, applicants were not qualified for a permit serving the base—Sub judice decision did not affect applicants legitimate interest.*

The applicants applied and eventually obtained rural tax licences for the village of Akrotiri, whilst the interested parties applied and ultimately obtained rural tax licences for the British Sovereign Base Area of Akrotiri, that is for a quite distinct and separate area from the former.

Moreover, the applicants were not qualified to obtain any tax licences for serving the British Base Area because they did not operate tax offices in such area and did not possess a permit to that effect from the Base Authorities. 5

By means of this recourse the applicants impugn the validity of the decision, whereby there were granted to each of the interested parties permits for three rural taxes for serving the aforesaid area. 10

Held, dismissing the recourse: (1) The issue of legitimate interest may be raised by the Court *ex proprio motu*.

(2) In the circumstances of this case applicants had no legitimate interest adversely and directly affected by the sub-judice decision. 15

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Meletis and Others v. C.P.A. (1986) 3 C.L.R. 418;

Kritiotis v. The Municipality of Paphos and Others (1986) 3 C.L.R. 322; 20

Constantinidou and Others v. The Republic (1974) 3 C.L.R. 416;

Republic v. K.M.C. Motors Ltd. (1986) 3 C.L.R. 1899.

Recourse.

Recourse against the decision of the respondent Minister given in hierarchical recourses filed by the interested parties whereby 25

the refusal of the Licensing Authority to issue to the interested parties licences for rural taxis for the purpose of serving the Akrotiri Sovereign Base Area was reversed.

Chr. Pourgourides, for the applicants.

5 *M. Tsiappa*, for the respondents.

G. Triantafyllides, for interested party Y. Ellinas.

A. Haviaras, for interested party Kem Taxi Ltd.

Cur. adv. vult.

LORIS J. read the following judgment. The three applicants,
10 by means, of the present recourse, impugn the decision of the respondent Minister, dated 7.1.85, given in the hierarchical recourses filed by the interested parties against the decision of the Licensing Authority, whereby the refusal of the Licensing Authority, to issue to the interested parties licences for rural taxis for
15 the purpose of serving the Akrotiri Sovereign Base Area, was reversed.

The facts relevant to the present case are as follows:

On 14.4.80 applicants No. 1 and No. 2 addressed two separate applications (vide Appendices No. 4 & No. 3 respectively) to
20 the Licensing Authority for the issue of rural taxi licences, for the purpose of serving the needs of Akrotiri Village by their respective vehicles TZ628 and EZ 419.

On 28.3.81 applicant No. 3 likewise applied to the Licensing Authority (vide Appendix 5) for the issue of a rural taxi licence
25 for the purpose of serving the needs of Akrotiri Village, by his vehicle K.A. 909.

On 5.5.80 interested party Y. Ellinas applied to the Licensing Authority (vide Appendix No. 2) for the issue of 5 rural taxi li-

cences for the purpose of serving the needs of the British Sovereign Base Area of Akrotiri.

On 18.4.80 interested party KEM Taxi Ltd. applied to the Licensing Authority for the issue of 10 rural taxi licences for the purposes of serving the needs of the British Sovereign Base Area of Akrotiri. 5

The Licensing Authority, after examining the relevant applications, granted on 23.2.82 to applicants 1 and 3 the applied for licences, turning down the application of Applicant No. 2 in the present recourse. 10

The Licensing Authority refused applications of both interested parties for the issue of rural taxi licences for the purpose of serving the needs of the S.B.A of Akrotiri. (Vide Appendix 6).

Applicant No. 2 filed a hierarchical recourse with the Respondent Minister challenging the said refusal of the Licensing Authority; the Minister after examining the recourse of applicant No. 2 annulled the relevant decision of the Licensing Authority on 10.7.82, and invited the Authority in question to grant to applicant No. 2 the licence applied for i.e. a licence for a rural taxi for the purpose of serving the needs of Akrotiri Village (vide Appendix 7). 15 20

Interested parties in the present recourse namely Y. Ellinas and Kem Taxi Ltd. filed on 15.3.82 and 18.3.82 respectively hierarchical recourses with the respondent Minister (vide Appendices 9 and 10), challenging the decision-refusal of the Licensing Authority dated 27.2.82. 25

The Respondent Minister after hearing the hierarchical recourses of both interested parties on 19.6.82 and 25.9.82 (vide Appendices 11 and 12) decided on 7.1.85 to annul the relevant decision of the Licensing Authority; by virtue of his aforesaid decision, which appears in Appendix 13 attached to the opposition the respondent Minister invited the Licensing Authority to grant tem- 30

porary rural taxi licences for a period of 6 months in relation to 3 vehicles owned by each one of the interested parties, to be stationed in the British Sovereign Base Area of Akrotiri with a view to serving the needs of the S.B.A. of Akrotiri; in his aforesaid decision of 7.1.85 the respondent has set out as a prerequisite for a further renewal of the said temporary licences after the initial period of 6 months, the adduction of evidence by the interested parties to the effect that they were still operating Taxi Offices in the Akrotiri S.B.A with the permission of the Base Authorities.

10 It is quite clear from the above statement of facts and the material before me, that all three applicants applied for the issue of rural taxi licences for the purpose of serving the needs of Akrotiri Village and they were eventually issued with such licences for the said purpose, whereas both interested parties applied for the issue
15 to them of rural taxi licences for the purpose of serving the needs of the British Sovereign Base Area of Akrotiri; in spite of the fact that the interested parties were refused such licences by the Licensing Authority, they were successful in their hierarchical recourses and the respondent Minister invited the Licensing Authority to grant temporary licences to them - 3 for each interested
20 party - for the purpose of serving the needs of the British Sovereign Base Area of Akrotiri.

In short the applicants applied and eventually obtained rural taxi licences for the village of Akrotiri, whilst the interested parties applied and ultimately obtained rural taxi licences for the British Sovereign Base Area of Akrotiri, that is for a quite distinct and separate area from the former. In this connection it must be borne in mind that the applicants apart from the fact that they did not apply for licences for rural taxis for the purpose of serving the British Sovereign Base Area of Akrotiri, they did never qualify for seeking such licences as they were never operating Taxi Officers in the Akrotiri S.B.A. nor did they possess any permit from the Base Authorities to that effect.

35 In the circumstances I consider it pertinent at this stage to examine whether the present recourse is justiciable in view of the provisions of Article 146.2 of our Constitution which requires

such recourse to be made by a person whose any "existing legitimate interest" is adversely and directly affected by such decision. "The legitimate interest must exist at the time of the filing of the recourse and up to the determination of the case" (*Meletis and Others v. C.P.A.* (1986) 3 C.L.R. 418 at p. 433).

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In this connection I fully endorse the statement of my brother Judge Stylianides in *Kritiotis v. The Municipality of Paphos and Others* (1986) 3 C.L.R. 322 at p. 338:

"Though traditionally a recourse for annulment of an administrative decision is very widely open, it is not an actio popularis open to every citizen of the country. A citizen cannot contest the validity of every administrative act unless he possesses the quality of legitimate interest. Had it been otherwise, the influx of the recourses would paralyse administrative justice and the judicial control would have become illusory; furthermore for practical reasons the administration would also be handicapped in the due performance of its function. The criterion is the existence of a direct relationship and affectation of an interest, material or moral, of the applicant, otherwise the recourse is deprived of its admissibility".

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Although the issue of "legitimate interest" in the case under consideration was not directly raised, it is well settled that the existence of legitimate interest can be inquired into by an Administrative Court acting ex proprio motu.

In *Constantinidou & Others v. The Republic* (1974) 3 C.L.R. 416 at 418 it was held that "Litigation under Article 146 of the Constitution is a matter of public law and the presence of an existing legitimate interest has to be inquired by an Administrative Court even ex proprio motu".

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And recently in *Republic v. K.M.C. Motors Ltd.* (1986) 3 C.L.R. 1899 it was reiterated by the Full Bench of this Court that in administrative recourses the Court can go ex proprio motu into

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certain matters and, in particular, matters touching the existence of a legitimate interest.

5 In the instant case having considered the matter in the light of the above authorities and the material before me I hold the view that all three applicants had no existing legitimate interest adversely and directly affected by the sub-judice decision of the Respondent Minister dated 7.1.85 given in the hierarchical recourses in question.

10 All three applicants confined their applications to obtaining licences of rural taxis for the purpose of serving Akrotiri village only. Applicants 1 and 3 were granted such licences by the Licensing Authority as early as 23.2.82; applicant No. 2 in spite of the refusal of the Licensing Authority was eventually granted the licence applied for, by virtue of the decision of the Respondent
15 Minister given in the hierarchical recourse as above stated on 10.7.82.

All applicants in the present recourse did not apply and in fact they did not qualify, for the reasons above stated, to apply for licences for rural taxis for the purpose of serving the Sovereign
20 Base Area of Akrotiri.

Both interested parties applied for licences for rural taxis for the exclusive purpose of serving the Sovereign Base Area of Akrotiri. Both interested parties were fully qualified in so applying as it is clear that they had secured contracts from S.B.A. of Akro-
25 tiri for the purpose of serving the Base Authorities.

The hierarchical recourse to the Minister by Applicant No. 2 is not in any way connected with the hierarchical recourse of the interested parties. The hierarchical recourse of applicant No. 2 was relating to the village Akrotiri and the decision by the Minister
30 was given as early as 10.7.82. The hierarchical recourse of the interested parties was relating to their application for obtaining rural taxi licences for the exclusive purpose of serving the Sovereign Base Area of Akrotiri.

The decision of the respondent Minister in the latter occasion was given on 7.1.85. It could not and it did not in fact affect legitimate interests of any one of the three applicants.

For all the above reasons it is clear that none of the applicants ever had any legitimate interest in the sense of Article 146.2 of the Constitution, so as to be enabled to pursue the present recourse which is therefore, doomed to failure and it is accordingly dismissed. 5

Let there be no order as to costs.

Recourse dismissed.
No order as to costs. 10