IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PETROLINA LTD.,
Applicant,

and

THE MUNICIPAL COMMITTEE OF FAMAGUSTA,
Respondent.

(*Case No.* 120/70).

Petrol Filling Stations (*Regulation*) *Law*, 1968 (*Law No.* 94 *of* 1968)—*Refusal by the respondent Licensing Authority to grant the applicant a permit to erect a petrol filling station—Failure on the part of the applicant to resort to the remedy of review by higher authority* (viz. *the Council of Ministers*) *provided under section* 10(1)(*a*) *of the Law—Such failure does not prevent the making of a recourse under Article* 146 *of the Constitution for the annulment of the aforesaid refusal of the respondent—See further* infra—Cf. *section* 6 *of the Motor Transport* (*Regulation*) *Law*, 1964 (*Law No.* 16 *of* 1964).

Recourse under Article 146 *of the Constitution—Administrative Review—Jurisdiction of the Court under Article* 146 *in administrative law matters is exclusive—This consideration does not exclude the possibility to provide for a review of an administrative act or decision by way of hierarchical remedies before a a higher administrative organ—But this possibility to apply to a hierarchically superior organ for such a review does not prevent the making of a recourse under Article* 146 *without having first* (*or at all*) *to resort to the said process of review—See further* infra ; *see also* supra.

Administrative Review and the recourse under Article 146 *of the Constitution—See* supra ; *see also* infra.

Administrative Review—As distinct from a process of confirmation or completion of an administrative act or decision by a hierarchically higher organ—In the latter case no recourse under Article 146 *lies until such confirmation or completion is effected—Desirability of introducing and expanding such process*—Cf. *section* 21(1) *of the Taxes* (*Quantifying and Recovery*) *Law*, 1963 (*Law No.* 53 *of* 1963)—Cf. *supra.*

In this recourse the applicant company complains against the refusal of the respondent Municipal Committee, as the Licensing Authority under the Petrol Filling Stations (Regulation) Law, 1968 (Law No. 94 of 1968), to grant them a permit to erect a petrol filling station at Famagusta.

It is not disputed that the company did not apply to the Council of Ministers, under section 10 of the Law, for a review of the said refusal on the part of the respondent ; and the respondent raised the preliminary objection that because of such failure of the applicant this recourse could not have been made. Section 10(1)(a) of the said Law provides that any person whose legitimate interest is affected by the refusal of the Licensing Authority to grant a licence may (δύναται), within ten days, apply to the Council of Ministers for a review of the matter.

Rejecting the preliminary objection raised by the respondent, the Court :—

Held, (1). There is no doubt that the application for review provided for by section 10(1)(a) (*supra*) is a remedy, before a hierarchically superior organ, afforded within the limits of the realm of the administration ; especially as under Article 54 of the Constitution the Council of Ministers is vested, *inter alia*, with the " general direction and control of the Government of the Republic " as well as with the " supervision of all public services ".

(2) But there is nothing in Article 146 of the Constitution, under which the present recourse was made to this Court, or in any other legislative enactment, which prevents the making of a recourse without resorting first to a remedy such as the one under section 10(1)(a) of the said Law No. 94 of 1968. The position in this respect is closely similar to that under section 6 of the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964) (*see* the case of *The Cyprus Transport Co. Ltd.* v. *The Republic* (1966) 3 C.L.R. 617 ; in that case reference was made to the earlier case of *Pelides and The Republic*, 3 R.S.C.C. 13, at p. 17).

(3) Because of the manner in which section 10 is framed I have reached the view that the remedy of review by the Council of Ministers, as provided therein, is not a step by way of confirmation or completion of the relevant administrative action of the respondent Licensing Authority, but merely a review by a higher administrative authority ; therefore, the possibility to apply for such a review does not prevent the making of a

recourse to this Court under Article 146 of the Constitution, in a case in which there has not first been made a relevant application to the Council of Ministers. The same approach to the matter as the one adopted in the present instance, was adopted in closely similar situations by the Greek Council of State (*see* : Decisions in cases 24/1932 and 97/1937; see also *Cooper* v. *Wilson* [1937] 2 K.B. 309; and *London Borough of Ealing* v. *Race Relations Board* [1971] 1 All E.R. 424).

(4) In the light of the foregoing I am of the opinion that the preliminary objection in question raised by the respondent cannot be sustained.

Order accordingly.

Cases referred to :

The Cyprus Transport Co. Ltd. v. *The Republic* (1966) 3 C.L.R. 617 ;

Pelides and The Republic, 3 R.S.C.C. 13, at p. 17 ;

Cooper v. *Wilson* [1937] 2 K.B. 309 ;

London Borough of Ealing v. *Race Relations Board* [1971] 1 All E.R. 424 ;

Decisions of the Greek Council of State in cases Nos. 24/1932 *and* 97/1937.

Per curiam : I feel bound to observe that it is highly desirable that, as far as possible, the process of the examination of the validity of administrative acts and decisions should be pursued by way of hierarchical remedies before higher administrative organs and that only after all such remedies have been exhausted a recourse under Article 146 should lie ; I think that it is, therefore, necessary to frame provisions of the kind of section 10 of Law No. 94 of 1968 or of section 6 of the said Law No. 16/1964 (*supra*) in such a manner as not merely to enable the making of an application or an appeal to higher authority but to render such a course a prerequisite for the making of a recourse under Article 146—as a necessary step for the completion of the relevant administrative process—as it has been done, for example, by means of section 21(1) of the Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53 of 1963).

Decision on a Preliminary Legal Issue.

Decision on a preliminary issue of law to the effect that the present recourse, against the refusal of the respondent

to grant a permit to the applicant to erect a petrol filling station at Famagusta, could not have been made because the applicant did not apply to the Council of Ministers under section 10 of the Petrol Filling Stations (Regulation) Law, 1968 (94/68).

L. Clerides with *R. Gavrielides*, for the applicant.

M. Papas, for the respondent.

Cur. adv. vult.

The following decision was delivered by :—

TRIANTAFYLLIDES, P. : In this recourse the applicant complains against the refusal of the respondent Municipal Committee, as the Licensing Authority under the Petrol Filling Stations (Regulation) Law, 1968 (94/68), to permit the applicant to erect a petrol filling station in Famagusta. Such refusal was communicated to the applicant by letter dated the 5th March, 1970.

At the commencement of these proceedings arguments were heard on a preliminary issue of law which had been raised by the Opposition, *viz.* that this recourse could not have been made because the applicant did not apply to the Council of Ministers, under section 10 of the Law, for a review of the refusal of the respondent.

It is, *inter alia*, provided by the said section 10 (see subsection 1 (*a*)) that any person whose legitimate interest is affected by the refusal of the Licensing Authority to grant a licence may (δύναται), within ten days, apply to the Council of Ministers for a review of the matter.

It had to be examined, therefore, whether or not the admitted failure of the applicant so to apply to the Council of Ministers precludes the filing of this recourse.

There is no doubt that the application for review provided for by means of section 10 is a remedy, before a hierarchically superior organ, afforded within the limits of the realm of the administration ; especially as under Article 54 of the Constitution the Council of Ministers is vested, *inter alia*, with " the general direction and control of the government of the Republic " as well as with the " supervision of all public services ".

There is nothing in Article 146 of the Constitution, under which the present recourse has been made to this Court, or in any other legislative enactment, which prevents the making of recourse without resorting first to a remedy such as the one under section 10 (1) (*a*) of Law 94/68.

The position in this respect is closely similar to that under section 6 of the Motor Transport (Regulation) Law (16/64) ; see the case of *The Cyprus Transport Co. Ltd.* v. *The Republic* (1966) 3 C.L.R. 617. In that case reference was made to the earlier case of *Pelides* and *The Republic*, 3 R.S.C.C. 13, where, in the judgment, the following are stated (at p. 17) :—

> " The Court takes this opportunity of stressing that though Article 146 grants it exclusive jurisdiction in administrative law matters there is nothing in such Article to prevent procedures for administrative review of executive or administrative acts or decisions from being provided for in a Law. Such review may be either—
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> (*a*) By way of confirmation or completion of the act or decision in question, in which case no recourse is possible to this Court until such confirmation or completion has taken place (*e.g.* under section 17 of CAP. 96) ; or
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> (*b*) by way of a review by higher authority or by specially set up organs or bodies of an administrative nature, in which case a provision for such a review will not be a bar to a recourse before this Court but once the procedure for such a review has been set in motion by a person concerned no recourse is possible to this Court until the review has been completed."

Because of the manner in which section 10 is framed I have reached the view that the review by the Council of Ministers, as provided therein, is not a step by way of confirmation or completion of the relevant administrative action, but only a review by higher administrative authority ; therefore, the possibility to apply for such a review does not prevent the making of a recourse to this Court, under Article 146 of the Constitution, in a case in which there has not first been made a relevant application to the Council of Ministers.

It is useful to refer in this connection to the decisions of the Greek Council of State (Συμβούλιον Επικρατείας) in Cases 24/1932 and 97/1937 whereby there was adopted, in closely similar situations, the same approach as the one adopted in the present instance. It is interesting to note, also, that in England—where in the absence of the judicial remedy of a recourse for annulment, such as the one under Article 146, resort is had to the remedy of an action for a

declaration—it was held in the case of *Cooper* v. *Wilson* [1937] 2 K.B. 309, that an ex-sergeant of the police force, who claimed that he had not been validly dismissed from the force, was not limited to the right of appeal to the Secretary of State given by the Police Appeals Act, 1927, and that the fact that there existed the said remedy which he could take did not prohibit his access to the Court by way of an action for a declaration ; and the *Cooper* case was quite recently applied in the case of the *London Borough of Ealing* v. *Race Relations Board* [1971] 1 All E.R. 424.

In the light of all the foregoing I am of the view that the preliminary objection in question of the respondent cannot be sustained.

Before concluding I feel bound to observe that it is highly desirable that, as far as possible, the process of the examination of the validity of administrative acts and decisions should be pursued by way of hierarchical remedies before higher administrative organs and that only after all such remedies have been exhausted a recourse under Article 146 should lie ; I think that it is, therefore, necessary to frame provisions of the kind of section 10 of Law 94/68 or of section 6 of Law 16/64 in such a manner as not merely to enable the making of an application or an appeal to higher authority but to render such a course a prerequisite for the making of a recourse under Article 146—as a necessary step for the completion of the relevant administrative process—as it has been done, for example, by means of section 21 (1) of the Taxes (Quantifying and Recovery) Law, 1963 (53/63).

Order accordingly.