

1987 November 26

[PIKIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SPYROS PROTOYEROS,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTRY OF COMMERCE AND INDUSTRY,
2 THE MINES DEPARTMENT,

Respondents

(Case No 518/86)

Reasoning of an administrative act — Failure or omission to communicate the reasons of a decision — Not fatal to its validity — Decision itself may contain the reasons in support thereof — The gap may be bridged by the material in the file, if such material indicate unambiguously and incontrovertibly the reasons for the decision

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A quarry licence had been granted to the applicant on 2nd April, 1985, with a view to establishing and operating a quarry for the extraction of sandy soil for a period of six months

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Clause 4 of the terms attached to the licence prohibited the use of the material extracted by the applicant for building purposes or any refinement of that material

The licence was renewed for a further period of six months

Prior to such renewal the applicant breached the aforesaid condition in clause 4

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On 4th February, 1986, the Mines Department invited the applicant to renew his Bank guarantee as a condition for the renewal of his permit, a fact suggesting that the authorities were contemplating the further renewal of the licence

Nonetheless by the sub judice decision applicant's application for the further renewal of the licence was rejected. Following such rejection the

applicant was required by the second sub judge decision to restore the ground to its condition prior to the sinking of the quarry

Held, annulling the sub judge decision (1) The second sub judge decision is not an executory act, it merely affects the implementation of the executory act not to renew the licence

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2) Failure to communicate the reasons for a decision is not fatal In this case examination of the material placed before the Court throwing light on the sub judge decision has not revealed any specific reasons for the decision taken That again need not be fatal to the decision provided the gap is bridged by the material in the file suggesting those reasons However, the material must, as explained in *Vassiliou v Republic* (1982) 3 CLR 220, indicate unambiguously and incontrovertibly the reasons of the Administration for the decision

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3) Counsel for the respondent submitted that the decision was warranted by two facts, namely the breaches of clause 4 and applicant's application for the deletion of clause 4

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4) However, earlier breaches of clause 4 had been excused by the renewal that followed them Applicant's application for the deletion of clause 4 is a matter separate from that of the renewal

5) It follows that the inquiry relevant to the application for renewal was inadequate, whereas the reasons for the decision remain as obscure as they were in the communication of the decision itself

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Sub judge decision annulled
No order as to costs

Cases referred to

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Vassiliou v The Republic (1982) 3 CLR 220

Cytechno Ltd v The Republic (1979) 3 CLR 519

Recourse.

Recourse against the refusal of the respondents to renew a quarry licence granted to applicant under the provisions of the Mines and Quarries (Regulation) Law, Cap. 270.

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M. Georghiou, for the applicant.

St. Ioannides (Mrs.), for the respondent.

Cur. adv. vult

PIKIS J. read the following judgment. At issue in these proceedings is the validity of the decision of the respondents of 12th June, 1986, dismissing an application made by the applicant to these proceedings, to renew a quarry licence granted under the provisions of the Mines and Quarries (Regulation) Law, Cap. 270. A quarry licence had been granted to the applicant on 2nd April, 1985, with a view to establishing and operating a quarry for the extraction of sandy soil. The licence was for a period of six months, while the exercise of the right for the extraction and the exploitation of minerals conferred thereby was subject to terms and conditions attached to the permit. The licence was renewed for a further period of six months, a fact brought to the notice of the applicant by letter of the respondents of the 21st October, 1985. The licence expired on 17th March, 1986; before its expiration applicant had petitioned for its renewal for a further period of six months. The rejection of his request for renewal is the subject-matter of the present proceedings.

Clause 4 of the terms attached to the licence prohibited the use of the material extracted by the applicant for building purposes or any refinement of that material. The quarry right was confined to the extraction of sandy soil for use of the material in an unchanged condition for purposes other than building ones. It is admitted that in the process of exploitation of the quarry, the applicant breached the conditions imposed by Clause 4, a fact duly brought to his attention coupled with a warning to observe in future the terms of the licence, evidently designed to remind of the power vested in the authorities by the provisions of s. 41 of the law (CAP. 270) to determine the licence.

Applicant heeded the warning and, as far as we may gather confined the use of the material extracted therefrom, in conformity with the provisions of Clause 4. Furthermore, the breaches occurred, as may be ascertained from the material before us, before the renewal of the quarry licence decided upon on 18th September, 1985. We can presume, in view of the renewal, that the authorities were satisfied with the undertakings of the applicant to observe in future the provisions of Clause 4. Also the authorities made representations to the applicant affecting the safety of the mining operations and the mode of extraction of the material which again, as can be discerned, were duly heeded by the applicant.

On 4th February, 1986, the Mines Department invited the applicant to renew his Bank guarantee as a condition for the renewal of his permit; a fact suggesting that the authorities were contemplating the renewal of the licence. In response thereto the applicant renewed the Bank guarantee coincidentally with his application for an extension of the quarry licence (dated 8th February, 1986). Notwithstanding the above, the application for renewal was dismissed, a fact communicated to the applicant by letter dated 12 June, 1986. The information given in the letter is confined to mentioning the fact that his application was rejected. Shortly afterwards, on 17th June, 1986, the applicant was required to restore the ground by levelling it to its condition prior to the sinking of the quarry. This is the second decision challenged by the recourse, an act inseparable from the decision of 12th June, 1986, not executory in itself. The rights and obligations of the applicant with regard to the quarry licence were determined and defined by the decision communicated on 12th June, 1986. The decision notified on 17th June, 1986, was incidental thereto and merely affected the implementation of the executory act communicated on 12th June, 1986. Therefore, our task is confined to a review of the latter decision in acknowledgment of the fact that the jurisdiction of the Supreme Court under Art. 146.1 is confined to executory acts of the Administration, that is, acts in themselves creative of rights in law.

As earlier noticed, the communication to the applicant of the rejection of his application for renewal merely stated the decision, not the reasons that prompted it. The failure or omission to communicate the reasons of a decision is not of itself fatal to its validity. The decision itself may contain the reasons in support thereof. In this case examination of the material placed before the Court throwing light on the sub judice decision has not revealed any specific reasons for the decision taken. That again need not be fatal to the decision provided the gap is bridged by the material in the file suggesting those reasons. However, the material must, as explained in *Vassiliou v. Republic** indicate unambiguously and incontrovertibly the reasons of the Administration for the decision. If the discernment of the reasons of the Administration for the decision is a matter of speculation, the gap in the reasoning remains unbridged and the matter must be referred back to the Administration for a proper discharge of their functions. In the above case stress was laid on the breadth of the discretion of the mining authorities to withhold a mining permit in exercise of their

* (1973) 3 C.L.R. 220.

duties as the custodians of the mineral wealth of the country; to be used in a manner conducive to the interest of the public as a whole. In that case the material in the file disclosed unambiguously the reasons of the Administration for the refusal of the application
5 for a quarry permit making possible judicial review of administrative action in the comprehensive manner required by the provisions of Art. 146.1 of the Constitution.

The decision in *Cytechno Ltd. v. Republic** establishes that the discretion to withhold renewal of a permit given under the
10 provisions of Cap. 270, wide though it is, is not absolute and must be founded on a true appreciation of the facts of the case, including the purpose for which the permit had originally been granted and any change of circumstances relevant thereto, as well as facts pertaining to the position of the applicant and the
15 reasonableness of his expectation for renewal.

Counsel for the Republic submitted that the decision of the authorities was warranted by two facts: firstly, a report that on 4th April, 1986, the applicant committed further breaches of the provisions of Clause 4. The applicant was reported to the Police
20 for these breaches and a prosecution was mounted against him for contravention of the law (Cap. 270). As we were informed the prosecution was dismissed and the applicant acquitted of the charge. Secondly, the applicant had applied for a deletion of the limitative terms of Clause 4, an application that was dismissed.
25 This was a separate matter from the renewal that could have had no bearing on the fate of the application for extension of the quarry permit. On the other hand, earlier breaches of Clause 4 could not be relied upon as a reason for refusal of renewal for as earlier explained they had been excused by the renewal of the
30 permit when it first expired.

I am inevitably driven to the conclusion that the inquiry relevant to the application for renewal was inadequate, whereas the reasons for the decision remain as obscure as they were in the communication of the decision of the 12th June, 1986. There is no
35 alternative but to set aside the decision for lack of due reasoning and for inadequate inquiry into the facts relevant to the application for renewal of the quarry permit.

The decision is set aside and declared to be wholly void pursuant to the provisions of Art. 146.4(b) of the Constitution. No
40 order as to costs.

Sub judice decision annulled.

No order as to costs.

* (1979) 3 C.L.R. 519 (F.B.).