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[TRIANTAFYLLIDES, J. ]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

YIANGOS DROUSHIOTIS,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTER OF COMMERCE AND INDUSTRY,  
2. THE SENIOR MINES OFFICER,

*Respondents.*

(Case No. 61/65).

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*Mines and Quarries—Issue of prospecting permits under the Mines and Quarries (Regulation) Law, Cap. 270—Discretion—The discretion in the power of the respondent to grant or refuse such permits has to be exercised properly—Notwithstanding that by virtue of Article 23, paragraph 1, of the Constitution the right of the Republic to minerals etc. is expressly reserved—In the instant case the respondent refused to grant the applicant a prospecting permit under Cap. 270 (supra) and the relevant Regulations on a ground which did not and could not warrant or validly support the final rejection of the application for such permit—Such ground which was put forward as the reasons for the said refusal, could only support either a refusal pro tempore, or deferment of consideration of such applications for such permits, until the completion of the Government project invoked by the respondent as the reason for his said refusal—Therefore, the respondent did not exercise properly his discretion in the matter—And his decision whereby he refused to grant the permits applied for, is contrary to law within paragraph 1 of Article 146 of the Constitution, in the sense that it is contrary to basic principles of Administrative Law relating to the proper exercise of discretionary powers—It has also been taken in excess and abuse of powers—And it has to be annulled—See also, under the headings hereafter.*

*Administrative Law—Discretionary powers of the Administration—The Court will not interfere so long as on a proper exercise thereof a decision has been taken which was reasonably open to the appropriate organ on the basis of the material before it—But the Court is bound to interfere if the said powers have been*

*exercised in a defective manner—As e.g. when the decision reached cannot be validly supported by the reasons given therefor—Or when material considerations have not been duly taken into account—See, also, under the heading Mines and Quarries above ; and under the headings hereafter.*

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*Discretionary powers of the administration—Decisions taken in a defective exercise thereof—Such decisions are contrary to law—In the sense that they are contrary to basic principles of administrative law relating to the proper exercise of discretionary powers—They have also been taken in excess and abuse of powers—See, also, above and herebelow.*

*Article 146, paragraph 1 of the Constitution—Decision contrary to law—Contrary to basic principles of Administrative Law—A decision taken contrary to such basic principles is a decision contrary to Law—Excess and abuse of powers—See, also, above.*

*Basic principles of administrative law—Decision taken contrary to such principles—Decision contrary to law—Meaning—Excess and abuse of powers—See under the headings above.*

*Constitutional Law and Administrative Law—Article 23, paragraph 1, of the Constitution—Expressly reserving the right of the Republic, inter alia, to minerals—Does not release the administration from its duty to exercise properly its discretionary powers in relation to granting prospecting permits under the Mines and Quarries (Regulation) Law, Cap. 270—See, also, under Mines and Quarries etc. etc. above.*

Paragraph 1 of Article 23 of the Constitution provides :

“ 1. Every person.....has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right.

The right of the Republic to underground water, *minerals*, and antiquities is reserved”.

This is a recourse under Article 146 of the Constitution made by the applicant against the decisions of the Senior Mines Officer whereby he refused to grant to the former certain prospecting permits under Cap. 270 (*supra*) on the ground that the area concerned was within a region to be

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investigated by the Government in connection with the "Project of Survey of ground water and Mineral Resources" and that prospecting work would be carried out in due course over these areas by the Government.

The Court in granting the recourse and declaring the decisions complained of *null and void* :—

*Held*, (1) from the totality of the material before the Court it is clear that the sole reason, on the basis of which the applicant's applications for prospecting permits were refused, was the existence of the aforesaid "Project" (*supra*), and not on their respective merits in the light either of the relevant information supplied by applicant or of any other consideration.

(2) It is therefore obvious that the ground on which the said applications were refused, and which was put forward as the reason for the *sub judice* decisions of respondent, did not and could not reasonably warrant or validly support the *final* rejection of the said applications. It could only support a refusal *pro tempore*, or deferment of consideration of such applications until the completion of the "Project" in question.

(3) Though it is correct that by virtue of Article 23 of the Constitution (*supra*) the right of the Republic to minerals is expressly reserved, the fact remains that once, under the relevant legislation, (Cap. 270, *supra*), a discretion has to be exercised as to whether or not to grant a prospecting permit, such discretion has to be exercised properly. And this Court will interfere if the said powers have been exercised in a defective manner, as for example, when the decision reached cannot be validly supported by the reasons given therefor, or when material considerations have not been duly taken into account.

(4) Therefore, as the respondent's final refusal to grant the prospecting permits, was clearly not otherwise based on a due consideration of all relevant factors pertaining to their individual merits, it follows that such applications were turned down *finally*, at the material time, in a defective exercise of the relevant discretionary powers and the relevant decisions of the respondent in the matter are contrary to law (in the sense that they are contrary to basic principles of Administra-

tive Law relating to the proper exercise of discretionary powers) and they have also been taken in excess and abuse of powers, and have to be annulled.

*Sub judice decisions annulled.  
The applicant entitled to part  
of his costs.*

### Recourse.

Recourse against the refusal of Respondent 2 to grant Applicant three prospecting permits under the Mines and Quarries (Regulation) Law Cap. 270, and the relevant Regulations.

*A. Myriantis, for the Applicant.*

*K. Talarides, Counsel of the Republic, for the Respondent.*

*Cur. adv. vult.*

The following judgment was delivered by:-

TRIANTAFYLLIDES, J.: The Applicant in this recourse complains against the refusal of the Senior Mines Officer (hereinafter to be referred to as the "Respondent") to grant to him three prospecting permits under the Mines and Quarries (Regulation) Law Cap. 270, and the relevant Regulations.

The Respondent comes under the Minister of Commerce and Industry, who is, thus, also mentioned in the title of these proceedings.

In short the relevant facts, as found by me on the material before me, are as follows:-

On the 13th October, 1964, Applicant applied for a prospecting permit by means of application 2035. (see *exhibit 1* in these proceedings).

On the 13th November, 1964, Applicant applied for two more prospecting permits by means of applications 2045 and 2046. (see *exhibits 3 and 4*, respectively).

All the said three applications were eventually refused by letters of Respondent dated, respectively, the 18th December, 1964, the 17th March, 1965 and the 9th January, 1965 (see *exhibits 6, 12 and 8*).

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Applicant had applied also for another prospecting permit, on the 13th October, 1964, by means of application 2036, (see *exhibit 2*) but he received no reply thereto. As in the motion for relief Applicant does not appear to complain that this application also has been refused—in view of the time which has elapsed without any answer having been given by Respondent—nor does Applicant appear to complain under Article 29 of the Constitution for the failure of Respondent to reply to him in the matter, I am of the opinion that the fate of such application is an issue outside the ambit of this recourse and does not form part of the subject-matter thereof. I shall, therefore, limit this Judgment to only what concerns the decisions of Respondent on applications 2035, 2045 and 2046—against which decisions Applicant complains by means of the motion for relief in this recourse.

It is common ground that the areas affected by the three applications concerned are substantially identical to those covered by three prospecting permits issued earlier to a certain Georghios Petrakides of Larnaca, a relative of the Applicant; in fact the area affected by application 2035 is the area of prospecting permit 1634, the area affected by application 2045 is the area of prospecting permit 1744, and the area affected by application 2046 is the area of prospecting permit 1680.

Actually when application 2035 was presented by Applicant on the 13th October, 1964, an official endorsement was made thereon to the effect that Applicant had called in the company of the aforesaid Petrakides and that it was their intention to transfer the relevant prospecting permit to Applicant who, however, found it more preferable to him to make a new application.

No similar endorsement had been made on applications 2045 and 2046 but there appears to be little doubt that what was sought, in effect, to be done by means of application 2035 was being sought, likewise, by means of these two later applications.

On the 24th November, 1964, Respondent wrote to Applicant in relation to, inter alia, application 2035 asking, through a set questionnaire, for certain relevant information (see *exhibit 5*).

On the 5th December, 1964, application 2035 was submitted to an expert called the "Project Manager", in the Department

of Geological Survey (see *exhibit 16*); it was requested to know whether such Manager would raise any objection to the granting of the said application.

This "Project Manager" was an expert posted in the Department of Geological Survey in relation to the Project of the "Survey of Groundwater and Mineral Resources" in Cyprus, which was being pursued on the basis of a plan agreed upon between the United Nations and the Government of Cyprus. It is relevant in particular to note clause 5 of the relevant agreement, (see *exhibit 14*) –

"5 In order to assure that the results of the mineral and groundwater surveys may be made available on an equitable basis for legitimate and well timed development of resources in the Project areas, the Government shall take suitable measures to avoid premature and restrictive acquisition of mineral exploration and exploitation rights in the areas to be surveyed. It shall also take the measures necessary to permit the activities undertaken by the Project under this Plan of Operation to proceed without restraint in the areas selected, including on unalienated land"

The said Project Manager replied on the 10th December, 1964, (see *exhibit 17*) stating that application 2035 "should not be granted for the time being".

As a result on the 18th December, 1964, Respondent wrote to Applicant (see *exhibit 6*) informing him that it was not possible to grant him the relevant permit

The aforementioned letter of Respondent, dated the 18th December, 1964, crossed in the post with a letter by Applicant, dated 19th December, 1964, (see *exhibit 7*) by means of which Applicant was giving Respondent the information requested by Respondent, by his letter of the 24th November, 1964, in the form of a questionnaire

When Applicant received the said letter of Respondent, dated 18th December, 1964, he wrote back protesting against the refusal of application 2035 and asking for the reasons therefor (see *exhibit 9*)

In the meantime application 2046 was also submitted to the Project Manager for his views, on the 14th December, 1964, and on the 23rd December, 1964 he wrote back (see

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*exhibit 18*) suggesting that such application "should not be granted for the time being until the Project has examined the ground in more detail".

As a result on the 9th January, 1965, Respondent wrote to Applicant (see *exhibit 8*) informing him that it was not possible to grant to him the relevant permit. On the 16th January, 1965, Applicant wrote to Respondent (see *exhibit 10*) protesting for the refusal of the permit applied for by means of application 2046 and seeking to know the reasons therefor.

Eventually, on the 12th February, 1965, Respondent wrote to Applicant (see *exhibit 11*) stating that applications 2035 and 2046 had been refused because the areas concerned formed "part of those that have been set aside by Government in connection with the Project of 'Survey of Groundwater and Mineral Resources' ".

In the meantime application 2045 had been submitted, for his relevant views, to the Director of Geological Survey, on the 28th December, 1964, and on the 8th January, 1965 he recommended (see *exhibit 19*) that such application "should be refused as the area concerned lies in Lower Pillow Lavas which the Project may wish to investigate". As a result on the 17th March, 1965, Respondent wrote to Applicant (see *exhibit 12*) informing him that the relevant permit could not be granted as the area concerned was within a region to be investigated by Government.

Later on, on the 20th March, 1965, Respondent again wrote to Applicant, confirming a conversation with his advocate, to the effect that all three applications concerned "have been turned down because the Project is interested in these areas, and prospecting work will be carried out in due course over these areas by Government" (see *exhibit 13*).

During the hearing of this Case counsel for Applicant appeared to dispute the fact that the areas affected by the three applications in question were areas covered by the aforesaid Project. As a result when Judgment was reserved it was directed that Respondent should prepare a plan showing the areas affected by the applications concerned and by the aforesaid Project, and that such plan was to be filed by counsel for Respondent in Court, with copy to counsel for Applicant, who could, if he wished to raise any issue in relation to such plan, apply for a reopening of the hearing.

The said plan was filed on the 24th January, 1966, together with a letter of the Director of Geological Survey explaining it. It appears clearly therefrom that the areas affected by the three applications in question are all within the areas to be investigated under the aforesaid Project; this plan, together with the accompanying explanatory letter, has been marked as *exhibit* 21 in these proceedings.

From the totality of the material before the Court it is clear that the sole reason, on the basis of which the three applications of Applicant for prospecting permits were refused by Respondent, was the existence of the aforementioned Project, and that these three applications were not refused on their respective merits, in the light either of the relevant information supplied by Applicant in answer to the questionnaire of Respondent dated 24th November, 1964, or of any other consideration; actually application 2035 was refused even before Respondent had received Applicant's answers to his aforesaid questionnaire, and applications 2045 and 2046 were later refused on exactly the same grounds as application 2035, without any reference to such answers.

Though it is correct that by virtue of Article 23 of the Constitution the right of the Republic to minerals is expressly reserved, the fact remains that once, under the relevant legislation (Cap. 270), a discretion has to be exercised, as to whether or not to grant a prospecting permit, such discretion has to be exercised properly; and it is well settled that in matters of discretionary powers this Court will not interfere so long as on a proper exercise thereof a decision has been taken which was reasonably open to the appropriate organ on the basis of the material before it; but this Court is bound to interfere if the said powers have been exercised in a defective manner, as for example, when the decision reached cannot be validly supported by the reasons given therefor, or when material considerations have not been duly taken into account.

Had the expert advice, given to Respondent by those dealing with the aforementioned Project, been to the effect that the prospecting permits applications of Applicant had to be refused finally, and for all time, in the light of the requirements or findings relating to such Project, I would be quite prepared to hold that it was reasonably open to Respondent, on such ground only, to decide to refuse finally the said applications, and, of course, there could not then arise any question of examining such applications on their

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merits in the light of the information supplied by Applicant, or of any other relevant consideration. But in the present Case we are faced with the clearcut position that the advice given regarding applications 2035 and 2046 was to the effect that the prospecting permits applied for should be refused "for the time being", pending investigations in the course of the Project, and the expert advice given in respect of application 2045, though not explicitly in the same terms as above, can only be construed to the same effect when looked upon in its proper context. It is obvious, therefore, that the ground on which the applications of Applicant were refused, and which was put forward as the reason for the *sub judice* decisions of Respondent, did not and could not reasonably warrant or validly support the *final* rejection of the said applications, as it has taken place in this Case. It could only support either a refusal *pro tempore*, or *deferment of* consideration of such applications, until the completion of the Project in question. Only after such completion it could have been reasonably open to the Respondent to decide finally on the relevant applications, either in view of the results of the Project or, if such results did not warrant the rejection of such applications, on the individual merits thereof, in the usual course.

As the ground on which the applications of Applicant were refused did not render it reasonably open for Respondent to refuse them finally, *at that stage*, and as their final refusal, as then made, was clearly not otherwise based on a due consideration of all relevant factors pertaining to their individual merits, it follows that such applications were turned down *finally*, at the material time, in a defective exercise of the relevant discretionary powers and that the three relevant *sub judice* decisions of Respondent in the matter are contrary to law (in the sense that they are contrary to basic principles of Administrative Law relating to the proper exercise of discretionary powers) and they have also been taken in excess and abuse of powers, and have to be annulled; it is, therefore, hereby ordered accordingly. The matter has to be reconsidered afresh in the light of this Judgment; in doing so, the circumstances in which Applicant has applied for permits in respect of areas covered before by permits in the name of the aforesaid Petrakides will, I trust, not be lost sight of, in so far as the true nature of the transaction may be a relevant consideration.

Having reached the above conclusion I need not decide any other issue raised in these proceedings, such as the issue of the delegated competence of Respondent to exercise the powers of dealing with applications for prospecting permits; I leave open such issue and all other issues which have been raised in these proceedings.

Regarding costs I take the view that as at the time when the applications of Applicant were refused, it was, in my opinion, reasonably open to Respondent to refuse to grant them *for the time being*, pending completion of the aforesaid Project, Applicant is entitled to only part of his costs which I assess at £20.

*Sub judice decisions annulled.*

*Order for costs as aforesaid.*

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