

1984 March 6

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

ANDREAS CONSTANTINOU,

Applicant.

v.

THE COUNCIL FOR THE REGISTRATION OF
ARCHITECTS AND CIVIL ENGINEERS,

Respondents.

(Case No. 222/82).

Administrative Law—Administrative acts or decisions—Must be taken after a due inquiry and reasons therefor must be given—Examinations entitling applicant to be licensed as building technician—Respondents deciding that he failed in the examinations because he did not pass the oral tests—No record of the marks he received during his oral examination, what were the questions put to him who were the members of the examining Committee and what were the marks given by each of them to the applicant's oral answers—Sub judice decision annulled because it was taken without a proper inquiry and without giving reasons therefor.

Costs—Successful recourse for annulment—Respondents ordered to pay applicant costs.

The applicant who had been practising the profession of building technician took the examinations that were prescribed by the respondents as a condition which he had to satisfy in order to be entitled to be licensed as a building technician under the Architects and Civil Engineers Law, 1962. The respondents decided that he failed in the examinations because though he passed successfully the written tests he failed in the oral tests.

Upon a recourse by the applicant against the validity of the above decision the Court found that though the intention of the respondents was that the marks a candidate would receive for his answers in his oral examinations would count or be added to

those he had received for his written tests, no decision was taken as to whether a candidate had to receive the aggregate of a certain number of marks or the average of the marks he was given in (a) Architectural Plan (b) Building Regulations etc., and (c) Oral Examinations; and that there was no record what were the marks which the applicant received during his oral examination, what were the questions put to him, who were the members of the examining committee and what were the marks given by each of them to the applicant's oral answers. 5

Held, that the decision of administrative organs must be taken after a due inquiry has been carried out and that the reasons for reaching their decision must be given; that in the light of the above factual findings, the decision of the respondents must be declared null and void in that they have failed to carry out a proper inquiry into the ability of the applicant to practise the profession of a building technician, and, they, also, failed to give their reasons for reaching their decision that the applicant failed in passing the examinations. 10 15

Held, further, that considering the failure of the respondents to introduce regulations with regard to the matters envisaged by the provisions of section 17 of Law 41/62 as amended later and the way in which the oral examinations were carried out, they should pay the costs of the applicant. 20

Sub judice decision annulled.

Recourse. 25

Recourse against the refusal of the respondents to grant a licence of Building Technician to the applicant.

A. S. Angelides, for the applicant.

L. Demetriades with *St. Nathanael*, for the respondents.

Cur. adv. vult. 30

DEMETRIADES J. read the following judgment. By the present recourse the applicant prays for:-

1. Declaration of the Court that the decision of the respondents which was communicated to the applicant by their letter dated the 6th March, 1982, by means of which they considered that the applicant had failed in the examinations for the grant to him of a licence of Building Technician, is null, void and of no legal effect. 35

2. Declaration of the Court that the omission of the respondents to grant to the applicant a licence to become a Building Technician is void and that everything omitted shall have to be performed.

5 The grounds of law on which the applicant bases his application are the following:-

- (a) The decision was reached without due inquiry.
- (b) The decision is the product of a misconception as to the law or as to the facts.
- 10 (c) The decision was reached in abuse or excess of powers.
- (d) The decision is the product of an alien purpose and contravenes vested rights of the applicant.
- (e) The decision lacks due reasoning.
- (f) The decision was reached incompetently and/or by a
15 legally defective procedure.
- (g) The respondents omitted their legal duty.

The respondents are, by section 9 of the Architects and Civil Engineers Law, 1962 (Law 41/62), as amended by Laws 7 of 1964, 43 of 1966, 41 of 1968, 84 of 1968 and 5 of 1970, the appropriate authority to which a citizen of the Republic may apply for the grant to him, amongst others, of a licence to become a Building Technician.

Under the provisions of section 9(1)(B)(b) of the said law, a citizen of the Republic is entitled to be licensed as a Building Technician if, amongst other conditions which he has to satisfy, he passes examinations that are prescribed by the respondents.

As it appears from the record of the present proceedings, the applicant had been practising the profession of Building Technician for sometime without having first obtained a licence to that effect and that after criminal proceedings were brought against him; he, on the 11th May, 1981, and the 12th May, 1981, addressed letters to the office of the President of the Republic of Cyprus, and to the respondents, by which he was complaining that the examinations provided for in section 9(1)(B)(b) of Law 41/62 had not taken place for quite a long time in contravention of the pro-

visions of the said Law. By his said letters he was suggesting that arrangements had to be made so that the examinations ought to take place at fixed times in order that candidates knew in advance when same were to be held.

By section 17 of Law 41/62 the respondents are empowered to enact, with the approval of the Council of Ministers, regulations that make provision for, inter alia - 5

- (a) the procedure to be followed for the submission of applications for the registration and/or the grant of a licence to Building Technicians, and 10
- (b) the carrying out of examinations imposed or permitted by the Law.

It is to be noted that up to at least the date on which the applicant submitted his complaints no steps had been taken by the respondents to introduce regulations with regard to the matters envisaged by the above-mentioned provisions of section 17. 15

On the 6th October, 1981, the respondents, by notification published in the local press, informed the public that examinations for granting licences to Building Technicians were to take place at 8.00 a.m. on Saturday the 14th November, 1981, at the Higher Technical Institute and that applications for participation in the exams were to be accepted by them at their offices between the hours of 8.30 a.m. and 12.30 p.m. till the 7th November, 1981. 20

On the 6th October, 1981, the applicant submitted his application to the respondents and paid to them the examination fees. 25

According to the contents of an affidavit sworn on the 22nd July, 1983, by a certain Chrystalla HadjiGeorghiou, who in her affidavit describes herself as the assistant secretary of the respondents, she, after the applicant filed his application and paid the examination fees, handed to him a document containing the syllabus of the examinations (Πρόγραμμα 'Υλης των Εξετάσεων). Copy of this document forms part of a bundle of documents that was produced and to which I will refer later on. 30 35

On the 14th November, 1981, the applicant presented himself

and took part in the written examinations provided in the syllabus handed to him.

5 It must be noted that in the press release of the respondents, by which they announced that examinations for those wishing to be granted a licence to practice as Building Technicians were to take place, nothing was mentioned that the examinations were to consist of oral and written tests or that all the tests were not to take place on the same date.

10 In an affidavit that the applicant swore and which is dated the 21st June, 1983, he alleges that after he sat for the written tests, he was informed that though he had passed them successfully, he had to attend an informal interview with the examining board before he was issued with a licence. It is the allegation of the applicant that he was never told that his interview by the
15 examining board would be considered as an oral test, part of the examinations advertised; that his answers to questions put to him would be marked and that the marks he was to receive would be taken into consideration by the examining board when deciding whether he had passed or failed in the examinations.

20 Mr. Dionysios Toumazis, who at all material times was the Chairman of the board of the respondents, swore an affidavit in which he alleged that the oral examination had been a prerequisite for passing the examinations.

25 There is no doubt that that might have been the intention of the respondents and one can easily reach this conclusion if he looks at the note of the decision of the Examining Committee (see Blues 6 and 7 in the bundle of documents filed) which are the results of the written exams by candidates and in which it is stated that the marks that each candidate received in the tests
30 for the architectural plans and the subjects of "Οικοδομικής-Σιδηροπαγούς Σκυροδέματος και Οικοδομικών Κανονισμών" ("Building construction - Reinforced Concrete and Building Regulations") were to be added to those of the oral examinations so that final results would be reached.

35 As it appears from the minutes of the meeting of the respondents, which was held on the 23rd September, 1981 (see Blue 1 in the bundle of documents filed), it was decided that the examinations for Building Technicians were to be held on the 14th

November, 1981, at the Higher Technical Institute; that a relevant notification was to be published in the press and that the subjects of the examinations were to be prepared by Messrs. D. Toumazis and N. Savvides with regard to the Architectural part and Messrs L. Demetriades and Char. Kkolos with regard to the Static Calculations, Building Regulations etc. 5

Nowhere in this decision of the respondents does it appear that a clear directive with regard to the syllabus of the examinations was given to the persons who were entrusted with its preparation, or that the candidates had to take part in written as well as in oral tests. In the notification published in the local press on the 6th October, 1981, to which I have already referred, no mention was made at all about oral tests. 10

However, at the very end of the syllabus handed to the applicant (see Blue 4(b) in the bundle of documents filed) and to which I have earlier referred as having been handed to him by Mrs. HadjiGeorghiou, it is clearly stated that the examinations were to consist of (a) written examinations and (b) oral examinations. 15

As it appears from the documents filed I find that though the intention of the respondents was that the marks a candidate would receive for his answers in his oral examinations would count or be added to those he had received for his written tests, no decision was taken as to whether a candidate had to receive the aggregate of a certain number of marks or the average of the marks he was given in (a) Architectural Plan, (b) Building Regulations etc., and (c) Oral Examinations. In any event, there is no record what were the marks which the applicant received during his oral examination, what were the questions put to him, who were the members of the examining committee and what were the marks given by each of them to the applicant's oral answers. 20 25 30

It has been repeatedly stated by this Court in a number of previous occasions that the decisions of administrative organs must be taken after a due inquiry has been carried out and that the reason for reaching their decision must be given. 35

In the present case and in the light of my above factual findings, I have come to the conclusion that the decision of the re-

spondents must be declared null and void in that they have failed -

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- (a) to carry out a proper inquiry into the ability of the applicant to practice the profession of a Building Technician, and
 - (b) to give their reasons for reaching their decision that the applicant failed in passing the examinations.

In the result, the decision of the respondents is declared null and void and of no effect whatsoever.

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- Considering the failure of the respondents to introduce regulations with regard to the matters envisaged by the provisions of section 17 of Law 41/62 as amended later and the way in which the "oral examinations" were carried out, I find that they should pay the costs of the applicant.

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- Sub judice decision annulled. Respondents to pay applicant's costs.*