1982 March 16

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MENELAOS VASSILIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE SENIOR MINES OFFICER AND/OR THE COUNCIL OF MINISTERS,

Respondents.

(*Case No.* 322/80).

Constitutional Law—Right tc property—Article 23.1 *of the Constitution —Right of the Republic to underground minerals—Reserved by the said Article, thus validating provisions of section* 4(1) *of the Mines and Quarries (Regulation) Law, Cap.* 270 *which likewise reserves ownership and control of all minerals and quarry materials to the Republic.*

Abuse of powers—Burden of establishing—Rests upon the applicant.

Mines and Quarries (Regulation) Law, Cap. 270*—Quarry permit —Issue of—Within the discretion of the Head of the Mines Division—Quarrying operations likely to affect adversely water resources of the area—Perfectly open to Head of Mines Division to refuse issue of quarry permit on this ground.*

Administrative Law—Inquiry—Adequate inquiry—Decision refusing grant of quarry permit—Taken after obtaining views of inter-departmental technical Committee—Cannot be set aside for lack of adequate inquiry.

Administrative Law—Policy decision—Nothing wrong in principle with the adoption of a general policy decision governing future action of the administration—Provided the discretion of the

organ vested with powers under the law is not neutralized to the extent of depriving it of discretion to have regard to the merits of the individual case.

Administrative Law—Administrative acts or decisions—Reasoning —May be supplemented by material in the file—Not all reasons behind the decision need be explicitly stated and omission to state subsidiary reasons does not render the reasoning inadequate.

On April 12, 1980, the applicant, as owner of a plot of land at Potamia village, situate adjacent to the bed of Idhalias river, applied in the prescribed form to the Council of Ministers, through the Head of Mines Division, for a quarry permit to extract shingle and sand from his said field. The Mines Officer, in exercise of the powers delegated to him by the Council of Ministers, sought the views of an inter-departmental committee set up for the purpose of examining applications for quarry permits affecting Idhalias river, before deciding the application. The stand of this committee was adverse to the application for reasons relating to the need to protect the aquifer of the area. On July 23, 1980, by a notice in writing, addressed to the applicant, the respondent refused the application for "hydrological and other reasons". Hence this recourse.

During the hearing it emerged that as from 1978, a policy decision was taken to withhold permits for quarrying building material from or near the bed of Idhalias river in order to protect the aquifer. This policy was evolved after noticing the extent to which water resources of the aquifer had dwindled; and it was strictly adhered to thereafter.

Counsel for the applicant contended:

(a) That the property rights of the applicant, safeguarded by Article 23.1 of the Constitution have been violated.

(b) That a quarry permit was granted to three other persons similarly circumstanced as the applicant and, therefore, the respondent has acted in abuse of the powers vested in him by law, in that he did not accord equal treatment to the applicant as that extended to other persons in a like position.

(c) That the decision was taken contrary to or in abuse of the provisions of the Mines and Quarries (Regulation)

Law, particularly sections 36, 37(1), 39(1) and (2), and the Regulations made under s. 47(1) of the same law, and,

(d) that the decision rests on an insufficient inquiry and that the reasoning in support is indefinite and inadequate

Held, (1) that Article 23.1 relied upon by the applicant, expressly reserves, inter alia, the right of the Republic to underground minerals, validating thereby the provisions of section 4(1) of the Mines and Quarries (Regulation) Law, Cap 270, likewise reserving ownership and control of all minerals and quarry materials in Cyprus to the Republic, and that, consequently, applicant had no proprietary or possessory rights over the material he applied to extract to the surface, notwithstanding the fact that they were situate below the surface of his land.

(2) That no evidence was adduced to substantiate the averment of abuse of powers nor was the point persued in the address, and that since the burden of establishing abuse of powers rests upon the person propounding such a contention this ground of annulment must fail

(3) That the Mines and Quarries (Regulation) Law, Cap. 270, read in its entirety, renders in effect the appropriate authority the arbiter over the grant of a quarry permit, that it was perfectly open to the Head of the Mines Division to withhold permission if quarrying operations were likely to affect adversely the water resourses in the area

(4) That the decision taken cannot be set aside for lack of adequate inquiry because the application was referred, in the first place, to an inter-departmental technical committee, specifically functioning for consideration of applications for quarry permits and evaluation of their impact on the water resources of the area; that the committee was set up in furtherance to a decision to take necessary measures for the protection of Idhalias aquifer in the light of evidence that it had reached dangerously low levels; and that no criticism can justifiably be levied at the decision of the respondent to refer, in the first place, to the aforesaid committee the application for a permit for, having regard to the participants, it was on any view a highly competent body

to opine on the implications of a quarry permit on the water resources and none were made.

Held, further, that there is nothing wrong in principle with the adoption of a general policy decision governing future action of the administration; that if public interest warrants the formulation of settled factors to guide the administration in its task, it is permissible for the administration to evolve a general policy, provided the discretion of the organ vested with powers under the law is not neutralized to the extent of depriving it of discretion to have regard to the merits of the individual case.

(5) That though the decision communicated to the applicant was couched in a rather laconical language it did bring to his notice the main reason for which his application was dismissed, that is, the implications on water resources; that not all the reasons behind the decision need be explicitly stated, and omission to state subsidiary reasons does not render the reasoning inadequate (see *Mouzouris* v. *The Republic* (1972) 3 C.L.R. 43); that the reasons communicated to the applicant are not the only source wherefrom the reasoning of a decision may be derived; that the reasoning may be supplemented by material in the file of the case unless the law otherwise requires and expressly dictates that such reasons be disclosed in their entirety to the subject, which is not the case before us; that in this case the reasons communicated to the applicant were sufficient but any doubt as to them is dispelled on a consideration of the material in the file that makes it clear beyond doubt that the permit was refused in order to protect the weakened aquifer of the area; that it was perfectly open to the respondent to arrive at this decision, and nothing brought to our notice justifies the intervention of the Court; accordingly the recourse should fail.

Application dismissed.

Cases referred to:

Nissis v. *Republic* (1967) 3 C.L.R. 671;

R. v. *Secretary of State for Environment* [1976] 3 All E.R. 90;

R. v. *Tarbey Licencing Justices* [1980] 2 All E.R. 25;

Anisminic v. *Foreign Compensation Commission* [1969] 1 All E.R. 208;

Mouzouris v. *Republic* (1972) 3 C.L.R. 43;

Christodoulou v. *Republic* (1968) 3 C.L.R. 603;

Sevastides v. *Republic* (1968) 3 C.L.R. 309;

Oryctaco Limited v. *Republic* (1981) 3 C.L.R. 174.

Recourse.

Recourse against the refusal of the respondent to grant a quarry permit to extract shingle to applicant.

A. Hadjiloannou, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicant is the owner of a plot of land at Potamia village, situate adjacent to the bed of Idhalias river, near the dividing line erected by the Turkish army.

On 12th April, 1980, the applicant applied in the prescribed form to the Council of Ministers through the Head Mines Division for a quarry permit to extract shingle and sand from his aforementioned field. The Mines officer, in exercise of the powers delegated to him by the Council of Ministers under Law 23/62, and the decision of the Council embodied in Circular No. 35 communicated on 29.3.1965, sought the views of an inter-departmental committee set up for the purpose of examining applications for quarry permits affecting Idhalias river, before deciding the application. The views of this technical committee were communicated to the Mines officer on 27.5.1980 and their stand was adverse to the application, for the reasons stated therein, relating to the need to protect the aquifer of the area.

On 23rd July, 1980, by a notice in writing, addressed to the applicant, the respondent refused the application for "hydrological and other reasons".

The applicant challenges by this recourse, the validity of the aforementioned decision on four grounds, one of which is patently untenable, notably ground 1, alleging violation of the property rights of the applicant safeguarded by Article 23.1 of the Constitution. The self same Article relied upon by the applicant, expressly reserves, inter alia, the right of the Republic to underground minerals, validating thereby the provisions

of s. 4(1) of the Mines and Quarries (Regulation) Law, Cap. 270, likewise reserving ownership and control of all minerals and quarry materials in Cyprus to the Republic. Consequently the applicant had no proprietary or possessory rights over the material he applied to extract to the surface, notwithstanding the fact that they were situate below the surface of his land.

Another complaint that may be summarily dismissed is that concerning administrative discrimination at the expense of the applicant by virtue of ground 3 of the grounds of law set forth in support of the application. The contention is made that a quarry permit was granted to three other persons similarly circumstanced as the applicant and, therefore, the respondent is charged with abuse of the powers vested in him by law, in that he did not accord equal treatment to the applicant as that extended to other persons in a like position.

Not a iota of evidence was adduced to substantiate this averment nor was the point pursued in the address. The burden of establishing abuse of powers rests upon the person propounding such a contention. (See, inter alia, *Christodoulos Nissis* v. *The Republic* (1967) 3 C.L.R. 671).

The two other grounds upon which the application is founded are:-

(a) That the decision was taken contrary to or in abuse of the provisions of the Mines and Quarries (Regulation) Law, particularly sections 36, 37(1), 39(1) and (2), and the Rules promulgated on 22.7.1958 under s. 47(1) of the same law, and,

(b) that the decision rests on an insufficient inquiry and that the reasoning in support is indefinite and inadequate.

Powers of the Council of Ministers (or the Head Mines Division to whom powers were entrusted), to refuse a quarry permit:

The Mines and Quarries Law, read in its entirety, including the provisions relied upon by the applicant, renders in effect the appropriate authority the arbiter over the grant of a quarry permit. The width of the discretion is commensurate to the duty of the appropriate authority to safeguard the interests

of the public in the preservation and proper utilisation of minerals, an important aspect of natural wealth. They are the custodians of the mineral wealth of the country in the use and enjoyment of which no individual has a right except under licence. The several provisions of Cap. 270 cited in the application, far from imposing any fetters on public authority, confirm the wide discretion conferred by law. It was perfectly open to the Head Mines Division to withhold permission if quarrying operations were likely to affect adversely the water resources in the area. The implications from the unearthing of one species of minerals or quarry material on other underground resources, was a perfectly legitimate consideration to take into account in deciding whether to grant a quarry permit. And in the face of reasonable risks to the weakened water resources of the area, the authority might refuse to the citizen the privilege to tap underground resources of the country. The suggestion that the adverse consequences, such as they might be, would be suffered in an area now beyond the physical control of the government of Cyprus, is hardly worth mention; and the less said the better.

In my judgment, it was perfectly open to the respondent to refuse, under the law, a quarry permit for the extraction of building material from the area of Idhalias river. What remains to consider is whether the inquiry held and the decision taken are liable to be set aside for lack of adequate inquiry and proper reasoning, as alleged by the applicant.

The Inquiry:

The application was referred, in the first place, to an inter-departmental technical committee, specifically functioning for consideration of applications for quarry permits and evaluation of their impact on the water resources of the area. The committee was set up in furtherance to a decision to take necessary measures for the protection of Idhalias aquifer in the light of evidence that it had reached dangerously low levels.

No criticism can justifiably be levied at the decision of the respondent to refer, in the first place, to the aforesaid committee the application for a permit for, having regard to the participants, it was on any view a highly competent body to opine on the implications of a quarry permit on the water resources and none

were made. Considering its composition, it was in a unique position to give a valid opinion on the repercussions from the grant of a permit.

The respondent, as he informed the Court in his oral testimony before us, did not automatically dismiss the application as a result of the advice of the aforementioned committee, but proceeded to examine it on its merits in view of his own knowledge of the area and its water resources. He was well acquainted with the surrounding locality, and dangers to the aquifer from the extraction of building material and the level of the property in comparison to the bed of Idhalias river, being parallel to it. Taking the view, as he did, that water, a most valuable resource for the well-being of the area and the country as a whole, was at risk, a permit was refused.

Before us, it was submitted that it was within the contemplation of the applicant to limit digging to a depth of only 2 feet, and that, consequently, the apprehensions of the respondent were unjustified. This argument was pressed notwithstanding the fact that the application was not limited, as suggested before us, and the obligation of the respondent to examine it on its face value, as presented to him. Nor that it would make any difference if the application was formulated as aforesaid for Mr. Kronides informed us that he would even, under those circumstances, dismiss it in view of the fact that the property is on the same level with the bed of the river; therefore, the extraction was likely to weaken the aquifer.

Administrative Policy:

It emerged at the trial that as from 1978, a policy decision was taken to withhold permits for quarrying building material from or near the bed of Idhalias river in order to protect the aquifer. The policy was evolved after noticing the extent to which water resources of the aquifer had dwindled. This policy was, it seems, strictly adhered to, thereafter.

There is nothing wrong in principle with the adoption of a general policy decision governing future action of the administration. If public interest warrants the formulation of settled factors to guide the administration in its task, it is permissible for the administration to evolve a general policy, provided the

discretion of the organ vested with powers under the law is not neutralized to the extent of depriving it of discretion to have regard to the merits of the individual case. One may appropriately recall in this context the observations of Denning, M.R., in *R.* v. *Secretary of State for Environment* [1976] 3 All E.R. 90 (C.A.), emphasizing the differences between judicial and administrative decisions and the fact that public policy lies at the core of administrative decisions. More relevant still is the decision of the Divisional Court in *R.* v. *Tarbay Licencing Justices* [1980] 2 All E.R. 25 (D.C.), where it was pointed out that in the domain of administrative law there is nothing wrong in principle with the adoption of a general policy, so long as sufficient room is left for deviation therefrom whenever the merits of a particular case so justify. It is noteworthy to mention that the recent trend of English authority, especially since the decision of the House of Lords in the *Anisminic* v. *Foreign Compensation Commission* [1969] 1 All E.R. 208, is conducive to the development of a coherent body of administrative law wherefrom useful guidance may be derived in appropriate circumstances.

The formulation of a policy decision by the administration has the added advantage of ensuring uniformity of action and equality of treatment. Reverting to the circumstances of the case, the fact that the respondent acted, to start with, from the premise of a general policy, in no way vitiates the decision, given that he did not overlook the merits of the case and did not feel automatically duty bound to dismiss it.

Reasoning of the Decision:

The decision communicated to the applicant was, it must be said, couched in a rather laconical language; nonetheless it did bring to his notice the main reason for which his application was dismissed, that is, the implications on water resources. Not all the reasons behind the decision need be explicitly stated, and omission to state subsidiary reasons does not render the reasoning inadequate. (See *Christos P. Mouzouris* v. *The Republic* (1972) 3 C.L.R. 43 (judgment of A. Loizou, J.)).

The reasons communicated to the applicant are not the only source wherefrom the reasoning of a decision may be derived. The reasoning may be supplemented by material in the file of the case unless the law otherwise requires and expressly

dictates that such reasons be disclosed in their entirety to the subject, which is not the case before us. However, reference to the file as a supplement to the reasoning, is only permissible if the facts set out therein are unequivocably and inextricably connected with the decision taken to the extent of saying that they are unavoidably behind it. (see, *Conclusions from the Decisions of Case Law of the Greek Council of State*, 1929–59, p. 185). In other words, the reasoning behind the decision must not be a matter of conjecture for in those circumstances judicial review would be impossible. The principle that the reasoning may be supplemented from the records in the file was accepted as a sound legal proposition in many decisions of the Supreme Court. (See, inter alia, *Costas Christodoulou* v. *The Republic* (1968) 3 C.L.R. 603; *Pelopidhas Sevastides* v. *The Republic* (1968) 3 C.L.R. 309; *Oryctaco Limited* v. *The Republic* (1981) 3 C.L.R. 174). In this case the reasons communicated to the applicant were sufficient but any doubt as to them is dispelled on a consideration of the material in the file that makes it clear beyond doubt that the permit was refused in order to protect the weakened aquifer of the area. It was perfectly open to the respondent to arrive at this decision, and nothing brought to our notice justifies the intervention of the Court. However, nothing said in this judgment should be construed as encouraging the authorities to limit the communication of their reasons to a bare minimum. Proper acquaintance of the subject about the fate of his affairs with the administration, is greatly in the interests of proper administration and in the end, strengthens the confidence of the public in the action of the administration. Had the reasoning been more explicit, I would seriously consider adjudging the applicant to pay costs.

In the result, the recourse is dismissed with no order as to costs.

Application dismissed. No order as to costs.