

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
IN ITS REVISIONAL JURISDICTION AND IN ITS
REVISIONAL APPELLATE JURISDICTION

Cyprus Law Reports
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[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TSAMBIKOS KARAYIANNIS AND ANOTHER,

Applicants.

v.

1. THE CENTRAL BANK OF CYPRUS,
2. THE REPUBLIC OF CYPRUS, THROUGH THE
MINISTRY OF COMMERCE AND INDUSTRY,

Respondents.

(Case No. 251/74).

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- Administrative Law—Discretionary powers—Principles on which administrative Court interferes with the exercise of discretion by the Administration—Permission to subscribe memorandum of a company under section 10 of the Exchange Control Law, Cap. 199—Refused by respondent 1 after obtaining the views of respondent 2—No improper use of discretionary powers, or misconception concerning the factual situation or non taking into account of material factors—Issue of negative decision fully justified on the material before the respondents.*
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- 10 *Exchange Control Law, Cap. 199—Non resident—Subscription to memorandum of company—Permission under s. 10 of the Law*

properly refused by respondent 1 after obtaining the views of respondent 2.

Applicant No. 1, who is a non resident, applied to respondent No. 1 for permission, under s. 10 of the Exchange Control Law, Cap. 199, to subscribe the memorandum of a company to be formed under the name "Apollo 8 Tours Ltd.,". Respondent No. 1 was also informed that the company would undertake the agency of several travel companies and would act as travel agents. 5

Respondent No. 1, in accordance with its practice, referred the application to the Ministry of Commerce and Industry for its views. The Ministry in reply informed respondent 1 that they objected to such foreign participation as foreign nationals would compete with Cypriots in a sector that is already saturated. Respondent 1 then wrote to the applicant in terms of the Ministry's objection refusing the permission applied for. 10 15

Applicant filed a recourse against the said refusal contending that the respondents acted contrary to law and under a misconception of facts.

Held, dismissing the recourse, (1) respondent No. 1 very rightly upon receiving the application sought the views of the Ministry of Commerce and Industry under which the Cyprus Tourism Organization comes, as it is clear from the memorandum of the company to be formed, that its main objects had to do with tourism. After obtaining the views of the Ministry and in exercising their discretion in the matter the respondents issued the decision complained of. 20 25

(2) It is a well established principle of Administrative Law that on a recourse under Article 146 of the Constitution the Court is not empowered to substitute its own discretion for that of the Administration (*Charalambos Pissas No. 2 v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 784). An Administrative Court can only interfere if there exists an improper use of the discretionary power or a misconception concerning the factual situation or the non taking into account of material factors. (*Vafeadis v. The Republic*, 1964 C.L.R. 454). 30 35

(3) I find no merit in the allegation that the respondents acted contrary to law or that they misconceived the facts of

the case. On the contrary, the material before the respondents, including the Articles of Association of the company under formation and the views of the Ministry of Commerce and Industry fully justify the issue of the negative decision reached by them.

Application dismissed.

Cases referred to:

- Pissas (No. 2) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 784;
10 *Vafeadis v. The Republic*, 1964 C.L.R. 454.

Recourse.

Recourse against the refusal of the respondents to grant permission to applicant No. 1 to subscribe in a company to be formed under the name "Apollo 8 Tours Ltd."

- 15 *L. Papaphilippou*, for the applicants.
G. Constantinou (Miss), for the respondents.

Cur. adv. vult.

20 MALACHTOS J. read the following judgment*. The applicants in this recourse claim a declaration of the court that the act or decision of the respondents dated 14th March, 1974, whereby they refused to grant permission that applicant No. 1 subscribes in a company to be formed under the name "Apollo 8 Tours Ltd.", is *null* and *void* and of no legal effect whatsoever.

The relevant facts are as follows:

25 By letter dated 22nd February, 1974, *exhibit 1*, the applicants through their advocates applied to the Central Bank of Cyprus for permission under the Exchange Control Law, Cap. 199, that applicant No. 1, who is a travel agent and a Greek subject residing permanently at Rhodes, subscribes the Memorandum
30 of Association of a private company to be formed under the name of "Apollo 8 Tours Ltd". To the above letter *exhibit 1*, a copy of the Memorandum and Articles of Association of the said company, *exhibit 4*, was attached. Respondent No. 1 was informed by the said letter, *exhibit 1*, that this company would
35 undertake the agency of several travel companies and would act as travel agents. The travel companies listed in clause 3 (b) of the objects of the company were exclusively represented in Greece by applicant No. 1. They further informed respondent

* An appeal was filed against this judgment on 21.2.1978

No. 1 that during the years 1972 and 1973 applicant No. 1 managed to attract 230,000 tourists in Greece and that he would be in a position to switch tourists to Cyprus of even a greater number. That the Memorandum of Association of the company would be subscribed by Cypriots for 6,666 shares and by applicant No. 1 for 3,334 ordinary shares of £1 each. The respondent No. 1 upon receiving the above application sought the views of the Ministry of Commerce and Industry by a letter dated 26th February, 1974, *exhibit 2*, to which *exhibits 1* and *4* were attached. It is the practice of the Central Bank in dealing with applications involving the participation by non residents in the share capital of companies incorporated in Cyprus to refer all applications to the appropriate Ministry of the Government of the Republic for their views.

The Ministry of Commerce and Industry by their letter dated 8th March, 1974, *exhibit 6*, informed the Central Bank that they objected to such foreign participation as foreign nationals would compete with Cypriots in a sector that is already saturated. In fact at the material time there were about one hundred travel agencies operating in Cyprus. To these local sub agencies should be added. The arrivals of tourists during 1973 were 178,598 and the departures 87, 294. Respondent No. 1 bank, after considering the application in the light of the objection of the Ministry wrote the following letter, *exhibit 3*, to the applicants refusing the granting of permission for applicant No. 1 to subscribe the Memorandum of Association of the company under formation.

“ With reference to your letter dated 22nd February, 1974 requesting permission on behalf of the above company to issue shares to a non-resident we regret to inform you that under the Exchange Control Law, Cap. 199 we are unable to grant the requisite authority as they would compete with Cypriots in a sector that is already saturated.”

Hence the applicants filed the present recourse.

The grounds of law on which the application is based are:

1. The respondents acted under misconception of facts in finding that the incorporation of Apollo 8 Tours Ltd. would compete with Cypriots in a sector that is already saturated.

2. The respondents misconceived applicants application in that its main object is not at all saturated in Cyprus.
3. The respondents' decision or act is contrary to the general policy of the Government of Cyprus for promoting tourism in Cyprus.
4. Respondents resorted to absolute prohibition without considering whether conditional or in terms or otherwise grant would have served the public interest and policy and the objects of the application of the applicants.

10 Counsel for applicants argued that respondents misconceived the facts of the application in considering that the company to be formed was one for the sale of tickets and not for the promotion of tourism. The application of the applicants was only for permission for applicant No. 1 to subscribe for 1/3rd of
15 the total number of shares in the company. He also argued that the respondents did not properly weigh all the factors of the case, such as the great number of tourists that applicant No. 1 was in a position to bring to Cyprus, the number of the companies in the tourist trade which he represented, and the
20 fact that these companies would not appoint as their agent a company in which respondent No. 1 did not participate. He further submitted that the respondents ought to have considered the possibility of imposing restrictions on the permission before arriving at an absolute prohibition. Finally, he
25 submitted that the respondents acted ultra vires the Central Bank of Cyprus Law 1963 (48/63) particularly sections 3, 4 and 6 of that Law, which deal with the establishment, purposes and functions of the Central Bank.

30 Counsel for the respondents, on the other hand, submitted that the decision was taken after taking into account all relevant factors including the Memorandum of Association of the company, *exhibit 4*, and arrived at the conclusion that the proposed company would have competed other local companies taking into consideration its objects, one of which was the
35 issue and sale of tickets. There was at the material time a great number of tourist agencies operating. The tourists would have been attracted through the cooperation of applicant No. 1 with any one of these agencies and not solely by the formation of a new company.

The relevant legislative enactment in the present case is section 10 (2) of the Exchange Control Law Cap. 199 which reads as follows:

“10 (2) The subscription of the memorandum of association of a company to be formed under the Companies Law, or any Law amending or substituted for the same, by a person resident outside the scheduled territories, (now the Republic), or by a nominee for another person so resident, shall, unless he subscribes the memorandum with the permission of the Financial Secretary, (now the Central Bank), be invalid in so far as it would on registration of the memorandum have the effect of making him a member of or shareholder in the company, so, however, that this provision shall not render invalid the incorporation of the company; and if by virtue of this subsection the number of the subscribers of the memorandum who on its registration become members of the company is less than the minimum number required to subscribe the memorandum, the provisions of the said Laws relating to the carrying on of business of a company the number of whose members is reduced below the legal minimum shall apply to the company as if the number of its members had been so reduced.”

Respondent No. 1 very rightly upon receiving the application on behalf of applicant No. 1 sought the views of the Ministry of Commerce and Industry under which the Cyprus Tourism Organization comes, as it is clear from the memorandum of the company to be formed, *exhibit 4*, that its main objects had to do with tourism. After obtaining the views of the said Ministry and in exercising their discretion in the matter the respondents issued the decision complained of.

It is a well established principle of Administrative Law that on a recourse under Article 146 of the Constitution the Court is not empowered to substitute its own discretion for that of the Administration (*Charalambos Pissas No. 2 v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 784). An Administrative Court can only interfere if there exists an improper use of the discretionary power or a misconception concerning the factual situation or the non taking into account of material factors (*Costas Vafeadis v. The Republic of Cyprus*, 1964 C.L.R. 454).

I must say that I find no merit in the allegation that the respondents acted contrary to law or that they misconceived the facts of the case. On the contrary, the material before the respondents, including the Articles of Association of the Company under formation and the views of the Ministry of Commerce and Industry, fully justify the issue of the negative decision reached by them.

For the above reasons this recourse fails with no order as to costs.

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*Application dismissed.
No order as to costs.*