

1988 September 15

[HADJITSANGARIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ARIFAN LIMITED,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

- 1. THE MINISTRY OF AGRICULTURE AND NATURAL RESOURCES,
- 2. THE PRESIDENT OF THE TENDER BOARD,

Respondents.

(Case No. 962185).

Discretion of administration—Judicial control—Principles applicable—Court will not substitute its discretion to that of the administration—In this case the sub judice decision to award the tenders to the interested parties was reasonably open to the respondents.

The facts of this case sufficiently appear in the judgment of the Court. 5

Recourse dismissed.

No order as to costs.

Cases referred to:

Christodoulou v. CYTA (1978) 3 C.L.R. 61;

The Republic v. Myrtilotis (1975) 3 C.L.R. 484.

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Recourse.

Recourse against the decision of the respondents to award the tender for the supply of Reagents to the interested party instead of

the applicants.

Ph. Valiantis, for the applicants.

N. Charalambous, Senior Counsel of the Republic, for the respondents.

5 *G. Triantafyllides*, for the interested party.

Cur. adv. vult.

HADJITSANGARIS J. read the following judgment. By this recourse the applicant company seeks the annulment of the sub-
10 justice decision of the Tender Board whereby the Board accepted the tender of the interested parties for the supply of Reagents instead of that of the applicants.

The grounds upon which the recourse is based are:

(1) That the decision was taken in excess or abuse of power.

15 (2) That the decision was not duly reasoned and that its reasoning does not accord with the facts.

(3) That there was a breach of the principle of equal treatment, provided by the Constitution.

(4) It is also argued that the tenders accepted did not satisfy the terms of the invitation.

20 The respondents deny all the above allegations and in answer allege that the decision was taken in due exercise of discretionary administrative powers. The same stand point is taken by the interested party C.G. Christofides and Son Ltd.

25 As to the facts of this case it is common ground that following the invitation for tenders by the Department of Agriculture for the supply of laboratory Reagents four tenders were submitted by the

date specified, that of the applicants, and those of C.G. Christofides and Son Ltd., G.A. Stamatis and Son, and G.A. Gavriellides. The Tender Board eventually accepted the tenders of C.G. Christofides and Son Ltd. and G.A. Stamatis and Son (interested parties) and did not accept those of the applicants and Gavriellides. 5

In his written address learned counsel for the applicants argued as per the facts relied upon in the recourse that the applicants' tender was in full compliance with the terms of the invitation, whereas that of the interested parties was not, and he further argued that the applicants' tender was cheaper as to a number of items required than that of the interested party. 10

Learned counsel for the respondents relied on the facts stated in the opposition and produced the letter dated 24.8.85 whereby the Acting Director of the Department of Agriculture expressed his views on the four tenders. As stated in the letter the applicants' tender should be rejected because although 19 out of the total of 58 items required were offered at the lowest cost the unit quantities at which they were offered were much larger than required. As he further expressly stated "such large quantities are unacceptable for use in our Laboratory as not only they are inconvenient to handle but also they may enhance decomposition, oxidation and other forms of degradation of the Reagents". In addition he stated that the principles of the applicants were not a known analytical reagents company and was offering chemicals to them for the first time. Thus, he suggested that the tender of the interested parties be accepted on the basis that the item at the lowest cost is preferred provided it is in accordance with the specifications. The Board proceeded to accept the tender of the interested parties. 15 20 25 30

By a letter dated 17.9.85 the applicants complained about the rejection of their tender and requested the reasons for its rejection.

By a letter dated 20.9.85 the Ministry of Agriculture replied to

the said letter pointing out that the reasons for the rejection were given in the letter dated 24.8.85, and specifically explained to them with regard to the 14 items which the applicants claimed were offered to them at the lowest cost why their tender could not
5 be accepted. Specifically they pointed out that the unit or pack as to 9 items was not in accordance with the invitation being as to larger quantities and that for the reasons stated in the letter dated 24.8.85 such large quantities were unsuitable. Further the specifications of the interested parties as to the 14 items were more detailed and complete than those of the applicants. Only two of the
10 items offered by the applicants were of the same purity as those of the interested parties. The letter further gives in great detail full reasons for the rejection of the applicants' tender.

Having considered the documentary evidence before me I am
15 fully satisfied that the respondents in reaching their sub-judice decision, had considered all the facts before them in their proper prospective and had reached such decision after a proper inquiry and their decision is fully reasoned and justified.

It is a well established principle of Administrative Law that the
20 Court will not interfere or substitute its own discretion for that of the administrative organ to which the discretionary power is entrusted, provided such organ has not exceeded its bounds of its discretionary power and its decision was duly reasoned.

As long as the decision in accordance with the above was reasonably open to the organ in question the principles of administrative justice are not offended. *Christodoulou v. CYTA* (1978) 3
25 C.L.R. 61, *The Republic v. Myrriotis* (1975) 3 C.L.R. 484.

In the present case on the material before me and the view of the facts I have taken it is clear to me that the decision taken by
30 the respondent was not only reasonably open to them but was in fact fully justified in the circumstances and duly reasoned.

In the result the recourse fails and is hereby dismissed but in the circumstances I make no order as to costs.

*Recourse dismissed.
No order as to costs.*