### 1979 June 9

## [STAVRINIDES, J.]

# IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS PYLIOTIS,

Applicant,

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## THE REPUBLIC OF CYPRUS, THROUGH

- 1. THE MINISTRY OF FINANCE,
- 2. THE PRESIDENT OF THE TENDER BOARD,

  Respondent.

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(Case No. 135/68).

Tenders—Instructions to would-be tenderers—Omission to include certain information therein—Not amounting to abuse of power—Because would-be tenderers could have applied to the respondents for such information before submitting their tenders.

Following the submission of a tender by the applicant for the laundering and dry-cleaning of items of clothing for the National Guard he was on February 24, 1968 informed by the Ministry of Defence that "the Tender Board had accepted his tender for the laundering and dry-cleaning of items of clothing for the National Guard for the District/Centre of Famagusta and Tricomo/Yalousa". As contracts for other areas had been awarded to other tenderers the applicant, by means of this recourse, prayed for a declaration that the award of such contracts "is null and void and of no effect whatsoever".

Counsel for the applicant pointed to the fact that neither the leaflet instructing would-be tenderers nor the printed form for use in tendering stated the quantity of any of the items in respect of which tenders were invited, and that this was "an abuse of power" because "(a) it prevented a tenderer who would be prepared to made the lowest overall tender from doing so without reducing his prices to unprofitable levels, since the lowest profitable price for each item depended on the quantity of that item;

(b) it left tenderers in the dark as to the amount of work it involved with the possible result that a successful tenderer might be unable to cope with the volume of work involved".

Held, that while points (a) and (b) are considered reasonable in themselves, this Court does not agree that the omission of the information in question from either document need have had the effect contended for; that there is a complete answer to the applicant's case, and that is that, as pointed out in a letter from the Chairman of the Tender Board to the applicant dated March 6, 1968 (exhibit 6), before submitting his tenders he could have applied to the Ministry for the information, which it is not suggested that he did; and that, accordingly, the application must be dismissed.

Application dismissed. No order as to costs.

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### Recourse.

Recourse against the decision of the respondents to award the contract for the laundering and dry-cleaning of items of clothing for the National Guard to another tenderer in preference and instead of the applicant.

- L. N. Clerides, for the applicant.
- L. Loucaides, Deputy Attorney-General of the Republic, for the respondents.

Cur. adv. vult.

STAVRINIDES J. read the following judgment. At the material time the applicant was running a laundry and dry-cleaning establishment. In December, 1967, a notice was published in the press inviting tenders for the laundering and dry-cleaning of items of clothing for the National Guard. The applicant got 30 from the Ministry of Defence a printed leaflet instructing would-be tenderers and a printed form for use in tendering (exhibits I and 2 respectively).

Paragraph 6 of exhibit 1 stipulated that "The tenders must be submitted separately for each District or Centre"; and it was agreed between counsel on either side that "District" and "Centre" referred to military areas. By para. 7 thereof it was provided that the tenders should reach the office of the Accountant General not later than 9 a.m. on Saturday, January 20, 1968.

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The applicant duly submitted separate tenders for each military area except the Nicosia, Paphos and Tilliria areas.

On the following February 24 the applicant received a letter from the Ministry of Defence (exhibit 3) informing him that "the Tender Board had accepted his tender for the laundering and dry-cleaning of items of clothing for the National Guard for the District/Centre of Famagusta and Tricomo/Yalousa" (exhibit 3). It is not disputed by the respondent that a contract or contracts for other areas had been awarded to another tenderer or other tenderers; and what the applicant is praying for is a declaration that the award of a contract or contracts in respect of those other areas to another tenderer or tenderers "is null and void and of no effect whatsoever"

It is a fact that neither exhibit 1 nor exhibit 2 states the quantity of any of the items in respect of which tenders were invited, and the case for the applicant is that this was "an abuse of power" for these reasons: "(a) It prevented a tenderer who would be prepared to make the lowest overall tender from doing so without reducing his prices to unprofitable levels, since the lowest profitable price for each item depended on the quantity of that item; (b) it left tenderers in the dark as to the amount of work it involved with the possible result that a successful tenderer might be unable to cope with the volume of work involved".

While I consider points (a) and (b) reasonable in themselves, I do not agree that the omission of the information in question from either exhibit need have had the effect contended for. It seems to me that there is a complete answer to the applicant's case, and that is that, as pointed out in a letter from the Chairman of the Tender Board to the applicant dated March 6, 1968 (exhibit 6), before submitting his tenders he could have applied to the Ministry for the information, which it is not suggested that he did.

For the above reasons the application is dismissed. In all the circumstances I make no order as to costs.

Application dismissed. No order 35 as to costs.