

1978 August 12

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TAKIS LEONIDA,

*Applicant,*

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Respondent.*

(Case No. 249/76).

5 *Mines and Quarries (Regulation) Law, Cap. 270—Quarry licence—  
Application for—No power in competent authority to require  
applicant to build a plant or set up any installations before his  
application would be favourably examined—Section 9(1) of the  
Law read in conjunction with section 39.*

10 *Administrative Law—Administrative decision—Misconception of law—  
Application for quarry licence—Competent Authority requiring  
applicant to build a plant and set up installations before his appli-  
cation would be favourably examined—Section 9(1) of the Mines  
and Quarries (Regulation) Law, Cap. 270, read in conjunction  
with section 39, does not authorise competent authority to act  
in this manner—Competent Authority acted under a misconception  
of law—Its decision annulled as being contrary to law.*

15 On November 21, 1974, the applicant applied for a quarry  
licence, class 'A' with regard to an area of 1,555 donums of  
land at Pano Arodes. His application was refused by the  
Minister of Commerce and Industry; and when he applied for  
re-examination of the matter the Minister revoked his aforesaid  
20 decision and substituted same by a new one. Applicant was  
thereupon informed that the whole subject has been placed anew  
before the Minister of Commerce and Industry who decided not  
to grant the quarry licence for the time being but that the appli-  
cation will be favourably examined if within one year applicant  
25 managed to set up installations worth more than C£100,000  
for the processing of the pentonitis.

Hence the present recourse by means of which applicant challenges both the validity of the original decision and of the later decision imposing the aforesaid condition.

Section 9 (1) of the Mines and Quarries (Regulation) Law, Cap. 270 reads as follows: 5

“ The Council of Ministers may require an applicant for a prospecting permit, mining lease or quarry licence to show to his satisfaction that he commands sufficient working capital to ensure the proper prospecting, development or working, as the case may be, of the area applied for and may require the applicant to furnish a banker’s guarantee for such amount as may be determined”. 10

*Held*, that though section 9(1) clearly empowers the competent authority under the law to require an applicant for a quarry licence to satisfy it that he commands sufficient working capital, it does not, however, authorise the competent authority, to require an applicant to build a plant or set up any installations before an application would be favourably examined as it has been done in this case; that the respondent authority acted on a misconception of law and that, accordingly, the *sub judice* decision is *null* and *void* as being contrary to law (see, also, s. 39 of Cap. 270). 15 20

*Sub judice decision annulled.*

(*Note:* After annulling the *sub judice* decision the Court dealt with the question of the competence of the Minister of Commerce and Industry to act in lieu of the Council of Ministers, and held that such competence was conferred on him by a decision of the Council of Ministers taken under s. 3(1) of the Statutory Functions (Conferment of Exercise) Law, 1962 (Law 23/62)). 25 30

### Recourse.

Recourse against the decision of the respondent whereby he, inter alia, refused to grant to applicant a quarry licence, class ‘A’, for the quarrying of pentonitis clay in the area of Pano Arodes village. 35

*G. Ladas*, for the applicant.

*S. Georghiades*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks:

5           “(a) The annulment, as being contrary to law and in excess or abuse of power, of the decision of the Minister of Commerce & Industry, dated the 3.8.1976, by which a quarry licence, class ‘A’, for the quarrying of pentonitis clay in an area of 1,555 donums of land at Pano Arodes village, was refused; and

10           (b) The annulment of the decision of the Minister of Commerce & Industry, dated 24th September, 1976, to impose the conditions stated therein for the granting of the said licence, class ‘A’, as being *null and void*, as contrary to law and/or as in abuse and/or as in excess of power”.

15       The applicant on the 21st November, 1974, applied on the appropriate form ‘C’ of the First Schedule to the Mines and Quarries Regulations, 1958, for a quarrying licence, class ‘A’, with regard to an area of 1,555 donums of land at Pano Arodes village marked on the site plan attached to the said application.

20       It may be mentioned here that under Regulation 17(2) a quarry licence, class ‘A’, may be granted when the area to be covered by the licence exceeds 20 donums in extent or where the whole or part of the quarried material will be exported or processed and the products from such processing or part thereof will be

25       exported. By letter dated 24.1.1976 (*Exhibit ‘A’*), the Senior Mines Officer asked for particulars on five points before the Ministry could take up the matter for a final decision. These points included particulars regarding the places from where samples were taken, the results of their examination, the estimate of the volume of the pentonitis, the future plans regarding

30       the exploitation of the permit, and the capital which they had at their disposal for the purpose. The applicant replied by letter dated 8.2.1976, (*Exhibit ‘B’*), and by letter dated the 7.2.1976 (*Exhibit ‘C’*), Dr. K. Louca, a geologist, informed

35       the Senior Mines Officer that he had visited the area in question, carried out an examination and found that there exist several millions of tons of good quality pentonitis clay. By letter dated the 3rd August, 1976, (*Exhibit ‘D’*), the applicant was informed that the Minister of Commerce & Industry, having

30       considered the whole subject decided not to grant him the

said licence. The applicant asked for re-examination of the matter by letter dated 30th August, 1976, *Exhibit 'E'*; the Minister thereupon revoked his aforesaid decision and substituted same by a new one dated the 4th September, 1976, and the applicant was informed by letter of that date (*Exhibit 'F'*) as follows:— 5

“..... the whole subject has been placed anew before the Minister of Commerce & Industry and he decided that:

- (a) For the time being not to grant the said quarry licence but that you be informed that your application will be favourably examined if within one year from to-day you manage to set up installations worth more than C£100,000.— for the processing of the pentonitis. 10
- (b) The extent of the licence will be decided depending on the capacity of the factory to be erected. 15
- (c) The approval of the Government and the Central Bank of Cyprus should be secured in advance, if in the Company to be formed or in the exploitation of the licence, foreigners will participate.” 20

The question of quarrying licences and permits is regulated by the Mines and Quarries (Regulation) Law, Cap. 270, hereinafter referred to as “the Law”, and the Regulations made thereunder. A distinction is made therein between a quarry permit and a quarry licence. The first may be issued under section 38 by the Commissioner of the District, subject to such terms and conditions as he may determine and for a period not exceeding one year, and, a quarry licence may be granted by the Governor whose powers since Independence and under Article 188.3 (b) of the Constitution have vested in the Council of Ministers, being a matter relating to the exercise of executive power. 25 30

Section 39 of the Law reads as follows:—

- “(1) Quarry licences may be granted subject to such covenants, terms and conditions and in respect of such areas and subject to the payment of such rentals and fees as may, from time to time, be determined by the Governor. 35
- (2) Quarry licences may be granted for such period not exceeding twenty-five years and may be renewed for a

further period or periods not exceeding twenty-five years at any one time:

5            Provided that in cases where considerable capital expenditure or processing plant at or near the site is necessitated the Governor may in his discretion grant a quarrying licence for a period not exceeding fifty years renewable for a further period not exceeding fifty years in accordance with any mining or quarrying Regulations then in force.

10        (3) The provisos to subsection (1) of section 22 and the provisions contained in subsections (5), (6) and (7) of section 24 and in sections 25, 26, 27, 28, 29 and 31 shall be applicable mutatis mutandis to quarry licences”.

15        Relevant also to our case is section 9 of the Law which reads:-

20            “(1) The Governor may require an applicant for a prospecting permit, mining lease or quarry licence to show to his satisfaction that he commands sufficient working capital to ensure the proper prospecting, development or working, as the case may be, of the area applied for and may require the applicant to furnish a banker’s guarantee for such amount as may be determined.

25            (2) The Governor may require any reports on the area of a mining lease or quarry licence made by prospectors, lessees or engineers to be submitted for his information.

            (3) If any person makes default in complying with any requirement imposed under subsection (2) he shall be liable to a fine not exceeding five pounds for every day during which the default continues”.

30            This section clearly empowers the competent authority under the law to require an applicant for a quarry licence to satisfy it that he commands sufficient working capital so that the proper development or working of the area applied for will be ensured. It further gives power to the competent authority  
35            to require an applicant to furnish a bankers guarantee for such an amount as it may be determined. This is the section of the law read in conjunction with section 39 which can be relied

upon in justifying the ascertainment by the competent authority of the financial means and the know-how of an applicant before a prospecting permit, mining lease or a quarrying licence are granted.

Section 9 does not authorize, however the competent authority, whether the Council of Ministers or the Minister of Commerce and Industry, if the former delegated its powers under the law to the latter, to require an applicant to build a plant or set up any installations before an application would be favourably examined as it has been done in this case and communicated to the applicant by the letter of the 24th September, 1976 (*Exhibit 'F'*). The position in law being so, I have reached the conclusion that the respondent authority acted on a misconception of law and therefore, the decision is *null* and *void* as being contrary to law.

The construction suggested by learned counsel for respondent that if the installations worth more than C£100,000.- were set up the licence would be definitely granted, is not born out by the very wording of the *sub-judice* decision as communicated to the applicant. It only states that it would be favourably examined and moreover, it leaves open the extent of the licence making it depending on the capacity of the factory to be erected; the tenor of this decision having in itself an element of uncertainty as to what will be the wish of the administration in the future.

Having come to this conclusion, the question of the competence of the Minister of Commerce and Industry to act in lieu of the Council of Ministers, which is by the law empowered to act thereunder, may be briefly dealt with out of respect to the arguments advanced on this issue. Under section 3(1) of the Statutory Functions (Conferment of Exercise) Law 1962 (Law No. 23/62), where by or under any law the Council of Ministers is empowered to exercise any statutory functions, the Council of Ministers may, unless by law expressly prohibited from so doing, by a decision in this respect, authorize, as in our case, a Minister to exercise such statutory functions on behalf of the Council of Ministers subject to such conditions, exceptions and qualifications as they may in such decision prescribe.

This was obviously done in the present case by decision No. 4545 of the Council of Ministers, dated 18.3.1965, and published, together with other similar decisions, under Notification No. 7 in Supplement 3, Part I, to the official Gazette of the Republic  
5 No. 1248, dated 10th June, 1976, page 13, at page 44.

These decisions were taken under section 3 of Law 23/62 and in my view there is nothing in the Mines and Quarries Law or in the Constitution or on account of the composition of the Council of Ministers, as claimed on behalf of the applicant, to  
10 prevent the lawful delegation of competence in the matter. Such delegation having been duly done on behalf of the competent organ on the strength of a statutory provision the Minister of Commerce and Industry was competent in the matter to act.

For all the above reasons the *sub judice* decision is annulled  
15 but in the circumstances I make no order as to costs.

*Sub judice decision annulled.  
No order as to costs.*