

1986 November 15

[LORIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

THEONITSA P. GEORGHIOU AND ANOTHER,

*Applicants,*

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- 1. THE REPUBLIC OF CYPRUS, THROUGH
  - (a) THE DISTRICT OFFICER AND/OR ACTING DISTRICT OFFICER OF NICOSIA, AS DISTRICT OFFICER NICOSIA AND AS CHAIRMAN OF THE WATER BOARD OF NICOSIA,
  - (b) THE MINISTRY OF INTERIOR.
- 2. THE WATER BOARD NICOSIA.

*Respondents.*

*(Case No. 365/83).*

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*Reasoning of an administrative act—Vague and uncertain—Vacuum cannot be filled by arguments of counsel—Rejection of an application for supply of water “for the known reasons of dearth of water”—Annulled for lack of due reasoning.*

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*Administrative Law—Due inquiry—Rejection of application for supply of water—Statement that in no case water had been supplied after 4.2.81 to any plot outside the area of supply proved to be incorrect—Conclusion that there has been no due inquiry.*

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*Water—The Water Supply (Municipal and Other Areas) Law, Cap. 350, as amended by Laws 25/72 and 31/82—Sections 5, 12(2)(e) and 43.*

On 25.3.83 the applicants applied to respondents 2 for the supply of water to their building site under Reg. No.

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E1011 at Pallouriotissa. Respondents 2 turned down the said application by letter dated 17.8.83 "for the known reasons of dearth of water". The applicants asked respondents 2 to reconsider their case. The respondents replied by letter dated 24.8.83 that they were unable to supply applicants' property with water "due to the shortage of the supply of water" and that after 4.2.81 they had not supplied anyone whose plot was outside the area of supply.

Hence the present recourse. Counsel for respondents 2 argued that as applicants' plot was outside the supply area, respondents 2 not only were not under an obligation to supply the applicants with water, but in fact they could not do so.

*Held, annulling the sub judice decision:* (1) The sub judice decision emanates from the Water Board of Nicosia, a statutory body established in virtue of the Water Supply (Municipal and Other Areas) Law, Cap. 350, as amended by Laws 25/72 and 31/82. It follows that respondents 1 (a) and (b) have no locus standi in this recourse, which, as against them is dismissed.

(2) The decision communicated by the letter of 24.8.83 is confirmatory of the earlier decision in the letter dated 17.8.83 as, obviously, there has not been a new inquiry. But the recourse is not out of time as it was filed on 10.9.83.

(3) The reasoning of the sub judice decision, namely "for the known reasons of dearth of water" is vague, uncertain and unsatisfactory. Arguments of counsel cannot fill the vacuum existing through lack of reasoning dating back to the material time. In any event sections 12(2) (e) and 43 show that if certain prerequisites are satisfied the respondent Water Board may supply water outside its area of supply.

(4) The evidence adduced showed that the respondent Board did in fact supply water after the 4.2.81 outside its area of supply and, therefore, the statement to the contrary in the letter of 24.8.83 leads to the conclusion that the Board failed to carry out a due inquiry, and laboured under a misconception of fact.

*Sub judice decision annulled. £30.- costs in favour of applicants.*

**Cases referred to:**

*METALOCK (Near East) Ltd. v. The Republic* (1969)  
3 C.L.R. 351;

*Droussiotis v. The Republic* (1967) 3 C.L.R. 15.

**Recourse.**

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Recourse against the decision of respondent No. 2 whereby applicants' request for the supply of water to the building site of the applicants at Pallouriotissa was refused.

*L. Papaphilippou*, for the applicants.

*N. Charalambous*, Senior Counsel of the Republic, 10  
for respondents No. 1.

*G. Triantafyllides*, for respondent 2.

*Cur. adv. vult.*

LORIS J. read the following judgment. Both applicants impugn by means of the present recourse the decision of 15  
the Water Board of Nicosia, respondent No. 2, set out in the letters addressed by the Chairman of the Board aforesaid to the applicants on 17.8.83 (exh. A attached to the recourse) and 24.8.83 (exh. Γ attached to the recourse), 20  
whereby the request of the applicants for the supply of water to the building site of the applicants situated at Pallouriotissa and covered by Registration No. E 1011, was refused.

It was the stand of learned counsel appearing for respondents No. 1 (a) and (b) throughout the present proceedings that both aforesaid respondents have no locus 25  
standing in the present recourse.

Having given this submission my best consideration, now that all the facts of this case and legal argument are before me, I hold the view that the present recourse impugns 30  
the decision of respondent No. 2 set out in the aforesaid letters, and respondents No. 1 (a) and (b) are in no way connected with the present proceedings. The sub judice decision is emanating from the Water Board of Nicosia, a 35  
statutory body established under the provisions of the Wa-

ter Supply (Municipal and Other areas) Law Cap. 350 (as amended by Laws 25/72 and 31/82) which in s. 5 provides that "A Board, established under the provisions of this Law .... shall .... institute and defend suits and other legal proceedings" by that name.

Therefore, the present recourse against respondents No. 1 (a) and (b) is hereby dismissed.

I shall now proceed to examine the recourse against respondent No. 2 who will be hereinafter referred to as "the respondent".

The applicants who are the joint owners of a building site at Pallouriotissa under Registration No. E 1011 covered by plot 947 of sheet/pian XX1/47.EI and II applied on 25.3.83 to the Water Board of Nicosia for the supply of water to their aforesaid building site.

The respondent replied by letter dated 17.8.83 (exh. A attached to the recourse) rejecting the aforesaid request of the applicants.

Thereafter, counsel for the applicants addressed a letter to the respondent (exh. B attached to the recourse) requesting a reconsideration of the said decision.

The respondent replied by letter dated 24.8.83 (exh. Γ attached to the recourse) rejecting the request of the applicants once more, stating further that they were unable to supply the property of the applicants with water "due to the shortage of the supply of water", stressing at the same time that they had not supplied with water anyone whose plot was outside the area of supply of water after the amalgamation of the Water Board with the Greater Nicosia Scheme and specifically after 4.2.1981.

As a result, both applicants filed the present recourse praying for a declaratory judgment annulling the decision of the respondent set out in the letters aforesaid.

The grounds of law on which the applicants rely are briefly the following:

(1) The respondent Board acted in defiance of their duty and obligation set out in section 12(1) of Cap. 350.

(2) The respondent acted contrary to the rules of fair administration and under a misconception as to the actual facts. 5

(3) The sub judice decision is contrary to Articles 23.1, 23.3, 13.1 and 9 of the Constitution.

(4) The respondent acted in a discriminatory manner towards the applicants violating thus Article 28 of the Constitution. 10

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

(6) The respondent failed to carry out due enquiry and as a result misconception as to the actual facts occurred.

Before proceeding to examine the grounds of law relied upon by applicants, it is useful at this stage to make short reference to the sub judice decision. 15

The executory decision of the respondent Board is the one contained in its letter addressed to the applicants dated 17.8.1983. The decision of the respondent contained in his letter of 24.8.83 addressed to counsel for applicants is purely confirmatory of his earlier decision having obviously been taken without the carrying out of a fresh inquiry. Nevertheless, the present recourse was filed within the time envisaged by Article 146 of the Constitution, having been filed on 10.9.1983. 20 25

The respondent Board in its letter of 17.8.1983 turns down the application of the applicants for the installation of water supply to their said building site "for the known reasons of dearth of water"; no further reasoning is given.

In its letter of 24.8.83 the respondent make reference to their letter of 17.8.83 stating that "they have nothing to add" to their letter of 17.8.83; in fact they do add a note to the effect that for the known reasons of dearth of water they have never granted "water for drinking purposes" to any applicant outside their area of supply after the 4.2.1981. 30 35

It must be stated at the outset that the reasoning given in their sub judge decision is vague, uncertain and unsatisfactory; and the note to their letter of 24.8.83 does not add anything to their reasoning of 17.8.83 as far as the applicants are concerned. The note does not say that the building site of the applicants is outside the area of supply of the respondent Board; it simply states that generally the respondent Board "for the known reasons of dearth of water" had never installed water for drinking purposes to the property of any applicant outside their area of supply after the 4.2.81.

Learned counsel for the respondent in an admirable effort to afford reasoning to the sub judge decision stated the following in his written address:

"It is an undisputed fact that the property of the applicants plot No. 947, is situated outside the 'area of supply' as that is defined in s. 2 and 3 of Cap. 350. This is evidenced very clearly by the map attached hereto as exh. 1 clearly indicating that plot 947 marked yellow is outside the Greater Nicosia Scheme and therefore outside the area of supply. It is, therefore, our submission that the respondents not only were not under an obligation or duty to supply the applicants with water, but in fact they could not do so because her property was situated outside the 'area of supply' water of the Nicosia Water Board. In other words the respondents could not supply the applicants with water simply because their plot was situated wholly outside the 'area of supply' as that is defined in s. 2 and 3 Cap. 350. The Water Board have no jurisdiction to supply water outside the area of supply because their jurisdiction is clearly limited to plots of land situated within the area of supply".

And further down:

"In view of the above and in view of the fact that the plot of the applicants is situated outside the area of supply the respondents are under no obligation or duty to supply them with water; in fact they are

unable to do so because their jurisdiction which stems from Cap. 350 is clearly limited to the supply of water to plots situated within the area of supply."

It is well-settled that "arguments advanced by counsel for respondent during the hearing of a case cannot really fill the vacuum existing through lack of due reasons dating back to the material time" (*METALOCK (Near East) Ltd. v. Republic*, (1969) 3 C.L.R. 351 at p. 359—*Droussiotis v. Republic*, (1967) 3 C.L.R. 15 at p. 23.)

In this connection it must be noted though, that any Water Board, under the provisions of s. 12(2)(e) of the Water Supply (Municipal and other Areas) Law Cap. 350 may: "supply water for any purpose to any area outside the area of supply, if by such supply the water in the area of supply is not likely to be diminished or affected."

Furthermore, under s. 43 of Cap. 350 it is specifically provided that the Water Board of Nicosia (the respondent Board) may exercise any power or undertake any duty for and on behalf of the Government "with respect to the provision of water supplies in any area not being an area declared to be an area of supply under the provisions of s. 3" provided that this is done only with consent of the Council of Ministers and subject to such terms and conditions as they shall approve. It may be added here that the Council of Ministers has delegated its power under this section to the Ministers of Interior and Agriculture.

Respondent has filed a D.L.O. plan which is before me, indicating that plot 947, the building site of the applicants is situated outside the area of supply of the respondent Board. In this connection the following are stated in the written address of the respondent:

"If any water was given to persons outside the area of supply of water this was done by the Water Development Dept. which was the authority responsible for the supply of water before the amalgamation of the Water Board of Nicosia with the Greater Nicosia Scheme and that was done after the express approval of the Minister concerned. We wish to point out, how-

ever, that any water supplied to such persons was supplied not by the respondent Water Board but by the Water Development Dept. before the amalgamation and specifically after 4.2.81 no water was supplied to any plot of land which was considered to be wholly situated outside the area of supply. As regards the supply of water by the W.D.D. this is no responsibility of the respondents and this was done after the express approval and consent of the Minister concerned."

Applicant No. 2 has sworn an affidavit on 3.12.85 where the names of five persons are given and the plots of their respective properties are indicated, lying outside the area of supply of the respondent Board, in respect of which water supply by the respondent Board was installed.

An affidavit sworn on behalf of the respondent Board by Panayiotis Kakouris, Clerical Officer, of the respondent Board, on 13.12.1985, indicates inter alia that at least on plot 946 (owner: Maroulla Iacovou) the respondent Board installed water on 11.8.82. It is abundantly clear from the D.L.O. plan filed by the respondent (a) that plot 946 abuts the property of the applicants under plot 947; (b) that both plots are outside the area of the water supply of the respondent Board.

This evidence emanating from the respondent proves that the note of the respondent in his letter of 24.8.83, (to the effect that the respondent Board had never installed water for drinking purposes to the property of any applicant outside their area of supply after the 4.2.1981) is to say the least incorrect. And it leads to the unequivocal conclusion that the respondent Board has failed to carry out a proper enquiry; in reaching the sub judice decision thereof, it was in the circumstances acting under a misconception as to material facts.

Having found as I did, I shall not examine the remaining grounds on which the applicants rely.



In the result, the present recourse succeeds on the grounds of (a) failure by the respondent to carry out a proper inquiry; and (b) lack of due reasoning. The sub judice decision is hereby annulled. The respondent Board to pay £30.- against the costs of applicants.

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*Sub judice decision annulled.  
Order for costs as above.*