

1986 December 22

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

DEMETRIOS G. DEMETRIOU,

Applicant,

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THE DISTRICT OFFICER OF LIMASSOL,

Respondent.

(Case No. 401/84).

*Gaming machines—Installation and operation of—Permit for—
The Betting Houses, Gaming Houses and Gambling Pre-
vention Law, Cap. 151—Section 6B as amended by s. 2
of Law 19/78—Powers of District Officer thereunder.*

*Natural Justice—Gaming machines—Application for installation 5
and operation of—Section 6B (as amended by Law 19/78)
of the Betting Houses, Gaming Houses and Gambling Pre-
vention Law, Cap. 151—Report by Police to District Of-
ficer as to the suitability of premises, mentioning that
applicant is of good character—Report did not contain 10
any facts beyond applicant's knowledge—No violation of
the Rules of Natural Justice—No interference with the
discretionary powers of the District Officer.*

*Constitutional Law—Right to exercise a profession, trade or 5
calling —Constitution, Article 25—Section 6B (as
amended by Law 19/78) of the Betting Houses, Gaming 15
Houses and Gambling Prevention Law, Cap. 151—Re-
striction thereunder within the ambit of Article 25(2)—
Article 24.2 of the Constitution irrelevant to present
case. 20*

*Administrative Law—Discretionary powers—Interference with,
by another organ—See Natural Justice, ante.*

Recourse for annulment—Subsidiary irregularities—Court looks at the substance of the case—Wrong description of respondent—Can be cured by amendment even ex proprio motu when giving judgment—Recourse against District Officer, who had refused a permit in virtue of powers vested in him by Law—No substantial irregularity—No need for amendment.

Executory act—Confirmatory act—Rejection of applications by the owners of gaming machines and another person for installation and operation of gaming machines in particular premises—Rejections of new applications by the same owners and rejection of applications by applicant for the installation and operation of such machines in the same premises—As far as applicant is concerned the said rejection cannot be confirmatory of the previous rejections.

On 22.2.84 Silver Amusement Enterprises Ltd. submitted applications for permits to move a number of their gaming machines to the premises at No. 165 Archbishop Makarios III Avenue in Limassol. Simultaneously similar applications were submitted by the person in charge of the premises, namely Costas Chrysostomou. Having obtained a report* from the police the respondent rejected all the said applications on the ground that "the premises are situated on the ground floor of a clinic and at a small distance from the Lanition Gymnasium of Limassol".

On 25.4.84 the said company reverted on the matter and submitted new applications to the same effect. Simultaneously similar applications were submitted by the applicant Demetrios Demetriou for installation of the said machines in his premises at 165 Archbishop Makarios III Avenue in Limassol. Having obtained information from the police that there had not been a change in the situation as it prevailed at the time, when the previous applications were made, the respondent turned down the new applications on the same grounds as the previous applications had been turned down and in ad-

* Quoted at p. 2092.

dition he mentioned that the machines had already been installed illegally in the said premises.

As a result the applicant filed the present recourse. His counsel argued that though under s. 6B(2) (a) of Law 19/78 the District Officer is empowered to attach conditions on any permit in respect of gaming machines, he cannot refuse altogether the grant of a permit. He further argued that the respondent in seeking information from the police without the knowledge of the applicant violated the rules of natural justice. He also contended that the premises are far away from the Lanition Gymnasium and that similar permits were granted to other persons in the area.

Counsel for the respondent raised a number of preliminary objections, namely that the recourse was wrongly brought against the District Officer, who is not an independent organ, but it should have been brought against the Republic, and that the sub judice decision was confirmatory of the previous decision, whereby the applications of the said company and Costas Chrysostomou were rejected.

Held, dismissing both the preliminary objections and the recourse: (1) When this Court is dealing with a recourse, it looks at the substance of the case and does not allow subsidiary formalities such as the description of the respondent to defeat the substance. In his case the decision was taken by the respondent in virtue of powers vested in him by the Law and, therefore, there is no substantive irregularity if he is described as a respondent. Even if there had been such an irregularity, it could be cured in the judgment by directing amendment of the title.

(2) The applicant, being the person having the control and/or possession of the machines was entitled under s. 6B(1) of Cap. 151 as amended to apply for a permit to operate the machines. The fact that several applications were submitted by Silver Amusement Enterprises Ltd. in the past and had been rejected does not concern the applicant. but concerns such company and any other

5 person, who previously applied for the installation and operation of the machine. The applicant's applications were first submitted on 25.4.84 and the refusal was communicated to him by letter dated 23.5.84. This recourse was filed within 75 days from such communication. In so far as the applicant is concerned the sub judice act is not confirmatory of any previous act.

10 (3) As it is clear from the provisions of s. 6B of Cap. 151 as amended by Law 19/78 the District Officer is empowered both to grant a permit subject to conditions or refuse a permit altogether bearing in mind the prerequisites set out therein. He is empowered to refuse a permit, if the premises in which the gaming machines have been installed or are intended to be installed are not, in 15 the circumstances, suitable.

20 (4) For the purposes of his inquiry the respondent was bound to obtain information as to the suitability of the premises and as to whether the applicant was a fit person to be granted a permit. The report of the Police did not contain any facts beyond the knowledge of the applicant, who is, also, described therein as a person of good character. It follows that the rules of natural justice were not violated. Furthermore, the fact of obtaining such information from the Police cannot be considered, in the 25 circumstances of this case, as an interference with the respondent's discretionary powers or as tainting his decision with irregularity.

30 (5) Article 24.4 of the Constitution invoked by the applicant has nothing to do with the present case. The only provision in the Constitution that might have some bearing is Article 25, but the position is covered in virtue of Article 25.2 as the restrictions are imposed by law in the public interest, good morals and the public order.

35 (6) The applicant failed to substantiate by evidence the allegations that permits to operate gaming machines were given to other persons in the same area.

(7) The sub judice decision was duly reasoned and, in the light of all the circumstances, reasonably open to the respondent.

Recourse dismissed. £75 costs against applicant.

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cases referred to:

Hadji Papasymeou v. The Republic (1984) 3 C.L.R. 1182;

Christodoulou v. The Republic, 1 R.S.C.C. 1;

Hyatt International v. The Republic (1985) 3 C.L.R. 337;

Kouttoukis and Others v. The Republic (1985) 3 C.L.R. 2440. 10

recourse.

Recourse against the refusal of the respondent to issue applicant a permit for the installation of gaming machines in the premises of his café-Snacks business. 15

A. Poyiadjis, for the applicant.

Cl. Theodoulou (Mrs.), Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant runs a business of Café - Snacks under the name "Monte Carlo" at the premises situated at No. 165, Archbishop Makarios III Avenue, in Limassol. 20

On or about the 25th April, 1984, applicant submitted application to the District Officer, of Limassol, for the issue to him of a permit for the installation in the same premises of gaming machines. Such application was submitted simultaneously with an application by Silver Amusement Entertainment Co. Ltd., the owner of such machines, who applied for a permit for the removal of the said machines from the place they were installed and their installation to the said premises of the applicant naming the appli- 25 30

cant as the person proposed to be in charge of such machines.

5 By letter dated the 23rd May, 1984, the respondent refused the permits applied for on the ground that the said premises were on the ground floor of a clinic and also at a short distance from the Lanition Gymnasium of Limassol.

As a result, applicant filed the present recourse challenging the validity of the above decision.

10 The grounds of law on which his prayer for relief is based, are that the sub judice decision -

(a) Was taken in excess or in abuse of power.

(b) Is contrary to the principles of administrative justice concerning the exercise of discretionary power.

15 (c) Does not coincide with the principles of equal treatment and is prejudicial and/or violates the principle of equality contrary to Article 28 of the Constitution.

(d) Is of a destructive and/or prohibitive nature and as such, it violates Article 24.4 of the Constitution.

20 (e) Is the result of misconception of fact.

(f) The respondent failed to carry out a proper inquiry before issuing the sub judice decision and

(g) The sub judice decision is not duly reasoned.

25 The facts of the case as emanating from the relevant material in the file of the administration, copies of which have been attached to the written address of counsel for the respondent, are as follows:

30 On the 22nd February, 1984 the Silver Amusement Enterprises Ltd., a private company, the registered owner of a number of gaming machines, submitted a number of applications to the respondent for permits to move a number of their gaming machines from Salonica Str., Limassol, where they were installed, to the premises at No. 165
35 Archbishop Makarios III Avenue. Simultaneously with such applications Costas Chrysostomou who was the person in

charge of the above premises also submitted similar applications for the installation of the said machines at his premises which were described as Games and Snacks salon.

The respondent in the process of his inquiry into the matter, submitted the applications to the Police Superintendent of Limassol for his observations. The Police Superintendent by his letter dated the 15th March, 1984 informed the respondent as follows:

"Gaming machines:

I refer to the attached application of Costas Chrysostomou of Limassol No. 165, Archbishop Makarios III Avenue, for the installation of gaming machines and wish to inform you as follows:

2. The applicant is a suitable person of good character and the proposed premises are situated at Archbishop Makarios III Avenue at the south side of the Lanition Gymnasium. It is on the ground floor and is used as snack bar. At the upper floor the clinic of doctor Mattheou is housed.

3. The gaming machines mentioned in the applications have already been installed in the said premises and operate without a permit. The applicant has already been reported on three occasions and directions have been given that the reporting should continue.

4. The said premises are frequented mainly by students of the Lanition Gymnasium and the use of the machines causes considerable noise which is affecting the clinic.

5. In view of the above and the well known problems which are created with the school children, the application is not recommended."

The respondent rejected both the applications of the company and that of Mr. Chrysostomou and by letter dated the 21st March, 1984 informed them of the reasons of his refusal: As stated in his letter "it was not possible to grant such a permit for the reason that the premises are situated

on the ground floor of a clinic and at a small distance from the Lanition Gymnasium of Limassol."

5 The said company reverted again on the matter on the 25th April, 1984 by submitting new applications in respect of the same machines for permits to instal them at the premises at No. 165, Archbishop Makarios III Avenue. Simultaneously with the said applications, Demetrios Demetriou, the applicant in the present recourse, submitted similar applications for permits to instal the said machines in his premises at 165, Makarios III Avenue. In fact the said machines had already been in the possession of the applicant and were operated by the applicant before the submission of his applications to the respondent.

15 Upon receipt of such applications the respondent asked information from the Superintendent of Police as to whether there had been a change in the situation as it prevailed when the previous applications were made. The Superintendent of Police in reply repeated that the reasons previously mentioned by him still held good and also mentioned that the said gaming machines had already been installed illegally in the premises at 165, Makarios III Avenue, and were operating without a permit.

25 The respondent after examination of the applications and after he had ascertained that there had been no change in the circumstances which previously rendered the grant of such permits undesirable rejected the applications for the same reasons as he had done in respect of the previous applications.

30 Counsel for applicant in arguing his case submitted that under the provisions of s. 6B(2) (a) of Law 19/78 the District Officer is empowered to grant permits in respect of gaming machines subject to conditions which he might deem necessary in the public interest, good morals, and the public order. In the exercise of his discretionary powers the District Officer could in the present case grant the permit subject to such conditions as to the hours of operation of the said machines or any other conditions concerning the use of the premises but he could

not refuse altogether the grant of a permit. In the circumstances, counsel submitted, the District Officer wrongly exercised his discretion. He further contended that the respondent by asking the opinion of the Superintendent of Police on the matter and taking into consideration such opinion without the knowledge of the applicant, acted in contravention of the law and the rules of natural justice. He also contended that the premises in question are far away from the Lanition Gymnasium and that similar permits were granted to other persons in the same area and thus the applicant was treated in a discriminatory manner. He concluded by submitting that the respondent acted under a misconception of law, abuse of power and wrong exercise of his discretionary powers, and the sub judice decision is not duly reasoned.

Counsel for respondent by her written address in expounding on her grounds of law in opposition to the applicant's recourse contended that:

(a) The recourse was wrongly brought against the District Officer of Limassol in his personal capacity, as the respondent is not an independent organ and the applicant, if he had any complaint, should have filed his recourse against the Republic.

(b) The sub judice decision is confirmatory of a previous decision dated 21.3.1984 and it is not by itself executory and could not be challenged by a recourse.

(c) The applicant has no legitimate interest in view of the fact that the owner of the gaming machines was the Silver Amusement Enterprises Ltd. who, as such, applied to the District Officer to move the said machines from Salonica Street in Limassol to the premises of the applicant, enclosing at the same time, an application on behalf of the applicant for the installation of the machines at his premises.

(d) The operation by the applicant of a Snack Bar and his expressed intention of sale of intoxicating liquors in the same premises, disentitles him to have gaming machines installed, as a special permit is required from the District

Officer for such purpose and the applicant never applied for such a permit.

5 (e) The sub judice decision was taken properly and lawfully and in full compliance with the provisions of the law, Constitution and after a due inquiry in the matter had been carried out; also that the decision is duly reasoned.

10 I shall briefly deal first with the preliminary objection of counsel for the respondent that the recourse should fail as it was wrongly directed against the District Officer personally and not the Republic of Cyprus.

15 From a series of decided cases both of the Supreme Constitutional Court and of this Court it is well established that when this Court is dealing with a recourse before it, it looks into the substance of the case and the act that is challenged and does not allow subsidiary formalities such as the description of the respondent to defeat the substance. Such principle has been recently reiterated by Triantafyllides, P. in *Hadji Papasymeou v. The Republic* (1984) 3 C.L.R. 1182 in which after reviewing various cases and in particular *Christodoulou and The Republic*, 1 R.S.C.C. 1, he said the following at p. 1185:

25 “ what really matters in a recourse under Article 146 is its subject-matter and that the description of the respondent is a subsidiary formality.”

30 In *Christodoulou and The Republic* (supra) the Court proceeded on its own motion, when giving judgment, to amend the title of the proceedings to read “The Republic of Cyprus, through the Collector of Customs” instead of “Polykarpos Yiorkadjis Minister of Interior” so as to bring it into conformity with the true facts of the case (see also *Hyatt International v. Republic* (1985) 3 C.L.R. 337, at pp. 348 - 349 where reference to other cases is made).

35 In the present case the decision which is challenged is the decision of the District Officer in the exercise of powers vested in him under the law and I see no substantive irregularity if he is described as a respondent. Even if I had

reached a different conclusion such irregularity could be cured in the judgment by directing that the title of the proceedings be amended by describing the respondent as "The Republic of Cyprus, through the District Officer of Limassol", which in the circumstances I find unnecessary to do. 5

Before dealing with the other issues before me I find it necessary to make a brief reference to the law on the matter. Under s. 6B(1) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 as amended by s. 2 of Law 19/78 it is provided that "any person who has under his control or in his possession any gaming machine or allows or suffers that any such machine is installed or used in any premises of which he has the control or possession, otherwise than in accordance with the conditions provided under sub-section (2) is guilty of an offence" 10 15

In sub-section (2) of section 6B the conditions required under sub-section (1) are set out. Condition (a) of such sub-section provides that a permit is obtained from the District Officer of the district in which the machine is situated and it goes on to mention how such permit can be obtained and prescribes the fees payable for its issue. It further provides that the District Officer may impose such conditions necessary in the public interest, the good morals or the public order, as he may deem fit. 20 25

The first proviso to sub-section (2) provides as follows:

"Provided no such permit shall be issued or shall be renewed unless the District Officer is satisfied that the applicant is of good character and a fit person to be granted a permit or renewal of the permit and that the premises, bearing in mind all the circumstances, are suitable." 30

It is clear from the provisions of this section and in particular the first proviso that the District Officer is empowered both to grant a permit subject to conditions or refuse a permit altogether bearing in mind the prerequisites set out therein. 35

In the light of the provisions of the law the contention of counsel for applicant that the District Officer is only empowered to impose conditions and not to refuse completely a permit credits no merit.

5 I come next to consider the contention of counsel for the respondent that the sub judge decision is confirmatory of a previous decision whereby applications for installation of gaming machines at the same premises had been refused.

10 It is clear from the facts before me that the applicant is a person having the control and/or the possession of the gaming machines which had been installed at his premises. As such he was entitled under sub-section (1) of s. 6B to apply for a permit from the District Officer to operate such machines. The fact that the said machines had already been installed and were operated in the premises in the occupation of the applicant is abundantly clear from the letter of the Superintendent of Police to the District Officer in which he mentioned that such machines had already been
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20 illegally installed and were operated at the premises of the applicant and that criminal proceedings in this respect had been initiated against him.

No previous applications had been submitted by the present applicant for a permit to possess and operate the
25 said machines but his applications were first submitted on the 25th April, 1984, and the refusal of the respondent was communicated to him on the 23rd May, 1984. The present recourse was filed on the 4th August, 1984, i.e. within the time limit of 75 days prescribed by the Constitution. The contents of the letter of the District Officer
30 embodying the sub judge decision cannot be treated as confirmatory of any previous decision concerning any person other than the applicant who had not previously submitted any application. The fact that several applications
35 were submitted by the Silver Amusement Enterprises Ltd. in the past and had been rejected does not concern the applicant but concerns the said company or any other person who previously applied for the installation and operation of such machines. I, therefore, find the contention of counsel
40 for the respondent that the sub judge decision is con-

firmatory of a previous one, in so far as the applicant is concerned, as untenable.

Having dealt with the preliminary objections I come now to the substance of the case.

The District Officer is empowered under sub-section (2) (a) of s. 6B to refuse a permit if the premises in which the gaming machines have been installed or are intended to be installed are not, in the circumstances, suitable. Before refusing the application of the applicant the District Officer carried out an inquiry as to whether such premises were suitable for the purpose applied for. For the purpose of being better informed in the matter he made inquiries as to the person of the applicant and the suitability of the premises, from the Police Superintendent of Limassol who informed him that the said premises were situated at a short distance from the Gymnasium and that on the first floor of the premises in question there was a clinic the running of which would be disturbed by the operation of the said machines. In his reply to the applicant the District Officer gave his reasons for having refused the permit. The applicant contended that similar permits had been granted to other persons and that conditions could be imposed whereby the complaints advanced could be avoided. As to his allegation that similar permits had been granted in the same area it has not been substantiated by any evidence and, therefore, they remain unfounded.

In the circumstances of the present case and for the reasons explained by the District Officer in his reply to the applicant it was reasonably open to him to reach the sub judge decision and I have not been satisfied that a good cause has been shown that the District Officer in exercising his discretion as he did has erred in principle or that he has wrongly exercised his discretion, so as to justify this Court to interfere with his decision.

As to the contention of counsel for applicant that the sub judge decision is violating Article 24.4 of the Constitution I find that such provision has no application in the present case. The only provision in the Constitution that might have some bearing in the case is Article 25

which protects the right to practice any profession or to carry on any occupation, trade or business. Under paragraph 2, however, of Article 25 such right may be subjected to conditions or restrictions prescribed by law including the public interest and public morals. In the case under consideration restrictions are imposed by law in the public interest, the good morals and the public order.

I also find that the contention of counsel for applicant that the sub judice decision is not duly reasoned is unfounded. Ample reasoning is given by the District Officer in his letter as to the reasons why the application was refused.

I further find no merit in the argument of counsel for applicant that the fact that the District Officer in reaching his decision asked information from the Superintendent of Police concerning the applicant and the premises in question amounts to a violation of the rules of natural justice. The District Officer for the purposes of his inquiry was bound to be informed as to the suitability of the premises and whether the applicant was a fit person to be granted a permit. The information provided by the Superintendent of Police is not of a nature which embodies facts beyond the knowledge of the applicant because the applicant was well aware as to the situation of his premises and also the fact that there was a clinic on top of them. In the information supplied by the police the applicant is described as a person of good character and so there was no reason for the District Officer to inquire further into this matter once he did not consider the character of the applicant as an impediment to the grant of the permit.

In *Koutoukis and Others v. The Republic* (1985) 3 C.L.R. 2440 in dealing with a similar argument that the decision of the District Officer in that case was wrong in that in reaching his decision he relied on the opinion of the Attorney-General of the Republic which he sought, I said the following at p. 2448:

“.... I find no merit in his argument. The Attorney-General of the Republic is also the Legal Adviser of the Government and the District Officer merely sought

his advice as to a legal point which arose during the consideration of the matter by him and this by no means can be considered as an interference with the discretionary power of the District Officer.”

In the present case the District Officer was bound by the law to ascertain whether the prerequisites for the grant of a permit had been satisfied. The Police Superintendent was a proper source for supplying him with such information both concerning the person of the applicant as well as the suitability of the premises and all circumstances pertaining to such premises. I find nothing wrong in the carrying out of his inquiry by the District Officer, for him, to have asked such information from the Superintendent of Police and the obtaining of such information, in the circumstances of the present case, cannot be considered as an interference with the discretionary powers of the District Officer or taint his decision with irregularity or violation of the rules of natural justice.

For the above reasons this recourse fails and is hereby dismissed with £75.- costs against the applicant.

*Recourse dismissed. Applicant
to pay £75.- costs.*