1986 November 25

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1. OLYMPIOS PAPADOPOULOS,
2. PAPADOPOULOS TILLYARD ASSOCIATES,
3. TILLYARD AND PARTNERS (CYPRUS),

Applicants,

v.

1. THE MUNICIPALITY OF NICOSIA AND/OR
THE MUNICIPAL COMMITTEE OF NICOSIA,
2. THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondents.

(Case No. 640/85).

ıstitutional Law—Constitution, Article 29—Object and ambit of.

ıe within which to file a recourse—Request by applicants to be informed of any decision in respect of tenders and the reasons therefor—Information given by letter dated 15.2.85—Repeated requests following said reply for information on same matter—Prompt reply given on each occasion referring to letter dated 15.2.85—Failure to file recourse within 75 days from 15.2.85—Recourse out of time.

Applicants were among the tenderers for the supply to the respondent Municipality of services of Quantity Surveyors needed for the design and construction of a swimming pool. Having received no reply, they requested, through their counsel, by letter dated 15.1.85 the Municipality to inform them whether a decision had been taken and if so, the criteria upon which it was reached. By

letter dated 15.2.85 the Municipality informed applicants' said counsel that the tender was awarded to M.D.A. and that the criteria were experience, organization of the tenderers and other relevant considerations.

On 3.5.85 the applicants addressed another letter to the Municipality asking whether a decision had been taken. In reply the Municipality referred them to the letter dated 15.2.85. Not content with the reply the applicants addressed one more letter dated 28.5.85 to the Municipality renewing their request for information about the criteria of the decision. By letter dated 1.6.85 the Municipality referred the applicants to the letter dated 15.2.85. The request for information was repeated by the applicants by letter dated 21.6.85, to which reply was given on 1.7.85, telling the applicants that the information had already been given to them. As a matter of fact the Municipality replied to every communication by the applicants within the period envisaged by Article 29 of the Constitution.

Held, dismissing the recourse: (1) The applicants were fully apprised of the decision and its reasons by the letter dated 15.2.85. It was a decision of an executory nature and, as such, could be challenged by a recourse within the 75 days period. This the applicants failed to do.

(2) The object of Article 29 of the Constitution is not to promote correspondence between citizens and public authorities, but to ensure that request or complaint are dealt with expeditiously and effectively, giving the reasons of the decisions affecting the addressors. It does not oblige public authorities to reply to communications, already, answered. It does not afford of itself a right to judicial review confined by Article 146.1 to executory administrative acts. Jurisdictionally what it accomplishes when it relates to a matter amenable to the jurisdiction of Article 146.1 is to remove the element of prejudice that would otherwise be necessary to make the recourse justiciable.

(3) In this case the only request touching upon a matter

of executory nature was that contained in the letter of 15.1.85 to which a reply was given on 15.2.85.

Recourse dismissed with costs.

Cases referred to:

Kyriakides v. *C.B.C.* (1965) 1 C.L.R. 482;

Pankyprios Enosis Epistimonon Chimikon v. *Ministry of Education* (1983) 3 C.L.R. 745;

Xenophontos v. *The Republic*, 2 R.S.C.C. 89;

Pitsillos v. *Minister of Interior* (1971) 3 C.L.R. 397;

Justice Party v. *The Republic* (1986) 3 C.L.R. 187;

Frangos and Others v. *Republic* (1982) 3 C.L.R. 53;

Booksellers Association v. *The Republic* (1985) 3 C.L.R. 1171;

Nakis Bonded Warehouse Ltd. v. *Municipal Committee of Larnaca* (1985) 3 C.L.R. 1179.

Recourse.

Recourse against the decision of the respondents to award the tender for the design and construction of a swimming pool at Goal Grounds, Nicosia to the interested party.

Chr. Triantafyllides, for the applicants.

K. Michaelides, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The Municipaity of Nicosia invited tenders for the supply of the services of Quantity Surveyors needed for the design and construction of a swimming pool at Goal Grounds, Nicosia. Applicants were among the tenderers. By a decision dated 7th January, 1985, the Municipality awarded the tender

to M.D.A., a firm of quantity surveyors. Seemingly, the decision was not immediately communicated to the applicants; whereupon their counsel requested the Municipality to inform them whether a decision had been taken and if so, the criteria upon which it was reached. A reply was given within 30 days to both requests. By a letter dated 15th February, 1985, the Municipality informed counsel for the applicants that (a) the tender had been awarded to M.D.A. and (b) the criteria by reference to which the decision was taken were experience, organization of the tenderers and other relevant considerations. Thus applicants were fully apprised about both the decision and the reasons upon which it was founded. It was a decision of an executory character definitive of the rights of the applicants with regard to the tender and as such could be challenged by mounting a recourse before the Supreme Court within 75 days (Article 146.3). This they failed to do. Instead they pursued what I regard, if I may use the expression, a fruitless course after the lapse of the 75-day-period, designed to elicit the grounds upon which the decision had been taken despite the information given them on 15th February, 1985. The course chosen could not, under any guise, revive the right to challenge the executory decision that lapsed with the expiration of the 75-day-period.

The details of the course followed by the applicants were the following: Notwithstanding the communication made to them of the decision mentioned above, on 3rd May, 1985, they addressed a letter to the Municipality asking whether a decision had been taken. The Municipality replied promptly informing them by letter dated 14th May, 1985, that reply to their question had been made long ago, on 15th February, 1985. As earlier indicated, their counsel addressed on their behalf a request for similar information on 15th January, 1985. Not content with the reply of the Municipality of 14th May, 1985, they addressed yet one more letter to the respondents on 28.5.1985 renewing their request for information about the criteria by reference to which the tender was awarded to the successful tenderers. Speedily again the Municipality

replied on 1st June, 1985, that the criteria were those indicated in their letter of 15th February, 1985. The request for information was repeated by yet another letter of their counsel dated 21st June, 1985, to which reply was given on 1st July, 1985, telling them that the information sought had already been given to them. To complete the picture reference must be made to a request for information made by the applicants on 17th December, 1984, that was repeated in the letter of their counsel of 15th January, 1985, and to which reply was given by the letter of the Municipality dated 15th February, 1985. Thus, as a matter of fact, reply was made to every communication of the respondents including specification of the reasons for which the decision to award the tender to the third parties within the 30-day-period envisaged by the Constitution. If the applicants were dissatisfied with the decision or the adequacy of the reasons upon which it was founded, as disclosed to them, the only course open to them was to challenge the decision before the Supreme Court within the 75 days.

We may appropriately remind of the observations of Triantafyllides, J., as he then was, in the case of *Andreas Kyriakides* v. *C.B.C.*(1) that the object of Article 29 is not to promote correspondence between citizens and public authorities but to ensure that requests or complaints made by citizens are dealt with expeditiously and effectively giving the reasons of decisions affecting the addressors. Equally apposite are the observations of Triantafyllides, P., in *Pang. Enosis Epist. Chimikon* v. *Min. Education*(2) that Article 29 does not oblige public authorities to make reply to communications already answered. The ambit and juristic implications of Article 29 were first reviewed by the Supreme Constitutional Court in *Xenophontos and Republic* (3). Directed by the tenor of the above decision Stavrinides, J. pointed out in *Modestos Pitsillos* v. *The Minister of the Interior, through The Director-General and Another* (4) that Article 29 refers exclusively to written

(1) (1965) 3 C.L.R. 482, 495.
(2) (1983) 3 C.L.R. 745, 748.
(3) 2 R.S.C.C. 89.
(4) (1971) 3 C.L.R. 397.

requests and complaints that can be made the subject of an application for annulment under Article 146. Recently I had occasion to review the ambit and implications of Article 29 guided by the plethora of Cyprus cases bearing on its interpretation and application—*Justice Party* v. *The Republic*(1). Article 29 aims, it was observed, to ensure sound administration by obliging public authorities to heed and deal with written communications of citizens who have a right to an expeditious reply thereto. Jurisdictionally what it accomplishes when it relates to a matter amenable to the jurisdiction of Article 146, is to remove the element of prejudice that would otherwise be necessary to make the recourse justiciable. Article 29 does not afford of itself a right to judicial review confined by Article 146.1 to executory administrative acts. The only request of the applicants for information touching upon a matter of an executory character was that of 15th January, 1985, where they sought to be informed whether a decision had been taken. To that communication a reply was given on 15th February, 1985.

In my judgment the recourse is wholly unfounded and was doomed to failure from the very beginning. In such circumstances I can only exercise my discretion in one way (2) by ordering the applicants to pay the costs of the respondents, namely, the Municipality of Nicosia. The recourse against the Council of Ministers was earlier withdrawn.

In the result the recourse is dismissed with costs to be assessed by the Registrar.

Recourse dismissed with costs.

(1) (1986) 3 C.L.R. 187.
(2) Frangos and Others v. The Republic (1982) 3 C.L.R. 53, 61; Booksellers Association v. Republic (1985) 3 C.L.R. 1171; Nakis Bonded Warehouse Ltd. v. The Municipal Committee of Larnaca (1985) 3 C.L.R. 1179.