

1988 September 30

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SATURN BUILDING CO. LTD.,

Applicant,

v.

THE MUNICIPALITY OF NICOSIA,

Respondents.

(Case No. 522/86).

Time within which to file a recourse under Art. 146.1 of the Constitution.

This recourse, whereby the decision to award a tender to a third person is challenged, was filed on 21.8.86. The applicants alleged that they never received a letter dated 20.2.86 informing them of the award to a third person. However, from a letter dated 3.6.86 addressed by applicants to the respondent, the Court concluded that the applicants had knowledge of the sub
5 justice act as early as the 3.6.86; consequently, the recourse was dismissed as being out of time.

Recourse dismissed.

No order as to costs.

Recourse.

Recourse against the decision of the respondent to award the tender for the widening, deepening and covering of the Pallouriotissa drain, Phase "C" to the interested party instead of to the applicants.
15

A. Skordis with A. Papacharalambous, for the applicants.

K. Michaelides, for the respondents.

Cur. adv. vult.

MALACHTOS J. read the following judgment. In this re-
course the applicant claims a declaration of the Court that the deci-
sion of the respondent Board of 12.6.86, which was communi-
cated to the applicant company on 14.6.86, by which its tender
for the widening, deepening and covering of the Pallouriotissa
drain, Phase "C", was rejected, is null and void and of no legal
effect whatsoever. 5

The relevant facts of the case are the following:

On 7.2.85 the respondent Board invited, through the local
press, tenders for the widening, deepening and covering of the
Pallouriotissa drain, Phase "C". The applicant company was
among the eight tenderers who submitted their tenders. 10

The respondent Board awarded the contract for the aforesaid
works to the lowest bidder, namely, "KOUPIE IKODOMIKES
EPIHIRISIS LTD". 15

The applicant company, according to the allegations of the re-
spondents Board, was informed by letter dated 20.2.86, that its
tender was rejected. It is the allegation of the applicant company
that this letter was never received.

On 5.6.86 the applicant addressed a letter to the respondent en-
quiring about the fate of its aforesaid tender and requesting the re-
turn of the bank guarantee submitted together with it, in the event
of its tender not being successful. 20

The respondent by letter dated 12.6.86, referred the applicant
to the letter of the 20th February, 1986, and as to the return of the
bank guarantee, advised him to apply to his bankers. 25

It must be noted here that before 5.6.86 the applicant ad-
dressed, on 3.6.86, another letter to the respondent where, inter
alia, complained about another tenderer who was not an officially
registered contractor under the Registration and Control of Build-
ing Contractors and Technical Works Laws of 1973 and 1982, to 30

whom the contract had been awarded contrary to the existing legislation.

The relevant part of the letter of 3.6.86 reads as follows:

5 "In connection with the construction of the works for the widening, deepening and covering of the Pallouriotissa drain, Phase "C", I wish to inform you that as regards the said works the tender of our company amounted to about £129,000 and we were second on the list of the successful tenderers. From
10 personal contacts and confidential informations we were assured that the construction would be awarded to us as the first tenderer was not an officially registered building contractor on the basis of Law 32/82. It appears, however, that again the invisible hand intervened to our detriment since up to the present
15 day, Mr. Mayor, with your own signature, the works are carried out illegally against the interest of our company".

On 21.8.86 the applicant filed the present recourse.

One of the grounds on which the opposition is based is that the recourse was filed out of time.

20 It is clear from the above that the applicant, when addressing the letter of 3.6.86 was aware that the contract had been awarded to a third party, which was already constructing the works in question.

25 Therefore, even if we assume that the letter of 20.2.86 was not received, he had sufficient knowledge of the sub judice decision at least on 3.6.86. Therefore, the present recourse was clearly filed beyond the 75 days time limit provided by Article 146.3 of the Constitution and so it is out of time.

30 Consequently, this recourse cannot be entertained and must, therefore, be dismissed.

In the result, this recourse fails and is hereby dismissed.

There will be no order as to costs.

Recourse dismissed.

No order as to costs.