

1988 May 21

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

M. J. LOUISIDES & SONS LTD.,

*Applicants,*

v.

THE MUNICIPALITY OF LIMASSOL,

*Respondents.*

*(Case No. 134/86).*

*Fee—Definition of—It is supposed to be based on the costs of rendering the services, though in many cases the costs are arbitrarily assessed—Municipalities—Refuse collection fees—They are fees, not taxes.*

5 *General principles of administrative law—Discretion of administration—Absence of criteria for its exercise in the law or regulation—Whether the competent organ can lay down criteria for its own guidance—Question determined in the affirmative.*

*General principles of administrative law—Presumption that an administrative decision was taken after correct ascertainment of the relevant facts—How rebutted.*

10 *Reasoning of an administrative act—Due reasoning—Question of degree depending on nature of decision—Municipalities—Not expected to give very detailed reasoning for the determination of refuse collection fees.*

The facts of this case appear sufficiently from the judgment of the Court.

15 *Recourse dismissed with costs.*

*Cases referred to:*

*Georghallides v. The Village Commission of Ay. Phyla and Another*, 4 R.S.C.C. 94;

*Constantinides v. Electricity Authority of Cyprus* (1982) 3 C.L.R. 798;

*Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509;

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*Kyriakides and Sons Ltd. v. Municipal Committee of Limassol* (1985) 3 C.L.R. 607;

*Lami Groves Ltd. v. The Republic* (1986) 3 C.L.R. 2378;

*Loizou v. Sewage Board of Nicosia* (1988) 1 C.L.R. 122;

*The Republic v. Ekkeshis* (1975) 3 C.L.R. 548;

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*Skaros v. The Republic* (1986) 3 C.L.R. 2109.

**Recourse.**

Recourse against the imposition on applicants of the sum of £110.- refuse collection fees for 1985.

*C. Tsirides*, for the applicants.

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*Y. Potamitis*, for the respondents.

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. The applicant company is the occupier of an office situated at 101A Spyrou Araouzou Street, in Limassol town, where they carry on the business of a shipping agency. The said premises comprise five offices and six permanent employees are working there.

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The Respondent Municipality imposed on the applicants

£110.- refuse collection fees for 1985 for the above premises. By notice dated 10.12.85, payment thereof was demanded.

5      Applicants being aggrieved filed this recourse, whereby they seek a declaration that the act or decision of the Respondents, by which the applicants were asked to pay the sum of £110.- as tax refuse collection is null and void and without any legal effect.

The grounds on which the applicants seem to base their case, as set out in the recourse and expounded in the written address of counsel are: -

10      (a) That the Respondents laboured under misconception of law believing that they were entitled to impose tax and not a reasonable fee for services rendered.

15      (b) That they failed to carry out a due inquiry; they did not take into consideration all material facts, including the extent of the premises and the volume of the refuse.

    (c) That the sub judice decision was arbitrary and not reasoned.

20      Having regard to the provisions of the statute empowering the Municipality to impose this form of "tax", the relevant Regulation and the nature thereof, there is no doubt that it is a fee and not a tax.

25      A fee is generally defined to be a charge for a special service rendered to individuals by some public authority and it is supposed to be based on the expenses incurred in rendering the service, though in many cases the costs are arbitrarily assessed - (see *Haris E. Georghallides v. The Village Commission of Ay. Phyla & Another*, 4 R.S.C.C., 94; *Aleccos Constantinides v. The Electricity Authority of Cyprus* (1982) 3 C.L.R., 798; *Apostolou and Others v. The Republic* (1984) 3 C.L.R., 509; *Kyriakides and Sons Ltd. v. Municipal Committee of Limassol* (1985) 3 C.L.R., 30 607; *Lami Groves Ltd. v. The Republic* (1986) 3 C.L.R., 2378;

**Stylianides J. Louisides & Sons v. L' ssol Municipality (1988)**

*Meropi Michael Loizou v. Sewage Board of Nicosia*, (1988) 1 C.L.R. 122.

The Law—relevant Regulations—empowers the Respondents to impose a fee up to £1,000.- in respect of offices.

The Respondents, as neither the Law, nor the Regulations, contain any criteria for the exercise of their discretionary power, they laid down the following criteria: - 5

1. The volume of the premises.

2. The number of the personnel employed therein.

3. The nature of the work carried out. 10

4. The costs of collection, transport and burying of the refuse, which increases every year.

5. The desire of the Respondents not to reduce the standard of the services rendered.

6. The amount of the expenses required and actually incurred by the Respondents for the collection, transport, and burying of the refuse in general, and for an occupier in particular, which they are indeed higher than the amount collected from the fees imposed; and 15

7. Generally the services rendered.

It is within the power of a public body to lay down criteria for the exercise of its discretionary power. This is salutary and is conducive to good and proper administration. Furthermore, the judicial control of the administrative acts in that sphere is easier and more effective. 20

The Town Clerk and Treasurer in sworn affidavit gave details of the cost of collection, transport and burying of refuse for 1985; 25

The total amount of refuse collection fees for 1985; and the assessment of costs for the collection of refuse from an ordinary dwelling house.

5 Removal of refuse from premises in a town is a necessary service rendered in the interest of public health for which the authority, having the duty to provide such service, must be indemnified to do so, or be able to, by charging the townsmen with a fee to cover the costs of rendering such service. The fee, however, cannot be an arbitrary one and should be based proportionately on the cost of services rendered to the citizen.

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An administrative decision by presumption is reached after a correct ascertainment of the relevant facts. This presumption is rebuttable. The burden of establishing that an administrative decision was reached on the basis of misconception about a material fact rests on the person challenging the validity of such decision in that ground. This burden is discharged, even if the applicant raises a doubt in the mind of the Court. A probability that a misconception had led to the taking of the decision complained of, is sufficient to vitiate an administrative act - (*Republic v. Ekkeshis* (1975) 3 C.L.R., 548; *Skaros v. The Republic* (1986) 3 C.L.R., 2109, at p. 2115).

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25 Having regard to the material before me, the applicants failed to discharge the burden cast on them. They failed to show that the sub judice decision is tainted by any misconception of fact, or any failure to carry out due inquiry. The Respondents exercised their discretionary power on the basis of reasonable criteria. The assessment was not arbitrary; the fee was based proportionately on the cost of the services rendered to the applicants citizens, including the extent of the premises of these beneficiaries. It was actually assessed by reference to the cost of processing the service in general.

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What is due reasoning is a question of degree depending upon the nature of the decision concerned.

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Having regard to the nature of the sub judice decision, it is not expected from a Municipal Corporation to give very detailed reasoning for the determination of the fees payable for refuse collection.

There was no misconception of law or fact. 5

For the foregoing, this recourse fails.

It would be inequitable to burden the Municipality with the costs of defending this recourse.

In the exercise of my discretion, in the circumstances of this case, I see no reason why the applicants should not pay the costs of the Respondents. 10

Case dismissed. Sub judice decision confirmed. Applicants to pay the costs of the Respondents.

*Recourse dismissed with costs against applicants.* 15